

This is a translation of the

**Loi (1991) sur la copropriété des immeubles bâtis**

(Chapter 18.180)

as in force on 1 January 2019

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**LAW (1991) ON THE CO-OWNERSHIP OF BUILDINGS**

A LAW on the co-ownership of buildings

**FIRST PART**

**DEFINITION AND FORMATION OF THE CO-OWNERSHIP OF IMMOVABLE PROPERTY**

**1 Definitions**

In this Law, unless the context otherwise requires –

“association” means the association of co-owners incorporated under Article 5 of this Law;

“committee” means the association committee which may be constituted under Article 7 of this Law;

“*corpus fundi*” means a *corps de bien-fonds*<sup>1</sup> within the meaning of the *Loi (1880) sur la propriété foncière*, as amended;

“declaration” means the co-ownership declaration registered under Article 3 of this Law;

“immovable property” means a building, and does not include a contractual hypothec, a *rente*, or a contract lease;<sup>2</sup>

“share” means a share constituted in a declaration;

“representative” means the association representative appointed under Article 6 of this Law;

“private units” and “common parts” are defined in Article 2(3) of this Law.

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<sup>1</sup> A parcel of land able to be sold and hypothecated as one unit

<sup>2</sup> contract lease: a lease for more than 9 years (passed before the Royal Court)

## 2 Division of immovable property

- (1) Subject to the provisions of this Law, the ownership of any immovable property may be divided between several persons by storeys or by parts of storeys, and this Law governs every immovable property the ownership of which is divided between several persons by shares.
- (2) The division of ownership referred to in paragraph (1) of this Article shall be effected by shares each comprising a private unit and an interest in the common parts of the immovable property and each constituting a *corpus fundi*.
- (3) The private units are those parts of the buildings and lands reserved for the exclusive use of a given co-owner. The common parts are those parts of the buildings and land intended for the use or benefit of all the co-owners or some of them.
- (4) In default of contrary title the following are presumed to be common parts –
  - (a) the site;
  - (b) the courtyards, yards, open land and gardens;
  - (c) access roads and parking areas;
  - (d) the structure of the buildings, the components of the common amenities (including parts of pipework relating thereto which go through the private units), as well as ducts, flues and chimney stacks;
  - (e) the common service areas; and
  - (f) the passages and corridors,and the following are deemed to be rights appurtenant to the common parts –
  - (i) the right to increase the height of a building intended for common use or containing several areas which constitute different private units, or to excavate the site thereof;
  - (ii) the right to erect new buildings on the courtyards, yards, open lands, gardens and parking areas forming common areas, or to excavate such courtyards, yards, open lands, gardens and parking areas; and
  - (iii) the right of party-ownership pertaining to the common parts.
- (5) Subject to contrary title, the partitions or walls separating the private units and not forming part of the structure are party-owned as between the units which they separate.
- (6) The private units are the exclusive property of each co-owner. The common parts are the subject of an undivided ownership between the co-owners as a whole or as between certain of them only. The common parts and the rights appurtenant thereto cannot be subject, independently of the private units, to an action for a forced sale<sup>3</sup> or to a partition<sup>4</sup>.
- (7) Subject to contrary title, the interest in the common parts appurtenant to each share is proportional to the surface area of each private unit without regard to its usage.
- (8) Each share is capable of constituting an inheritable unit<sup>5</sup> in an estate comprising immovable property.
- (9) Each co-owner has at his or her disposal the private unit comprised in his or her share; the co-owner has the right to use and enjoy freely his or her private unit and the common parts on condition that he or she does not breach the rights of other co-owners or the *destination*<sup>6</sup> of the immovable property.

## 3 Co-ownership declaration

- (1) The ownership of immovable property cannot be divided in accordance with Article 2 of this Law unless a co-ownership declaration has been registered in the Public Registry.

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<sup>3</sup> *Action en licitation*

<sup>4</sup> *A partage*

<sup>5</sup> *tête de partie*

<sup>6</sup> The intended purpose and nature or character of the property – *see Article 3(4)*

- (2) The declaration shall contain the description of how the ownership of the immovable property has been divided and shall determine the destination of both the private units and the common parts, as well as the conditions of their enjoyment; it shall also fix, subject to the provisions of this Law, the rules relating to the administration of the common parts.
- (3) The declaration shall state the name of the association.
- (4) The declaration shall impose no more restrictions upon the rights of the co-owners than can be justified by the *destination* of the immovable property, as it is defined in the documents of title, by its character or its situation.
- (5) No amendment of the declaration may take effect unless such amendment has been registered in the Public Registry.
- (6) The Royal Court may refuse to register a declaration or any amendment thereto in such circumstances as may be set out in Rules of Court.

