

# Becoming a Co-Owner

Buying My Future Condo



**RGCQ**  
REGROUPEMENT  
DES GESTIONNAIRES  
ET COPROPRIÉTAIRES  
DU QUÉBEC



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- A non-profit organization (NPO), neutral and independent
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## MISSION

- Protect new home buyers
- Promote the improvement of construction quality in Quebec

## TOOLS TO HELP YOU

- Directory of accredited companies for an informed choice
- GCR Maintenance Guide for home or condo care
- Buyer's Kit for understanding warranties and their durations
- GCR Echo – Consumer edition, for housing-related news



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## Preface

Acquiring a property is the most significant purchase we will make in our lifetime. Over time, the real estate market has adapted to the lifestyles, desires, and aspirations of Quebecers. In particular, the creation of divided co-ownership in 1969 greatly contributed to facilitating access to property ownership. Over the past fifty years, this housing model has developed exponentially, winning over hundreds of thousands of households. Housing projects of this type have continued to multiply across Quebec, driven by a thriving economy and a dynamic real estate market.

In 2018, there were nearly 330,000 divided co-ownership units in Quebec, with a total property value approaching \$90 billion. Co-ownership has experienced unprecedented growth since the early 2000s. Today, it is no longer limited to major urban centers but is also reshaping the landscapes of smaller municipalities. This model has proven its worth, enriching Quebec's urban heritage, densifying cities, and curbing urban sprawl toward the suburbs.

However, while this model has brought many benefits, it has also given rise to challenges, particularly regarding the longevity of this vast housing stock. On December 5, 2019, the government adopted Bill 16 specifically to preserve this valuable heritage. After 50 years, many buildings faced significant maintenance deficits that the existing legislative framework had failed to address. The goal of this new law was to help co-owners better protect their investment. It also aimed to ensure intergenerational equity.

Other improvements, such as Bill 141 amending the Quebec Civil Code regarding co-ownership insurance, and Bill 41 clarifying co-owners' responsibilities in the event of disasters, have also helped modernize the legislative tools available.

Purchasing a condominium is more complex than buying a single-family home in many respects. Embracing this model means agreeing to share building-related expenses, as well as adhering to community living rules. This responsibility requires the formation of a syndicate of co-owners tasked with maintaining the building and safeguarding the common interest. Potential buyers have much to gain from understanding the basic principles that govern co-ownership. They will enter into the process fully informed and take their role as co-owners seriously. Professionals who assist their clients in buying or selling condominiums thus bear significant responsibilities in advising and informing them.

For this reason, our organizations have decided to jointly produce a guide to buying a condominium. We are confident that this resource will greatly help future buyers make informed decisions. Not only will this guide better protect them, but it will also contribute to preserving the co-ownership housing stock.



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**RGCQ**

REGROUPEMENT  
DES GESTIONNAIRES  
ET COPROPRIÉTAIRES  
DU QUÉBEC

# SERVING CO-OWNERSHIPS

Answers and tools to simplify your management.

RGCQ members have access to:

- ♦ Unlimited personalized **advice** to help them manage their co-ownerships
- ♦ **Support** for implementing co-ownership law reforms
- ♦ Template **documents** tailored to their need
- ♦ Specialized **trainings** for all levels
- ♦ High-quality, real-time **information** on co-ownership developments

The RGCQ is a non-profit organization founded in 1999 with the mission of improving the management and governance of Québec co-ownerships. Representing over 80,000 condominium units and 300 businesses, the RGCQ is the leading voice for co-owners, syndicates, and property managers.

**For more information or to become a member, contact us:**

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# Finding a Home

## Divided or Undivided Co-Ownership?

Purchasing a condo provides an easier path to property ownership due to its lower purchase cost compared to a single-family home. This option is particularly attractive to young families and renters, many of whom are increasingly choosing the condo lifestyle, allowing them to become homeowners much more quickly.

However, living in a co-ownership setting means sharing your space with neighbors—whether few or many, nearby or distant—and contributing financially to maintain and preserve the building. Coexisting in a condominium requires maintaining cordial relationships with neighbors and adopting a long-term perspective rather than treating it as a temporary stay.

Condo living demands certain skills, as it doesn't offer the same freedom as a single-family home. Co-ownership operates under a framework where property rights are exercised collectively. Decisions made by the community may not always align with your preferences. There are also restrictions, regulations, and prohibitions, which may make it challenging for everyone to feel at ease in this type of housing arrangement.



Purchasing a housing unit in a divided co-ownership, commonly known as a "condo," is appealing due to its often-lower purchase cost compared to a single-family home.

Nonetheless, this housing model offers many benefits, including reduced expenses. Not only is the cost of living in a condo typically lower than in a house, but there are also opportunities for savings on housing-related expenses.

If you decide that co-ownership is right for you, the next step is to choose among different types of buildings or co-ownership models. A real estate broker can help present options that meet your needs and criteria.

#### Consider Condo Fees

Although living in a condo is generally less expensive than in a single-family home, don't forget to factor in common expenses, commonly referred to as condo fees, into your budget. Regardless of the type of co-ownership you choose or the condition of the building (new or existing), you will need to pay a monthly amount to contribute to the proper functioning of the condominium.

## Divided or Undivided Co-Ownership?

If you're looking for an apartment, ask yourself whether it is part of a divided or undivided co-ownership. While these two concepts are similar—both involve the shared ownership of a single property by multiple individuals known as co-owners—the legal and financial implications are not the same.

### Divided Co-Ownership

Divided co-ownership, commonly referred to as a condominium, is a housing model that legally separates the financial responsibilities of the owners. It is governed by a declaration of co-ownership, a notarized agreement that regulates the relationships between co-owners and administrators. This declaration is a crucial legal document as it outlines the living framework of the condominium. The publication of this declaration in the land registry officially establishes the syndicate of co-owners.

To create a divided co-ownership, the building is divided into private and common areas. These are identified by individual lot numbers assigned during the cadastral operation. Each private co-ownership lot thus created becomes a distinct real estate property.





Co-owners have exclusive ownership of their private portion (e.g., an apartment) and, in some cases, a parking space and a storage unit. They jointly (in undivided ownership) share the common areas of the building (e.g., the structure such as foundations or framing, mechanical equipment, entrance hall, swimming pool, parking areas, elevators, and community rooms). These common areas are managed by the syndicate of co-owners, which is responsible for their maintenance and upkeep.

The legal framework of divided co-ownership offers greater freedom. In principle, you can manage your property as you wish—for example, renting or selling your private unit without requiring prior approval from anyone. You can also take out a mortgage to purchase your unit, with no liability falling on the other co-owners.

### Undivided Co-Ownership

A building is held in undivided co-ownership when it belongs to more than one person (the co-owners), without being physically divided into distinct lots (private and common areas). Unlike divided co-ownership, the apartments are not individualized, and no prior cadastral operation is required. The property is subject to a single property assessment, which is why municipal and school authorities issue a single tax bill for the entire building. You will hold, along with the other co-owners, an undivided ownership right over the entire property, proportional to the value of your share.

Unlike divided co-ownership, an undivided co-ownership does not have a legal entity responsible for the building's maintenance or a board of directors. Instead, the co-owners manage the property collectively or by appointing a manager.

Other key distinctions include clauses that often limit the freedom to sell your share to a third party, as well as restrictions on renting out your portion of the property (your apartment). These are important considerations when choosing this type of co-ownership.

### What Is the Most Common Type of Co-Ownership?

The vast majority of existing co-ownerships, as well as nearly all new developments, are divided co-ownerships.

Undivided co-ownerships are less common; each has unique characteristics, and their management is far less regulated.

This is why it is difficult to provide general information and advice about these properties, and why this guide focuses on divided co-ownerships.

# Key Features of Divided Co-Ownership

## The Different Types of Divided Co-Ownership (Residential, Mixed-Use, Vacation, Phased)

Divided co-ownership comes in various forms and exists in a range of building types. Many condominiums are strictly residential, while others are mixed-use (residential and commercial) or vacation properties (located in tourist areas or near ski resorts). Each type of co-ownership is governed by specific rules outlined in its declaration of co-ownership.

As for the buildings, they can include duplexes, triplexes, and other "plexes," as well as row houses, townhouses, or multi-story residential towers with hundreds of units. The common denominator lies in the division of the property into distinct lots following a cadastral operation, the publication of a declaration of co-ownership, and the establishment of a syndicate of co-owners.

In some divided co-ownerships, real estate complexes are developed in multiple phases. Depending on the developer's chosen approach, these projects may involve two declarations of co-ownership: an initial or horizontal declaration, which governs the common areas shared across the entire project, and a concurrent or vertical declaration, which applies specifically to each building or phase. This structure leads to the creation of two types of syndicates of co-owners: a horizontal syndicate, responsible for managing the shared elements of the overall complex, and several vertical syndicates, each overseeing the operations of an individual building. This dual-level organization ensures that both the collective and building-specific aspects of the property are effectively managed, with well-defined roles and responsibilities for each syndicate.





