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Editorial

Co-ownership Insurance in All Its Forms in 2025

The legislative framework governing insurance in co-ownership has undergone major changes following the adoption of a new law assented to in 2018, the various measures of which are now fully in force. This new version of the rules relating to insurance in co-ownership has had, and will continue to have, significant implications for syndicates and co-owners themselves. Overall, however, all parties should benefit from better protection in the event of a loss, provided that these rules are properly applied.

"Upon publication of the declaration of co-ownership, the collective body of co-owners constitutes a legal person whose purpose is the preservation of the immovable, as well as the maintenance and administration of the common portions (...). It must, in particular, ensure that the work necessary for the preservation and maintenance of the immovable is carried out," provides section 1039 of the Civil Code of Québec. These new rules are indeed part of a broader objective to ensure the long-term sustainability of the real estate stock held in co-ownership.

That said, section 1073 of the *Civil Code of Québec* has been substantially amended. For good reason, as it now requires that the insurance policy of the syndicate include a reasonable deductible. Other key elements of this reform include the obligation for the syndicate to have the building's reconstruction value assessed by a certified appraiser at least every five years, as well as to maintain "a sufficiently precise description of the private portions so that improvements made by co-owners can be identified." This description must be entered in the register of the co-ownership and made available to co-owners upon request.

Thus, improvements made to private portions will be more accurately assessed so that they reflect their true value. This description also aims to limit disputes between the syndicate's insurer and the co-owner's insurer, who must determine who pays what in the event of a loss. Moreover, the creation of a self-insurance fund, intended in particular to cover the syndicate's deductibles when it must handle a loss, is among the other new measures. This fund already existed in some declarations of co-ownership. Now, all syndicates are required to establish one.

Unfortunately, this new legislative framework remains poorly understood by many co-owners and syndicate directors, as well as by certain stakeholders in the insurance sector. This is the main reason why we felt it necessary to publish this new booklet, which addresses the insurance of the syndicate as well as that of directors, assembly officers, managers or property managers, co-owners, and tenants of a condo.It also examines the role of the insurance trustee and various other aspects that syndicates of co-ownership should be aware of, including steps to prevent losses and recourses against co-owners and tenants responsible for a loss.

Moreover, this booklet includes several definitions contained in a glossary on insurance which, like the practical fact sheets and sub-fact sheets that address the topic, can be consulted on the Condolegal.com website. In short, we offer an overview of the rules governing insurance in co-ownership, a residential housing model that is rapidly expanding and whose many facets must be properly understood.

Enjoy the read!

Yves Joli-Coeur – Distinguished Lawyer
President of the RGCQ – Provincial
Publisher of the Condolegal.com portal

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Insurance of the Syndicate of Co-ownership

Your co-ownership is exposed to various types of risks, for example fires, water damage, theft and acts of vandalism. When a loss occurs, co-ownership insurance covers the immovable, as well as the civil liability of the syndicate of co-ownership.

For a syndicate, taking out this type of insurance is mandatory. The law and most declarations of co-ownership require it. The insurance policy specifies the coverage provided, the limits and exclusions of coverage, as well as the amounts applicable to deductibles.

The various coverages that your syndicate must obtain are reviewed on the following pages.

BUILDING INSURANCE

The law requires syndicates of co-ownership to insure their building. Most declarations of co-ownership also impose this obligation. This may seem surprising at first, since the syndicate is not, strictly speaking, the owner of either the private portions (except in certain cases) or the common portions. However, its primary mission is to ensure the preservation and long-term sustainability of the building, which it must manage and administer according to best practices. This is why the legislator has recognized its insurable interest and imposed the obligation to obtain insurance for the building.

Property Covered

The insurance must cover the common portions, the private portions (excluding improvements made to them by a co-owner), and the movable property belonging to the syndicate. This insurance must be taken out in the name of the syndicate, whose identity will appear on the insurance policy. It should be recalled that co-owners, as well as their hypothecary creditors, are not the insured parties in this case. As for improvements made to the private portions, it is the responsibility of each co-owner to protect them through individual insurance, whether those improvements were made by previous owners or by themselves.

Reference Unit

Furthermore, section 1070 of the Civil Code of Québec has been amended to provide that the syndicate's register of co-ownership must contain, in addition to the other documents listed in that provision, a description of the private portions sufficiently precise to allow improvements made by co-owners to be identified. It is also provided that a single description may apply to several portions when they have the same characteristics. This description serves as a reference unit, and co-owners who request it may consult it. It should be noted that this document is directly related to the obligation to insure the entire immovable, including the private portions, excluding improvements made to them, in accordance with section 1073 of the Civil Code of Québec.

This measure came into force in December 2018 for all co-ownerships established as of June 13, 2018, the date on which the amending law was assented to. Those created before that date have been subject to it since June 13, 2020. Thus, all syndicates of co-ownership have since been required to produce and retain this description, which serves to define the boundary of the syndicate's insurable interest, beyond which property insurance becomes the responsibility of each co-owner individually.

Risks Covered

The syndicate's insurance policy must not only cover damage resulting from theft or fire, but also all "usual risks," which include lightning, wind, hail, water damage, impact from aircraft or land vehicles, and so on. In other words, the syndicate's board of directors must obtain what is commonly referred to as an "all risks" insurance policy.

However, only accidental losses are covered. The insurance protects against the damaging consequences of unforeseeable, sudden and random events. Non-accidental damage is generally not covered by the insurer. The insurer will also not cover losses resulting from an inherent defect in the property, such as a hidden defect or faulty workmanship during the construction of the building. The same applies to damage resulting from a chronic lack of maintenance of the common portions by the syndicate. Insurers do not indemnify negligence...

Reconstruction Value

The law now requires the syndicate to obtain insurance covering the "reconstruction value of the immovable, in accordance with the standards, practices and rules of the art applicable at that time." This corresponds to the amount that would have to be spent to rebuild the entire immovable in the event of a total loss, without taking into account its state of depreciation. This reconstruction value must therefore also include, among other things, demolition costs, professional fees, permits and applicable taxes (GST and QST). The required amount must be determined at least every five years by a member in good standing of the Ordre des évaluateurs agréés so that the coverage remains adequate.

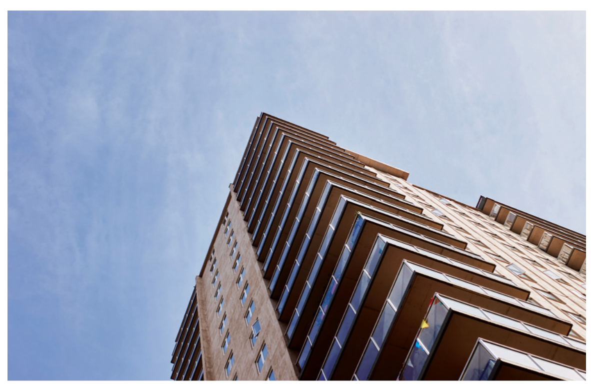
Required Coverage Amount

In the past, in order to benefit from lower premiums, some boards of directors of syndicates tended to underestimate, whether intentionally or unintentionally, the reconstruction costs of their building. By not insuring the immovable for its full reconstruction value, the amount provided by the insurance could prove insufficient in the event of a total or partial loss. Indeed, in the event of a total loss, the insurer is released upon payment of the amount of insurance subscribed. In the event of a partial loss, the indemnity is calculated according to the "proportional rule." The syndicate's directors could thus incur the liability of the syndicate, and even their own personal liability. It is therefore now required that the reconstruction value for insurance purposes be assessed by a professional, namely a certified appraiser. It must also be updated at least every five years. Moreover, the insurance policy may contain a proportional clause that moderates the strict application of these principles.

Self-Insurance Fund

Section 1071.1 of the Civil Code of Québec requires every syndicate of co-ownership to establish a self-insurance fund that is liquid and readily available in the short term. This obligation reflects a practice that already existed in many co-ownerships. The sums accumulated in this fund belong to the syndicate and are not refundable to co-owners who sell their private portion. This self-insurance fund is, first and foremost, intended to cover the deductibles provided for in the insurance policies obtained by the syndicate. It is also used to repair damage to property in which the syndicate has an insurable interest when the contingency fund or an insurance indemnity cannot cover the cost. This fund is established based on the highest deductible subscribed by the syndicate (with the exception of those for earthquake or flooding) and an additional reasonable amount to cover the other payments to which it is allocated.

A minimum contribution from co-owners has been established by government regulation, ensuring that the self-insurance fund is replenished within a maximum period of two years if sums are withdrawn from it.



GOOD TO KNOW!

The government has determined by regulation the risks that are covered by default under the syndicate's insurance policy. This coverage may be reduced, provided that the excluded risks are expressly stated in the insurance policy or in an endorsement, and that they appear in clearly visible typographical characters.

KEY TAKEAWAY:

The syndicate's insurance policy must, in all circumstances, provide for a waiver of any subrogation rights against the syndicate, the co-owners and the persons living with them, the directors, the manager, and the assembly officers (chair, secretary of the meeting and other persons responsible for ensuring its proper conduct). Such subrogation recourse by an insurer is now excluded in matters of divided co-ownership, except in cases involving bodily or moral injury, or damage resulting from an intentional fault or gross fault (section 1075.1 of the Civil Code of Québec).

