

## CONDOMINIUM DEBTS



The law applicable to the Condominium and its operational legislation is dispersed and reduced, which, as a rule, causes difficulty in solving daily and unexpected problems which arise in an indivisible common property, especially when the condominium has no Building Regulation. Many solutions ultimately emerge from solving other cases submitted to court for judicial review of the decision. However, even resorting to jurisprudence (court decisions), a similar situation may have different interpretations and thus can stand before two or more solutions to the same problem.

### 1. Debtors

It is discussed who should be considered debtors and therefore responsible for the condominium debts. There are fundamentally 2 guidelines. Both claim that the obligations contained in the provisions of art. 1424 of the CC are real obligations. However, there are those who believe that some of these obligations are not transmissible, and should be charged to the previous owner who was linked to it. Others believe that the obligations contained in that legal normative are pure *propter rem*, accounting for them the current owner.

Immediately, that first stand leads to a difficulty: which obligations from the art. 1424º of the CC, despite being *propter rem*, are not transmissible, and which are? Among other reasons, the buyer, new owner, before buying, should gather some important information about the fraction he intends to buy, that will allow him to make a decision of buying beyond the information that the seller is obliged to give, such as the content of the

#### **Verónica Pisco - Responsabilidade Limitada**

Av. Cidade de Loulé (antiga Estrada de Vale de Lobo), Caixa Postal 530-A, Ferrarias, 8135-018 Almancil.

Rua José Pinheiro e Rosa, Urb. Horta da Fábrica, Lt 12, R/C Dt, Fracção "A", 8800-676 Tavira.

Tlf./Fax: 0351 289 358 382 TLM.: 0351 968 919 049 [veronica.pisco-offi@sapo.pt](mailto:veronica.pisco-offi@sapo.pt) [www.veronicapisco-lawoffice.com](http://www.veronicapisco-lawoffice.com)

**RESPONDER PARA:** Av. Cidade de Loulé (antiga Estrada de Vale de Lobo), Caixa Postal 530-A, Ferrarias, 8135-018 Almancil.

current Condominium Regulation, the expenses approved for works that are not yet executed, overdue quotas: with the Town Hall, with the ventures, accessibility, expropriations foreseen to the area that will be his residence area. This is a real duty, as the seller will have to provide essential information about the business.

In conclusion, the Law establishes only one regime for the Condominium obligations that are typically *propter rem* obligations. Its compliance may be required of the current owner. However it also gives the necessary mechanisms to the one that is called to comply another's obligation, demands the refund to the real responsible, through the right to return; and also requires the compensation for loss and any damage suffered by the situation.

## **2. Board Minute as Enforceable title**

The condominium board minute can constitute enforceable title, with the purposes of bringing enforcement, as long as this one, beyond the necessary formalities to its validity, fulfil certain requirements, that allowed to identify the debtor, his debt, and its liquidity. Therefore, if the Board Minute is in conditions to constitute enforceable title, it will be possible and extremely advisable, enforce the debtor, without appealing to any declaratory court action, including the small claims court.

## **3. Debt**

To the condominium debt, resultant of the share in the contribution costs in the common parts of the building, approved in the budget, it will be increased the interest at 4% rate, as well as any penalty or penal clause (commonly called "fine") under the Condominium Regulation approved at the condominium meeting, regularly gathered.

The values obtained, as discriminated, will be increased by the legal expenses including the legal costs, lawyer and execution agent fees, as long as it is also approved in the condominium assembly that has deliberated the debt recovery.

## **4. Enforcement**

The enforcement is an installment coercive recovery (involuntary) whether in cash or in kind. The enforcement starts with the presentation of the executive application (initial requirement) at the Court. The creditor must submit the application and require that the debtor is notified to pay his debt in 20 days, or name his goods to pledge. The creditor can oppose. By doing it, it will begin a declarative process, attached to the main executive

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process, where it will discuss the argument validity presented on the opposition made by the debtor.

## **5. Pledge and Debt Payment**

When the execution has the conditions to proceed, happens the seizure of assets of the debtor, since that the personal patrimony is a real guarantee of his obligations, by the pledge execution. The pledge gives the creditor a payment preference through which the sales benefit of the pledged kinds over any other creditor who doesn't have previous real guarantee over those assets.

That pledge can be made over a building, movable goods (vehicle, boats, airplanes, furniture, etc.), bank accounts, credit claims, bank notes.

Since September 1st 2013, the pledge over bank accounts of the owners became an effective mean of debt recovering from the owners, because it's no longer necessary a specific court order to authorize the debtor's bank account pledge. Therefore, it is possible to request the blocking of bank accounts, through Bank of Portugal, followed by the pledge of the determined bank account balances, till the debts limit, including the court expenses. Case there is a bank account in the debtor's name, the process is much simpler to the creditors.

## **6. Alternative means to the court resolution**

There are, however, alternatives and modalities to the conflict resolution that may avoid an execution, which may allow solving the question in a cheaper way. But it requires that the owners, as debtors, show good sense.

A registered letter with reception notice, called as amicable debt collection procedure shall be sent by the lawyer, communicating the debts source and amount. This letter will constitute a previous advice from the not complying owner, with the purpose of extend the deadline to fulfil the payment or suggest a payment plan to the condominium administration, which should be made written agreement, with enforceability and eventually, as guarantee. This letter will also constitute a debts proof of existence in case it is necessary to resort to legal court.

***Verónica Pisco***

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*(Lawyer)*

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