## Declaration of co-ownership

The declaration of co-ownership is the legal document that establishes a divided co-ownership upon its publication in the land register. It is a notarized act unilaterally drafted by the project's promoter (referred to as the "declarant") and to which all co-owners, including future co-owners, are automatically bound as soon as they purchase an apartment. It contains the provisions related to the legal structure of the co-ownership and its operating rules. It is therefore considered the "social contract" that governs the life of co-owners, both individually and collectively. The declaration consists of three parts: the descriptive statement of the fractions, the constitutive act of co-ownership, and the building's regulations.

The **descriptive statement of the fractions** is found at the end of the document. This more technical section lists the cadastral designation of all the private and common portions of the building.

The **constitutive act of co-ownership** contains the key legal elements of the co-ownership, including the "destination of the building" (its intended use). It describes the origins of the property rights of its "creator" (the "declarant"), as well as the servitudes established for the project. This section also includes the description of the relative values of the "fractions" created by dividing the building into lots, as well as the voting rights assigned to each. The constitutive act also specifies the respective powers and responsibilities of the board of directors and the general assembly of co-owners.

The **building's regulations**, in turn, impose the code of conduct for all co-owners and occupants of the building. It also sets out the rules for the management and administration of the co-ownership, including the composition of the board of directors, the rules for the use of common and private portions, the procedures for holding co-owners' meetings, and the co-owners' contribution to common expenses, including contingency and self-insurance funds.

### CAREFUL

Many buyers unfortunately neglect to review the declaration of co-ownership and its amendments before making a purchase, even though they agree to abide by it and are legally bound by its terms. Such negligence can lead to unpleasant surprises, and you may find yourself in violation of the "social contract". Your real estate broker should review the building's regulations to assess whether the expected and planned cohabitation aligns with your expectations.

### GOOD TO KNOW!

The building's regulations define the daily life you can expect in a particular divided co-ownership. This section covers topics such as the rental of fractions, whether or not a profession can be practiced in a private unit, restrictions or prohibitions regarding pets, noise and nuisances, smoking or cannabis use, the use or prohibition of cooking appliances on balconies, the use of elevators, garbage chutes, the community room, the pool or spa, as well as rules regarding signage, the installation of antennas or satellite dishes, etc.



### TO REMEMBER

The building's regulations may be modified over time. It is therefore essential not to rely solely on the original declaration of co-ownership but to also review any amendments that may have been made to these regulations.

## The Syndicate of Co-Owners

The syndicate of co-owners is a distinct legal entity that represents the collective of the building's co-owners. This syndicate comes into existence as soon as the declaration of co-ownership is published in the land register. It serves as the legal representative of the co-ownership.

Its mission is to ensure the maintenance and preservation of the building and to protect the collective interests of the co-owners. A syndicate of co-owners has a name, an official address, and its own assets. It operates through two governing bodies: the board of directors and the general assembly of co-owners.



### The Board of Directors:

- > Manages the syndicate's affairs;
- > Oversees the maintenance of the building;
- > Operates on a continuous basis.

### The General Meeting of Co-Owners:

- > Acts on an ad hoc basis, during the annual general meeting or extraordinary meetings;
- > Is consulted by the board of directors on the provisional budget during the annual meeting;
- > Appoints the members of the board of directors;
- > Makes certain key decisions, such as amendments to the declaration of co-ownership or authorizing transformation or improvement work on common areas.



## Private Portions, Common Portions, Restricted-Use Common Portions, and Fractions

Each **private portion** in a divided co-ownership has its own cadastral designation (lot number). This typically refers to the apartment, but may also include parking spaces and storage units. Private portions are those on which co-owners have exclusive ownership rights.

**Common portions** include all parts of the building and land that are not private portions. These are listed in the declaration of co-ownership (e.g., hallways, staircases, elevators, mechanical rooms, foundations, main structure, etc.). Contrary to common belief, common portions do not belong to the syndicate but rather to all co-owners jointly, in proportion to the shares allocated to each fraction.

Some common portions are designated for the exclusive use of one or a few co-owners, such as balconies, patio doors, and windows. These are referred to as **restricted-use common portions** and are defined in the declaration of co-ownership. They are not always adjacent to the residential unit (e.g., parking spaces or storage units in the basement that do not have a specific lot number). These are assigned either by the developer-seller, acting as interim administrator, or by the syndicate's board of directors.

### GOOD TO KNOW!

When purchasing in a divided co-ownership, a buyer is actually acquiring a "fraction of co-ownership." This includes:

- One or more private portions (e.g., a residential unit and an indoor parking space);
- An exclusive right of use over restricted-use common portions (e.g., a balcony or storage unit);
- An undivided share in the common portions of the co-ownership.

## The Destination of the Building

The destination of the building is a fundamental concept in divided co-ownership. It defines the type of co-ownership and the permitted uses of its private and common portions (e.g., strictly residential, residential with the possibility of professional activities under certain conditions, etc.).

Most divided co-ownerships have a **residential destination**. However, some have a **mixed-use destination**, with commercial spaces on the ground floor and residential units on the upper floors. While purchasing in such co-ownerships is generally not an issue, buyers should consider factors like deliveries, noise, and potential odors, depending on the type of business allowed. Insurance premiums in these buildings may be higher compared to strictly residential co-ownerships. It is crucial to carefully review the declaration of co-ownership to determine the types of businesses permitted. Additionally, aspects such as board member appointments and the distribution of common expenses between commercial and residential units should be examined closely in such properties.

In tourist areas, co-ownerships are often designated for **vacation purposes**, where short-term rentals are generally permitted or even managed by a rental company established alongside the co-ownership. Buyers should be aware of the potential risks associated with frequent visitors and the sporadic occupancy of units by co-owners, which may impact insurance premiums.

Beyond the formal classifications found in the declaration of co-ownership, a building's destination can also be shaped by other factors. These include the luxurious nature of the property, its location, the quality of materials used in its construction, the level of comfort it offers, and any specific permissions or restrictions related to the activities of co-owners. These elements contribute to defining how the building is used and perceived, beyond what is written in the legal documents.



## Insurance in Divided Co-ownership

As the entity responsible for maintaining the building held in divided co-ownership, the syndicate of co-owners is required to insure the entire property (both common and private portions) against common risks such as fire, theft, vandalism, water damage, and flooding. At first glance, this may seem surprising, since the syndicate does not own either the common areas or the private portions, except in rare cases (such as a residential unit designated for an on-site concierge).

The legislator chose this approach, firstly because it aligns with the syndicate's obligation to preserve the building, and secondly to minimize the number of parties involved in case of reconstruction following a disaster. The only limitation to the syndicate's insurance obligation regarding the building concerns improvements made by an owner to their private portion. Each co-owner is responsible for insuring these improvements, as well as their personal belongings. In this regard, syndicates must keep a sufficiently detailed description of the private portions in the co-ownership register to identify these improvements. Before purchasing, you should consult this description of the "reference unit", which will help you determine what you will need to insure as a future owner.

The syndicate must also take out liability insurance for itself, as it is a legal entity that could be sued, as well as liability insurance covering members of the board of directors, assembly officers, and the property manager.

The cost of various insurance premiums that all co-ownership syndicates must subscribe to is included in the common expenses that co-owners must pay, based on the relative value of their respective shares.

In divided co-ownership, insurance operates on two levels. The syndicate is responsible for insuring the building as a whole, excluding any improvements made by individual co-owners to their private portions. Each co-owner, in turn, must insure these improvements. Legally, co-owners are only required to carry liability insurance — with a minimum of \$1 million if the building has fewer than 13 residential units, and \$2 million if it has 13 or more. No other coverage is mandated by law. However, the declaration of co-ownership may impose additional insurance obligations, such as requiring co-owners to obtain specific coverage and notify the syndicate upon subscription or renewal of their policy. It is essential to review this document carefully. Your real estate broker should inform you of the syndicate's insurance responsibilities, what is covered by the co-ownership's insurance policy, and the importance of ensuring your own coverage is sufficient. Remember, the declaration of co-ownership is binding on all co-owners, who must adhere to its provisions.

### New or Existing Co-ownership?

As a future buyer, you will have the choice between new or existing co-ownership properties. While the end result is the same, the steps leading to the purchase and the key factors to check are very different. Here, we present both options to you.



# Buying in an Existing Co-ownership

## The Advantages and Disadvantages of Buying in an Existing Co-ownership

Buying in an existing co-ownership comes with several advantages, including the ability to assess the condition of the building, as well as the location and dimensions of the desired unit. To some extent, you can evaluate its maintenance status and check for major defects, soundproofing, and resistance to odor transmission. This verification can be done by questioning the seller during a property visit, conducting a pre-purchase inspection, and reviewing the available documentation in the co-ownership register (financial statements, minutes of co-owners' meetings, and board meetings). These assessments are impossible in a building under construction.

However, a co-ownership with history can also present risks, particularly if there is a lack of maintenance or poor management—often, these two issues go hand in hand. It's important to understand that when purchasing in a divided co-ownership, you are not just acquiring a unit; you are also committing to contributing to common expenses and potential special assessments.