CAUTION!

When obtaining the syndicate's insurance coverage, the board of directors must declare all circumstances likely to significantly influence an insurer in establishing the premium, assessing the risk, or deciding whether to accept it. If it fails to provide all relevant information to the insurer, the syndicate may face a denial of coverage or a reduction in compensation at the time of a claim.

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CIVIL LIABILITY INSURANCE OF THE SYNDICATE OF CO-OWNERSHIP

Like any other natural or legal person, a syndicate of co-ownership may incur civil liability. The law therefore requires every syndicate of co-ownership to obtain insurance covering its civil liability toward third parties. Most declarations of co-ownership also impose this obligation.

Purpose of the Coverage

This insurance is crucial both for the co-ownership and for the co-owners themselves. It provides protection to all co-owners when their liability is engaged collectively toward third parties, including co-owners or occupants of the building.

The insurance obtained by the syndicate covers risks related to the common portions of the immovable (e.g., poorly cleared sidewalks, slippery stairs, etc.) or damage caused by its employees (e.g., concierge, security guard, doorman, etc.) in the performance of their duties. It protects the syndicate if it is held responsible for causing harm to a third party, such as bodily injury or property damage. In addition, the insurer may be called upon, under certain conditions, to assume the defense of the syndicate if a civil liability lawsuit is brought against it. This coverage is used to pay lawyers' fees and other judicial expenses. However, as with any insurance policy, exclusions apply.

Coverage Amount

In the civil liability insurance policy, the insurer must indicate the amount of insurance coverage. The declaration of co-ownership may require a minimum coverage amount, which could become outdated after a certain time. It is therefore important to be cautious.

Exclusions

In addition to the usual exclusions, this civil liability insurance (generally) excludes any damage resulting from insufficient insurance coverage in the syndicate's insurance policy. For example, this could occur if the declared value does not correspond to the actual reconstruction cost of the building. In such a case, to rebuild the immovable in whole or in part following a loss, all co-owners would have to contribute financially to make up the difference between the indemnity paid by the insurer and the actual reconstruction costs.

Failure to Insure the Syndicate for Civil Liability

Failure to obtain civil liability insurance coverage could have serious consequences for the syndicate, for the co-owners individually, and for the members of the syndicate's board of directors.

- **For the Syndicate**

If it is sued and ultimately required to compensate the person who suffered the damage, the syndicate will then have to bear its own legal fees and other court costs.

- **For the Co-owners**

Although a syndicate of co-ownership has its own financial assets, the law provides that when a judgment is rendered against it, the financial liability of the co-owners is engaged in part. It should be noted that the person who prevails against the syndicate may claim the sums of money from each person who owned a private portion at the time the cause of action arose, in proportion to the relative value of their fraction.

- **For the Directors**

Any director incurs personal liability if they fail to observe a duty of prudence and diligence in carrying out their mandate. The syndicate's failure to obtain civil liability insurance may therefore engage the personal liability of the members of the board of directors.

GOOD TO KNOW!

Having a swimming pool in the building increases the risk with respect to the syndicate's civil liability. For this reason, your syndicate should review the limit of its civil liability coverage to ensure that it has adequate protection. In all circumstances, this coverage should be at least two million dollars.

KEY TAKEAWAY:

In all cases, the board of directors should be assisted by an insurance professional. This professional will recommend an appropriate coverage amount based on the insured risks.

CAUTION!

The insurance coverage of the syndicate of co-ownership for its civil liability is distinct from that of the directors. The two should therefore not be confused, and one should not assume that if the directors' civil liability were engaged, they would be covered. If no coverage specifically for directors is obtained, they will not be protected.

Directors' and Officers' Liability Insurance

The director plays a leading role within a co-ownership. As a mandatary of the syndicate of co-ownership, he or she must ensure the proper management of the co-ownership's day-to-day affairs, which requires a solid understanding of the tasks associated with this pivotal function. In this capacity, directors must act with prudence, diligence, honesty and loyalty, and must never lose sight of the interests of the community of co-owners.

The director's civil liability in respect of the duties assigned to him or her is largely misunderstood. Thousands of Quebecers who sit annually on a board of directors, and of whom you may be one, are unaware of this reality.

Multiple Risks

In principle, directors incur no personal liability with respect to the commitments and obligations of the syndicate of co-ownership. Nevertheless, they may incur personal liability for faults committed in the performance of their duties, whether they are remunerated or serve on a volunteer basis. In such circumstances, they would be required to assume the financial consequences of any resulting damage, to the extent that it is directly related to the faults alleged against them.

A director is responsible for the initiatives he or she takes in relation to the co-owners. As a participant in the resolutions adopted by the board of directors, the director incurs liability. If a director does not wish to be held liable for a decision made by the board of directors, he or she must formally dissent by having the disagreement recorded in the minutes or in any document serving that purpose (art. 337 of the Civil Code of Québec).

Object of the Coverage

This insurance limits the financial impact of the consequences for which directors may be liable on their personal assets. It protects them by assisting in their defence, that is, by covering the costs associated with the insured's defence (legal fees, expert fees and other legal expenses). If they are found liable, it will cover the damages, as well as any other amounts the insured is required to pay, where applicable.

Obligation to Obtain Insurance

Directors' civil liability insurance is mandatory for all syndicates of co-owners, without exception, in order to cover the liability of members of the board of directors. Such insurance coverage is also required under the declaration of co-ownership. It covers the liability of board members toward third parties in the event that a director commits faults, errors, negligence or omissions in the performance of his or her duties. The declaration of co-ownership may, in some cases, specify the amount of coverage required.

Exclusions

In addition to the usual exclusions, this insurance generally excludes any damage resulting from insufficient insurance coverage under the syndicate's insurance policy. This may involve a declared value that does not correspond to the building's reconstruction value, despite the requirement to have it assessed by a professional. Although this requirement minimizes the risk, rebuilding the immovable, in whole or in part, following a loss would require all co-owners to contribute financially to make up the difference between the indemnity paid by the insurer and the actual reconstruction costs. In such a case, directors could be exposed to having to compensate, out of their own funds, the co-owners and third parties who suffer damage.

GOOD TO KNOW!

Even if you serve as a volunteer director, your civil liability may be engaged in the same manner as if you were remunerated. However, the extent of damages caused by a volunteer is generally assessed less strictly by the courts. In any event, the syndicate of co-ownership must obtain insurance covering the civil liability of directors for acts performed in the course of their duties.

KEY TAKEAWAY :

To ensure the liability coverage of each member of the board of directors in the event of a claim, the syndicate of co-ownership must also obtain directors' civil liability insurance, in addition to the insurance policy covering the immovable.

CAUTION!

If your syndicate of co-ownership does not obtain civil liability insurance coverage for its directors, you should never agree to assume this role, as the financial consequences resulting from errors or omissions could significantly affect your personal assets.

Insurance for Meeting Officers

The appointment of meeting officers is required in divided co-ownership. The range of titles and roles assigned to them is varied: chair, vice-chair, secretary of the meeting and scrutineer. However, the civil liability of a meeting officer in respect of the duties assigned to him or her is largely misunderstood. Yet many Quebecers accept this role while being unaware of this reality.

Multiple Risks

Any assembly officer incurs personal liability if they fail to observe a duty of prudence and diligence in carrying out their mandate. They may be subject to legal action, whether they are paid or not, in the event of a serious breach of their obligations. This could notably be the case for the chair of the meeting who makes an erroneous decision during a meeting, causing harm to one or more co-owners.

Purpose of the Coverage

This insurance limits the financial consequences for which assembly officers may be liable with respect to their personal assets. It protects them by helping them defend themselves, meaning that it covers the costs associated with the insured's defense (lawyers' fees, expert fees and other legal expenses). If they are held responsible for having caused harm, it will generally cover damages and other costs that the insured would be required to pay.

Obligation to Be Insured

Civil liability insurance for assembly officers is mandatory. It covers the liability of the chair and the secretary of the meeting, as well as that of the other persons responsible for ensuring its proper conduct. The declaration of co-ownership may specify the amount of insurance coverage. This product is not only intended to protect assembly officers, it also allows the syndicate and the co-owners to be adequately covered if an assembly officer commits errors or faults, or is guilty of negligence or omission in the performance of their duties.

Exclusions

Civil liability policies for assembly officers do not cover all situations involving legal liability. They often include exclusions. For example, damage resulting from intentional faults and gross faults, as well as acts of misappropriation, are generally not covered.

GOOD TO KNOW!

By becoming an assembly officer, you expose yourself to certain risks that may engage your personal liability. You therefore have every interest in ensuring that the board of directors obtains liability insurance so that damages caused to third parties are covered by this insurance policy.

KEY TAKEAWAY:

In addition to the fact that civil liability insurance for assembly officers is mandatory, it also increases the likelihood that individuals from outside the co-ownership will agree to take on this role.

CAUTION!

Even if the multi-risk insurance policies obtained by the syndicate generally provide civil liability coverage for directors, this does not necessarily guarantee coverage for acts carried out by assembly officers. To avoid any ambiguity, ensure that the directors' civil liability coverage is extended to assembly officers.

