

Real Estate_

Law no.8/2022: ammendments to the horizontal property framework

Law no. 8/2022, published on January 10, introduces significant amendments to the legal framework of the horizontal property (strata title, hereinafter “PH”). Several provisions of the Portuguese Civil Code, of Law-Decree no. 268/94, October 25, and of the Notary Law were amended.

Here is a brief overview of the most relevant updates:

1. Courts to approve the amendment of the PH title (if 1/10 of the members fail to agree)

The lack of agreement to amend the PH title in regard to the communal parts of buildings may be resolved by a court of law, if (i) only up to 1/10 of the condominium’s members disapprove of the amendment, and (ii) the amendment does not change the conditions of use, value, or purpose of the building’s units.

2. Certificate of debt clearance before the condominium is mandatory for the transaction of a unit

The transfer of a unit will now require the presentation of a certificate of debt clearance before the condominium, which shall be issued by the condominium’s manager. The acquirer may, however, waive the presentation of such certificate. The certificate has to be issued within 10 days and shall include the details of the current condominium expenses for the unit, as well as the details about the existing debts.

3. Sellers to communicate the transfer of a unit to the condominium's manager

The seller of a unit must inform the condominium's manager about the sale within 15 days of the transaction. The Sellers shall also provide the condominium's manager with the acquirer's details. If they fail to do so, the seller shall be liable for the expenses incurred by the condominium to identify the acquirer of the unit, as well as for the expenses caused by the delay in the payment of the condominium fees that are due after the transaction.

4. Liability for condominium debts in the context of the transferring of a unit

The liability for any condominium debts existing when transferring a unit depends on when such debts became due (i.e., the Seller is liable if the debts became due before the transaction, and vice versa), unless stipulated otherwise. However, if the acquirer waives the certificate of debt clearance before the condominium prior to the transaction (see point 2), he/she may become liable for any existing condominium debts.

5. Liability for condominium expenses

The Law clarifies that, unless agreed otherwise, the expenses for the maintenance and usage of the communal parts of the building, as well as for the shared services, must be borne proportionally by whomever the unit owners are when the resolution approving such expenses is adopted.

6. Simple majority for attributing responsibility for paying the expenses of the condominium's shared services

The allocation of the condominium's shared services expenses to the condominium members (in equal or proportional shares) may be specified in the PH title. Such a provision has to be approved by a majority of the condominium members, without a negative vote of any voting member (previously the majority was of 2/3).

7. Liability for the damages caused to the communal parts of the building by the parts that are allocated exclusively to a condominium member

By default, liability for the maintenance of the communal parts of the building and for the shared services expenses is allocated proportionally to each unit owner. However, the law now stipulates that, if any maintenance is required on the communal parts as a result of insufficient maintenance of an area allocated exclusively to a condominium member, he/she may be responsible for repairing the damages to the communal parts.

8. 1st annual condominium meeting may (exceptionally) take place during the 1st quarter

The condominium meeting for approving the previous year's accounts and the budget for next year may exceptionally be held in the first quarter of each year, provided that it is established in the condominium's regulations or approved by a majority of the condominium members.

9. Condominium Meetings ("CM") may be convened by e-mail

The AC may be convened by an e-mail sent to the members who have previously expressed the will to be notified by e-mail.

10. Condominium Meeting to be held 30 minutes later in case of insufficient attendees

By law, the presence of the majority of the condominium members is required to hold a CM. Generally, if sufficient members do not show up, the CM is postponed for one week later. The Law now establishes the possibility of reconvening the CM for thirty minutes later, in the same place, provided that representation of 1/4 of all the condominium members is assured.

11. Additional duties of the condominium manager and express stipulation of the civil liability for the lack of action

The condominium manager is in charge of new duties, namely related to court proceedings that may involve the condominium or its members. It is also stipulated that the condominium's manager is subject to civil liability (and potentially criminal liability) for the lack of performance of his/her duties.

12. Mandatory presentation of three work budgets

Whenever the Condominium Meeting is to decide about the execution of innovative or unscheduled maintenance works, the condominium manager must present three independent budgets to the condominium members (unless stipulated differently in the condominium regulations or decided by resolution of the CM).

13. Representing the condominium before the courts

It is further clarified that the condominium must always be legally represented by its manager, and that any criminal complaints related to the communal parts of the building do not require prior approval by the CM.

14. Content of the Condominium Meetings' minutes and effectiveness of the resolutions approved

The Condominium Meetings' minutes must detail the date and place of the meeting, the indication of the present and absent members, the matters discussed, the decisions and resolutions taken, the result of each vote, and the fact that the minutes have been read and approved by the attending members. It is also established that the resolutions will become effective following the approval of the minutes, regardless of whether or not these are signed by all the condominium members.

15. Electronic signature of the Condominium Meetings' minutes

The CM minutes may now be signed and adhered to through a qualified electronic signature, or by the handwritten signature of the member on the original document or on a scanned document sent via email. For this purpose, a statement by the owner sent by email to the condominium manager shall suffice, provided it states that he/she agrees with the content of the minutes.

16. Virtual Condominium Meetings

Under certain conditions, the CM can be conducted remotely, preferably through videoconference. The condominium manager is responsible for providing the necessary technological means to the member who does not have access to the necessary means, otherwise the CM will have to be carried out in person.

17. Special fee to recover the Condominium's reserve fund

Whenever the Condominium's reserve fund is used for purposes other than maintenance of the building, the members shall be required to pay a supplementary fee to recover the used amount within 12 months after the CM's resolution that approved the usage of this amount.

18. Debts of the members with the condominium – scope of the enforcement title (*título ejecutivo*); term and limitations to the judicial collection

The title needed for legally collecting the debts of the members with the condominium (which is composed of the minutes of the Condominium Meeting that implemented the condominium contributions) will now also cover interest on arrears, as well as penalties, provided that it is approved by the CM or established in the condominium's regulations.

The court action for judicially collecting such debts shall be initiated within 90 days as from the first breach by the condominium member (unless otherwise decided by the CM). It is now also required that the amount owed to the condominium is equal to or greater than the amount corresponding to each year's social support index amount (Indexante dos Apoios Sociais).

Law 8/2022 of January 10 will enter into force on **April 10, 2022**, but the amendments to Article 1437 of the Civil Code (Representation of the condominium in court), came into force on January 11, 2022.