



**REAL ESTATE AND TOURISM**

# Amendments to the rules on horizontal property – what has changed?

[Law 8/2022](#) (the “Law”) was published on 10 January. This Law introduces important changes to the rules on horizontal property and to the mandatory documents that must accompany the deed or the certified private document for the sale of self-contained units.

**A. MAIN CHANGES TO THE CIVIL CODE**

**1. Possibility to ask the courts to resolve any absence of agreement regarding the alteration of the certificate of establishment of horizontal property in relation to the common parts**

Under the previous rules, the certificate of establishment of horizontal property could only be modified<sup>1</sup> with the agreement of all the condominium owners. Through the legislative amendment introduced by Law 8/2022 , Article 1419 of the Civil Code now provides for the **possibility to overcome any absence of agreement to amend the certificate of establishment before the courts**, provided that:

**"The Civil Code now provides for the possibility to overcome any absence of agreement to amend the certificate of establishment before the courts."**

- i) it involves a change to the common parts of the building;
- ii) the votes of the condominium owners who do not approve the change are less than 1/10 of the invested capital; and
- iii) the change does not modify the conditions of use, the relative value or the purpose for which the units of the condominium owners who do not approve the change are intended to be used.

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<sup>1</sup> Without prejudice to any change resulting from the joining together of two or more units in the same building into a single unit, provided they are adjacent to each other. This does not require the authorisation of the other unit owners.

## 2. Maintenance and use charges

The new Article 1424 of the Civil Code now expressly states that the maintenance and use of the building will be under the **responsibility of the condominium owners at the time of the resolutions in question**.

### 2.1. Common areas exclusively used by one unit

The expenses of any common areas that are exclusively used by one of the condominium owners must be paid by the condominium owners using them. However, if the state of maintenance of the common parts of the building affects the maintenance or the use of the other common parts of the building, the owner who has the exclusive use of the common parts must bear the repair expenses in the proportion of his/her co-ownership, except if the need for repair is due to his/her own fault.

### 2.2. Liability for charges and debts - sale of unit

Article 1424-A is added to the Civil Code and Article 54 of the Notaries' Code is amended, regarding, respectively, the responsibility for the condominium charges and the obligation to present, in the instruments of transfer of real estate, a declaration relating to those charges<sup>2</sup>. However, the purchaser may declare that it waives the right to presentation of this declaration. Therefore, in the case of the transfer of units, the following will be required:

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BEFORE THE SALE OF THE UNIT:	
<b>Step 1</b> Request for issuance of a statement of charges and debts	The owner of the unit must ask the manager to issue a written statement setting out: i) The amount of all outstanding condominium charges in respect of that owner's unit, specifying their nature, amounts and payment deadlines; and ii) Indication of existing debts (if any), their nature, amounts, constitution dates and due dates.
<b>Step 2</b> Issuing a statement	The statement must be issued by the manager within 10 days of the request for it.

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UPON SALE OF THE UNIT	
<ul style="list-style-type: none"><li>o The statement must be annexed to the deed or certified private document of sale of the unit in question; except if</li><li>o The buyer expressly states in the deed or in the certified private document that authenticates the sale of the unit, that he/she does not require the declaration of the manager and, consequently, accepts responsibility for any debt owed by the seller to the condominium.</li></ul>	

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The new owner is responsible for all condominium charges, regardless of their nature, which fall due after the transfer of the unit.

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<sup>2</sup> The instruments by which rights over properties are shared or transferred, or charges are incurred over them, cannot be drawn up without reference to the declaration provided for in Article 1424-A(2) of the Civil Code, without prejudice to the provisions of paragraph 3 of the same article.

This not only clarifies the responsibility for the condominium charges and debts, but also introduces greater protection for the buyer, who, as a rule, will only take responsibility for charges falling due after the transfer of the unit.

### 3. Definition of essential and urgent repairs

Article 1427 of the Civil Code already stipulated that “*any urgent and essential repairs of the common parts of the building can be done by any unit owner*”.

However, there was no provision as to what should be understood as essential and urgent repairs, so its implementation was always widely discussed before the courts.

The new Law introduces the following definition in Article 1427 of the Civil Code:

*“Essential and urgent repairs are those necessary to eliminate, in the short term, any faults or defective conditions existing in the common parts that may, at any time, cause or aggravate damage to the building or group of buildings and to property, and or put at risk the safety of people”.*

### 4. Condominium meeting

Article 1431 of the Civil Code now provides for the possibility to hold a meeting to discuss and approve the accounts and budget, exceptionally, in the first quarter of each year, if this possibility is provided for in the condominium regulations or results from a resolution, approved by a majority of the condominium meeting.

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Article 1432 of the Civil Code provides for **the possibility to convene the meeting by email**, for condominium owners who declare their agreement to this and indicate the address to be recorded in the minutes.