Insurance of the Condominium Manager

The tasks of a condo manager are numerous. The condo manager may be mandated to manage the building and ensure its preservation and maintenance. They implement the decisions of the board of directors and may be called upon to handle major losses, obtain the insurance required for the syndicate, and ensure that the building's by-laws are respected. Consequently, their civil liability could be engaged. In the event of a fault, they could be exposed to recourses or claims for compensation, whether by the syndicate or by the co-owners themselves. It is therefore imperative that civil liability insurance be obtained for the duration of their service contract or employment contract.

Civil Liability

Every condo manager must answer for the faults they may commit in the performance of their duties, as well as for their errors and omissions, whether intentional or not. Their civil liability, and sometimes that of the syndicate, could be engaged if they refuse or neglect to fulfill their obligations.

Civil Liability of an Employee Condo Manager

It may happen that an employee condo manager causes damage to a person while acting within the scope of their duties. Section 1463 of the Civil Code of Québec provides that the employer (the "principal") is responsible for the faults committed by its employees (the "agents"). If the victim proves that an employee committed a fault and that the employee was acting within the scope of their duties, the employer is presumed responsible for the damage caused, even if the employer committed no fault. However, the employer would then have the right to pursue recourse against the employee who committed the fault.

Contractual Civil Liability

Civil liability is considered "contractual" when it arises from a service contract by which the condo manager undertakes to deliver the services expected of them. Section 1458 of the Civil Code of Québec provides that any person who is a party to a contract is required to "repair the injury caused to the other contracting party as a result of failing to fulfill the obligations undertaken in the contract."

The reasons for bringing legal action against a condo manager may be numerous: unauthorized disclosure of privileged information, failure to obtain adequate insurance coverage for the syndicate, mismanagement of a loss, significant expenses incurred without authorization from the board of directors, negligence in monitoring maintenance contracts binding the syndicate to service providers, and so on. Of course, the condo manager will only be required to compensate the syndicate if the latter has suffered damage.

Civil Liability Insurance for an Employee or Volunteer Co-owner

If the condo manager is a volunteer co-owner or an employee of the syndicate, they should be insured by the syndicate. The syndicate's civil liability insurance generally covers the condo manager when they are responsible for damage caused to third parties. It usually covers damages, whether material, moral or bodily.

Civil Liability Insurance for an Employee or Volunteer Co-owner

If the condo manager is a volunteer co-owner or an employee of the syndicate, they should be insured by the syndicate. The syndicate's civil liability insurance generally covers the condo manager when they are responsible for damage caused to third parties. It usually covers damages, whether material, moral or bodily.

Professional Liability Insurance

If the condo manager is a member of a professional order, such as the Ordre des administrateurs agréés du Québec (Adm.A.), they will generally be covered by professional liability insurance. Nevertheless, the syndicate should verify whether, in the event of an error or omission, the insurance obtained by the relevant professional order provides coverage.

GOOD TO KNOW!

If the condo manager is a volunteer co-owner or an employee of the co-ownership, the syndicate should obtain, at its expense, civil liability insurance coverage specifically for that person.

KEY TAKEAWAY:

The civil liability of a condo manager may be engaged by the syndicate of co-ownership as a result of failing to comply with one of the conditions set out in the contract binding them to the syndicate.

CAUTION!

The syndicate should verify whether the condo manager whose services it retains under a service contract has obtained civil liability insurance. It should contact the manager's insurer to obtain a document attesting to the existence, as of the date of issuance, of an insurance policy in favor of the insured that would cover damages caused by the condo manager.

Tenant’s Insurance

Unlike the laws of other countries, particularly France, Québec law does not require a tenant to obtain insurance commonly referred to as “home insurance,” which, in the event of a loss, would cover their property and their civil liability. This absence of an obligation may become problematic, as a co-owner, if your tenant causes damage to the building or to its occupants, including other co-owners, without being insured. In such a situation, the declaration of co-ownership may hold you jointly liable for the damage caused by the tenant. The declaration of co-ownership may also require that any lease granted by a co-owner include an obligation for the tenant to obtain civil liability insurance. If this requirement is not met, you yourself could be considered at fault.

Civil Liability

Your tenant is responsible for damage caused throughout the duration of the lease. The tenant’s civil liability insurance will protect them against bodily injury or property damage they may unintentionally cause to others, as well as faults committed by persons they receive or accommodate in their dwelling. This insurance also covers damage that their property may cause to third parties. For example, it will cover water damage caused by their washing machine overflowing into your unit and into the neighbor’s.

Movable Property

The insurance of the co-owner who rents out the unit does not cover the tenant’s personal property. For this reason, the tenant has every interest in obtaining home insurance. In this way, all of their movable property located in the dwelling can be insured, in whole or in part.

Additional Living Expenses

In the event of a fire or significant water damage, your tenant may need to be temporarily relocated. In some cases, however, the rehabilitation work on the apartment may take several weeks or even several months. For this reason, their home insurance policy should include coverage for this situation; otherwise, they will not be compensated for the additional expenses incurred for temporary housing or food.

GOOD TO KNOW!

It is well known that many tenants in Québec unfortunately do not have home insurance. As a co-owner who rents out their unit, you therefore have every interest in requiring, as a condition set out in the lease, that your tenant maintain home insurance throughout the duration of the lease and provide you with proof of it.

KEY TAKEAWAY:

There should be as many insurance policies as there are insurable persons in divided co-ownership, namely the tenant, the co-owner landlord, the owner-occupant and the syndicate. It is also essential that these insurance products be complementary in order to avoid situations where certain risks are not covered by the insurer of the person who commits a fault. In other words, the tenant’s and the co-owner’s insurance must complement the syndicate’s basic insurance.

CAUTION!

The co-owner’s insurance does not cover the tenant’s movable property nor the tenant’s civil liability. Moreover, declarations of co-ownership almost always provide that a co-owner who rents out their unit is responsible for any damage caused by their tenant or by any person occupying the unit.

Insurance of the Co-owner

As the owner of an apartment in a divided co-ownership, you share the common portions in indivision with the other co-owners (roof, entrance hall, elevators, etc.). As a result, you also share part of the legal responsibilities associated with them. The syndicate must obtain insurance coverage for the immovable that covers both the common portions and the private portions, except for improvements made to them by co-owners (section 1073 of the Civil Code of Québec).

As a co-owner, you therefore have every interest in obtaining various insurance coverages. These will notably cover your personal belongings and furniture, in addition to complementing the syndicate's insurance coverage. Reading your declaration of co-ownership and the syndicate's insurance policy will allow you to determine your insurance needs.

Here are the different insurance coverages that you should obtain.

INSURANCE OF IMPROVEMENTS TO THE PRIVATE PORTION

The syndicate's insurance covers the common portions of the immovable, as well as your private portion, except for improvements made to it. In the event of a loss, the syndicate's insurance will not compensate you for damage to the improvements made to your private portion. It is therefore your responsibility to ensure that these improvements are covered by individual insurance at their proper value. If renovations have been carried out using materials of higher quality than the original ones, your insurance policy must take these improvements into account, whether they were made by you or by previous co-owners.

What Is an Improvement?

An "improvement" refers to work that increases the value of your unit compared with its original features. Repainting your apartment does not in itself constitute an improvement. However, replacing an original floor covering with one of higher quality most likely constitutes an improvement to your private portion.

How Can These Improvements Be Identified?

These are the improvements made to your private portion since the creation of the co-ownership (publication of the declaration of co-ownership), and not only since you became the owner. If you are not the first owner, it is important to verify whether improvements have been made over time. By consulting the register of the co-ownership, particularly the maintenance logbook, you may

GOOD TO KNOW!

Some developers place unfinished apartments on the market, leaving it to the co-owners themselves to make improvements to their private portion. This occurs in particular in historic buildings converted into lofts. However, the cost of these improvement works can be substantial. It is therefore up to you to obtain insurance that reflects the true value of these improvements.

KEY TAKEAWAY:

To determine what constitutes an improvement to your private portion, you must refer to the technical sheet produced by the syndicate, which describes the original layout of the private portion (reference unit).

CAUTION!

All syndicates of co-ownership must make available to co-owners a description of the private portions that is sufficiently precise to allow improvements made by co-owners to be identified (reference unit).

find information such as brochures or promotional documents produced by the developer at the time, or the disclosure statement, which may specify the nature of the original materials.

Reference Unit

As previously mentioned, since 2018 section 1070 of the Civil Code of Québec includes a paragraph stating that the syndicate must make available to co-owners a description of the private portions sufficiently precise to allow improvements made by co-owners to be identified. The section also provides that the same description may apply to several private portions when they share the same characteristics. This description serves as a reference unit, and co-owners who request it may consult it. The obligation to establish this descriptive statement of the private portions has applied to all syndicates of co-ownership since June 2020.

How Should These Improvements Be Assessed?

If contractors carry out improvement work in your private portion, the total amount of the invoices will allow you to establish the value of the work performed. You will then need to determine the added value that these improvements bring to your unit. However, if you purchased a unit that had already been improved by previous owners, and if you cannot obtain all the necessary information from your seller, you will have no choice but to rely on the services of a certified appraiser. This professional will provide a reliable assessment that can be relied upon by your insurer in the event of a loss.