#### **4 Common expenses**

- (1) The co-owners are bound to contribute to the expenses –
  - (a) in respect of the collective services and the components of the common amenities in proportion to the extent to which such services and components benefit each share;
  - (b) in respect of the maintenance, upkeep and administration of the common parts in proportion to the interest therein appurtenant to each share, to the extent that such interest is determined by the provisions of paragraph (7) of Article 2 of this Law, and generally to all expenses properly incurred by the association in proportion to the interest of each co-owner in the common parts.
- (2) The declaration shall fix the proportionate liability attaching to each share with regard to each category of charges.
- (3) Subject to the provisions of paragraph (4) this Article and those of Article 13 of this Law, the apportionment of common expenses cannot be modified except upon the unanimous vote of the co-owners.
- (4) Whenever the general assembly, acting upon the majority set out in this Law, determines to carry out works or to acquire or to dispose of property, the modification to the apportionment of common expenses thus rendered necessary may be determined by the general assembly acting upon the same majority.

#### **5 The co-owners' association**

- (1) The co-owners together constitute an incorporated association in accordance with the conditions specified, and under the name established, in the declaration.
- (2) The association may amend the declaration.
- (3) The objects of the association shall be the maintenance of the immovable property and the administration of the common parts.
- (4) The association has the capacity –
  - (a) to participate in proceedings, whether as plaintiff or defendant, even against individual co-owners; and
  - (b) to act jointly or otherwise with one or more co-owners in order to safeguard the rights appertaining to the immovable property.

Any co-owner nonetheless may bring proceedings in the co-owner's own name concerning the ownership or enjoyment of his or her share, provided that he or she gives notice thereof to the representative.

- (5) Without prejudice to any other right of action which a co-owner or a third party may have against the association, the association shall be liable for damages caused to co-owners by any defect of construction or failure to maintain the common parts, the whole without prejudice to any right of appeal.<sup>7</sup>

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<sup>7</sup> *action récursoire*

- (6) All contracts of acquisition or alienation of common parts or of creation or alienation of real rights for the benefit or to the burden of the common parts, decided upon in accordance with the provisions of this Law, are validly executed by the association itself and on its own authority.
- (7) The association may acquire itself, for value or otherwise, private units without those units losing their private character and may alienate them in accordance with the provisions of paragraph (6) of this Article.
- (8) The association has no right to vote in the general assembly by virtue of its ownership of any private unit.
- (9) The association shall have a common seal.

## **SECOND PART**

### **CO-OWNERSHIP ADMINISTRATION**

#### **6 General assemblies and the representative**

- (1) The decisions of the association shall be taken at general assemblies of the co-owners and their execution shall be conferred upon a representative of the association.
- (2) Where, before the first meeting of the general assembly, a representative has been appointed in the declaration or by any other agreement between the parties, such appointment must be submitted for ratification by the first general assembly.
- (3) In default of appointment, the representative shall be appointed by the Royal Court on the application of one or more of the co-owners or any other interested person.
- (4) Independently of the powers which are conferred upon him or her by other provisions of this Law or by Regulations, or by a special resolution of the general assembly, the representative shall be required –
  - (a) to ensure that the provisions of the declaration and the decisions of the general assemblies are carried into effect;
  - (b) to administer the immovable property, to provide for its maintenance, protection and upkeep and, in case of emergency, to proceed upon his or her own initiative in respect of the carrying out of all necessary works for the safeguard thereof; and
  - (c) to represent the association before the courts and elsewhere.
- (5) In the event of the representative being prevented from acting for whatever reason, or in the case of default on his or her part to exercise the rights and carry out the actions of the association and in the absence of provision in the declaration, the Royal Court shall have power to appoint a provisional administrator.
- (6) Being solely responsible for his or her functions, the representative cannot delegate such functions to anyone else. Only the general assembly may authorize upon a majority vote of all the co-owners a delegation of power for a specific purpose.
- (7) Upon the transfer of a share by hereditary<sup>8</sup> contract passed before the Royal Court or otherwise the new owner shall be required to give written notice thereof to the representative.

#### **7 Association Committee**

- (1) An association committee may at any time be instituted in order to assist the representative and to oversee his or her management.
- (2) In the absence of any special provision in the declaration, the committee is appointed by the general assembly upon the majority set out in paragraph (8) of Article 8 of this Law.
- (3) In default of appointment in accordance with paragraph (2) of this Article, the committee may be appointed by the Royal Court upon the application of one or more co-owners or of any other interested person.

