

Draft Regulation

Civil Code of Québec
(Civil Code; 2019, chapter 28; 2021, chapter 7; 2024, chapter 2)

Various rules concerning divided co-ownership

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation establishing various rules concerning divided co-ownership, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation determines the form and content of the maintenance log provided for by the Civil Code of Québec with regard to divided co-ownership, as well as the procedure for the keeping and review of the maintenance log. The draft Regulation also sets out the requirements for the establishment and review of such a log.

The draft Regulation also establishes standards relating to the study of the contingency fund of a divided co-ownership and designates, in particular, the professional orders whose members are empowered to perform the study. The draft Regulation determines the frequency at which a new study must be obtained by the board of directors.

In addition, the draft Regulation determines the form and content of the certificate that must be issued by the syndicate of a divided co-ownership when a fraction of an immovable under divided co-ownership is sold.

Lastly, the draft Regulation determines the terms and conditions concerning the deposit in a trust account of the deposit paid to a builder or a developer for the purchase of a fraction of an immovable under divided co-ownership.

The main impact of the draft Regulation on enterprises concerns the cost of producing a maintenance log and a contingency fund study, which must be paid by developers who build immovables held in divided co-ownership, as well as the cost of reviewing the log and the study, which must be paid by co-ownership syndicates, in particular if enterprises co-own the immovables.

Further information on the draft Regulation may be obtained by contacting Nathalie Mallard, Director, Direction de l'analyse et de la stratégie, Société d'habitation du Québec, 1054, rue Louis-Alexandre-Taschereau, Aile Jacques Parizeau, 3^e étage, G1R 5E7; telephone: 418 643-4035, extension 32040; email: nathalie.mallard@shq.gouv.qc.ca.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Nathalie Mallard at the above contact information.

FRANCE-ÉLAINE DURANCEAU
Minister Responsible for Housing

Regulation establishing various rules concerning divided co-ownership

Civil Code of Québec
(Civil Code, art. 1068.1, 1st par., art. 1070.2, 2nd par., art. 1071, 2nd par., and art. 1791.1, 1st par. and 3rd par.; 2019, chapter 28, ss. 35, 38, 39, 66 and 151; 2021, chapter 7, s. 1; 2024, chapter 2, ss. 1 and 2).

DIVISION I MAINTENANCE LOG

1. Every person who meets the following requirements may establish the maintenance log of an immovable provided for in article 1070.2 of the Civil Code, made by section 38 of the Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs (2019, chapter 28) and amended by section 1 of the Act to amend various legislative provisions with respect to housing (2024, chapter 2):

(1) the person is a member of one of the following professional orders:

- (a) Ordre des ingénieurs du Québec;
- (b) Ordre des évaluateurs agréés du Québec;
- (c) Ordre des architectes du Québec;
- (d) Ordre des technologues professionnels du Québec;

(2) the person's professional activities primarily concern management, construction, renovation or property inspection; and

(3) the person is not a member of the board of directors, or the manager, a co-owner or a resident of the immovable, or the spouse of such a person, and is not a shareholder, officer, director or employee of a legal person that is a co-owner of the immovable.

2. The maintenance log of the immovable contains an inventory and a description of the common portions of the immovable and the materials, apparatus and equipment that compose the common portions. It also contains an inventory and a description of the materials, apparatus and equipment installed in the private portions of the immovable whose maintenance is under the responsibility of the syndicate.

The maintenance log must contain the following information and documents in respect of each material, apparatus and equipment referred to in the first paragraph:

- (1) the date of installation, if known;
- (2) the required maintenance work, except the work referred to in section 3, and the frequency at which the required maintenance work must be carried out and the date on which it was done;
- (3) ordinary repairs and the date on which they were carried out;
- (4) the contracts entered into for the performance of the maintenance work and ordinary repairs referred to in subparagraphs 2 or 3, as the case may be;
- (5) the warranty contracts in force, where applicable;
- (6) the reports of any inspections performed or expert opinions obtained, where applicable;
- (7) the maintenance manuals of the manufacturer, where applicable.

3. The maintenance log also contains, in a separate section used exclusively for that purpose, an assessment of the condition and the remaining useful life of the materials, apparatus and equipment described in the maintenance log in accordance with section 2. On the basis of that assessment, a description of the major repairs and replacements to be carried out on each of those materials, apparatus and equipment, during the next 25 years, must be included in the maintenance log. A year of completion must be indicated for every major repair and replacement to be carried out.

The major repairs and replacements that are carried out and the date of completion are noted in the maintenance log, and the documents relating to that work, such as plans and specifications and contracts, are added to the maintenance log.

4. The maintenance log must be updated at least once a year. The update consists in adding to the maintenance log any new information or document referred to in section 2 or 3.

5. Only a person who meets the requirements provided for in section 1 may review a maintenance log. That person must carry out a complete review of the maintenance log on the basis of, in particular, the information and documents added as part of the annual updates.

The maintenance log must be reviewed at least every 5 years. Despite the foregoing, the maintenance log may be reviewed at least every 10 years if

- (1) the immovable consists of not more than 8 private portions;
- (2) the private portions of the immovable are residential; and
- (3) the immovable does not have more than 2 fully above-ground floors.

If certain work, among the work referred to in section 2 or 3, was planned or required in the maintenance log and was not carried out, the reviewed maintenance log must include a mention to that effect and indicate the reasons why the work was not carried out.