Is Insurance Mandatory?

Insurance for improvements made to a private portion is not mandatory under the law. However, most declarations of co-ownership require co-owners to obtain and maintain such insurance coverage. They must provide proof that this insurance remains in force, each time they renew their insurance contract or change insurers, by submitting a certificate of insurance to the board of directors.

INSURANCE OF MOVABLE PROPERTY

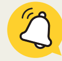
This insurance covers the movable property and personal belongings located in your private portion. To determine their value, they must be inventoried and assessed. Purchase invoices are extremely helpful during this process, and even essential to make accurate calculations. For valuable items, such as Persian rugs, paintings, jewelry and antiques, it would be prudent to take photographs of them and have them appraised by an expert. Once the value of all movable property has been established, the amount must be declared to the insurer. This value will be used to determine the indemnity payable in the event of a loss.

Replacement Value or Value at the Time of Loss?

The indemnities paid by your insurer depend on the type of insurance you have obtained, namely protection based on the depreciated value of the movable property or protection based on its replacement value. As a general rule, multi-risk home insurance policies include a replacement value clause, which means that damaged or destroyed items (furniture, clothing or accessories) will be replaced with others that are similar and of comparable quality. However, if you insure your movable property based on depreciated value, the compensation will be based on the value of identical new property, with a deduction corresponding to its state of wear and tear.

GOOD TO KNOW!

The original documents used to assess the value of your movable property (e.g., invoices, photographs and expert reports) should be kept in a safe place. It would be prudent to make copies and store them somewhere other than in your private portion. In this way, in the event of a major loss, you would not lose both your movable property and the documents needed to claim their value from your insurer.



KEY TAKEAWAY:

Insuring your movable property is not mandatory under the law. However, in practice, it is advisable to obtain insurance to protect yourself against common losses such as fires, water damage and theft.

CAUTION!

Insurance that provides coverage based on the value of the property at the time of the loss usually costs less than insurance that provides replacement value coverage. This is logical because, in the event of a claim, the insurer generally pays less than the property was originally worth.

Limits and Exclusions

Be aware that even if all of your property were to disappear, you could not claim from your insurer more than the insured amount provided in your insurance policy. This highlights the importance of accurately assessing the value of your movable property when taking out the policy and of carefully reading the conditions that govern it. Like other insurance products, this type of coverage includes exclusions that may vary from one contract to another.

Is Insurance Mandatory?

Insurance for movable property is not mandatory under the law. However, most declarations of co-ownership require co-owners to obtain and maintain such insurance coverage. Co-owners must also provide proof that this insurance remains in force, each time they renew their insurance contract or change insurers, by submitting a certificate of insurance to the board of directors.

CIVIL LIABILITY INSURANCE OF THE CO-OWNER

A co-owner may incur liability toward the syndicate, the other co-owners or occupants of the building, as well as toward other third parties. As indicated in section 1457 of the Civil Code of Québec, every person has a duty not to cause harm to others. As a co-owner, you must exercise prudence and comply with the applicable rules of conduct according to the context and circumstances. Otherwise, you may have to compensate third parties financially for moral, material or bodily damage you may have caused.

Multiple Risks

Civil liability insurance protects you against harmful acts that you may have committed by error or omission. This type of insurance generally covers various situations, including the following.

Occupants: This insurance covers your civil liability for damage caused in your unit if, for example, your tenant were injured because of a defective electrical installation.

Property Under Your Care: CThis insurance protects you against damage caused to neighbors or to third parties by property under your care. Indeed, every person is required to repair the damage caused to others by their

property (section 1465 of the Civil Code of Québec). For example, if your water heater is located in your private portion and begins to leak, you could be held responsible for the damage caused to your neighbors' movable property or to improvements made by other co-owners to their private portions.

Syndicate's Insurance Deductible

Civil liability insurance may cover damage that the occupants of your private portion, or you yourself, may have caused to the common or private portions of the building. This coverage applies to amounts that are not covered by the syndicate's insurer because of the deductible in the co-ownership's building insurance. For example, if the deductible is $50,000 and the damage is assessed at $75,000, the insurer will only pay $25,000 in compensation. Consequently, the syndicate would be entitled to claim from the co-owner at fault the portion of the damage for which it did not receive compensation. That co-owner could then seek reimbursement through their civil liability insurance. This type of coverage is therefore essential, and it would be risky to go without it. In fact, it helps prevent a co-owner from having to pay compensation that could amount to several thousand dollars.

Obligation to Insure One's Civil Liability

Civil liability insurance for co-owners has been mandatory since December 2020. Each co-owner must obtain civil liability insurance toward third parties of at least one million dollars ($1M) if the building contains fewer than 13 private portions used for residential purposes or for business activities. If the building contains 13 or more such units, the minimum coverage must be two million dollars ($2M).

Most declarations of co-ownership also require co-owners to obtain and maintain civil liability insurance, whether they are owner-occupants or landlords. They must provide proof that this insurance remains in force each time they renew their insurance contract or change insurers by submitting a certificate of insurance to the board of directors.

What Is Covered by Civil Liability Insurance

Generally included in a home insurance policy, civil liability insurance covers the payment of compensation for a loss caused by the fault of a co-owner. These indemnities are paid to those who suffer the damage, including other co-owners and occupants of the building, in order to compensate them for bodily injury or property damage they have sustained.

Coverage Amount

The declaration of co-ownership may require co-owners to maintain a minimum amount of insurance coverage, although this amount may have become outdated if the declaration of co-ownership is several years old. In any event, if the amount indicated is lower than the minimum required by law, this provision is now void and no longer valid. As a general rule, depending on the protection chosen, home insurance policies provide coverage of one or two million dollars.

GOOD TO KNOW!

Under the terms stipulated in a civil liability insurance policy, the insurer may be required, under certain conditions, to assume your defense in the event of a lawsuit against you. This coverage is used in particular to pay lawyers' fees and other legal expenses.

KEY TAKEAWAY:

Each co-owner must be insured against risks involving their civil liability toward third parties, whether they are an owner-occupant or not.

CAUTION!

If you fail to obtain a civil liability insurance policy, you will have to bear alone all claims arising from your civil liability.

Insurance Deductible

Most insurance contracts include deductibles, commonly referred to as "franchises," the amounts of which vary depending on the insured risk (e.g., fire, theft, vandalism, water damage, etc.). With respect to the syndicate, this deductible applies to the building insurance as well as to the syndicate's civil liability insurance and that of its employees, the insurance of directors and assembly officers, or that of the manager. The same applies to the co-owner's insurance, as each home insurance policy generally includes one or more deductibles that vary depending on the nature of the risk covered.

What Is an Insurance Deductible?

It is an amount of money that is deducted from the indemnity paid by the insurer and assumed by the insured following a loss. This amount is indicated in the insurance contract. The deductible can take two forms: either the insurer intervenes only above the deductible threshold, or the deductible amount is deducted from the indemnities it pays. In the event of damage to the building, the insured, in this case the syndicate of co-ownership, must therefore bear part of the cost of the rehabilitation work. The self-insurance fund is established for this purpose; otherwise, it may be necessary to turn to the contingency fund (for certain work only) or to impose a special assessment (call for contributions).

Advantages and Disadvantages

The amount of the deductible directly affects the amount of the premium. The higher the deductible, the lower the premium will generally be. Moreover, it should be noted that the deductible often has a beneficial effect:

- It encourages the insured to act responsibly by taking the necessary precautions to limit losses;
- It allows the insurer to reduce costs, both in terms of compensation and claims management expenses (e.g., the fees of the claims adjuster).

However, the amount of the deductible must not be excessive. The constant increase in deductibles imposed by insurers within Québec co-ownerships is therefore a worrying situation. This mainly concerns property insurance. This reaction by insurers is the result of repeated losses observed in divided co-ownership, particularly those caused by water damage (e.g., broken pipes or water heaters, overflows, leaks). As a result, many syndicates have been required to accept deductibles of several tens or even hundreds of thousands of dollars. This situation can jeopardize the financial stability of both the co-ownership and the co-owners. In Ontario, case law has already ruled that an excessive deductible is equivalent to a failure by the syndicate to fulfill its obligations. To address this issue, Ontario introduced the principle of a "reasonable deductible" into its legislation in 1998.

Reasonable Deductible

The concept of a reasonable deductible was also adopted by the Québec legislator in 2018 in order to put an end to unreasonable deductibles in too many insurance contracts of syndicates. Accordingly, section 1073 of the Civil Code of Québec was amended so that insurance covering the immovable must include a reasonable deductible. However, this is a very broad concept that must be assessed on a case-by-case basis rather than in a general manner. Moreover, the government has reserved the right to determine, by regulation, situations in which a deductible would be considered unreasonable.

GOOD TO KNOW!

If a third party is responsible for damage sustained in a co-ownership, you may claim reimbursement from that person for the amount of the deductible and for the damages not reimbursed by your insurer.

KEY TAKEAWAY:

The amount of the deductible may be adjusted based on the number of claims recorded in the syndicate's file. The board of directors therefore has every interest in preventing losses in the building because, in recent years, insurers have not hesitated to increase premiums and deductibles, or even refuse to renew the insurance if a syndicate submits repeated claims.