If the common expenses seem unrealistically low ("too good to be true") or if the contingency fund is empty, further investigation is necessary. Additionally, if the minutes of co-owners' meetings or board meetings mention upcoming major repairs, conflicts among co-owners, soundproofing issues, or problems with tenants, you might want to reconsider—or even walk away from the purchase altogether.

### What is the Contingency Fund?

The contingency fund is a financial reserve used to cover major repairs and the replacement of common areas in the building (such as the roof). It is mandatory for all divided co-ownerships and must be adequately funded to meet the building's needs. This fund helps distribute the cost of work over a long period, preventing financial shocks and ensuring fairness across different generations of co-owners.

A contingency fund study, conducted by a professional, allows for a proper evaluation of the syndicate's financial needs and long-term maintenance requirements. A well-funded contingency fund is a strong indicator of sound management and helps prevent unpleasant surprises after purchasing a unit.

## Buying Alone or Through a Broker

When you decide to buy, sell, or rent a property—whether it's a single-family home or a co-ownership unit—you are about to make one of the most significant decisions of your life.

The *Organisme d'autoréglementation du courtage immobilier du Québec (OACIQ)* is the regulatory authority for real estate brokerage in Québec. It informs and protects the public by enforcing the *Real Estate Brokerage Act*, in accordance with the mandate entrusted to it by Québec's Ministry of Finance. The OACIQ oversees real estate brokers throughout their careers to ensure they remain up to date in their practice and comply with their professional obligations.

By choosing to work with a real estate broker, you benefit from the full protection offered by the *Real Estate Brokerage Act*.

The *Organisme d'autoréglementation du courtage immobilier du Québec (OACIQ)*, in collaboration with the Ministry of Finance, has created various specific forms for transactions involving divided and undivided co-ownership properties. These forms are for the exclusive use of real estate brokers and help minimize the risks associated with this type of purchase:

**Exclusive Brokerage Contract – Divided Co-ownership**

– Fraction of a primarily residential building held in divided co-ownership

**Exclusive Brokerage Contract – Undivided Co-ownership**

– Share of a primarily residential building held in undivided co-ownership

**Promise to Purchase – Divided Co-ownership**

– Fraction of a primarily residential building held in divided co-ownership

**Promise to Purchase – Undivided Co-ownership**

– Share of a primarily residential building held in undivided co-ownership

**Seller's Declarations Regarding the Property**

– Divided Co-ownership

Request for Information from the Syndicate of Co-owners  
(**DRCOP form**)

The DRCOP form is a request submitted by a selling co-owner to the syndicate of co-owners (the board of directors) to provide the broker with key information about the property, including:

- Common expenses;
- The contingency fund;
- The financial status of the syndicate;
- Any ongoing or pending legal proceedings involving the syndicate;
- Building insurance details;
- Any notices of non-compliance;
- Private-area renovations that may have impacted common areas;
- Co-ownership bylaws;
- Upcoming major repairs or maintenance work.

This form ensures that relevant information about the unit being marketed is disclosed, helping to facilitate a transparent transaction that benefits all parties.



## Know everything about the building before saying yes!

In addition to the information provided by the seller-co-owner (see below), the law allows a prospective buyer to request from the syndicate “documents or information concerning the building and the syndicate that would allow them to give informed consent.” This refers to a prospective buyer—someone who has signed a promise to purchase—not a casual visitor or potential future buyer.

Since deadlines are very short after an offer is submitted, it’s important to already know what information you’re looking for when signing the offer. The law also states that the documents and information must be provided promptly to the prospective buyer who requests them, at their own expense, and subject to privacy provisions. The syndicate must also inform the seller-owner of the documents or information shared with the prospective buyer, so that all parties have access to the same information.

### GOOD TO KNOW!

To prevent any unpleasant surprises, the Promise to Purchase drafted by the OACIQ includes a condition requiring the buyer to obtain key documents related to the co-ownership. These include the declaration of co-ownership, the bylaws and any amendments, information provided by the syndicate (if available), minutes from co-owners' meetings, financial statements, and the current balance of the contingency fund. Your real estate broker plays an essential role in guiding you through this process and ensuring you receive all the necessary information before finalizing your purchase.

## Common Expenses

The **status of common expenses** for the unit in question is another crucial piece of information to verify. It is essential to ask the syndicate of co-owners whether the seller still owes any outstanding amounts for common expenses on the unit.

If there are unpaid common expenses associated with the unit—including contributions to the contingency fund or self-insurance fund—you will become responsible for them as soon as you take ownership. Therefore, it is imperative to inquire with the syndicate. The law states that if the syndicate does not provide a statement of account detailing any outstanding common expenses within 15 days of the request, it loses the right to claim them from the buyer. This request can be made by your real estate broker or by the notary handling the transaction. If unpaid common expenses exist, the notary will make the necessary **adjustments** when finalizing the sale.

Additionally, beyond the specific unit you are interested in, it is also crucial to check the rate of unpaid common expenses for the entire building. If this rate is high, it may be wise to reconsider the purchase. A high level of unpaid fees indicates that the syndicate is likely experiencing serious financial difficulties, which could lead to special assessments for other co-owners to cover the shortfall. It may also signal a lack of maintenance in the building, which can result in further long-term issues.





## The Condition of the Building

In addition to the documents and information provided by the syndicate regarding the building and the co-ownership, you should also have access to the **maintenance log** and the **contingency fund study**. While these documents are not yet mandatory, they enhance a co-ownership's competitiveness on the resale market. Furthermore, syndicates that use them demonstrate a commitment to good **governance and sound management**. In some co-ownerships, these documents may already be available, so it is important to inquire about them early in the process.

The **maintenance log** is a document that compiles all technical information about the building, as well as a history of maintenance and repair work carried out on the common areas over the years. It also includes details on anticipated future work.

The **contingency fund study** determines the annual contributions required from co-owners to ensure the fund can cover medium- and long-term expenses for major repairs or the replacement of common areas. This study must be updated **every five years**.

Reviewing these documents, along with meeting minutes and conducting a physical inspection of the property, is crucial when purchasing a unit in a divided co-ownership. This diligence helps prevent unpleasant surprises related to the condition of the building.

Your real estate broker should guide and support you at every step of this process.

### WARNING

Insufficient or non-existent contingency funds often result from common expenses that are too low or even negligible. Sooner or later, this unfortunate reality will catch up with the co-owners, who may face significant increases in common expenses to compensate for the shortfall. This is why a contingency fund study is an essential tool for the sound financial management of a co-ownership.



## The Location and Size of the Private Portion – Community Services

While important, the location of the unit within the building and the availability of community services (such as a pool, spa, gym, or community room) are largely a matter of personal preference. In an existing co-ownership, your selection of available units may be limited unless multiple units are for sale at the same time. However, if several units in the same building are on the market simultaneously, this could be a red flag. It may indicate underlying issues prompting owners to leave, warranting closer investigation.

Since you often won't have a choice in the location or available community services within a co-ownership, you should consider factors such as:

- Sunlight exposure
- Proximity to noise sources (e.g., garbage chute, mechanical rooms, busy streets)
- Presence or absence of community services

While these features are a matter of personal preference, keep in mind that more amenities generally lead to higher common expenses due to increased maintenance costs and insurance premiums.

Regarding the unit's size, it is crucial to ensure that the measurements listed in the property listing and brokerage contract accurately reflect those on the cadastral plan—which represents the actual interior dimensions of the unit. Discrepancies in unit size are more common when purchasing in a co-ownership under construction, or when buying off-plan, a topic we will cover in a later section.

### GOOD TO KNOW!

**A real estate broker must ensure that the surface area listed in the property description accurately reflects the net area shown on the cadastral plan, rather than the original architectural plans. The net surface area is measured by a land surveyor and is recorded in the certificate of location.**



## The Immediate Neighborhood

Have you found a divided co-ownership unit that interests you? Does the building appear to be well maintained? If you are considering purchasing, it's important to learn more about your potential immediate neighbors—especially regarding noise levels and odors (such as cigarette or cannabis smoke), which are frequent sources of disputes between co-owners.

To gather this information, review the minutes of co-owners' meetings and board meetings from the past three years. These documents can reveal ongoing or past conflicts within the co-ownership, including neighbor disputes that may have significantly impacted residents' quality of life.

During your property visits, be sure to ask the seller about any issues related to odors, smoke, or excessive noise coming from neighboring units, common areas, or commercial spaces (if applicable). For a more accurate assessment, it's best to visit the property multiple times at different days and hours to fully evaluate potential nuisances that could affect your comfort and enjoyment.



## Short-term Rentals

The rise of the sharing economy—led by platforms like Airbnb—has made it easier than ever for co-owners to rent out their units for just a few days a year, often earning significant income. This financial opportunity tempts many co-owners, who sometimes mistakenly believe they have the unrestricted right to use their private portion as they please. In reality, short-term rentals are often prohibited or even illegal in many buildings. Some co-owners are unaware of the rules, while others knowingly choose to ignore them.

However, the frequent turnover of guests can lead to serious inconveniences, such as late-night arrivals or early-morning departures that disturb the peace, disruptions to residents' quality of life, and potential security risks.

