



Management, governance & decision making : status of property law, challenges and ways forward in France

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Main texts

- Act n ° 65-557 of July 10, 1965 fixing the statute of the co-ownership of the built buildings
- Code of Construction and Housing
- Act n ° 2014-366 of March 24th, 2014 for the access to the housing and a renewed urbanism
- Act n ° 2015-992 of 17 August 2015 relating to the energy transition for green growth



I. Diagnostics

- One way to get the owner to renovate his building in terms of energy efficiency is to inform him of the energy and environmental status of his building. The legislator assumes that this information, this awareness will lead the owner to make the reasonable decision to renovate his building if it is not energy efficient.



Energy performance diagnosis and energy audit (mandatory)

- Two mandatory diagnostics
- Article L134-4-1 of the Construction and Housing Code
- Created by Act n ° 2010-788 of July 12th, 2010 – (Loi Grenelle II)
- An energy performance diagnostic is carried out for buildings with a collective heating or cooling system within five years from 1 January 2012.
- Content: Article R134-2
- Duration: 10 years Article R134-4-2



Energy performance diagnosis and energy audit (mandatory)

- Mandatory diagnosis
- Article L134-4-1 of the Construction and Housing Code
- In residential (major-use) condominiums of fifty or more lots, with a collective heating or cooling installation, whose application date for a building permit is before June 1, 2001, a energy audit must be carried out instead of the energy performance diagnosis.
- Content: Article R134-15
- Duration: Article R134-18: The energy audit is carried out within a maximum of five years from 1 January 2012.



Global technical diagnosis (mandatory)

- Mandatory diagnosis
- This diagnosis has to be carried out since January 1, 2017 in any building of more than ten years put in co-ownership (CCH: L.731-4).
- The GTD replaces the technical diagnosis prior to co-ownership (CCH: L. 111-6-2 repealed). It must be done before the establishment of the co-ownership rules and the descriptive division statement.



Global technical diagnosis (mandatory)

- Mandatory diagnosis
- Execution of the DTG ex officio at the expense of the « Syndicat » (Union of co-owners) in case of unworthy housing.
- In the context of unsanitary procedures or of the security of communal parts in co-ownership buildings, the competent administrative authority may request the the « Syndicat » (Union of co-owners) to produce the GTD to verify the state and safety of the communal parts (CCH: L.731-5 I).
- In case of refusal or impossibility to communicate this document one month after notification of the request, the competent administrative authority may have the GTD ex officio carried out at the expense of the syndicate of co-owners (CCH: L.731-5 II).



Global technical diagnosis (voluntary)

- Agreement of the co-owners in order to realize the GTD.
- As of January 1, 2017, any condominium building with a partial or total residential purpose (CCH: L.731-1) may be the subject of a GTD.
- The question of the realization of the GTD is included in the agenda of the general Assembly and the co-owners decide or not of the realization of the GTD and of its terms. The decision is taken by a simple majority (majority of the votes of the co-owners present and represented based on surface owned / law of 10.7.65: art 24).



Global technical diagnosis (voluntary)

- Presentation of the GTD to the co-owners
- Once the GTD has been completed, it must be presented to the co-owners during the general assembly following its completion or revision (CCH: L. 731-2 I).
- At the same meeting, the co-owners must decide on the question of the elaboration of a multi-year works plan and the implementation modalities (content, schedule, financial evaluation, financing modalities and choice of project manager).



Global technical diagnosis (voluntary)

- Consequence of the GTD on the requirement for a work fund
- If the GTD has been made and there is no need for work in the next ten years, the syndicate is exempt from the obligation to establish a work fund during the period of validity of the diagnosis (Law of 10.7 .65: article 14-2).



Global technical diagnosis (mandatory or voluntary)

- Content :
- It contains the essential information relating to the building of the co-ownership: the analysis of the apparent state of the communal parts and the common equipment, the state of the situation of the syndicate "with regard to the legal and regulatory obligations contained in the Code of the construction and housing, analysis of possible improvements in terms of technical and heritage management as well as the Energy Performance Diagnosis or the energy audit.
- The GTD must include the list of work necessary for the conservation of the building, including those that could be carried out over the next ten years, as well as a summary evaluation of their cost.



Global technical diagnosis (mandatory or voluntary)

Duration: The global technical diagnosis is established for a projected duration of 10 years and the diagnosis of energy performance or energy audit it includes is valid for ten years after its elaboration. As a result, the validity of the GTD is 10 years.



Work plan and energy performance contract

- Article R138-1 of the Code of construction and housing (Created by Decree No. 2012-1342 of December 3, 2012 - Article 2): "In order to submit to the general assembly of co-owners the question concerning a plan of energy saving works or an energy performance contract, in accordance with article 24-4 of the Act n ° 65-557 of July 10, 1965 fixing the statute of the co-ownership, the syndic of co-ownership joins, as the case, to the convocation the energy performance diagnosis or the summary report of the energy audit provided for in Articles R. 134-4-3 and R. 134-14.



Plan de travaux et contrat de performance énergétique

- Article 24-4 of the Act of 9 July 1965, contrary to Articles 24-1, 24-2 and 24-3 of the same Act, does not contain an explicit reference to the majority rules of Article 24 (majority of the votes of the co-owners present and represented based on surface owned).
- However, it should be considered that the decision of a multi-year work plan falls within the majority of Article 24 (majority of the votes of the co-owners present and represented based on surface owned / law of 10.7.65: art 24).



Works

- Article R138-1 of the Code of construction and housing : In the event that the syndicate of co-owners decides to carry out energy saving works, the co-ownerships trustee (syndic) proceeds to the competition of companies for the realization of this work. He places on the agenda of the general assembly following this call for competition, the vote, on the basis of the quotes collected, either of an plan of energy saving works or of an energy performance contract. .



Works

- In the event that a plan of energy saving works is adopted by the general assembly of the co-owners, the planned works must be the subject of a separate vote under the conditions laid down in f) of Article 25 of the law of July 10th, 1965 modified by the law ALUR, by application of the article R. 138-1 of the Code of construction and housing.
- Majority : absolute majority of all members, not just those choosing to vote.



Fund of works

- Regarding the financial aspects of these potential renovations, it should be noted that Article 14-2 of the 1965 Act was also amended by the ALUR Act, with a deferred application on 1 January 2017. This article provides, between other things, that the syndicate of co-owners constitutes a "works fund supplied by a compulsory annual contribution paid by the co-owners in the same way as those decided by the general assembly for the payment of provisions of the budget estimate".



Fund of works

- According to Article 14-2, "if the global technical diagnosis of the Article L. 731-1 of the Construction and Housing Code has been made and that there is no need for work in the the next ten years, the syndicate is exempt from the obligation to build a work fund during the period of validity of the diagnosis ".
- Conversely, "when the amount of the work fund reaches an amount greater than the estimated budget referred to in article 14-1, the trustee (syndic) shall include in the agenda of the general assembly the question of drawing up the multi-year plan of works mentioned in Article L. 731-2 of the Construction and Housing Code ".



Aid from the FART

- Decree n ° 2014-1740 of 29 December 2014 on the regulation of aid from the fund for assistance to the energy saving renovation of private dwellings (FART)
- The text comes into force on January 1, 2015.
- The Private Housing Thermal Renovation Fund (FART), managed by the National Housing Agency (ANAH) on behalf of the State, assists owner-occupiers, landlords and condominium owners eligible for ANAH aids to undertake energy saving renovation work.



Thank you for your attention

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