CAUTION!

A higher deductible makes it possible to obtain lower premiums, which creates the illusion of having paid less for insurance coverage. However, when the deductible is extremely high, it may indicate that the directors are not fully fulfilling their obligations.

Reduction in the Frequency of Losses

How can increases in deductibles be avoided? By implementing preventive measures to identify risks, such as water damage, and by engaging the services of a building professional. This professional can establish a maintenance program that reduces the frequency of losses and limits the increase in the building's claims rate. The installation of water leak detection systems may therefore be considered. You could also include other provisions in the declaration of co-ownership, such as requiring co-owners to replace any hot water tank that is more than ten years old.

Improper Management of Losses

Because of the high amount of the deductible, the directors of a co-ownership may be tempted not to report a loss to their insurer, believing that the syndicate has no chance of receiving compensation. However, it should be noted that your syndicate may in fact have been entitled to indemnification.

It is often difficult to accurately assess the amount of damage caused by a loss. The work required for repairs must be carefully estimated, with the assistance of professionals when necessary. Directors who choose not to report a loss run the risk of depriving the syndicate of compensation to which it might have been entitled and of engaging their personal liability for failing to do so.

Although the 2018 reform of insurance rules introduced the possibility for a syndicate of co-ownership not to make use of its insurance in the event of a loss (section 1074.1 of the Civil Code of Québec), this does not mean that the incident can go unreported to the insurer. Section 2470 of the Civil Code of Québec, which requires an insured party to notify its insurer of any loss that may trigger coverage, was not amended. A syndicate that decides, through its directors, not to make use of its insurance essentially becomes its own insurer. It must then ensure, with diligence, that the damage is repaired.

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Insurance Premium

The insurance premium is the amount that the insured must pay, monthly or annually, in order to benefit from the coverage provided in the insurance contract in the event of a loss. It constitutes an expense related to the preservation, maintenance and administration of the immovable. Although the syndicate must assume the cost, the resulting expenses are charged to the co-owners through their common expenses (condo fees).

How Is the Premium Calculated?

An insurance contract is a bet on the future and a risk assumed by the insurer. The amount of your insurance premium depends, first and foremost, on the risk being covered. To determine this amount, the insurer considers various factors:

- The nature of the risk covered;
- The location of your building (for example, an area at risk of flooding);
- The crime rate in your neighborhood;
- The distance between the building, a fire station and a fire hydrant;
- The presence, near the building, of certain types of businesses, such as a bar;
- The use of the building (residential, commercial or mixed);
- The replacement value of the building and movable property, as well as the maintenance performed;
- The number and scope of the coverages;
- The probability that damage will occur and the resulting costs;
- The presence or absence of monitoring systems (e.g., alarm system, fire detector or water leak detector);
- The history of claims made by your syndicate to the insurer;
- The history of claims made by other syndicates of co-ownership with comparable characteristics;
- The amount of the deductible. A higher deductible generally means a lower insurance premium;
- Climate change;
- Expenses related to the insurer's operating costs;
- The profit realized by the insurer on an insurance contract.

Other factors also influence the amount of the premium, such as the percentage of residential units rented out in your building, as well as the quality of its management.

Increase in Insurance Premium Costs

A universal rule governs the insurance industry: premiums increase according to the claims rate. In recent years, many Québec co-ownerships have had to face a considerable increase in insurance premiums or deductibles. Some syndicates have even experienced difficulties obtaining insurance. They have been forced to turn to insurance companies specializing in high-risk or "substandard" coverage.

This situation is the result of the numerous claims submitted to insurers in recent years, mainly due to water

damage. The situation has become such that, during general meetings, many co-owners demand that measures be taken to address the problem.

Implementation of Effective Management

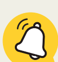
To counter the increase in insurance premiums, and ultimately reduce them, the board of directors must implement a preventive maintenance program for the building. Once this approach has been undertaken, the directors may be able to demonstrate to insurers that their co-ownership now represents a controlled risk.

Competitive Bidding

To obtain a competitive insurance premium, the directors may use the services of a broker. This professional acts as an intermediary between the various insurers and the syndicate. Their role is to find the insurance policy offering the best quality-to-price ratio. The directors will then be able to compare the premiums required by the insurers.

GOOD TO KNOW!

A well-managed co-ownership, supported by a maintenance logbook and a sufficient contingency fund, is an effective way to reduce the cost of insurance. A broker or property and casualty insurance agent can identify the risk factors considered by insurers and advise on how to reduce exposure to those risks and, consequently, lower insurance premiums.



KEY TAKEAWAY:

Insurance coverage for a co-ownership is arranged through a broker or a property and casualty insurance agent. They will be able to find the product that best suits your co-ownership, both in terms of coverage and premiums.

CAUTION!

The cost of insurance premiums is weighing more and more heavily on the operating budgets of syndicates of co-ownership. This increase results in particular from the aging of co-ownership buildings and the lack of maintenance observed in some buildings.

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Insurance Surcharge

An insurance surcharge is, as the name suggests, an additional premium added to the existing premium due to an increase in risk or the addition of a new risk, during the term of the contract or at its renewal. The risks are then analyzed according to rating scales specific to each insurer.

Increase in Risk

When the risk increases while the insurance policy is in force, the insured must promptly declare it to the insurer (section 2466 of the Civil Code of Québec). The insurer will then reassess the amount of the premium based on its evaluation of the risk. The insurer may decide to terminate the contract or propose, in writing, a new and higher premium. If the insured does not respond to this proposal within 30 days, or expressly refuses the increase, the policy will cease to be in force. Moreover, if the insurer continues to accept premiums or pays an indemnity after a loss, it is deemed to have accepted the change declared by the insured (section 2467 of the Civil Code of Québec).

The causes of an increase in risk may vary. At the top of the list are repeated claims and the failure of the syndicate to properly maintain the building. Similarly, certain activities carried out by co-owners in their private portion may result in a surcharge (for example, short-term or hotel-style rentals in a co-ownership whose destination is residential).

Addition of a Risk

Such a surcharge should not be interpreted as a penalty, since it allows certain risks that were originally excluded from coverage to be added. The addition of coverage increases the protection of the insured. For example, the syndicate could opt for an endorsement covering earthquakes.

Allocation of the Surcharge Among Co-owners

Like the co-ownership's insurance premium, the surcharge must in principle be distributed among the co-owners as a common expense, according to the relative value of their respective fractions. This method of distribution is the only one possible, because the legal provision that prescribes it, section 1064 of the Civil Code of Québec, is mandatory regardless of what the declaration of co-ownership may stipulate on this matter.

Charging the Surcharge to One or More Co-owners

However, it may happen that only the co-owner responsible for the increase in risk must compensate the syndicate for the cost of a surcharge. Such a situation occurs when the surcharge results from wrongful activities attributable to that co-owner (or to certain co-owners). In many cases, the declaration of co-ownership includes a clause assigning the surcharge according to whether the activity generating it is attributable to a co-owner. However, the activity must constitute a breach of the declaration of co-ownership. For example, in a co-ownership where renting is permitted, co-owners who rent out their unit are not committing any fault and should not have to pay the resulting surcharge, if any. Even those who do not rent their unit may be required to contribute, just as co-owners who do not use the swimming pool must still contribute to the maintenance expenses of that common portion.

Once the co-owner at fault has paid the surcharge, the syndicate may credit each co-owner with the amount recovered, according to the relative value of their respective fractions.

GOOD TO KNOW!

The calculation of the amount of the surcharge is specific to each insurer. It is determined based on the level of risk presented by the insured, on a case-by-case basis.

KEY TAKEAWAY :

An insurer may agree to insure a syndicate of co-ownership that presents a higher risk, or even a new risk, by applying a higher premium. This is then referred to as an insurance surcharge.

CAUTION!

Although the syndicate may be justified in claiming a surcharge resulting from a fault committed by a co-owner, it does not constitute a "common expense." In a decision rendered by the Court of Québec in 2005, the court ruled that if the co-owner fails to compensate the syndicate, the syndicate cannot publish a notice of legal hypothec to secure payment of this surcharge.

La prévention, une étape essentielle pour assurer la sécurité et la tranquillité de votre copropriété !

Saviez-vous que la plupart des sinistres peuvent être évités? Un sinistre, par définition, est un accident auquel on ne s'attend pas, mais qui en réalité peut être anticipé. En effet, l'oubli ou la négligence sont souvent mis en cause dans la survenue d'un sinistre. Contrairement aux maisons unifamiliales, où les propriétaires subissent seuls les conséquences d'un sinistre, les copropriétés rassemblent plusieurs foyers qui peuvent être impactés par un seul et même sinistre. Dans ce cas de figure, les répercussions peuvent être plus longues, coûteuses et complexes à gérer, notamment pour ceux qui se trouvent en situation de sous-assurance au moment de leur relocalisation. Elles accentuent donc la nécessité pour les copropriétés de se doter de solides mesures préventives pour tenter d'éviter la catastrophe.

