Bill 141 and divided Co-ownerships: What changes in insurance for co-owners?

May 8, 2019

Author

Dominic Boisvert

Lawyer

On June 13, 2018, Bill 141, *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions* (hereinafter referred to as the "Act"), received assent. This reform has a significant impact on certain laws governing the financial sector, amending the *Civil Code of Québec* ("C.C.Q.") regarding the divided co-ownership of an immovable.

While many of the legislative amendments will have to wait for the regulations to come into force, others took effect on December 13. Here is an overview of them.

Insurance obligations of the syndicate of co-owners

The provisions of section 641[1] of the Act amend the manner in which the insurance obligations of the syndicate of co-owners under article 1073 of the C.C.Q. are regulated. Here is a brief description of these amendments:

Deductible

Insurance taken out by syndicates must have a reasonable deductible. It will be up to the legislator to define this concept in a future regulation.

Risks covered

The risks covered by operation of law will be prescribed by regulation. These will be deemed to be covered, unless the policy or a rider sets out, expressly and in clearly legible characters, which of those risks are excluded.

Amount of coverage

The amount of insurance must cover the reconstruction of the immovable in accordance with the standards, usage and good practice applicable at that time; the amount must be evaluated at least every five (5) years by a member of a professional order designated by government regulation.

Insured persons

The members of the syndicate’s board of directors and the manager as well as the chair and the secretary of the general meeting of the co-owners and the other persons responsible for seeing to its proper conduct must take out third person liability insurance.

It should be noted that the manager may be a co-owner or a third party, in accordance with article 1085 C.C.Q. The insured status of a management company for the purposes of a syndicate's policy could have a significant impact on insurers' potential recoveries.

Identification of improvements to private portions

The Act provides that the syndicate must keep at the disposal of the co-owners a description of the private portions that is sufficiently precise to allow any improvements made by co-owners to be identified[2].

The identification of these improvements will in principle have the advantage of clearly defining what is covered by the co-ownership’s insurance and what is covered by the co-owner’s insurance. If not identifiable, the improvements would remain the responsibility of the syndicate.

Creation of a self-insurance fund

In addition to having to set up a contingency fund and an operating fund, the syndicate will have to set up a self-insurance fund that is liquid and available on short notice[3].

This fund will be used to pay the deductibles provided for in the insurance policies taken out by the syndicates and to compensate for damage to property in which the syndicates have an insurable interest, when the contingency fund or an insurance indemnity cannot provide for it. The amount of the self-insurance fund must be based on the amount of the deductible and must provide for an additional reasonable amount to cover the other expenses for which it is established.

Insurance obligation

Each co-owner must take out third party liability insurance, the amount of which will be determined by regulation[4].

Damage to property - Repair or claim

Section 642 of the Act provides for the insertion of articles 1074.1 to 1074.3 after article 1074 C.C.Q.[5]. These articles have the following provisions:

When a loss occurs which falls under the coverage provided for by a property insurance contract entered into by the syndicate and the syndicate decides not to avail itself of the insurance, it shall with dispatch see that the damage caused to the insured property is repaired.

A syndicate that does not avail itself of insurance may not sue a co-owner, a person who is a member of a co-owner's household, or a person in respect of whom the syndicate is required to enter into an insurance contract to cover the person's liability for expenses incurred.

On the other hand, it seems that the syndicate could benefit from a right of recourse in the event of a claim not involving insurance coverage.

However, the sums incurred by the syndicate to pay the deductibles and make reparation for the injury caused to property in which the syndicate has an insurable interest may not be recovered from the co-owners otherwise than by their contribution for common expenses, subject to damages it can obtain from the co-owner bound to make reparation for the injury caused by the co-owner's fault.

This reservation making it possible to claim damages is open to interpretation. It would be possible to read these new articles and conclude that the syndicate retains rights of recourse against a co-owner for damage to property in which it has an insurable interest in the event that no insurance coverage is at stake and the co-owner's fault can be demonstrated. Or, perhaps the legislator intended to preserve the syndicate's rights to claim damages other than the cost of repairing the damage caused to the property, as permitted by article 1728 C.C.Q. in respect of latent defects. These amendments and this notion of damages will undoubtedly need to be clarified by the courts.

Finally, syndicate insurance will take precedence in the event that the same risks and property are covered by more than one insurance policy.

Insurers' subrogatory action

The limitations on insurers' subrogatory rights in matters of divided co-ownership are now codified. The insurer of the syndicate, co-owner, person who is a member of a co-owner's household, or person in respect of whom the syndicate is required to enter into an insurance contract to cover the person's liability will be denied the right to bring a subrogatory action against one of these persons. The only possible exception to this rule applies in the case of bodily or moral injury or if the injury is due to an intentional or gross fault[5].

Conclusion

Although many of the above-mentioned amendments remain dependent on the adoption of regulations, it remains important for the representatives of co-ownership syndicates to carry out the necessary checks to validate their insurance needs and obtain the appropriate advice from professionals in this sector. Insurers will also have to adjust their practices as a result, both when insurance is taken out and when managing claims.

---

1. These amendments will come into force 12 months after the publication of a regulation made under the 3rd paragraph of article 1073 C.C.Q. A first regulation must be published by June 13, 2020, at the latest.
2. The provisions of section 638 come into force on different dates depending on the date of establishment of the co-ownerships concerned. See sections 653 and 814 para. 2 of the Bill 141.
3. The provisions regarding the self-insurance fund will come into force 24 months after the publication of a regulation made under the 3rd paragraph of article 1072 C.C.Q. A first regulation must be published by June 13, 2020, at the

latest.

4. The entry into force of these provisions is conditional on the adoption of a regulation to be published no later than June 13, 2020.
5. These provisions have been in effect since December 13, 2018.