If the number of owners required to pass the resolution does not appear upon the first call, Article 1432(4) of the Civil Code provides that if no other date is set, the meeting will be deemed to be convened for one week later, at the same time and in the place. In this case, the meeting can pass the resolution by majority vote of the owners present, provided that owners representing at least one quarter of the total value of the condominium are present.

Article 1432(4) 4 expressly states “*if no other date has been set in advance*” and the courts consider that a second convening notice with a mere delay of half an hour after the first one is not admissible<sup>3</sup>. However, in practice, many convening notices indicate a new meeting not for another date, but only for another time of the same day.

<sup>3</sup> See Judgment of the Supreme Court of Justice of 26.05.2015, Case no. 741/09.7YXLSB.L1.S1, available [here](#).

The provisions of Article 1432(4) of the Civil Code remain unchanged, but the new paragraph 5 of the same article expressly states that: *“if the conditions are met to ensure the presence, on the same day, of owners representing a quarter of the total value of the building, the notice to convene may be made for thirty minutes later, in the same location”*.

## 5. Duties of the condominium manager

In the context of Article 1436 of the Civil Code, the law has increased the duties of the condominium manager so that managers now have to:

- Check the existence of the common reserve fund;
- Require the condominium owners to pay their share of the approved expenses, including interest and penalties;
- Execute the resolutions of the meeting within 15 working days or within the period of time fixed for that purpose;
- Inform the owners in writing whenever the condominium is summoned or notified in judicial, arbitration, injunctive, administrative or disciplinary proceedings, and the manager must also inform them about any development in the proceedings at least every six months;
- Within 10 days, issue the unit owner’s debt statement, if requested by the owner, specifically for the purpose of sale of their unit;
- Provide at least three budgets whenever the resolution of the meeting relates to extraordinary or new maintenance works.

The law now expressly provides in Article 1436(3) of the Civil Code for the civil liability of the manager in respect of its obligations, even in cases of omission:

*“If the condominium manager does not comply with its duties under the law or under resolutions of the condominium meeting, it is subject to civil liability for its omission, without prejudice to any criminal liability, if applicable.”*

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## **B. MAIN CHANGES TO DECREE-LAW 268/94 OF 25 OCTOBER (HORIZONTAL PROPERTY RULES)**

The Law introduces extensive amendments to Decree-Law 268/94 of 25 October 1994 by developing some aspects of the Horizontal Property Rules and complementing the rules set out in the Civil Code.

### **1. The condominium meeting**

The following are the most important changes to Article 1:

- The possibility to sign the minutes by using a qualified electronic signature or a handwritten signature, placed on the original document or on a scanned document containing other signatures.
- The effectiveness of the resolutions depends on the approval of the respective minutes, regardless of whether these are signed by the unit owners;

Article 1-A is introduced to establish the rules of meetings conducted by means of remote communication:

- The condominium meeting is held by means of remote communication (preferably by video conference), by decision of the condominium management or at the request of the majority of the unit owners.
- However, if the unit owners are unable to attend the meeting by remote communication and have informed the condominium management of their inability to do so, it is the responsibility of the condominium management to provide the necessary means. If not, the meeting cannot be held by remote communication.

### **2. Mandatory communications in the event of sale of units**

Article 3 now imposes a duty, in the event of sale of the units, to inform the condominium management, by registered post within 15 days of the sale, of the identification details of the new owner (full name and tax identification number).

If this information is not provided, the selling unit owner will be responsible for the costs of identifying the new owner and the costs incurred by the unit owner in the event of non-payment of the costs incurred after the sale.

### 3. Reserve fund

Under Article 4, it is now mandatory to pay an extraordinary contribution to replenish, within a maximum period of 12 months, the amount of the reserve fund that is used for purposes other than maintenance expenses.

### 4. Outstanding condominium charges

The minutes of the meeting of the condominium owners that determine the amount of contributions to be paid annually by each unit-holder to the condominium and the due date of the obligations constitute an enforcement title. Article 4 now expressly states that this enforcement title covers not only the outstanding principal, but also the interest on arrears and any penalties, if approved by the meeting or provided for in the condominium rules.

The condominium manager must begin the legal debt recovery action within 90 days of the first default of the condominium unit owner, unless otherwise decided by the general meeting of the condominium owners, and provided the amount owed is equal to or greater than the amount of the SSI (Social Support Index) for the calendar year in question.

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## C. ENTRY INTO FORCE

The Law enters into force 90 days after its publication, except for the amendment to Article 1437 of the Civil Code (representation of the condominium in court), which enters into force on the day following publication.

In effect, the amendment to Article 1437 of the Civil Code is immediately applicable to court proceedings in which the regularity of the condominium's representation is at issue and the procedures necessary to ensure that the manages provides this representation must be started. ■