Un cadre légal pour encourager la prévention des sinistres

Au Québec, la législation impose aux syndicats de copropriétaires de couvrir l'immeuble dans son ensemble, tant les parties communes que privatives (à l'exception des améliorations). Les copropriétaires sont tenus quant à eux de souscrire à une assurance responsabilité civile. Par ailleurs, ils peuvent aussi être contraints par la déclaration de copropriété d'assurer leur partie privative. Cela peut sembler excessif, mais il est aussi possible d'y voir l'occasion de se préparer adéquatement, et d'éviter ainsi que des accidents ne deviennent des sinistres lourds de conséquences financières.

De nombreux secteurs insistent sur l'importance de la prévention dans la gestion de risques, il en va désormais de même pour les copropriétés. Au Québec, des juristes spécialisés en copropriété travaillent étroitement avec le gouvernement pour adapter les lois et les règlements à la réalité complexe des sinistres. Toutefois, la prévention et l'entretien quotidien de l'immeuble sont l'affaire de tous les copropriétaires, syndicats, et acteurs de l'industrie.

Comprendre son rôle au sein de la copropriété

Grâce à l'abondance d'informations disponibles dans les blogues, revues, et sites spécialisés, il n'a jamais été aussi simple de s'instruire et de comprendre les nuances des rôles de chacun. Rappelons par exemple que les administrateurs d'un immeuble en copropriété agissent à titre de bénévoles, et gèrent les « frais de condo » des copropriétaires. Pour ceux qui, parmi eux, envisagent de vendre leur unité, il est essentiel de comprendre le fonctionnement du syndicat et d'y participer activement afin de respecter toutes les étapes.

Habiter en copropriété signifie de vivre en communauté. Chacun s'engage à contribuer à la réussite d'un projet commun : la valorisation de l'immeuble. L'implication bienveillante et éclairée des copropriétaires permettra de mettre en place une prévention efficace des sinistres et d'équilibrer les primes d'assurance.

Former les administrateurs

Bien plus qu'une obligation, la formation des administrateurs est également une condition préalable pour adopter des mesures de prévention adaptées, pour transformer des défis en opportunités. En étant formés, les administrateurs acquièrent les outils pour gérer efficacement les situations délicates, tout en assurant la pérennité de l'immeuble. Ils deviennent des leaders inspirés et inspirants, capables de faire de leur copropriété un modèle de gestion où il fait bon vivre, tout en valorisant l'investissement de chaque copropriétaire. Une équipe d'administrateurs bien formés est la garantie d'une gestion harmonieuse, proactive et, surtout, reconnue par les copropriétaires pour son efficacité.

Par des décisions plus éclairées et stratégiques, les administrateurs bien formés répondent non seulement aux attentes des copropriétaires, mais dépassent les objectifs établis. Les avantages pour la copropriété sont nombreux : une meilleure qualité de vie grâce à une valorisation accrue de l'immeuble, une gestion préventive et proactive des sinistres, un sentiment de fierté et d'appartenance partagé par tous.

La prévention, un avantage pour les assureurs

Soutenir les syndicats dans la mise en place de mesures préventives est également bénéfique pour les assureurs, qui deviennent des partenaires de confiance pour les copropriétaires et administrateurs. En investissant dans la prévention des sinistres, les assureurs réduisent les coûts pour eux et pour leurs assurés, et améliorent leur image auprès de ces derniers. Ils ne sont plus perçus comme de simples fournisseurs de services, mais comme des acteurs engagés dans l'amélioration du quotidien des copropriétaires. Une relation de collaboration à long terme se crée, où chaque acteur trouve son compte. Avec des immeubles mieux protégés, des copropriétés mieux gérées et des sinistres en baisse, les assureurs s'ouvrent à de nouvelles perspectives, tout en contribuant à la stabilité du marché immobilier. La diminution des sinistres offre donc également la possibilité de choisir un assureur proposant des franchises raisonnables.

Copropriétaires et syndicats, à vous maintenant de collaborer pour faire de votre immeuble un modèle de bonne gestion, avec des actions simples qui réduiront non seulement les sinistres, mais aussi l'impact sur vos finances!

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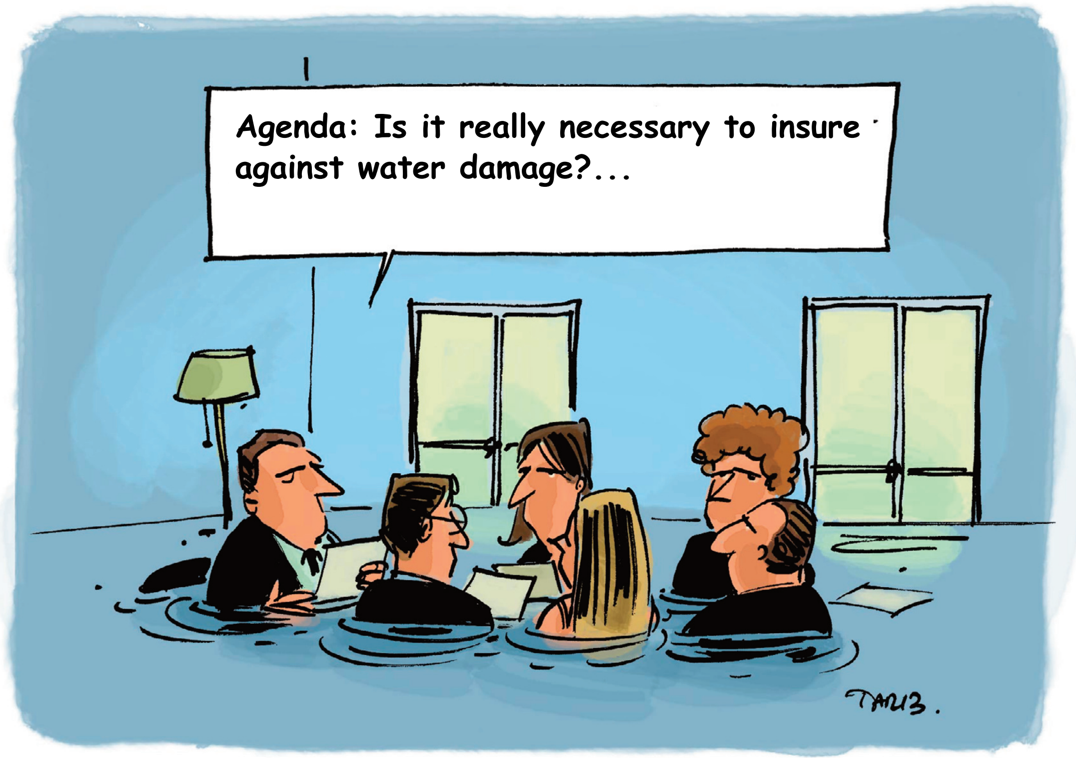
Must a Claim Always Be Filed for a Loss?



After being affected by a loss, members of the board of directors and the co-owners concerned are often caught off guard. They wonder how things will unfold next. In principle, once the notice of loss has been completed, several parties become involved: the syndicate's insurer, as well as the insurers of the co-owners and tenants concerned, if applicable, each of whom appoints their own claims adjuster. It is normal to assume that filing a claim is always the appropriate course of action. This is true in many cases, but the syndicate may sometimes have an interest in refraining from doing so.

Reporting the Loss: An Obligation

As mentioned earlier, section 2470 of the Civil Code of Québec provides that the insured must notify the insurer of any loss likely to trigger coverage as soon as they become aware of it. In other words, a loss, even if it appears minor, must be reported to the syndicate's insurer, provided that the damage is covered.

Reporting the Loss: Consequences

Reporting a loss may lead to a subsequent increase in insurance premiums and deductibles, but it cannot be stated with certainty that this will always be the case. The board of directors should therefore consult its broker or property and casualty insurance agent. It may also inquire about the insurer's policies in such circumstances. Ideally, this should be done when the insurance contract is renewed or when coverage is obtained from a new insurer.

Failure to Report the Loss: Consequences

Failing to report a loss is very risky because the insurer could consider, if it later discovers the situation, that the insured acted in bad faith. The insurer would then be justified in terminating the contract or refusing to renew it. It could also invoke clauses in the policy providing for the forfeiture of the right to indemnification if it proves that it has suffered prejudice as a result

To Claim or Not to Claim: A New Choice

In 2018, the Québec legislator introduced an innovative provision with section 1074.1 of the Civil Code of Québec. The first paragraph of this section explicitly provides the possibility for the syndicate not to make a claim to its insurer for a loss that would otherwise trigger coverage under the insurance contract on the immovable. This freedom of choice may help avoid increases in insurance premiums and deductibles. In return, the syndicate must ensure that the damage is repaired promptly at its own expense. Moreover, the second paragraph of the section provides that the syndicate cannot subsequently bring legal action against certain persons for damages for which it would otherwise have been indemnified by its insurer.

Making a Claim: Insurance Indemnity and Its Purpose

In principle, an insured party may do what it wishes with the indemnity paid by its insurer. The world of co-ownership, however, is an exception to this rule when it comes to the syndicate's property insurance. Indeed, the law requires the syndicate to obtain insurance covering the "reconstruction value" of the immovable. Section 1073 of the Civil Code of Québec adds that "the amount of insurance obtained must provide for the reconstruction of the immovable in accordance with the standards, practices and rules of the art applicable at that time." This obligation is justified by the collective nature of co-ownership and the syndicate's duty to preserve the immovable and oversee matters of common interest.

