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Undivided co-ownership – Beware of the repossession of the leased premises!

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WWII deeply modified the Canadian economy[1]. The concentration of resources toward the war effort brought about, among other things, a shortage of rental premises[2]. Hence, the law governing leases was adapted[3]. and the existing liberal vision of free negotiation of contracts and consent made way for a stricter one. At the time, the legislator only aimed to avoid abuses against tenants and strike a balance between the respective interests of the parties[4]; however, it was only with the 1979 reform that a policy aiming to conserve the residential dwellings pool was implemented. Despite their early stage, this is how “protectionist” notions respecting leases as we know them today came to be. One of these fundamental notions, which remains among the most unique is the right of tenants to remain in the premises, which has become a key principle of residential dwellings law in Quebec, being codified in our statutes and entrenched in our law.

Therefore, the repossession of a rental dwelling by the lessor, although allowed by the legislator in certain circumstances, constitutes an exception to this principle. This exception, which is found at article 1957 of the *Civil Code of Quebec*, allows the lessor to repossess a dwelling as a residence for himself or herself or for ascendants or descendants in the first degree or any related person for whom the lessor is the main support. The lessor may also repossess the dwelling as a residence for a spouse of whom the lessor remains the main support after a separation from bed and board or divorce or the dissolution of a civil union[5].

With the real estate wave seeking the conversion of rental buildings (duplexes, triplexes, etc.) into undivided co-ownerships, we deem it relevant to note a little known fact which constitutes an exception to that rule and specifically applies to undivided co-owners of a rental building. **The owner of an undivided share of an immovable may not repossess any dwelling in the immovable unless the only other owner is his or her spouse**[6]. Following the protectionist line of the reforms of the *Civil Code of Lower Canada*, and more specifically in 1987, the legislator further restricted the right to repossess.

Co-ownership is said to be *undivided* when the right of ownership is not accompanied by a physical division of the property[7]. The most common instance of undivided co-ownership is when a couple purchases a single family house. Both spouses are undivided co-owners and, unless specified otherwise in the sales contract, they are presumed to hold equal shares in this property[8]. Conversely, co-ownership is said to be *divided* when the right of ownership is apportioned among the co-owners in fractions, each comprising a physically divided private portion and a share of the common portions[9]. This is commonly referred to as a *condominium*.

Therefore, should you purchase a rental building with a person other than your spouse, you will be

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prohibited by law from repossessing a dwelling in that building unless the tenant occupying it voluntarily decides to leave. The decisions issued by the Régie du logement are crystal clear on the fact that a lessor cannot repossess a dwelling held in coownership with one or several members of his or her family, friends or other persons, except his or her spouse - whether married or not.

What is more, if you still wish to purchase a property with others and hold it with them as an undivided co-owner despite this inconvenient limitation, it is strongly recommended that you establish all the rights of the undivided co-owners in a co-ownership agreement. The agreement should then be published to make it enforceable against third persons.

Originating from an era where the intervention of the State was necessary in the context of the contractual relationship between lessors and tenants, and having since evolved in the same direction, it is not to be expected that the legislator will relax its protectionist rules. It is therefore essential to know one's rights and obligations, be it as tenant, lessor, purchaser or seller since each of us may be called upon to act in any of these capacities over the course of our lives.

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[1] Pierre-Gabriel JOBIN, *Le Louage*, 2e édition, Cowansville, Éditions Yvon Blais, 1996, p. 4.
[2] *Ibid*.
[3] *Ibid*.
[4] *Ibid*., page 7
[5] Art. 1957, par. 2 C.C.Q.
[6] Art. 1958 C.C.Q.
[7] Art. 1010, par. 2 C.C.Q.
[8] Art. 1015, par. 1 C.C.Q.
[9] *Supra*, note 7, par. 3.

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