To avoid such issues, it is essential to verify the rules governing short-term rentals by consulting municipal regulations, the declaration of co-ownership, and any additional building rules that may apply. Understanding these restrictions before purchasing will help prevent future conflicts and ensure the property aligns with your lifestyle and expectations.

## Safety, Neighborhood Life, Schools, Services, and Public Transportation

Buying a condominium is not limited to analyzing the property itself and the community of residents within the building. Considerations related to the surrounding neighborhood are equally important, just as they are when buying a single-family home. Beyond the rules of conduct in effect within the desired co-ownership, the dynamics of the area where it is located should also be taken into account.

One of the first concerns you should have relates to safety in the neighborhood. Of course, news reports can already provide some insight—some neighborhoods carry a well-known reputation—but other verifications are also possible. An exploratory visit should extend beyond the end of the street where the co-ownership is located. The presence of dilapidated or abandoned buildings in the surrounding area could compromise the peace and quiet of the neighborhood. Whenever possible, exploring the area on foot will always be more effective than viewing it from a vehicle.

The presence of a nearby wooded area is not always a guarantee that it will be preserved forever. Checking with the municipality can be helpful to ensure that zoning is not in the process of being changed to convert the wooded land into a new residential development. While this does not give you absolute certainty, it is nonetheless worth considering.

Finally, the quality of nearby services is another crucial factor, whether it's schools, shops, parks, tennis courts, bike paths, or other public services. Public transportation should also be considered, of course. Those who live near a metro or commuter train station have a clear advantage, as it makes commuting easier. Moreover, a property located near a bus stop, metro station, or train station typically increases in value over time.

In short, buying a unit in a co-ownership involves a more thorough analysis than buying a single-family home.



## The Promise to Purchase (Offer to Purchase)

Once you've found the apartment of your dreams and assessed its price, you can begin considering making an offer to purchase, whether verbally or in writing. While a verbal offer is legally valid, it is strongly recommended to formalize it in writing. When working with a real estate broker, they are required to use one of the official promise to purchase forms provided by the Québec Real Estate Self-Regulatory Organization (OACIQ) to record, in writing, the intention to proceed with a real estate transaction between two parties.

The promise to purchase precedes the transaction involving an existing property. Although the term "offer to purchase" is commonly used, the expression "promise to purchase" is the one used when a real estate broker is involved. It is the mechanism by which an interested buyer communicates to the seller their intention to acquire the listed property, under certain conditions. The initiative for a promise to purchase comes from the buyer, who sets out their conditions based on the terms presented by the seller when the property was put on the market.

The promise to purchase remains conditional on the seller accepting its terms. It must therefore be drafted with care and in accordance with best practices—this is where the broker's expertise becomes essential. The promise to purchase must also include a number of specific clauses and suspensive conditions designed to protect the buyer. It is only valid for a short period, after which it becomes void if the seller does not respond within the prescribed timeframe.

This document is essentially a preliminary contract that becomes binding on the seller as soon as they accept the conditions outlined within it. On your end, you must proceed with the purchase of the property at the price stated in your offer, should the seller accept it.

If the seller rejects the offer, you may submit a counter-offer. In that case, the original offer becomes null and void, and you are released from any obligation. Likewise, if your offer includes a time limit and the seller does not accept it within that timeframe, you regain your full freedom. If no time limit is indicated, you may theoretically withdraw your offer at any point, provided the seller has not yet accepted it.

Once the seller accepts the conditions of an offer, the sale is legally considered to be concluded in principle. The deed of sale can then be prepared and signed before a notary, once the conditions laid out in the offer have been fulfilled.

### GOOD TO KNOW!

The seller has the right to receive and review all offers submitted for their property.

They are free to respond to offers in any order they choose and are not obligated to accept the first one they receive.

During the validity period of an offer to purchase, the seller can:

- > Accept the offer as-is;
- > Reject the offer, especially if the proposed price is lower than the asking price
- > Make a written counteroffer, which nullifies the original offer. The counteroffer typically remains valid for a short period as well.

## HOW TO DRAFT AN OFFER TO PURCHASE?

Your real estate broker will use the mandatory Promise to Purchase – Divided Co-ownership – Fraction of a Primarily Residential Building Held in Divided Co-ownership form from the OACIQ and will record all relevant data in it for the submission of a properly completed offer to purchase. A form is also available for a Promise to Purchase for an Undivided Co-ownership.

The Promise to Purchase must be drafted with rigor. The wording must include all the conditions governing the sale. These conditions list the obligations of the seller and the buyer. They will eventually be included in the terms of the deed of sale if the transaction is completed.

At the time of signing your Promise to Purchase, some aspects surrounding the transaction may still elude you, for example, if you need to sell your primary residence before buying or if you need to obtain a mortgage loan before acquiring the new property.

To this could be added other unforeseeable factors, such as a lack of information to carry out the necessary verifications before the purchase.

### That is why your offer to purchase must be conditional on:

- > The completion of certain events that you do not control, such as the sale of your property;
- > The transmission (for review) of all required information and documents, such as the certificate of location, the minutes of co-owners' meetings, the maintenance log, the asset management plan, and the contingency fund study;
- > The usual conditions of inspection and financing.  
The real estate broker must recommend that you proceed with a pre-purchase inspection of the private portion and all common areas;
- > Satisfaction regarding the condition of the targeted building.

Among the important documents to consider is the **Seller's Declarations Regarding the Property – Divided Co-ownership** form. This form, specifically developed by the OACIQ for transactions in divided co-ownership, includes a wealth of information about the concerned property that the seller must provide. It covers, among other things, common expenses, the state of the contingency fund, common services, and security systems, such as the presence of sprinklers.





## HOW TO DRAFT AN OFFER TO PURCHASE?

The offer to purchase usually includes suspensive conditions, meaning the seller must maintain their commitment for a certain period, allowing you to review the received documents. A suspensive condition allows you to withdraw from the transaction if the provided information is unsatisfactory. Therefore, the offer to purchase includes exit clauses, enabling you to cancel your offer if needed. These clauses must be clearly written and include a sufficient timeframe, ensuring you have enough time to react before they expire.

### Common Suspensive Conditions Include:

- > Approval of a mortgage loan from a lender;
- > Obtaining an appraisal establishing the market value of the property;
- > Obtaining a title insurance policy;
- > Receiving the **seller's declaration**;
- > Receiving a **certificate of location** showing the property's current status;
- > Receiving a copy of the building's insurance **appraisal report**, determining its reconstruction value;
- > Receiving a certificate or acoustic report, specifying the apartment's soundproofing level;
- > Obtaining the **DRCOP form (Request for Information from the Syndicate of Co-owners)**;
- > Receiving a document confirming the scope and compliance of any modifications or improvements made to the private portion, if applicable;
- > Receiving a pre-purchase **inspection report** from a qualified inspector or professional, confirming the property's condition is suitable for purchase;
- > The sale of your current residence, if applicable.



## HOW TO DRAFT AN OFFER TO PURCHASE?

The Promise to Purchase should also be conditional on conducting various verifications, whose conclusions must meet your expectations, including:

- > The condition of the property, including the private portions for sale (unit, parking space, storage area) and the common areas of the building;
- > The co-ownership's insurance policy, including the insured value of the building,
- > The co-ownership's claims history;
- > The **declaration of co-ownership**, including all amendments;
- > The **financial statements of the co-ownership syndicate**;
- > The **minutes** of co-owners' meetings and board meetings for the past three years;
- > The asset management plan and the building condition certificate, if applicable;
- > The existence of any special assessments or violation notices;
- > The **maintenance log** and the **contingency fund study**.

Each condition must include a tracking mechanism, such as deadlines and notification requirements. If any condition in the offer to purchase is not met, your obligation to acquire the property becomes null and void. At this stage, your real estate broker's advisory role is crucial.

Once all verifications are completed to your full satisfaction and all suspensive conditions are met, the transaction can proceed to closing.

## CHOOSING A NOTARY

The selection of the notary handling the transaction is generally determined within the Promise to Purchase, as it can be a point of negotiation between the parties. If no agreement is reached, the buyer has the right to choose the notary, unless the transaction involves the creation of a mortgage right in favor of the seller, such as a balance of sale price payable at a later date, secured by a mortgage.

Any practicing notary is legally qualified to handle a transaction in a divided co-ownership. However, this work requires experience in the field and a strong understanding of legislative and case law developments related to divided co-ownership. The Code of Ethics for Notaries states that they must avoid any misuse of trust regarding their level of expertise.

The notary's role should not be viewed as a mere formality, and choosing a notary should not be based solely on fees and costs. It is essential to select a notary with both experience in real estate transactions and specific knowledge of divided co-ownership.

**You can find more detailed information about the notary's role in the section "Stakeholders in a Real Estate Transaction."**

## ADJUSTMENTS AND TRUST ACCOUNT HOLDBACKS

The "adjustments" made by the notary refer to amounts that the seller paid prior to the transaction and which benefit the buyer, based on the date the buyer takes possession of the property—often the same day the ownership is transferred. These typically include payments for municipal or school taxes, as well as common expenses paid in advance for the syndicate's fiscal year. The promise to purchase will therefore stipulate that these amounts will be apportioned between the parties, either on the date the deed of sale is signed before the notary or on the date of possession, although another date can also be agreed upon. Clearly specifying this date in the promise to purchase helps avoid many issues related to the distribution of costs.