Is It Better Not to File a Claim?

Sometimes filing a claim leads to an increase in insurance premiums and deductibles. The syndicate might therefore decide not to file a claim with its insurer if the cost of repairs is only slightly higher than the deductible. For example, if the deductible is $10,000 and the cost of the work is approximately $12,000 or $13,000. Before choosing this option, the board of directors will need to:

- Have the reconstruction costs of the damaged areas assessed;
- Verify with the broker or the property and casualty insurance agent whether it is indeed more advantageous not to file a claim.

Not Filing a Claim: The Price to Pay

If the syndicate decides not to claim compensation, it essentially becomes its own insurer. For this reason, it must promptly undertake the work required to repair the damaged common and private portions. Preparing specifications will be necessary to determine the scope of the reconstruction work and to establish its cost. Depending on the extent of the damage, the services of a building professional may be required in order to properly assess the possible impacts of the loss on the integrity of the immovable. Finally, the syndicate will have to assume the full cost of the work (except for costs associated with the added value resulting from improvements made to private portions by co-owners). The self-insurance fund is specifically intended to cover such work.

Not Filing a Claim Because of the Deductible: Consequences

If the syndicate does not claim compensation for damage caused by a loss, it can no longer bring legal action against certain persons for damage for which it would otherwise have been indemnified by its insurance. These persons include a co-owner and the individuals living with them, as well as all persons for whom the syndicate must obtain civil liability insurance, namely the members of the board of directors, the assembly officers and the manager (section 1074.1 of the Civil Code of Québec). This exclusion does not apply to the deductible amount, for which the insurer does not provide compensation. That amount may therefore be claimed from any of these persons if they are found to be the cause of the loss and are proven at fault, in accordance with section 1074.2 of the Civil Code of Québec.

GOOD TO KNOW!

In the event of a loss in a co-ownership, the self-insurance fund will be used to pay the syndicate's deductible as well as to repair damage caused to property in which it has an insurable interest. This would apply, for example, if the contingency fund or an insurance indemnity cannot cover the costs, such as in the case of a coverage limit, underinsurance, or an exclusion.

KEY TAKEAWAY:

At the time of renewing the insurance policy, insurers assess the frequency of losses and claims specific to a co-ownership in order to determine the amount of the premium and the deductible to be paid.

CAUTION!

How can you know, as a director, whether you should file a claim with the syndicate's insurer? To make an informed decision, the cost of the necessary repair work must first be estimated. Only then can you determine whether the financial stakes justify making a claim.

Water Damage

Water damage is the leading cause of losses in co-ownership. It is becoming increasingly costly for both syndicates and their insurers. In recent years, the proportion of water damage incidents in co-ownership buildings has more than doubled. The main causes include poor maintenance by syndicates, construction deficiencies, and changing climate conditions. Because water damage often affects both common portions and private portions, it is generally considered one of the most complex types of losses to manage.

Consequences

Water damage often affects more than one unit. It may damage both a co-owner's movable property and the building's common and private portions, and can cause significant material damage to the co-ownership and to the co-owners. This type of loss may also result in non-material damages, such as loss of use of the premises. In addition, the moisture caused by water damage can promote the development of mould, which may affect human health and even damage the building's structure.

Origin of Water Damage

Water damage is sometimes difficult to detect, and its source may be multiple. It may be caused by:

- Deficient waterproofing of walls or of the roof;
- A pipe rupture due to aging or freezing;
- Defective window caulking;
- An overflowing bathtub, washing machine or dishwasher, or a failure of their water supply hoses. Water will often travel to neighbouring units through the ceilings;
- Oversight or negligence by a co-owner (for example, a poorly closed window or faucet);
- Sewer backups;
- A clogged sewer line;
- A defective or aging water heater;
- Defective sealing joints around sanitary installations (for example, a bathtub or shower).

Given the particular characteristics of divided co-ownership, it can sometimes be difficult to identify the source of water damage. It may first be necessary to determine whether the origin lies in a common portion or a private portion.

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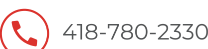

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How to Prevent Water Damage

There is no miracle solution to prevent water-related losses. However, given their impact on a co-ownership's budget, preventive measures should be implemented to monitor components and equipment that present a higher risk (for example, a spa or a rooftop terrace).

In the Common Portions

The maintenance of common portions is the responsibility of the syndicate. As a general rule, the building envelope (roof, foundations, exterior walls) and the piping systems are common portions. These matters are normally addressed in the syndicate's maintenance logbook, which should contain the building's piping plans and keep an up-to-date record of work carried out on these installations. For example, the regular maintenance of water supply and drainage systems, as well as the waterproofing infrastructure of the roof and terraces, can effectively help prevent water leaks. In addition, pipes located near exterior air must be protected in order to prevent the formation of ice blockages during the winter.

In the Private Portions

Here are some practical tips to help prevent water damage:

- Replace your water heater before the end of its useful life;
- Never leave your home with a window left partially open;
- Avoid running the washing machine or dishwasher while you are away, even for a short period;
- Shut off the water supply during prolonged absences;
- Regularly check the watertightness of windows;
- Monitor the condition of the seals around sanitary fixtures (for example, bathtubs and showers);
- Maintain water supply installations, including the shut-off valves;
- Install a water leak detector and an overflow alarm that will automatically shut off the water supply valves in the event of a problem;
- Be vigilant if plumbing work is being carried out; do not leave the area until the site has been properly secured.

Loss Management

When water damage originates from the common portions, the syndicate of co-ownership must take the appropriate emergency measures. The source of the damage must be stopped as quickly as possible, after which the most urgent steps should be taken.

The loss must be reported immediately to the insurance companies involved, both the syndicate's insurer and those of the co-owners concerned. Once the loss adjusters have completed their work, the services of a contractor should be retained to carry out the necessary repairs.

Insurance Coverage

In many cases, several parties are involved in a loss: the occupying co-owner, the tenant, the leasing co-owner, and the syndicate. In principle, there may be as many insurance policies as there are parties involved. In essence, when water damage causes damage to common portions or private portions, the syndicate's insurer is usually the first to handle the claim. This is mainly because the syndicate has the obligation to maintain insurance covering all common portions and private portions, excluding improvements made to the private portions. The insurer will pay an indemnity corresponding to the amount

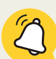
of the damage, minus the deductible. This deductible must be paid from the self-insurance fund or allocated among the co-owners based on the relative value of their fractions. Co-owners, for their part, insure their movable property, their civil liability, and the improvements made to their private portions.

Why Can Water Damage Become a Significant Expense for a Co-ownership?

Even though insurance may cover the repairs, the co-ownership must still pay the deductible, not to mention the possible increase in premiums that may follow. In some cases, the insurer may even terminate the insurance contract, with prior notice, if it considers that the co-ownership has made too many claims following losses. The syndicate must then find a new insurer, who will likely charge a higher insurance premium.

GOOD TO KNOW!

There are several ways to reduce the risk of water damage. One of them is to optimize prevention. Some companies offer increasingly innovative products designed to help prevent water damage, although it would be unrealistic to expect to eliminate it entirely.



KEY TAKEAWAY:

Be aware that insurance policies do not cover all losses. They contain exclusions. For example, some insurers do not cover damage resulting from a "failure to repair" or from a "known and significant lack of maintenance on the part of the insured."

CAUTION!

It is essential to carefully read the "exclusions of coverage" in the Property Damage section of the syndicate's insurance policy. Not all water-related damage is necessarily covered by insurance contracts, particularly sewer backups.

The Insurance Trustee and Major Losses

If your co-ownership suffers a "significant loss" following a claim, you will be required to retain the services of an insurance trustee. Indeed, article 1075 of the Civil Code of Québec provides that: "The indemnity due to the syndicate following a significant loss shall, despite article 2494, be paid to the trustee named in the constituting act of the declaration of co-ownership or, failing that, designated by the syndicate."

The insurance trustee is a key person. Their role is to manage the indemnities paid by the insurer. They ensure that the available funds are used for the "repair or reconstruction of the building." In short, the interests of the co-owners and their mortgage creditors are protected, since they both have an interest in seeing the building restored.

What Is a "Significant Loss"?

A significant loss refers to a loss resulting in a substantial indemnity following a claim affecting a large portion of the building. Most declarations of co-ownership published after January 1, 1994 specify that damage affecting between 10% and 25% of a building constitutes a "significant loss." Moreover, article 1075 of the Civil Code of Québec provides that a government regulation may eventually establish the criteria used to determine what qualifies as a "significant loss."

Designation of an Insurance Trustee

Unless the declaration of co-ownership (the constituting act) already provides for the appointment of a specifically identified trustee, which is fortunately becoming less common, it is generally the board of directors that designates one. Moreover, it is not necessary to convene a meeting of co-owners to make such a decision.

Choosing the Right Insurance Trustee

Before selecting the trustee who will protect your interests, ensure that the person is properly qualified, holds professional liability insurance, and works with building professionals (for example, engineers and architects). If the appointed individual is a member of a professional order, verify whether their insurance coverage applies to acts performed in the capacity of an insurance trustee.

