

Workshop on legal considerations for energy efficiency upgrades of multi-owner apartment buildings

Management, government & decision making:
status of property law, challenges & ways forward -
Portugal

**Sandra
Passinhas**

Type of apartment ownership

- Individual ownership of a unit [*proprietário exclusivo da fracção autónoma*]
- Collective or co-ownership of the land and structural parts of the building *compropietário das partes comuns* (Portuguese CC art 1420(1)).

The unit vs. common parts

- **The unit**
- **Common parts: the land and other elements, such as the outside shell of the walls and other structural walls; the roof; entrance halls, stairways, corridors; and common installations for services such as electricity, gas, water, and heating (CC art 1421(1)(a) - (d)). The following may also be designated for common use: the recreation hall and gardens; lifts; a residence for the caretaker or manager of the scheme; and parking areas (CC art 1421(2)(a) - (d)).**

Management:

- Portuguese law assigns the management of the apartment ownership scheme to the community of owners acting through the general meeting of owners (*assembleia de condóminos*), and an executive organ, the manager (*administrador*) (CC art 1430(1)).

General Meeting

- **The general meeting is the highest administrative organ of an apartment ownership scheme. As such, it is entrusted with the power to adopt resolutions within the parameters set out in law and in the constitutive title. Apartment owners automatically become members of the management structure as soon as the apartment in question is conveyed to them.**

Managing Agent

- The managing agent (*administrador*) controls the day to day running of the scheme

Decision making

- The general meeting exercises its powers by means of formal resolutions passed at a duly constituted general meeting.
- Votes are allocated in accordance with the participation quota of the apartment in question (CC art 1430(2)).
- Owners, representing at least half of the quotas in the common property, must be present or represented before valid resolutions can be taken at a general meeting (CC art 1432(3)).
- If the required quorum is not obtained at the first meeting, CC art 1432(4) provides that a second meeting can be convened, and must take place within one week after the first.
- The second meeting can validly adopt majority resolutions, irrespective of the number of owners present, if the majority of voters represents at least a quarter of the shares in the common property (CC art 1432(4)).
- If only specific owners are charged with certain expenses, only those owners are allowed to vote on resolutions concerning these expenses (Article 1424(3) CC).

Decision making

- The following measures can be approved by a resolution representing two thirds of the total vote:
 - an authorization to individual owners to alter the architectural style or the esthetical appearance (*linha arquitectónica ou o arranjo estético*) of the building (CC art 1422(3));
 - and improvements to the common parts of the building (art 1425 CC, majority in number representing two thirds in value of the quotas).

Article 5 of Law 153/2014, of October 20th:

- Unanimity is replaced by 2/3 majority (*installation of energy-improvements by a single co-owner*);
- 2/3 majority is replaced by simple majority of 50% (*installation of energy-improvements in common parties*).

Maintenance vs. major renovation works

- Regular maintenance is of the utmost importance in order to prevent the deterioration of the buildings and facilities, which would jeopardize the owners' financial investment in their units. It falls within the normal competence of the general meeting, and it can decide on this type of work by a simple majority.

Building code obligations to meet when renovations are undertaken.

- **Decree Law Decreto n.º 118/2013, August 20th**
(transposing Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings)
- <http://www.adene.pt/sce/legislacao-o>

Specific requirements on renewable energy technologies

- **Solutions for the use of solar thermal energy;**
- **In residential buildings there is a minimum renewable energy contribution required for Domestic Hot Water (DHW), based on a minimum solar thermal panel area for each building occupant in.**

Energy labelling

- **Energy performance certificates in Portugal are issued at individual flat, except in non residential buildings in which heating and cooling are assured by a centralized system, where EPC is issued at building level.**

Specific EE policies & measures

- IFRRU 2020 (Urban Rehabilitation as an instrument for revitalization of cities) is a financial instrument aimed to support investments in urban renewal, that covers the entire Portuguese territory.
- <http://www.portaldahabitacao.pt/pt/portal/reabilitacao/ifrru/index.html>

Incentives

- NOTICE 20 - EFFICIENT BUILDINGS 2016 issued in the scope of Energy Efficiency Fund (FEE).
- <http://www.pnaee.pt/avisos-fee/aviso-20>
- NOTICE 21 - PUBLIC ADMINISTRATION EFFICIENT 2016 issued in the scope of the Energy Efficiency Fund (FEE).
- <http://www.pnaee.pt/avisos-fee/aviso-21>

Do current management arrangements impede EE and RES investments in apartment buildings?

- **The Energy Performance Certificate;**
- **Decentralized energy production;**
- **The electric vehicles.**



Thank you very much!

sandrap@fd.uc.pt