The notary may also be required to withhold a portion of the sale price in their trust account until certain obligations of the seller are fulfilled. For example, if the seller committed in the promise to purchase to carry out specific repairs in the private portion before the transaction date, and those repairs have not been completed—or even started—by that time. The parties must then agree on the amount to be withheld, the conditions for its release, and provide instructions to the notary accordingly.

The notary may also raise the question of a holdback on their own initiative—for instance, if an irregularity is found in the certificate of location. Such a holdback becomes especially appropriate if the issue could impact the buyer's property title.



## LEGAL WARRANTY

Under the *Civil Code of Québec*, the seller is required to deliver the property and to guarantee ownership and quality. These guarantees apply by law and do not need to be explicitly stated in the deed of sale. However, the parties may, in their contract, add to the legal warranty, reduce its effects, or exclude it entirely. That said, the scope of the legal warranty is not without limits and does not exempt you from being vigilant, by carrying out all necessary verifications and even taking certain precautions.

### The warranty of ownership

The warranty of ownership concerns defects affecting property titles, such as encroachment on a neighboring lot or by a third party, or the registration of a legal construction hypothec. This warranty also covers limitations under public law, such as municipal zoning bylaws or provincial environmental regulations.

As with the warranty of quality, the seller is not liable under the warranty of ownership for any limitations they specifically disclose to the buyer during the sale process.

### The warranty of quality

The warranty of quality is commonly referred to as the “warranty against latent defects.” A latent defect is a flaw or deficiency affecting a sold property to the extent that it is unfit for its intended use, or its usefulness is so diminished that the buyer would not have purchased it, or would not have paid such a high price, had they known about the defect. Naturally, the seller must inform the buyer of all defects they are aware of; failing to do so could result in not only the return of the amount received, but also compensation for any harm suffered by the buyer.

The latent defect must, of course, exist before the sale, must be unknown to the buyer at the time of the transaction, and must not be apparent, in order to qualify for compensation. The law specifies that a defect is considered apparent if it can be detected by a prudent and diligent buyer without the need for an expert. This does not exempt you from the need to have the apartment and the main common areas of the building inspected during a visual inspection carried out by a qualified person. Skipping such an inspection could prove to be a serious mistake.

## PRE-PURCHASE INSPECTION

For any real estate property, a pre-purchase inspection is essential. In fact, your real estate broker is required to recommend that you have a pre-purchase inspection carried out by a person who holds professional liability insurance, conducts inspections in accordance with recognized practice standards, and provides you with a written report of their findings and recommendations.

The inspector you hire will examine both the unit and the building. This process allows you to withdraw from the transaction under a suspensive condition if the inspection does not meet your expectations. Additionally, a pre-purchase inspection helps you make an informed decision and avoid unpleasant surprises, as it allows you to:

- > Identify visible defects related to maintenance or construction in both common and private areas that may affect the property's use and value, influencing your decision to buy;
- > Assess potential future repairs needed in the building;
- > Determine a fair purchase price and possibly renegotiate the sale price.

An inspection mandate generally involves a visual examination of the property in question. This process aims to detect and describe any construction or maintenance defects in the building, as observed on the date of inspection. It is followed by a written report.

When you purchase an apartment in a divided co-ownership building, you become the owner of your unit (private portion), but also a co-owner of an undivided share of the common areas (e.g., land, balconies, and the building's major structural elements such as exterior walls and the roof). In such cases, it is advisable to ask the building inspector not to limit the inspection to the private portion, but to include the common areas as well, where the most significant and costly problems are often found. Inspecting the common areas provides an opportunity to assess the general condition of the building. For example, advanced deterioration of a garage slab or a roof often indicates poor overall maintenance of the building.

Keep in mind, however, that a building inspector may not be able to examine the common areas in fine detail. Nevertheless, their work will offer a good overview of the building's general condition. By consulting documents such as the building condition certificate, the maintenance log, the asset management plan, and the contingency fund study, the inspector can also determine whether the recommended maintenance schedules have been followed. Once the inspection is complete, you will have a clear overall picture of the situation. You can then decide whether or not to proceed with the purchase of the desired apartment and, if necessary, renegotiate the purchase price downward.





## SALES “WITHOUT LEGAL WARRANTY”

It is quite common to see properties listed by sellers as being sold “without legal warranty.” For various reasons, sellers choose this approach to sell at a lower cost, perhaps to speed up the transaction. Such sales are made at the buyer’s own risk. By including this clause, the seller seeks to exclude the warranty of quality concerning latent defects. In such a case, if a defect is discovered later, you may have no recourse against the seller—unless they knew about the defect, or could not have been unaware of it, and failed to disclose it to you.

In this context, you must be even more vigilant and take extra precautions. Your real estate broker has a duty to clearly inform you of the consequences of excluding the warranty of quality. A more thorough inspection and a careful review of the **Seller’s Declarations** form are highly recommended.

## DOES A WARRANTY PLAN APPLY?

Even if you are purchasing an existing co-ownership unit, a new home warranty plan—such as the mandatory plan administered by Garantie de construction résidentielle (GCR)—may still apply. These warranty plans are transferable to any buyer and remain valid until their expiration date. If the building is relatively new, it is important to ask questions and conduct verifications to determine whether any coverage is still in effect. Some aspects of the warranty plan may still be active and applicable.

Details on warranty plans can be found in the section on purchasing a new co-ownership unit.

# Buying a New Co-ownership, One Under Construction, or a Planned Project

## The Advantages and Disadvantages of Buying a New (or “Off-Plan”) Condo

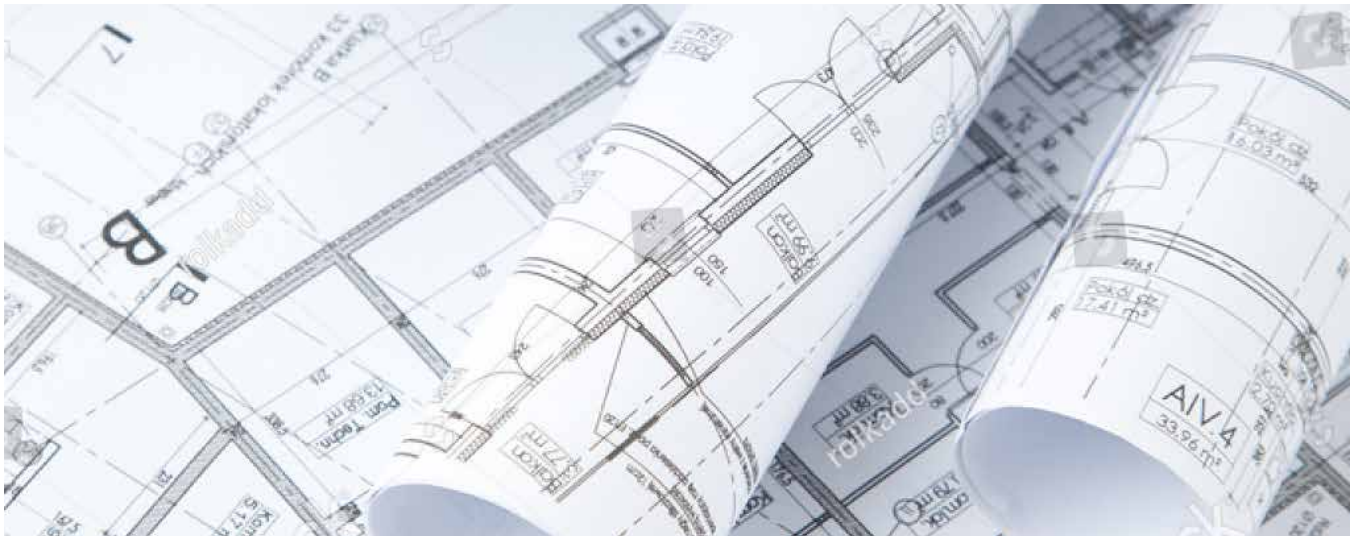
Many buyers turn to purchasing units in newly built buildings, developments under construction, or even those still at the project stage—where sometimes only a trailer stands on a vacant lot, the future site of the building. The appeal of new construction is understandable: it offers a range of residential unit models and various finish options for flooring, countertops, cabinets, light fixtures, and bathroom accessories.

These buildings often resemble luxury hotels and have a modern style not typically found in older properties. In addition, developers may offer attractive sale prices on new units to entice their first buyers. However, it's important to remember that buying a new property includes sales taxes (GST/QST), which are added to the purchase price—unlike resale transactions between a current co-owner and a buyer, where such taxes usually do not apply.

That said, buyers should not let their guard down. New construction projects do not always unfold as originally planned by the developer. You must remain vigilant not only about changes to the project during construction but also regarding potential defects and construction flaws, which—while not inevitable—are still common. This highlights the importance of having warranty coverage, if applicable.

