# J. Y. Interpretation No.141（December 13, 1974）*

**ISSUE:** In case a real property is held by the co-owners, does a co-owner have the right to mortgage his share of title to the property without the consent of the other co-owner?

**RELEVANT LAWS:**

Article 819, Paragraphs 1 and 2 of the Civil Code （民法第八百十九條第一項、第二項）; Interpretation Yuan-tze No. 1516（司法院院字第一五一六號解釋）.

**KEYWORDS:**

Co-ownership（共有）, co-owner（共有人）, common property（共有物）, joint relationship（公同關係）.**

**HOLDING:** Each co-owner of a building or land may create a mortgage on his share of the property if such co-ownership is not based on a joint relationship among the co-owners.

**REASONING:** Article 819, Paragraph 1 of the Civil Code provides that "each co-owner may freely dispose of his own share." Where the common prop-

**解釋文：** 共有之房地，如非基於公同關係而共有，則各共有人自得就其應有部分設定抵押權。

**解釋理由書：** 按「各共有人得自由處分其應有部分」，為民法第八百十九條第一項所明定。除基於公同關係而共有者另有規定外，如共有物為不動

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\* Translated by Raymond C. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

erty is a real property, with the exception of co-ownership based on a joint relationship which is otherwise governed by law, each co-owner is free to dispose of his share of the property under the foregoing provision and is consequently free to create a mortgage on such portion of the property if he deems it necessary to do so to provide security without transferring the possession of the property. In contrast, the second paragraph of the same article reads: "Any disposal of and alteration to, and the creation of any encumbrance on, a common property can only be made with the consent of all co-owners." This provision is meant to apply to the situation where the [entire] property is made the object to be disposed of or altered or charged with an encumbrance by any of the co-owners, rather than referring to the portion of the property shared by any individual co-owner. A comparison between the texts of the two paragraphs will clearly show the true meaning of the law. Our view expressed in Interpretation Yuan-tze No. 1516 is hereby further supplemented.

產，各共有人本於前開規定，既得自由處分其應有部分，則遇有不移轉占有而供擔保之必要時，自得就其應有部分設定抵押權。至於同條第二項所謂「共有物之處分、變更、及設定負擔，應得全體共有人之同意」，係指共有人以共有物為處分、變更、或設定負擔之標的，並非就各共有人之應有部分而言。此比照第一項得自由處分之規定，法意至為明顯。本院院字第一五一六號解釋，應予補充釋明。