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<sup>8</sup> *Transfert héréditaire* (signifying a transaction in immovable property)

## 8 Procedure and powers of general assemblies

- (1) Subject to the provisions of this Article –
  - (a) the declaration shall determine the procedure and the powers of the general assemblies;
  - (b) the decisions of general assemblies shall be taken on a majority of the votes of the co-owners present or represented.
- (2) Each co-owner shall have a number of votes corresponding to that co-owner's proportionate interest in the common parts, but if a co-owner possesses an interest in the common parts exceeding fifty per cent, the number of his or her votes shall be reduced to an amount equal to all the votes of the remaining co-owners.
- (3) A co-owner may delegate his or her right to vote to a third party, whether or not that third party is a member of the association.
- (4) The representative and his or her spouse, or the representative and his or her civil partner, may not preside at an assembly nor receive authority to represent a co-owner.
- (5) In the case where there is ownership by more than one person or a usufruct of a share, the interested parties must, in the absence of a contrary stipulation in the declaration, be represented by one person who shall in default of agreement be appointed by the Royal Court at the request of one of the interested parties or of the representative.
- (6) When the declaration imposes a liability on some only of the co-owners to meet the costs of maintaining a part of the immovable property or of the maintenance and running costs of a particular facility, it may be provided by the declaration that only those co-owners shall take part in the vote on decisions concerning such costs, each of them possessing a number of votes proportional to his or her participation in the said costs.
- (7) The general assembly may not –
  - (a) by any majority whatever impose upon a co-owner a modification of the *destination*<sup>9</sup> of his or her private unit or the mode of its enjoyment, such that those derive from the declaration;
  - (b) save by the unanimous vote of the co-owners present or represented, decide to alienate common parts the conservation of which is necessary to preserve the *destination*<sup>10</sup> of the immovable property.
- (8) Only upon a vote of the majority of all the co-owners can decisions be adopted concerning –
  - (a) any delegation of power;
  - (b) the authorisation given to certain co-owners to effect at their own cost works affecting the common parts or the exterior aspect of the immovable property, and consistent with the *destination*<sup>11</sup> of the immovable property;
  - (c) the appointment or dismissal of the representative or of the members of the committee;
  - (d) the conditions under which transactions are carried out concerning the common parts;
  - (e) the mode of realization and execution of works required to be undertaken in pursuance of statutory obligations.
- (9) In default of a decision taken by the majority required by paragraph (8) of this Article, a new general assembly may determine the matter by the majority referred to in paragraph (1)(b) of this Article.
- (10) Only upon a vote of the majority of members of the association representing at least three-quarters of the votes of all the co-owners can decisions be adopted concerning –
  - (a) the modification of the declaration in any way that concerns the enjoyment, use and administration of the common parts;

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<sup>9</sup> See footnote 6

<sup>10</sup> See footnote 6

<sup>11</sup> See footnote 6

- (b) works which involve renovation, addition or improvement, except those referred to in paragraph (8)(e) of this Article.

### THIRD PART

#### IMPROVEMENTS, ADDITIONS AND HEIGHTENING

##### 9 Decision to improve etc.

- (1) The general assembly of co-owners, acting upon the majority referred to in Article 8(10) of this Law, may decide to make any improvement which is consistent with the *destination*<sup>12</sup> of the immovable property. The general assembly shall determine accordingly, subject to the same majority –
  - (a) the apportionment of the cost of the works and the liability to the indemnity referred to in Article 10 of this Law in proportion to the benefit which will result from the said works for each of the co-owners but taking into account any agreement between individual co-owners to bear a greater part of such costs;
  - (b) the apportionment of the expenses of operation, maintenance and reinstatement of those common parts or features renovated or newly created.
- (2) Subject to the provisions of Article 13 of this Law, no co-owner or any person in right of such co-owner may obstruct the execution, even within his or her private unit, of works properly and expressly decided by the general assembly in pursuance of this Article, and the decision taken binds the co-owners to contribute, in the proportions fixed by the general assembly, to the cost of the works, to the indemnity referred to in Article 10 of this Law, as well as to the expenses of operation, administration, maintenance and replacement of those common parts or features renovated or newly created.
- (3) The construction of an additional storey or of buildings for the purpose of creating new areas for private use may not be carried out unless the decision to do so is taken upon the unanimous vote of the members of the association.

##### 10 Indemnity

Co-owners who, as a result of the execution of works, suffer a prejudice, whether by reason of a permanent diminution of the value of their share, or a serious interference with their enjoyment thereof, even if temporary, or dilapidations, are entitled to an indemnity at the expense of the co-owners as a whole which is apportioned according to the initial proportion of the rights of each co-owner in the common parts.