It's essential to do your homework beforehand, starting with confirming that the developer is properly licensed with the Régie du bâtiment du Québec (RBQ) and holds accreditation with the Garantie de construction résidentielle (GCR) for buildings with four or fewer stacked private portions. Additional checks with the Office de la protection du consommateur (OPC) and the SOQUIJ legal information portal can reveal whether complaints or legal actions have been filed—and how frequently—against the developer.

Moreover, since builders are not required to submit to mandatory inspections during construction, it's worth asking whether the project has been (or will be) monitored by qualified building professionals (such as an architect or engineer), and whether plans exist for the building as constructed, bearing the signature of a professional authorized to certify them.



## Buying Off-Plan

Buying off-plan requires an additional level of vigilance. Financial difficulties or unforeseen events may arise during the course of the project. Such situations can result in finishes not matching the buyer's original choices, a higher final price than expected, or delays in the delivery of the private unit—or even of the entire building. It is advisable to include compensation clauses in the preliminary contract to mitigate such inconveniences.

Buying off-plan also opens the door to issues of surface area, when the dimensions of the unit as built differ from those specified in the preliminary contract. A later section addresses this specific issue.

## Warranty Plans

There are two types of warranty plans for new buildings: a mandatory warranty plan, governed by the **Regulation respecting the guarantee plan for new residential buildings**, which applies to certain categories of divided co-ownership buildings; and **optional warranty plans**, which may apply to other types of buildings.

These plans are designed to provide financial protection to consumers and syndicates of co-owners in cases where the developer or builder fails to meet their legal and contractual obligations. The plans involve three parties: the consumer or the syndicate of co-owners on one side, the builder on the other, and a third-party organization that acts as guarantor—the warranty plan administrator. This administrator accredits the builders and guarantees their obligations, according to the terms and conditions set out in the applicable plan.

## THE MANDATORY WARRANTY PLAN

### The Mandatory Warranty Plan [La Garantie de construction résidentielle (GCR)]

Since January 1, 2015, a single organization has been responsible for administering the mandatory warranty plan: *Garantie de construction résidentielle (GCR)*. This neutral, independent, and non-profit organization has a primary mission to protect buyers and reduce the rate of claims by promoting higher-quality residential construction and ensuring sound risk management related to the coverage provided. In fact, the most common non-compliances identified during GCR inspections have decreased by 56% since 2017.

The organization accredits builders, conducts inspections during construction, manages claims, and acts in a role similar to that of a guarantor when a builder fails to meet their obligations or ceases operations during the project.

#### Scope of the mandatory warranty plan

The Regulation respecting the guarantee plan for new residential buildings falls under the authority of the Régie du bâtiment du Québec (RBQ). It applies to entirely new buildings composed of:

- > Detached, semi-detached, or row single-family homes;
- > Residential towers containing no more than four superimposed private portions, excluding private portions used for parking or storage.

This plan does not cover high-rise co-ownership buildings with more than four superimposed private portions, nor existing buildings that have been converted into divided co-ownership. It is therefore essential to ensure that the building in question is properly accredited under the warranty plan. To do so, simply consult GCR's directory of accredited builders.

## Coverage Provided

Any purchaser of a building covered by the mandatory warranty plan automatically benefits from it. The plan provides protection for deposits, up to a certain limit, as well as coverage for construction defects that may affect the building. These guarantees vary depending on whether the issue arises before, at the time of, or after the reception of the private portion or the common areas:

- > **Before reception:** partial reimbursement of **deposits paid**, up to a maximum amount, if the building was not delivered or if the private portion or common areas were not completed. Relocation, moving, or storage expenses may also be covered.
- > **At the time of reception:** when the private portions are received (by each co-owner concerned) or the common areas (by the syndicate of co-owners), the plan covers **visible defects** and the **completion of unfinished work**.
- > **After reception:** the plan covers **construction or soil defects** for five years following the completion of the work. It also covers **existing but non-apparent defects** at the time of reception, for one year after reception, provided they are reported within a reasonable timeframe. Lastly, the plan covers the repair of **latent defects** for three years after reception, as long as they are reported within a reasonable timeframe.

## Reception of Common Areas

When the syndicate is no longer under the control of the developer and the work on the common areas has been completed, the developer (or the builder) must send the syndicate a **notice of completion of the common area work**. The syndicate must then appoint a building professional to carry out the pre-reception inspection of the common areas. This inspection is conducted using a checklist provided by GCR, the content of which is approved by the Régie du bâtiment du Québec (RBQ) for applicable buildings. However, if major work remains unfinished, the common areas cannot be received. Otherwise, the professional appointed by the syndicate will determine the date of reception of the common areas and list the work that needs to be corrected or completed. This document constitutes the official **reception of the common areas** and marks the starting point for most of the warranties provided under the plan.

If the syndicate fails to complete the official reception process, the common areas will be presumed received if the following four conditions are met:

- The work on the common areas is complete
- The syndicate is no longer under the developer's control
- The developer sent a notice of completion to the syndicate, informing it of its obligations regarding the reception of the common areas
- Six (6) months have passed since the syndicate received this notice, and the syndicate has unjustifiably failed to receive the common areas





## Reception of Private Portions

Each co-owner must also conduct a pre-reception inspection of their private portion. This inspection is carried out jointly with the developer or contractor. It is highly recommended that you bring a building professional of your choice to assist you during this process.

The inspection follows a pre-reception inspection form provided by Garantie de construction résidentielle (GCR). This form includes a checklist of elements to verify, which has been approved by the Régie du bâtiment du Québec (RBQ). Any unfinished or defective work must be noted on the inspection document for follow-up.

## OPTIONAL WARRANTY PLANS

Optional warranty plans managed by builders' associations—namely the APCHQ, the ACQ, and the APECQ<sup>1</sup>—are also available for buildings not covered by the mandatory warranty plan. These plans generally provide protection for a portion of the **deposits paid**, the correction of **visible defects**, and the **completion of unfinished work**, as well as limited coverage for **latent and construction defects**. The operating rules for these warranty plans differ from those of the mandatory plan and vary from one administrator to another.

For syndicates of co-owners, these plans generally include claim deadlines that begin as soon as the declaration of co-ownership is published. However, during the first few months, syndicates are often under the control of a provisional administrator linked to the developer, which can lead to negative outcomes if the administrator fails to handle compensation claims within the required timeframes.

In addition, these plans often come with limited bonding periods, restricted coverage, deductibles, and high file-opening fees—factors that can discourage syndicates and co-owners from asserting their rights. Nevertheless, having such a plan is still preferable to having none at all. Verifying the presence of such coverage is therefore important, and you should not hesitate to ask questions and obtain all relevant documentation, if applicable.

For a construction project to be accredited under a warranty plan, the developer and its managers must meet certain quality and solvency criteria. Holding an appropriate license from the Régie du bâtiment du Québec (RBQ) is a key requirement.

Should you be concerned if a newly listed co-ownership is not accredited under one of these warranty plans? In such a case, it's advisable to exercise greater caution, but keep in mind that the law itself provides protective measures and legal recourse for latent defects or construction flaws.

**We will address these legal warranties and protective measures in the following sections.**

<sup>1</sup> APCHQ (Association des professionnels de la construction et de l'habitation du Québec), ACQ (Association de la construction du Québec), APECQ (Association patronale des entreprises en construction du Québec).

## THE PRELIMINARY CONTRACT

When purchasing a new co-ownership unit—whether it is still in the planning stage, under construction, or newly completed—the transaction is necessarily conducted with the developer or builder, who acts as the seller. The developer sets the sale prices based on the type of unit within the building (e.g., corner unit, studio, two-bedroom model, three-bedroom model, penthouse, etc.). They often offer various customization options for finishes, such as kitchen cabinets and bathroom fixtures. Beyond these aspects, however, there is generally little room for negotiation. Once the purchase terms with the builder or developer are established, the sales process must go through the preliminary contract stage.

The law requires that the sale of a residential building—whether built or to be built—by a developer or builder to an individual who is purchasing it to live in must be preceded by a “preliminary contract,” which is essentially equivalent to the offer to purchase discussed earlier. The preliminary contract is the written document that contains the promise to sell and the promise to buy the property, and it legally binds both parties. This contract is mandatory for both new single-family homes and divided co-ownerships, whether or not a real estate broker is involved in the transaction.



## CONTENTS OF THE PRELIMINARY CONTRACT

The preliminary contract must indicate, in addition to the name and address of the seller and the promisor-buyer, the work to be carried out, the sale price, the delivery date, the real rights encumbering the property, if applicable, as well as “useful information relating to the characteristics of the property.”

It must also specify the indemnity to be paid in the event the right of withdrawal is exercised. The written document evidencing the preliminary contract would nevertheless constitute, subject to the facts, an “adhesion contract” if it is drawn up on a pre-established form and completed by the developer after the essential conditions (choice of unit, finishing options, total price and deposit payments) have been agreed upon. Yet this contract also includes, on the back, general terms and conditions printed in small type, which are often ignored or misunderstood by buyers. Be careful! You should always take the time to thoroughly read and understand the entire document, and ensure you have received and reviewed all documentation to which you are entitled, including the **information notice**, before signing.

