

Tip Sheet for Claims Adjusters on Divided Co-ownership

9 questions to ask yourself in order to properly manage a divided co-ownership claim file*

Before accepting a mandate, it is important for claims adjusters to take into account the limits of their abilities and knowledge and the means available to them to adjust a claim¹ and provide insureds with services they can rightfully expect from a professional. This applies particularly to divided co-ownership claims. Given the number of players involved (claimants, insurers, claims adjusters, syndicate directors and suppliers) and the peculiarities of the legislation and insurance contracts, managing a co-ownership claim requires a different approach. Furthermore, due to legislative and regulatory changes enacted between 2018 and 2020, it is essential that you update your knowledge in this field.

The following **non-exhaustive** list of questions adjusters must ask themselves when dealing with co-ownership claims will enable them to take into consideration crucial issues to manage such claims.

¹ Section 26 of the [Code of ethics of claims adjusters](#)

*WARNING!

This tip sheet and the information it contains apply to divided co-ownerships. If the claims adjuster is handling an undivided co-ownership file or a loss in a building owned by a company whose shareholders are the occupants (“ownership by shares”), the rules regarding claims adjustment and contracts are different.

COMMENT

Certain questions only apply to claims for direct damage or for civil liability.

NOTE

This tool takes into consideration legislative changes resulting from Bill 141, Bill 41 and Bill 16.



This tip sheet does not constitute legal advice. To learn more about your obligations and resources available to you, please visit the [Co-ownership page](#).

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9 questions to ask yourself

1

Who are the parties you are dealing with?

Claims adjusters must always keep in mind who mandated them, who the insured is, and to whom they have obligations. They must also ensure they are speaking to the right parties: the manager or the director representing the board of directors of the syndicate of co-owners, or an insurance trustee (if appointed, or to be appointed).

▶ **Example** : Even though the claims adjuster acts for the insurer of the syndicate of co-owners and the main contact is the syndicate's director, a co-owner who suffered damages to his private portion is also an interested party. The claims adjuster mandated by the co-owner's insurer must also be involved and work with the syndicate's adjuster to ensure that the claim process goes smoothly. The other co-owners also have an insurable interest in the syndicate's claim.

2

What type of co-ownership is it?

The type of co-ownership affects the parties' legal status, the insurance contracts and how the claim is settled. Is the co-ownership divided or undivided? Residential, commercial, or mixed use? Is it a phased co-ownership? Are several syndicates and several declarations of co-ownership involved?

▶ **Example** : When dealing with a “complex” co-ownership—for instance, a co-ownership with several phases that includes an initial syndicate and several concomitant syndicates (residential high-rises, row- or semi-detached houses)—the claims adjuster must review all the declarations of co-ownership and understand how they impact each other, since a loss could affect several syndicates. Legal assistance may be necessary when dealing with a complex case file.

Tip Sheet for Claims Adjusters on Divided Co-ownership

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3

Do I have all the documents I need?

For example:

- declaration of co-ownership;
- insurance contracts of the parties involved;
- description of the private portions or the reference unit;
- a chartered appraiser's evaluation of the reconstruction cost;
- occupying tenant's lease (where applicable), etc.

The claims adjuster must obtain a copy of the declaration of co-ownership and its amendments, where applicable, even if the adjuster is acting for the insurer of the co-owner-occupant who suffered damages. Along with the insurance contracts, this is the main document required to begin analyzing the situation (even if the loss seems to have only affected the contents of a private portion).

ATTENTION : Certain declarations of co-ownership are several decades old and have not been updated. Current provisions of the *Civil Code of Québec* could override certain sections of these declarations, which may now be invalid.

The syndicate's insurance applies to the whole building, including the private portions—except for improvements that have increased the unit's value.

The adjuster should request a copy of the description of the private portions (or a description of the reference unit) to identify any improvements made by co-owners that have increased the unit's value.

What should you do if there is no description of the private portions (or the reference unit)?

If it is impossible to identify the improvements the co-owners made, the affected units are deemed to not have undergone any improvements.

The evaluation of the cost of reconstruction that was prepared for the syndicate might also contain useful information on the type of building, the quality and type of materials used, and other information related to the construction of the building.

Tip Sheet for Claims Adjusters on Divided Co-ownership

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4

Which insurance contract does the insured hold?

It is essential to verify the insurance contract(s) of the various parties: the contract(s) of the syndicate(s) of co-owners and that of the co-owners who suffered the loss.

Certain insurers use an insurance contract designed for co-ownerships, both for the syndicate and the co-owners. Other insurers use a standard home insurance form or a commercial-lines insurance form that is not specifically designed for co-ownerships, or that has been adapted by adding certain endorsements. Certain insurance contracts are also modified by adding additional guarantees, such as the Extension of Coverage – Loss Assessment, which is specifically designed for co-owners. It is therefore all the more important for claims adjusters to verify the contracts and the rules that apply in a given situation.



What if the contract is ill-suited to co-ownerships?

A claims adjuster might realize that the form is unsuitable. For instance, if a ground-floor commercial unit in a residential building is covered by a standard commercial-lines insurance form, the contract does not include clauses pertaining to insufficient insurance or apportionment of the deductible. If need be, the claims adjuster could contact the insurer's underwriting department to verify the information given when the risk was initially underwritten or renewed.