### FOURTH PART

#### RECONSTRUCTION

##### 11 Procedure in case of destruction, etc.

- (1) In the event of total or partial destruction of the immovable property, a general assembly of co-owners whose shares make up the damaged building may decide upon a majority of the votes of those co-owners to reconstruct the building or to reinstate the damaged part thereof. Where the destruction affects less than half of the building, reinstatement must take place if a majority of the co-owners affected by the damage so require. The co-owners who contribute to the maintenance of those buildings which have suffered damage are required to contribute in the same proportions and following the same rules to the cost of the works.

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<sup>12</sup> See footnote 6

- (2) In the case of works consisting of an improvement or addition in relation to the state of the building before it was damaged, the provisions of Articles 9 and 10 of this Law shall apply.
- (3) The compensation monies referable to the immovable property destroyed shall be applied in priority to its reconstruction.
- (4) If it is decided in accordance with paragraph (1) of this Article not to reinstate the damaged building, the Royal Court, in default of unanimous agreement between the co-owners or of provision in the declaration, may, on the request of any interested person, make such Order as it shall think fit for the liquidation of the rights in the co-ownership and the indemnification of those co-owners whose shares have not been reinstated.

## 12 Hypothecary<sup>13</sup> creditors

- (1) Any creditor of an hypothec which has become *sans assiette*<sup>14</sup> in whole or in part following the total or partial destruction of the immovable may make a representation to the Royal Court which may make such Order as it shall think fit in order to protect the real right attaching to the hypothecary claim including if necessary a direction that the said hypothec be secured upon one or more shares in the newly constructed building.
- (2) The representative shall keep a list of the hypothecary creditors who shall have notified him or her of their hypothecs and shall inform such creditors without delay in the event of total or partial destruction of the *corpus fundi*<sup>15</sup> upon which the hypothec is secured.

## FIFTH PART

### GENERAL PROVISIONS

## 13 Powers of the Royal Court

- (1) Each co-owner may contest a decision of the general assembly by means of a representation before the Royal Court alleging that the decision constitutes an abuse of majority, that is to say, that the majority has been used for an interest other than the collective interest of the co-owners, whether for personal gain or with malicious intent, and may seek as a result the annulment of the said decision.
- (2) A decision of the general assembly referred to in Article 9(1) of this Law is not binding upon a co-owner who voted against it and who has presented to the Royal Court a representation alleging that the improvement decided upon would be of a lavish nature having regard to the condition, character and *destination*<sup>16</sup> of the immovable property, and the said decision does not bind that co-owner unless the representation is rejected by the Court.
- (3) When the general assembly refuses to authorise individual co-owners to carry out at their own cost works affecting the common parts or the exterior aspect of the immovable property, such co-owners may present a representation to the Royal Court seeking authorisation to execute, in accordance with conditions fixed by the Court, any works of improvement referred to in Article 9(1) of this Law and the Court may in addition fix the conditions subject to which other co-owners may be permitted to use the facilities so constructed.
- (4) Each co-owner may challenge the apportionments fixed in accordance with subparagraphs (a) and (b) of Article 9(1) of this Law, or any other modification by the general assembly of the bases of apportionment of common expenses, by means of a representation before the Royal Court which may, if it thinks proper, make a revision of such apportionment.
- (5) Any representation which seeks to challenge a decision of the general assembly shall be presented before the Royal Court within a period of one month from the notification of

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<sup>13</sup> Secured by a charge (*i.e.* hypothec)

<sup>14</sup> *i.e.* where the building on which the charge was taken no longer exists

<sup>15</sup> See footnote 1

<sup>16</sup> See footnote 6

that decision which shall be given to the co-owners at the instance of the representative within a period of one month from the holding of the general assembly.

- (6) The periods mentioned in paragraph (5) of this Article may be amended by Regulations made pursuant to Article 14 of this Law.
- (7) In default of a decision of the general assembly modifying the apportionment of liability to contribute to common expenses, a co-owner may present a representation to the Royal Court which may, if it thinks proper, make a revision of such apportionment.
- (8) The provisions of this Article do not derogate from any other right of action exercisable by a co-owner or any other interested person.

#### **14 Regulations**

Subject to the provisions of this Law, the States may make provision by Regulations in respect of any matter concerning the administration of co-ownership and associations and generally for carrying this Law into effect.

#### **15 Rules of Court**

The Superior Number of the Royal Court, by virtue of the powers conferred upon it to make Rules of Court, may prescribe the procedure to be followed before the Royal Court for the purposes of this Law.

#### **17 Citation**

This Law may be cited as the Law (1991) on the co-ownership of buildings.