Once you have signed, there is virtually no room left for negotiation. The parties’ signatures formalize the developer’s promise to sell and your promise to buy. However, the law does grant you a short “reflection” period, during which it is still possible to unilaterally terminate the contract, in certain cases and subject to the payment of an indemnity to the developer. This is known as the **right of withdrawal** (see below).



## The information note

When the sale concerns a divided co-ownership unit in a residential building, the preliminary contract must be accompanied, at the time of signing, by an information note outlining the essential characteristics of the project—whether it is a new or under-construction condominium, or a building that has undergone major renovations to the point of now being considered new.

The **overall plan** and the **general development plan** of the project often take the form of architectural drawings and preliminary cadastral plans prepared by the land surveyor assigned to the project. These show the future location of the building(s), including the common areas or shared services.

The **descriptive specification** outlines the materials and components of the building's units. It lists, for example, the types of light fixtures, the brand names of bathtubs, showers, cabinets, and kitchen countertops.

The **projected budget** takes into account a full year of building occupancy, starting from the publication of the declaration of co-ownership. It includes a statement of debts and receivables, revenues, expenses, and common charges. It indicates, for each unit, the potential property taxes payable, the common expenses due, including the contribution to the contingency fund. This will allow you, among other things, to assess whether you can afford to commit to living in this co-ownership.

A copy of the **declaration of co-ownership**—or a summary of it, if it is not yet finalized—must also be attached to the information note.

Finally, the information note must include a **statement of the leases** granted by the developer or builder, and specify the maximum number of units that will be rented. This information is important to know, since in a co-ownership with many rental units, insurance costs are often higher. Moreover, if the developer retains several units for rental purposes, they will hold the voting rights attached to those units, which could give them a certain level of control during co-owners' meetings.

### What Should Be Included in an Information Note?

An information note must include the following:

- > Names of the architects, engineers, builders, and developers associated with the project
- > A general plan of the real estate project
- > The overall development plan, if applicable
- > A summary of the descriptive specifications (devis descriptif)
- > A description of the installations and common areas of the future co-ownership
- > Information about the building's management
- > The projected budget for the first year of the co-ownership
- > A copy or summary of the declaration of co-ownership
- > A copy or excerpt from the building's regulations for the future co-ownership
- > A statement of rental agreements granted by the developer, specifying the maximum number of units intended for rental purposes

### The Warranty Contract

For residential projects subject to the Regulation respecting the guarantee plan for new residential buildings (the mandatory guarantee plan), the buyer and the contractor must also sign the guarantee contract approved by the RBQ. This contract outlines the protections offered, the claims procedures, and the possible remedies. It must include the names and addresses of the buyer and the contractor, the date and place where the contract is signed by the contractor, a description of the building, the contact information of the plan administrator, as well as the contractor's accreditation and license numbers. It must also state that the guarantee is mandatory and bear the statement "Approved by the Régie du bâtiment du Québec," along with the date of the RBQ's decision.

### The Right of Withdrawal

The right of withdrawal (*faculté de dédit*) allows the buyer to unilaterally terminate the preliminary contract within 10 days of signing, even if no withdrawal penalty was specified. If an indemnity fee is included in the contract, which is often the case, it cannot exceed 0.5% of the agreed sale price.

Once the 10-day period expires, the contract can no longer be canceled unilaterally. The only remaining option is to negotiate with the developer, which could end up being far more costly than the 0.5% withdrawal fee.

### Deposit Protection

The payment of deposits is common when purchasing off-plan or when the building is under construction. Typically, an initial deposit is required at the signing of the preliminary contract. The amount varies depending on the purchase price, and there is no fixed rule in this regard. Some developers require a deposit of 10% to 15% of the purchase price, followed by additional payments at various stages of the construction process.

The law now provides that the builder or developer must fully protect all deposits paid by a buyer of a co-ownership unit. Four options are available to the developer: a surety bond, insurance, a deposit into a professional's trust account, or a guarantee plan.

The solution chosen by the developer may involve only one of these options, several of them, or a combination of all. That said, a deposit protected by a surety bond, insurance, or a guarantee plan allows the developer to cash and use the funds, unlike a deposit held in a trust account, which must remain untouched until the final transaction. This discourages many developers, who rely on deposits to gradually finance their project.

#### GOOD TO KNOW!

Article 1785 of the Civil Code of Québec grants you a 10-day period to unilaterally cancel this contract. This means you can withdraw from your commitment to purchase without having to provide any justification.

This right of withdrawal (*faculté de dédit*) can be exercised by any individual buyer who intends to personally reside in the unit covered by the preliminary contract.



## The Legal Construction Lien

When purchasing an apartment in a newly constructed co-ownership property, the common areas, a portion of the private portions of the building, or even the entire property may be subject to a notice of legal construction hypothec from the contractor, subcontractors, material suppliers, workers, engineers, or architects who contributed to the project—if one or more of them, or even all, remain unpaid. The hypothec is registered by these creditors for the increased value they have added to the property. However, new home warranty plans do not cover legal construction hypothecs! Although this situation is not very common, you must exercise extreme caution when making payments to the contractor and ensure that you are adequately protected.

Legal construction hypothecs are governed by strict rules. When they are registered following work carried out on the entire co-ownership, the total amount is apportioned among the units of the building, based on each unit's relative value. By paying their share of a legal construction hypothec, co-owners can have it discharged from their respective unit.

If the co-owners refuse to pay the required amounts, the creditor may take legal action against each of them, up to the amount attributable to their share. By exercising their hypothecary right, the creditor may request a court-ordered sale of the unit or its taking in payment, thereby dispossessing the owner.

A legal construction hypothec exists for the duration of the work and, to be preserved, a notice must be published within 30 days of the completion of the work. This risk is therefore often impossible for the notary handling the sale to detect, which is why it is advisable to purchase title insurance. This type of insurance offers protection against various legal issues that may affect the ownership titles of a property.

## Unit Size (Containment Defect)

Area discrepancy issues arise primarily in new co-ownership buildings, especially in off-plan sales, when the co-owner discovers that the surface area of their unit is smaller—sometimes significantly—than what was initially advertised prior to construction.

The seller is required to disclose the exact area of the private portion being marketed, but this can be difficult in off-plan sales, since the final measurements will only be known with certainty once the construction of the building is well underway. Unexpected developments during construction often lead to differences in area. For this reason, developers usually state that the dimensions are “approximate” or refer to the gross area, which may include the space taken up by structural columns, the outer walls of the unit, and sometimes even the balcony.

## Delivery Delays

Construction delays are common, not only in divided co-ownership projects but across the entire real estate sector. In many cases, if a delay occurs, the buyer and the developer can negotiate a new delivery date along with a mutual agreement regarding compensation or other arrangements. In January 2020, the legislator amended the Civil Code of Québec concerning deposit protection clauses. The revised law specifies that deposits must be refunded to the buyer if the co-ownership unit is not delivered by the agreed-upon date. However, since this provision is relatively new, it remains uncertain how the courts will interpret and enforce it in practice.

## Cancellation of the Sale / Reduction of Obligations

The law states that if the sale of a residential property (including a private portion in a divided co-ownership) was not preceded by a preliminary contract or an information note, the buyer has the right to request the cancellation of the sale and claim damages if they have suffered serious harm due to the absence of these documents. Alternatively, the buyer may choose to request a reduction in the sale price, equivalent to the damages they could have claimed. The same applies if the preliminary contract or information note contains significant errors or omissions. However, minor mistakes or omissions that do not result in serious harm do not qualify for legal action. This legal recourse must be initiated within 90 days of the sale or the transition assembly, when the developer transfers the administration of the co-ownership syndicate to the co-owners.

To minimize surprises, it is advisable to specify in the preliminary contract whether the stated area refers to gross or net surface area and to have the developer clarify the calculation method used.

Requesting a detailed floor plan with measurements can also be beneficial for the buyer. Legal recourses are available in cases of significant discrepancies, but the outcome depends on the specific circumstances.



## Legal Warranties

Whether or not a newly constructed building is covered by a guarantee plan, the Civil Code of Québec establishes obligations and responsibilities for developers, builders, and other professionals involved in the construction of the building. These are similar to the protections already mentioned under the mandatory guarantee plan.

This includes coverage for **latent defects**, **construction defects**, **design or construction flaws**, as well as **soil defects**.

A **latent defect** is a flaw in the sold property that renders it unfit for its intended use or that significantly diminishes its use to the point that the buyer would not have purchased it, or would have paid a lower price, had they known about it. The latent defect must predate the sale and must not have been detectable by a reasonably prudent buyer—that is, someone who carries out a normal inspection of the property before entering into the contract. It must be reported promptly after its discovery.

A **construction defect** (*malfaçon*) is a flaw, even minor, affecting the quality of the materials and resulting from poor execution of the work. This typically refers to work that is not done according to proper building standards or does not comply with the plans and specifications. However, it does not refer to a serious defect that affects the structural integrity of the building. These defects generally appear gradually after the sale and remain covered by this guarantee for one year following the acceptance of the work.

