



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 3

An Act to amend the Civil Code in respect of co-ownership and emphyteusis

Introduction

**Introduced by
Mr Herbert Marx
Minister of Justice**



**Québec Official Publisher
1988**

EXPLANATORY NOTE

This bill amends the Civil Code of Lower Canada in respect of co-ownership and emphyteusis to permit the registration of a declaration of co-ownership in respect of an immovable constructed by an emphyteutic lessee and in respect of an immovable constructed on land subject to superficies. It also permits the registration of a declaration in respect of an immovable already constructed that is held by emphyteutic lease. This last declaration, called "declaration of co-emphyteusis" will be governed by the rules provided for the declaration of co-ownership. Finally, the bill ratifies, retroactively, any registration of a declaration of co-ownership made in respect of any immovable of a class referred to above.

Bill 3

An Act to amend the Civil Code in respect of co-ownership and emphyteusis

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Civil Code of Lower Canada is amended by inserting, after article 441*b*, the following article:

"441*b*.1. Any immovable constructed, as improvements, by an emphyteutic lessee may, as in the case of an immovable held under superficies, be governed by the provisions of this chapter if the unexpired term of the emphyteusis or superficies, as the case may be, is over fifty years at the time of registration of the declaration of co-ownership.

In such a case, each coproprietor is liable towards the proprietor of the immovable subject to emphyteusis or superficies for the divisible obligations of the emphyteutic lessee or superficiary, as the case may be, in accordance with the provisions of the declaration of co-ownership or, failing such, in proportion to the relative value of his fraction as established in the declaration; the coproprietors remain liable for the indivisible obligations as for common costs."

2. Article 441*f* of the said Code is amended by inserting, at the end, the following paragraph:

"The declaration must specify, where applicable, that the co-ownership is established in respect of an immovable constructed by an emphyteutic lessee or an immovable constructed on an immovable subject to superficies, and such rights and obligations as may arise therefrom for the coproprietors."

3. Article 441*m* of the said Code is amended

(1) by replacing the word “and” in the second paragraph by the words “and, where applicable, by the emphyteutic lessee or the superficiary. The declaration must also”;

(2) by adding the words “, and, where applicable, the emphyteutic lessee or the superficiary must give notice thereof to the proprietor of the immovable” after the word “deposit” at the end of the third paragraph.

4. The said Code is amended by inserting, after article 441*x*, the following article:

“**441*x*.1.** The administrators, if duly authorized, may, in the name of the coproprietors, within six months of learning that a person has acquired the rights of the proprietor of the immovable subject to emphyteusis or superficies acquire the rights of that person by reimbursing him for the price of transfer and the costs he has paid.

Where the administrators exercise such right of redemption, the rights they acquire from the proprietor become common or exclusive parts, as the case may be.”

5. The said Code is amended by inserting, after article 442*p*, the following article:

“**442*q*.** It is and always has been lawful to register a declaration of co-ownership in respect of an already constructed immovable subject to an emphyteutic lease, an immovable constructed by an emphyteutic lessee or an immovable constructed on land subject to superficies.”

6. The said Code is amended by inserting, after article 567, the following article:

“**567.1** Emphyteusis affecting both the land and a constructed immovable may be the subject of a declaration of co-emphyteusis which is governed by the same rules as those provided for a declaration of co-ownership. It is also subject to the rules, adapted as required, applicable to co-ownership established in respect of an immovable constructed, as improvements, by an emphyteutic lessee.”

7. The said Code is amended by inserting, after article 568, the following article:

“568.1 Emphyteusis affecting the land on which an immovable held in co-ownership is constructed as well as that affecting both the land and a constructed immovable may be renewed without the lessee’s being required to make improvements thereon.”

8. Article 574 of the said Code is amended by adding, at the end, the following paragraph:

“Forfeiture cannot be declared where co-ownership is established in respect of an immovable constructed by the emphyteutic lessee. The same applies where the immovable is the subject of a declaration of co-emphyteusis.”

9. This Act comes into force on *(insert here the date of assent to this Act)*.