



LACAILLE, Lise
The Notary and Daily Life
Detail



CO-OWNERSHIP of property



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The law provides for two types of co-ownership

Those acquiring the co-ownership of a property must be properly informed of their rights and obligations. The first step is to define the different types of co-ownership.



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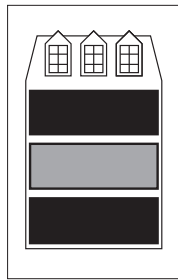
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DIVIDED CO-OWNERSHIP (CONDOMINIUM)

Divided co-ownership, as the name implies, permits the division of a building into fractions. A fraction may belong to one or more persons. Each owner of a fraction has the exclusive ownership of a private portion of the immovable, and has an undivided right of ownership, that is, a share proportionate to the relative value of his fraction, in the common portions of the immovable. The common portions belong to all the co-owners. The declaration of co-ownership may restrict some common portions to exclusive use by a co-owner (e.g. a private balcony adjacent to a private portion may be a common portion for restricted use).

Say, for example, that you buy the second floor in a three-storey condominium. You are the sole owner of the second floor (the exclusive portion). You and your two neighbours on the first and third floors also own shares of the common portions, such as the outside walls, the land, the roof, and so forth.

In the illustration, the **grey** areas belong to you alone; the **white** areas belong to all the co-owners.



FINANCING

Can I borrow to purchase a condominium unit (co-ownership fraction)?

Each owner of a fraction may hypothecate it (give it as security) to guarantee the repayment of the sums borrowed to purchase it. Each hypothec is separate. Condominium owners are not affected by a neighbour's hypothecary difficulties.

SPECIFIC PRECAUTIONS

What precautions should I take before buying a condominium?

Each condominium is governed by a notarial declaration of co-ownership. It goes without saying that a purchaser should always read the declaration of co-ownership carefully and understand its scope and meaning before making a final commitment. As a wise condominium buyer, you will also be concerned about the quality of management of the property. You should check out the various condominium expenses and fees thoroughly. **But most important, before you sign any document, consult your notary.** He or she is a specialist in condominium law.

YOUR RIGHTS AND OBLIGATIONS

What does the declaration of co-ownership cover?

The declaration of co-ownership divides the property into fractions. It includes the act constituting the co-ownership, the by-laws of the immovable, and a description of the fractions.

The constituting act of co-ownership specifies the relative value of each fraction, indicating how that value was determined. It also determines, as a function of the relative value, the contribution of each fraction to the common expenses of the immovable, the contingency fund established by law, and the number of votes attached to each fraction. The constituting act defines the destination or purpose of the immovable, i.e. the use (commercial or industrial, for example) the owners may make of it, as well as the destination of the private and common portions. The act also sets out the powers and duties of the board of directors of the syndicate and the general meeting of co-owners.

A detailed by-law stipulates rules on the enjoyment, use and upkeep of the private and common portions. For example, it might specify that no animals are allowed in the units. The by-laws also contain rules for the operation and administration of the co-ownership, in particular, the composition of the board of directors and the conditions relating to the office of administrator.

The description of the fractions contains the cadastral description of the private portions and the common portions of the immovable. It also contains a description of the real rights affecting or existing in favour of the immovable.

The owners' association or "syndicate" and the general meeting of co-owners.

What are the roles of the condominium syndicate and the general meeting of co-owners?

The syndicate is created when condominium ownership is established, to ensure that the property is preserved, maintained and administered. The board of directors is the administrative arm of the syndicate. The directors adopt the budget for the condominium property.

The general meeting of co-owners examines issues involving all the condominium owners. Each owner is entitled to vote at this meeting, according to the number of votes he or she has.

SALE AND HYPOTHEC

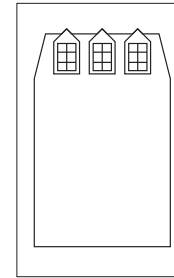
What conditions govern the sale and hypothecation of a fraction of divided co-ownership?

Each condominium owner is free to sell or hypothecate his or her fraction. However, the declaration of co-ownership may contain restrictions. You should ask your your notary for information on the precautions you should take.

UNDIVIDED CO-OWNERSHIP

A property of this type belongs to several individuals, called undivided co-owners. No one owner owns an exclusive portion of the property; rather, they each own a fraction.

For example, you buy a triplex with two of your friends and you all contribute equally to the sale price. After the sale, you decide to move into the second-floor apartment. The apartment does not belong to you exclusively; your two friends share its ownership with you, just as you share the ownership of their dwellings on the first and third floors. You and your friends are undivided co-owners of the whole triplex (see illustration in white). In the example above, your shares in the immovable are one third each.



THE FORMALITIES INVOLVED

How do you create undivided co-ownership?

Undivided co-ownership of a property begins informally when several persons, the undivided co-owners, acquire ownership of the same property. However, where an immovable is involved, it is in the interests of the undivided co-owners to draw up and register a formal agreement among themselves. The indivision agreement must be published to be enforceable against third persons.

FINANCING

Is each undivided co-owner free to hypothecate his or her share of property alone?

The *Civil Code of Québec* provides that each undivided co-owner may hypothecate his or her share of the property alone. The other co-owners are thus in no way liable should the hypothecary debtor default. The law even gives them special rights.

SELLING

Is each undivided co-owner free to sell his share?

Each co-owner is free to sell or transfer his or her undivided share in the property, unless otherwise stipulated in the indivision agreement. However, the law provides, with some exceptions, that the other undivided co-owners may, within certain time limits, exclude the new purchaser by refunding the sale or transfer price and expenses. The undivided co-owners must exercise this right of redemption within one year from the sale or transfer of the share.

TERM

How long can indivision last?

The indivision agreement may stipulate a maximum term of thirty years. However, the agreement may be renewed.

CONTENTS OF THE AGREEMENT

What provisions may be usefully included in an indivision agreement?

The agreement may cover the following:

- ▶ the term of the agreement
- ▶ rights and obligations of the co-owners with respect to the enjoyment of the premises
- ▶ the sharing of maintenance and renovation
- ▶ the sharing of expenses
- ▶ the ownership of improvements
- ▶ restrictions on selling
- ▶ rules for administering the property
- ▶ rules governing division on termination of the indivision agreement

Your notary can advise you properly about the contents of the indivision agreement.

CONVERSION OF RENTAL PROPERTY

The owner of rental property comprising one or more dwellings who wishes to convert it to a condominium (divided co-ownership) must follow certain strict rules.

Under current legislation, conversion to divided co-ownership is prohibited within the Montreal Urban Community unless the municipality in which the property is located has passed a by-law permitting it.

Conversion is allowed in other Quebec communities unless otherwise prohibited by a municipal by-law.

In all cases, the first step for the owner is to contact the municipality in which the property is located to determine whether such a conversion can take place.

Certain specific rules apply where all the dwellings in the building to be converted are occupied by the undivided co-owners. Finally, the law sets out the rights and obligations of the owner who has undertaken the conversion and the lessees living in the building.

Consult your notary: he leaves nothing to chance.