Claims adjusters must provide the insured with the explanations necessary for them to understand the settlement of the claim and services rendered to them². If the loss is not admissible, or if certain exclusions or limits apply, claims adjusters must notify the insured³ as well as any person that has an interest in the settlement amount. It may be appropriate to send [a reservation of rights letter](#).

² Section 21 of the [Code of ethics of claims adjusters](#).

³ Section 19 of the [Code of ethics of claims adjusters](#).

Tip Sheet for Claims Adjusters on Divided Co-ownership

9 questions à se poser

5

Which insurance coverages are held by

- the syndicate?
- the co-owner-claimant(s)?

Claims adjusters must analyze the insurance contract and its endorsements and ask themselves:

- How much is the deductible for this loss?
- What is the insurance limit for this loss?
- Were any endorsements related to this loss added to the co-owners' insurance, for example, water damage, sewer backup, the Extension of Coverage - Loss Assessment, etc.?

Analyzing the coverages will make it easier to answer the necessary questions to determine whether the claim is admissible or not (see questions 7 and 8 below).

6

Are any other claims adjusters involved?

Claims adjusters have an obligation to collaborate with other claims adjusters insofar as it causes no prejudice to their client or to the parties involved in the claim.⁴ If several claims adjusters are involved (as is often the case with co-ownership files), they have a duty to collaborate in order to reach a cordial settlement, and ensure the work is well coordinated, and the premises properly restored.

▶ **Example** : A meeting between the various stakeholders at the beginning of the case could help to confirm that everyone is on the same wavelength with respect to how the claim will proceed and the responsibilities of all those involved. Such a meeting would also allow any differences to be addressed and ensure the claimants are aware of them.

⁴ Section 52 of the [Code of ethics of claims adjusters](#).

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7

What is the cause of the loss?

Claims adjusters must investigate and identify the **cause of the loss**. This question is distinct from the obligation to identify the nature of the damages and which insurance contract will apply with regards to the payment of the claim (see below).

► **Example** : A common area, shared by several buildings (ex.: gym, community hall), suffers water damage that ruins some machinery and basement walls. Was this loss **caused by** a defective or obsolete pipe in the common basement, a defective pipe in the building immediately overhead, or a sloppy repair done by a co-owner in his unit?

8

What is the nature of the damages, and to which insurance contract will the payment of the claim be attributed to?

Claims adjusters must estimate the damages by identifying the affected property (building and contents) and the insureds involved. They must therefore ask themselves the following questions:

- Is this a claim for direct damages (movable or immovable property, loss of revenue), civil liability, or both?
- Is this a phased co-ownership, with several insurance contracts? If so, which damages are covered by which contract?
- Were the common or the private portions (or both) affected?
- In what proportions are the common and private areas affected.
- If private portions are affected, were there any damages to improvements that have increased the unit's value?
- If property was lost (contents), was it property belonging to the syndicate (and if so, which syndicate, in the case of phased co-ownerships), a co-owner, a tenant or a third party?

The answers to these questions, information on the coverages, as well as the documentation consulted, enable the claims adjuster to begin the investigation and establish the basis of the claim settlement. Thus, in the preceding example (question 7), the “initial” syndicate suffered the damages, but these may have been caused by a vertical (“concomitant”) syndicate or an individual co-owner.

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Is one person liable, or several? Can the parties initiate an action for liability or subrogation?

After having identified the cause of the loss and which contract or contracts apply for indemnification, the claims adjuster must consider the possibility of an action for liability or subrogation and thus must ask himself whether one or more parties are liable for the loss.

For example, if a third party who is not part of the co-ownership is liable for the damages, the syndicate's insurer (or the syndicate itself) could claim damages from them.

However, insurers are now prohibited from exercising their subrogation rights against the person/entity who is liable for the damages if this person/entity is part of the co-ownership,* with the exception of damages for mental suffering or bodily injury or if the loss resulted from gross negligence or wilful misconduct.

**Members of the co-ownership include: the syndicate of co-owners, a co-owner, a person who is a member of a co-owner's household, or a person in respect of whom the syndicate is required to enter into an insurance contract to cover the person's liability.*

The syndicate could claim for the deductible or damages that exceed the coverages in its contract from the liable co-owner (or a member of their household). However, the syndicate cannot claim any damages for which its insurer would have indemnified it.

ATTENTION : These are complex and occasionally contradictory legal concepts, for which legal assistance may be required. Avoid taking a legal position that is not supported by a legal opinion, by a written document from the insurer on risk, etc.

► **Example :** The claim resulting from a leaky pipe that damaged the common portions and a private portion might at first glance seem to fall under the syndicate's insurance. If the damages are caused by a defective component, the manufacturer could be held liable. However, if improper installation or maintenance by a co-owner is at stake, he could be held liable for reimbursing the deductible and the damages that exceed the coverage provided for in the syndicate's contract or not covered by the insurance.

If the co-owner (or his insurer) refuses to acknowledge his fault or liability, a civil action may be possible between the parties (syndicate of co-owners versus the co-owner at fault or liable for the damages).