6. The person who establishes or reviews a maintenance log must sign a declaration stating that he or she personally

- (1) conducted, on the premises, an examination of the common portions of the immovable and of the materials, apparatus and equipment referred to in section 2; and
- (2) examined the information and documents in the maintenance log.

The declaration must be dated and included in the maintenance log.

DIVISION II CONTINGENCY FUND STUDY

7. Any person may perform the contingency fund study provided for in the second paragraph of article 1071 of the Civil Code, amended by section 39 of the Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs (2019, chapter 28) and amended by section 2 of the Act to amend various legislative provisions with respect to housing (2024, chapter 2), provided

- (1) the person meets the requirements set out in section 1; or
- (2) the person is a member of the Ordre des comptables professionnels agréés du Québec and meets the requirements set out in paragraph 3 of section 1.

8. The contingency fund study must be obtained by the board of directors at least every 5 years. It must be performed based on the description, included in the maintenance log in accordance with section 3, of the major repairs and replacements to be carried out over the next 25 years. The study must contain at least the following information:

- (1) the total amount of the contingency fund on the date the study is performed;

(2) an estimate of the cost of each major repair and each replacement in the year of completion indicated in the maintenance log;

(3) a recommendation on the minimum amount that must be available in the contingency fund at the start of each year and on the sums that must be deposited annually in the contingency fund;

(4) the calculations made to establish the amounts referred to in paragraphs 2 and 3.

9. The contingency fund study must be signed and dated by its author.

DIVISION III **CERTIFICATE OF THE SYNDICATE**

10. The certificate of the syndicate attesting to the condition of the co-ownership provided for in the first paragraph of article 1068.1 of the Civil Code, made by section 35 of the Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs (2019, chapter 28), must contain at least the following information:

(1) the total amount of the contingency fund and the recommendation of the contingency fund study as to the minimum amount that must be available in the fund at the start of the year in progress;

(2) the total amount of contributions to the common expenses required from co-owners by the syndicate in the 2 previous years and the total amount of contributions to the common expenses paid by co-owners during that period;

(3) the total amount of liquid assets available to the syndicate to pay the current operating expenditures of the co-ownership;

(4) the amount of the annual surplus or deficit appearing in the last 2 financial statements of the co-ownership;

(5) a mention to the effect that the syndicate is the holder of the insurance policies that it must take out under article 1073 of the Civil Code;

(6) the total amount of the self-insurance fund and the amount of the highest deductible provided for by the insurance taken out by the syndicate;

(7) a summary description of

(a) the inspections performed and the expert opinions obtained at the initiative of the syndicate, during the last 5 years, that pertained to the general condition of the immovable or one of its major components;

(b) losses having affected, during the last 5 years, the private portion that is the subject of the sale or the common portions of the immovable;

(c) the major repairs and replacements carried out in the common portions during the last 5 years, and those planned for the next 10 years or that must be carried out quickly following an unforeseen event;

(d) disputes that are underway to which the syndicate is a party and that are the subject of a proceeding before a court.

The certificate must be dated and signed by the person authorized to issue it, and it must indicate the person's name and capacity.

DIVISION IV **DEPOSIT**

11. Only members of the following professional orders may hold in a trust account a deposit referred to in article 1791.1 of the Civil Code, made by section 66 of the Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs (2019, chapter 28) and amended by section 1 of the Act to establish a new development regime for the flood zones of lakes and watercourses, to temporarily grant municipalities powers enabling them to respond to certain needs and to amend various provisions (2021, chapter 7):

(1) Barreau du Québec;

(2) Chambre des notaires du Québec;

(3) Ordre des administrateurs agréés du Québec;

(4) Ordre des comptables professionnels agréés du Québec.

12. The builder or the developer must mandate a member of a professional order referred to in section 11 who is charged with receiving in a trust account the deposit referred to in article 1791.1 of the Civil Code, made by section 66 of the Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs (2019, chapter 28) and amended by section 1 of the Act to establish a new development regime for the flood zones of lakes and watercourses, to temporarily grant municipalities powers enabling them to respond to certain needs and to amend various provisions (2021, chapter 7).

The buyer must pay the deposit directly to the professional mandated under the first paragraph. The builder or developer may in no case make the payment in the place of the buyer.

13. The date agreed upon for the delivery of the fraction of the immovable under co-ownership, within the meaning of the third paragraph of section 1791.1 of the Civil Code, made by section 66 of the Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs (2019, chapter 28) and amended by section 1 of the Act to establish a new development regime for the flood zones of lakes and watercourses, to temporarily grant municipalities powers enabling them to respond to certain needs and to amend various provisions (2021, chapter 7), may be amended with the consent of the parties to the preliminary contract. To be valid, the new date of delivery must be indicated in the contract and the parties must sign the contract so amended.

DIVISION V **TRANSITIONAL AND FINAL**

14. In the cases provided for in the second paragraph of section 151 of the Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs (2019, chapter 28), the maintenance log or the contingency fund study obtained by the syndicate in the 2 years preceding the coming into force of this Regulation is valid for a period of 5 years as of the date it is obtained by the syndicate, provided that the person who prepared the maintenance log or the contingency fund study met, as the case may be, the requirements provided for in section 1 or 7 of this Regulation.

15. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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