

# The New Civil Code for Everyone

## JOINT (COMMON) PROPERTY

- The institution of joint (common) property is regulated by the Civil Code (articles 631-686);
- Joint property supposes that, on the basis of a legal deed or some other way of acquisition provided by law, the private property title is shared by two or more title holders,
- The forms of joint property are the following:
  - ownership on quotas/shares (co-ownership), which can be:
    - ▶ ordinary or
    - ▶ forced;
  - common indivisible ownership (indivisible co-ownership).

### Ordinary co-ownership

- In case of the ordinary co-ownership, each co-owner is the exclusive title-holder of one **quota-share** of the ownership title and may dispose of it freely in the absence of a contrary provision;
- The joint-owners will share the benefits and support the charges of the co-ownership, **in proportion with their quota-share** of the title;
- Each joint-owner is entitled to use the common asset to the extent he/she does not change its destination and does not prejudice the rights of the other co-owners:
- All co-owners are entitled to the fruits brought by the common asset, **in proportion with their quota-share** of the title;
- The steps to protect the rights do not require the consent of the other co-owners,
- The administrative and disposal acts imply **the unanimous consent** of the co-owners, with the possibility of judicial control in order to cover for the inability/refusal to give the consent of the co-owner who is unable / abusively refuses to give their consent to the conclusion of the administrative act;
- **Legal proceedings**, including the action for property recovery, **can be exerted by one co-owner**. Court orders issued in favor of the co-ownership are profitable for all co-owners, but court orders against one of the co-owners are not opposable to the other owners;
- there can be a derogation from the rules on the distribution of profits and tasks between the co-owners. The exertion in common of the right of possession (easement), administration and disposal deeds can be derogated by a management contract of the condominium concluded with the consent of all the co-owners.

### Forced co-ownership

- the following are in forced co-ownership:
  - assets considered as common parts, common divisions, assets under timeshare property, assets which represent family heirlooms;
  - necessary or useful common assets in order to use two neighboring buildings, situated on the borderline between them, such as footpaths, fountains, roads and springs;
  - common assets dedicated to the use of two or more funds, such as a heating station or other installations which serve two or more buildings, a common road in a residential neighborhood or similar assets;
  - any other asset as provided by law;

- each co-owner may exert the use of the common asset, on condition to observe its destination and to allow its use by the other co-owners;
- expenses for the maintenance and conservation of the common asset are supported in proportion with the quota-share of the title belonging to each co-owner;

Co-ownership on the **common elements** of buildings with several storeys or apartments

- If in a building or a residential complex there are premises destined as dwelling or with a different destination with different owners, the elements of the building which, being destined to the use of the respective premises, can only be used in common, are the object of a forced co-ownership title;
- Are considered as common elements:
  - *the ground on which the building is situated*, consisting both from the built area, and the necessary not built area, according to the nature or destination of the structure, in order to assure its normal exploitation; for the eventual excess area the owners are the holders of an ordinary co-ownership;
  - *the foundation, the inner yard, the structure, the supporting structure, the perimeter and division walls between the properties and/or the common areas, the roof, the terraces, stairs and staircases, halls, basements and undivided basements, water reservoirs, own heating stations and the elevators*;
  - the water supply and sewerage, electrical, telecommunications, heating and gas *installations* from the branch terminal/connection to the distribution point to the elements in exclusive ownership, *storm sewers, lighting rods, collective antennas*, as well as other such elements;
  - other assets which are, by law or will of the parties, in common use.
  - smoke and ventilation flues, as well as areas for laundry and drying are considered common elements exclusively for the co-owners who use these facilities according to the project of the building;
- common elements **may be allotted to co-owners for exclusive use** only if the rights of the other co-owners are not thereby prejudiced, with the consent of two thirds of the number of co-owners of the quotas-shares or by the general meeting of the owners' association, in case there is one, with the same majority;
- the alienation or mortgaging of the quota-share can be done only together with the right on the area which represents the main asset;
- if not provided otherwise in the ownership titles, *the quotas-shares are established by a ratio of the useful area of each dwelling space to the total useful area of the dwelling spaces of the building*.
- as a rule, each co-owner supports the expenses related to the maintenance, repair and exploitation of the common elements, in proportion with their own quota-share;
- co-owners are obliged to allow access to the areas which are main assets in order to perform the necessary works for the conservation of the building and maintenance of the common elements;
- in case of destruction of the building in whole or to an larger extent than half of its value, any co-owner may, in absence of a contrary agreement, request the sale at a public auction of the ground and of the resulting building materials;
- **the termination of the destination of common use for the common elements** of buildings with more storeys or apartments can be decided with a motive by a majority of two thirds of then number of co-owners, the termination of the destination of common use for these elements takes place by resolution of the general meeting of the owners' association adopted by a majority of two thirds of the number of co-owners.
- the building, respectively the part of the building which results from the termination of the common use is to be recorded adequately in the land register based on the cadastral documentation drafted for that purpose.

**In the case of buildings with more storeys or apartments or in the case of residential complexes consisting in individual dwellings, isolated, in a row or attached, where there are common properties**

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**and individual properties, the establishing of a owner's association is mandatory**, and this is organized and operates under Law 230/2007 on the establishment, organization and operation of the owners' associations.

#### Co-ownership on the common divisions

- the wall, the ditch, as well as any other division between two funds are presumed to be the common property of the neighbors, if there is no contrary provision in the ownership title, in a sign of non-community or if the common property has not become a property by usucapio (prescription);
- the following are *signs of non-community*:
  - when the top of the wall is straight and perpendicular towards one fund and inclined towards the other fund, the wall is presumed to be the exclusive property of the owner of the fund towards which the coping of the wall is inclined;
  - when the earth is amassed or accumulated exclusively on one side of the ditch, it is presumed that the ditch is the exclusive property of the owner of the fund towards which the earth is accumulated;
  - are considered signs of non-community any other signs which can lead to the presumption that the wall was built exclusively by one of the co-owners:
- the owners of the neighboring funds may be obliged to build a common division;
- the height of the common wall is established by the parties, without exceeding 2 meters, also taking into account the coping of the wall;
- the expenses for the maintenance and repair of the common divisions are supported by the co-owners in proportion with the right of each of them; if he/she does not participate to the expenses the co/owner waives their right of possession on the common division;
- any of the co/owners is entitled to lean constructions or to install beams in the common wall with the duty to leave 6 centimeters toward the other co-owner and without affecting the right of the latter to lean his/her own constructions or to install their own beams in the common wall;
- Increasing the height of the wall above the limit of the common wall can be done by any of the co-owners, on condition that they support themselves the heightening expenses above the limit of the common wall, as well as the expenses to repair the common part of the wall as a result of its elevation;

#### Common indivisible ownership

- an indivisible ownership exists when, by effect of the law or according to a legal document, the ownership title belongs at the same time to several persons *without any of these being the title holder of an established quota-share* from the ownership title on the asset or common assets.