The trustee must understand how a co-ownership operates, particularly its legislative framework. Article 1274 of the Civil Code of Québec requires that the trustee be either "a natural person fully capable of exercising civil rights" or "a legal person authorized by law."

The trustee must also demonstrate a high degree of integrity in the performance of their duties. They must not be in a conflict of interest with any co-owners living in the building, nor with the insurer or the building professionals involved in the repair or reconstruction. A lawyer or notary with recognized expertise in co-ownership should normally meet these criteria.

One Does Not "Improvise" as a Trustee

Unfortunately, some individuals occasionally present themselves as insurance trustees without having the necessary qualifications. In practice, these individuals often lack the required expertise. Even more concerning, they are usually not members of a professional order and may not be covered by professional liability insurance. In such circumstances, if the trustee misappropriates funds or improperly uses the indemnities under their control, the syndicate could face serious difficulties in obtaining reimbursement or compensation. It should be remembered that once the insurer has paid the indemnity to the trustee, the insurer is released from any further responsibility regarding the use of those funds.

A Heavy Responsibility

The trustee's credibility depends on many factors, including their role in overseeing the work required to restore the building to its original condition. In this regard, the trustee must verify that the contractor holds a licence issued by the Régie du bâtiment du Québec (RBQ) and pays the required contributions to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) as well as to the Commission de la construction du Québec (CCQ).

The trustee must also retain the services of a competent contractor. Otherwise, once the building has been

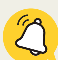
reconstructed, it could be affected by design or construction defects. Another important responsibility of the trustee is ensuring that the contractor pays the amounts owed to subcontractors. If this is not the case, the risk of a legal construction hypothec being registered against the building is very high. The law allows any person who has "participated in the construction or renovation of an immovable" to publish such a hypothec.

Termination of the Co-ownership

In another situation, if the co-owners decide to terminate the co-ownership following a loss, because of a significant loss or even a total loss of the building, the trustee must first distribute the funds to the prior and hypothecary creditors. To do so, the trustee must follow the rules set out in article 2497 of the Civil Code of Québec. Any remaining sums are then transferred to the liquidator of the syndicate, who distributes them to the co-owners based on the relative value of their fractions when calculating the reimbursement.

GOOD TO KNOW!

The insurance trustee must have a solid knowledge of co-ownership law. They must also be independent from the parties involved. A lawyer or a notary with recognized expertise in co-ownership generally represents a good choice.



KEY TAKEAWAY:

The mission of the insurance trustee is complex. It requires a strong knowledge of co-ownership law and must be carried out with diligence and professionalism. Failure to observe the foregoing principles could come at a significant cost to several co-owners.

CAUTION!

Some organizations offer the services of an insurance trustee free of charge. In reality, it is only free at the time of appointment. Fees may be charged once the trustee intervenes following a loss. Therefore, beware of misleading advertising.

Steps to Prevent Losses

As the saying goes, "Prevention is better than cure." This is particularly true when it comes to insurance. The multiplication of losses has significant long-term consequences. It leads to increases in premiums and deductibles. Some insurers have even withdrawn from the market, leaving few players and little real competition. It is therefore essential that both co-owners and co-ownerships do everything in their power to prevent losses.

For a syndicate of co-ownership, this means:

- Implementing a preventive maintenance program for the building and its equipment;
- Establishing an adequate contingency fund;
- Enforcing the building by-laws when they prohibit the transport or storage of dangerous devices or materials, such as a barbecue or a gas cylinder;
- Installing alarm or detection systems for acts of vandalism or fire;
- Requiring co-owners to regularly maintain their appliances, particularly water heaters, which are a frequent source of losses.

Recourse Against a Co-owner Responsible for a Loss

An overflowing bathtub or washing machine leaking into the unit below, a water heater that fails and pours water down six floors: losses are frequent in co-ownership and they are costly. This is why the amount of insurance premiums and deductibles has increased significantly in recent years.

Even worse, some insurers no longer wish to insure co-ownerships because the rate of losses has become unmanageable. This situation particularly affects the syndicate's insurer, since damage almost always affects both the common portions and the private portions, which the syndicate is required to insure. As a result, there is often a search for who is responsible, given that various factors may involve both the syndicate's insurer and the insurers of the co-owners concerned.

The Regime of Contractual Liability

The relationship between the syndicate and the co-owners is, first and foremost, a contractual one, even though the declaration of co-ownership is initially signed by only one person, the "declarant." This document must be considered a contract of adhesion, since the stipulations it contains are imposed by one party or drafted by that party and cannot be freely negotiated (article 1379 of the Civil Code of Québec). Indeed, when purchasing a fraction in a divided co-ownership, you become bound by the provisions of the declaration of co-ownership (article 1062 of the Civil Code of Québec), without being able to modify them in any way. It is essentially "take it or leave it." Of course, the meeting of co-owners may later amend it, but this does not change its contractual nature.

The Declaration of Co-ownership

Declarations of co-ownership generally contain a clause holding each co-owner responsible, toward the other co-owners and toward the syndicate, for damages caused by their fault or negligence, or by the act of property for which they are legally responsible. In fact, the courts have previously recognized that co-owners may assume, contractually, liability for damage caused by property under their responsibility, regardless of any fault or negligence on their part.

The New Law

The reform of insurance law in divided co-ownership introduced, among other provisions, articles 1074.1 and 1074.2 into the Civil Code of Québec. The first article addresses, as mentioned earlier, situations where the syndicate decides not to rely on its insurance following a loss. It provides that the syndicate cannot then bring an action against certain persons, including a co-owner, for damages for which it would otherwise have been indemnified by its insurer. Does this mean that the syndicate has no recourse at all? Not entirely. The syndicate may still claim the amount of the deductible, since this sum, which may be significant, is never paid by the insurer. Indeed, article 1074.2 of the Civil Code of Québec has provided the following since March 2020:

> "The amounts incurred by the syndicate for the payment of deductibles and for the repair of damage caused to property in which it has an insurable interest may not be recovered from the co-owners otherwise than through their contribution to the common expenses, subject to the damages it may obtain from the co-owner required to repair the injury caused by his fault and, in the cases provided for in this Code, the injury caused by the act or fault of another person or by the act of property under his custody.
>
> Any stipulation that derogates from the provisions of the first paragraph is deemed unwritten."

A certain body of case law has since emerged suggesting that the words "Any stipulation that derogates from the provisions of the first paragraph is deemed unwritten" now exclude any reference to contractual liability clauses contained in declarations of co-ownership, on the basis that such clauses would derogate from the principle established in the first paragraph of article 1074.2 of the Civil Code of Québec.

As a result, many syndicates have seen their claims based on such provisions dismissed, as the origin of the loss and/or the fault of the co-owner, and in some cases the tenant, could not be proven by the syndicate.

At the time of writing this document, in early 2025, it is still too early to determine whether this line of case law will be maintained or whether, on the contrary, relying on provisions contained in declarations of co-ownership will once again become an effective way to recover the amount of the deductible from a co-owner or tenant responsible for the loss.

Recourse of the Syndicate Against the Faulty Co-owner

One thing, however, is clear: the syndicate's right to be indemnified for the amount it had to pay because of the deductible must be supported by proof demonstrating the fault of the co-owner responsible for the loss, for example a failure to properly maintain their private portion. It must be understood that the co-owner exercises a certain degree of control over such elements, such as the water heater, plumbing fixtures or sanitary installations. In the case of a rented unit, the tenant becomes the custodian of the property for the duration of the lease. The notion of "custody" is transferable. It refers to a relationship between a responsible person and an object, based on a power of supervision and control that allows the person, whether co-owner or tenant, to prevent damage caused by the autonomous act of the property. However, it must be acknowledged that when it comes to plumbing located behind the walls, it is often difficult, if not impossible, for a syndicate to prove that the co-owner or tenant committed a fault.

Recourse of the Syndicate Against the Faulty Co-owner's Insurer

It should be recalled that several insurance policies coexist in co-ownership. Even if the insurer of a faulty co-owner has no contractual relationship with the co-ownership, the syndicate may bring an action against that insurer, as the insurer of the co-owner, pursuant to article 2501 of the Civil Code of Québec, which provides: "The injured third person may assert his right of action against the insured or the insurer or against both. The choice made by the injured third person in this regard does not constitute a waiver of his other remedies."

Defence Available to the Faulty Co-owner

In addition to arguing that they committed no fault, a co-owner may claim that the syndicate subscribed to an insurance policy with an unreasonable deductible and that they should not bear the resulting prejudice. It should be remembered that co-owners must be considered beneficiaries of the insurance subscribed to by the syndicate, since they pay the premiums through their common expenses.

GOOD TO KNOW!

The notion of the "autonomous act of a thing" necessarily implies the absence of human intervention. For example, if a failure occurs when a faucet is turned on or when a toilet mechanism is activated, it does not constitute an autonomous act of the object.

KEY TAKEAWAY:

Syndicates of co-ownership have every interest in requiring co-owners to install water leak protection systems in their private portions and to implement mandatory inspections of all plumbing fixtures and water heaters.

CAUTION!

As a general rule, the syndicate's recourse against a co-owner at fault must be preceded by a formal notice. Failing to do so, or sending it late to the recipient, could result in the syndicate's claim being dismissed.

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