A **design flaw** results from an error in the preparation of the plans and specifications. A **construction flaw** and a **soil defect** are major defects that can compromise the solidity or integrity of the property. This guarantee covers a “loss of the work,” whether total or partial, occurring within five years after the completion of the work.

It is worth noting that, in the case of a divided co-ownership, the syndicate of co-owners has the right to take legal action based on a latent defect, a design flaw, a construction flaw, or a soil defect—even if these affect not only the common portions, but also one or more private portions. In the latter case, however, the syndicate must first obtain authorization from the co-owners of those private portions in order to initiate the claim.

# Stakeholders in a Real Estate Transaction

## The Real Estate Broker

### A Regulated Professional

The Real Estate Brokerage Act imposes ethical duties and obligations on brokers, such as duties of loyalty, transparency, and disclosure. They are required to uphold these obligations in order to protect your interests during a real estate transaction. The Act also provides several mechanisms to protect you before, during, and after your transaction. You can verify that you are dealing with a person who holds a valid license issued by the OACIQ by consulting the organization's Licensee Register.

To keep their knowledge up to date, every real estate broker must complete the Mandatory Continuing Education Program [Translation of: Programme de formation continue obligatoire (PFCO)] developed by the OACIQ and accumulate a specified number of continuing education units every two years.

To maintain their license to practice, brokers are required to complete the Mandatory Continuing Education Program (PFCO).

### The Role of the Real Estate Broker in a Co-ownership Transaction

The real estate broker is, in a way, a guide who must notably assess the value of a property accurately and obtain relevant information about its history. In the case of an existing co-ownership property, the broker uses the **Request for Information from the Syndicate of Co-owners (DRCOP)** form and reviews documentation concerning the building and the syndicate of co-owners, such as:

- > The syndicate's registration information.
- > The declaration of co-ownership and any amendments.
- > Modifications to the building's regulations registered with the syndicate.
- > The co-ownership's insurance policy and the description of the reference unit.
- > The existence of a contingency fund study and the status of the contingency and self-insurance funds.
- > The cadastral plan and the certificate of location.
- > The minutes of co-owners' meetings and board meetings.
- > Any outstanding common expense payments related to the unit being sold.
- > The financial situation of the co-ownership.

If necessary, the broker may also consult co-ownership experts to conduct additional verifications and ensure that all essential aspects of the transaction are properly reviewed.

## COMPENSATION



A real estate broker's compensation, commonly referred to as a commission, is usually paid by the seller. It is not regulated by the Real Estate Brokerage Act, the OACIQ, or any other law. Broker commissions are determined through free market competition and are generally negotiated as a percentage of the sale price. This commission typically covers all costs related to the broker's services, including negotiations, advertising, communication, and multiple travel expenses.

During the search or sale of a property, a real estate broker has access to specialized tools to facilitate the transaction. These include information distribution systems, which automatically target condos that match your housing criteria.

A broker also plays a key role in advising clients during price negotiations, whether for a sale or purchase. This phase is often delicate and requires the expertise and guidance of an experienced professional to ensure a fair and strategic outcome.

## The Building Inspector

A building inspector is responsible for conducting a visual inspection of the private portion and the main accessible common areas of the building. Their role is to identify potential issues and advise you on their significance and possible consequences. If available, the inspector will also review the maintenance log and the building condition certificate. The inspection report should list, point by point, any visible defects or irregularities detected, along with potential risks of deterioration. This allows you to make an informed decision about your purchase. In some cases, the inspector may even recommend further investigation into specific concerns.

Your real estate broker is required to recommend a comprehensive inspection by a qualified building inspector who meets the following criteria:

1. Holds professional liability insurance covering faults, errors, or omissions.
2. Uses a recognized inspection service agreement.
3. Conducts inspections according to established building inspection standards.
4. Provides a written inspection report to the client.

The broker must provide you with a list of inspectors or professionals who meet these requirements, ensuring that you have more than one option to choose from.





## The Developer

A developer is an individual or legal entity that enters into a contract with a third party to sell a building that they have built, commissioned, or committed to building. In the context of divided co-ownership, a developer is specifically the person who, at the time of the publication of the declaration of co-ownership, owns at least half of all the fractions. In some cases, this also includes their successors or affiliated entities.

Under the Building Act, a developer is presumed to be a contractor, as they offer a building or civil engineering work for sale or exchange. As a result, a developer must hold a license issued by the Régie du bâtiment du Québec (RBQ) to legally operate in the market.

## The Notary

As you may have noticed, the notary plays a crucial role in the purchase of a divided co-ownership unit. As a public officer, the notary is responsible for receiving and authenticating legal acts. A declaration of co-ownership must be a notarized and officially registered document in the Land Register; otherwise, the divided co-ownership is not legally created.

Although it is preferable for the notary to be involved early in the transaction, they generally step in only after the offer to purchase (for a resale unit) or the preliminary contract (for a new unit) has been signed.

As a public officer, the notary has the following responsibilities:

- > Guaranteeing the validity of the seller's property titles and the authenticity of the deed of sale.
- > Providing impartial legal advice to both the buyer and the seller.
- > Ensuring all necessary legal guidance related to the documents they process.

The preparation of the deed of sale for a divided co-ownership unit is complex. The notary reviews the declaration of co-ownership, the certificate of location, the cadastral plan, the statement of common expenses, and sometimes even the minutes of the meeting of co-owners and of the board of directors. The notary must also ensure that the syndicate of co-owners has obtained insurance coverage and that it complies with both the declaration of co-ownership and the requirements of the law.

## Role of the Notary

As a public officer, the notary plays a fundamental role in a real estate transaction. By registering the deed of sale in the Land Register, they make the buyer's ownership rights legally enforceable against third parties. The notary must act impartially, advising both the seller and the buyer. Beyond drafting the deed of sale, the notary carries out numerous preliminary tasks and legal obligations, including:

- > Reviewing the offer to purchase and the declaration of co-ownership to ensure compliance with legal and contractual requirements.
- > Conducting verifications with the co-ownership syndicate, including financial and insurance matters.
- > Checking the seller's property titles to confirm legal ownership.
- > Verifying the co-ownership syndicate's insurance coverage, as well as the insurance requirements for individual co-owners.
- > Drafting the deed of sale, ensuring it accurately reflects the parties' agreements.
- > Preparing the mortgage loan deed if the buyer is financing the purchase.
- > Confirming that the seller has paid property taxes and common expense contributions, and handling mortgage discharge payments, if applicable.
- > Calculating financial adjustments and preparing the statement of allocations, particularly for municipal and school taxes.
- > Overseeing the signing of documents by all parties.
- > Registering the deed of sale in the Land Register, as well as the buyer's mortgage deed, if applicable.
- > Providing authenticated copies of the legal documents to the involved parties.

As part of their duty to advise the buyer, the notary must inform you of your future legal and financial obligations with respect to the co-ownership. To this end, they will request from the board of directors of the co-ownership any amendments to the building by-laws that have not been published in the Québec land register, as well as the minutes of the co-owners' meetings during which those amendments were adopted.

The notary also carries out certain verifications related to the co-ownership. They send a questionnaire to the directors of the syndicate regarding the status of common expenses for the unit in question. A copy of the syndicate's insurance policy will also be requested.

The notary may also need to interact with the land surveyor and the syndicate's insurance broker for clarification on certain matters. They are also in contact with the parties' mortgage lenders, if applicable, and often receive the buyer's mortgage deed.

## Notary's Mandate

The notary is responsible for verifying the seller's property titles, a process known as the "chain of titles", to ensure that the buyer acquires a valid ownership title. To do so, the notary reviews the property index, examines the cadastral plan, and analyzes the certificate of location.

The notary also reviews the offer to purchase or the preliminary contract, depending on the case. Since the deed of sale must accurately reflect the conditions agreed upon by the parties, this step ensures that the final transaction respects the buyer and seller's intentions.

Additionally, the notary verifies that all outstanding property taxes and common expenses have been paid. If necessary, they handle the required financial adjustments and prepare the statement of allocations (mémoire de répartitions).

## Receipt of the Deed of Sale

As the final step in the transaction, the notary meets with all involved parties to sign the deed of sale. Before this, the notary receives the purchase funds and deposits them into a trust account (compte en fidéicommis). In most cases, ownership is transferred to the buyer immediately upon signing. However, before releasing the funds to the seller, the notary must publish the deed of sale in the Land Register and verify its indexation. This includes checking for any adverse entries, such as a legal hypothec, that may affect the transaction. Once these verifications are complete, the notary disburses the funds to the seller.



### Transfer Duties

Transfer Duties, commonly known as the "Welcome Tax," require a buyer, as the new owner, to pay duties to the municipality upon the acquisition of a real estate property. The payment of transfer duties applies to the transfer of a new or previously owned building, as well as land, except for certain exceptions provided by law.

The notary handling the transaction is able to provide information regarding the calculation of transfer duties. Every new purchaser has 30 days to pay their transfer duties from the time they receive the invoice requesting payment. As a general rule, this invoice is sent a few weeks after the acquisition of the apartment.