



Condominium jobs, such as in free construction?

When it comes to free construction in condominiums.

Avv. Anna Nicola - Court of Turin 06/16/2020

Free construction

By **free building** we mean building interventions that **do not require any communication / qualification or authorization, to say the will**, by the municipal authority. Neither are the CILAs (sworn commencement notice) or the SCIA (certified commencement of activity) not taken into consideration.

As you know, the matrix is the D.P.R. n. 380 of 2001, whose art. 6 precisely regulates free activity.

These are mainly:

- Ordinary maintenance interventions
- Heat pumps with a nominal useful heat output of less than 12 kW
- Elimination of architectural barriers
- Research activity in the subsoil
- Earth movements
- Seasonal mobile greenhouses
- Paving of appurtenant areas
- Photovoltaic panels serving buildings
- Play areas and furnishing elements of seasonal furniture areas

Of course, **compliance with the other sector regulations is required**, which may come into question in individual concrete cases. So reads the art. 6: "Without prejudice to the provisions of the municipal urban planning instruments, and in any case in compliance with the other sector regulations affecting the **building activity** regulation and, in particular, **with the anti-seismic, safety, fire, hygiene and sanitary regulations, and those relating to energy efficiency, protection from hydrogeological risk**, as well as the provisions contained in the code of cultural and landscape heritage, referred to in Legislative Decree no. 42 of 22 January 2004 "the above interventions are carried out without any qualifying title

With the Ministerial Decree 2 March 2018 the **glossary** of free construction works was also approved with a sort of exemplification of what they may be.

For them, therefore, no communication of start of activity or other is necessary, even if the so-called **CEL** (free building communication), which can be qualified as simple communication for acknowledgment.

Depending on the content of the intervention, if it qualifies as ordinary or extraordinary maintenance, the **shareholders' resolution** to want to proceed with it will have the respective majorities - more or less stringent - prescribed by art. 1136 c.c. in general and by the individual rules specifically, where sanctioned.

Free building in condominium

In the condominium there is a specific rule introduced by the reform that sees certain interventions favorably.

This is art. 1120 - from the second paragraph onwards - c.c. for new innovations, which for their content I consider correct to define "**social innovations**".

"The condominiums, with the majority indicated by the second paragraph of article 1136, can arrange the innovations which, in compliance with the sector regulations, concern:

- 1) works and interventions aimed at improving the safety and health of buildings and plants;
- 2) the works and interventions envisaged to eliminate **architectural barriers**, to **reduce the energy consumption of buildings** and to create car parks for the service of real estate units or buildings, as well as for **the production of energy through the use of cogeneration, wind, solar** or in any case renewable sources by the condominium or by third parties who, for consideration, obtain a real or personal right to enjoy the paving or other suitable common surface;
- 3) the installation of centralized systems for radio and television reception and for access to any other type of information flow, including via satellite or cable, and the related connections up to the branch for the individual users, with the exception of systems that do not involve modifications capable of altering the destination of the common thing and preventing other condominiums from using it in accordance with their law. "

The regulation then dictates the procedures starting from the **convening** of the meeting which must be put in place by the administrator even if the request comes from only one condominium. The meeting call must be **within thirty days** of the request.

The condominium request must contain an indication of **the specific content and the methods of execution** of the proposed interventions, otherwise the administrator must promptly invite the proposing condominium to provide the necessary additions.

Architectural barriers and photovoltaic systems are provided both here and in the text of Presidential Decree 380/2001, art. 6. So their nature of free construction is undoubted.

Free building of the single condominium

Changes to the housing unit

Still in the condominium area, it is necessary to put in mind what the individual condominium can do. The reference is to art. 1122 c.c. on the basis of which the condominium can make **changes to its real estate unit and to the assets of which it has exclusive use** without the works that damage the common parts, or that cause prejudice to the stability, security or architectural decoration of the building.

In any case, prior information is given to the administrator who reports to the meeting.

Any intervention wishing to carry out the condominium on its property, must always comply with these parameters, as it cannot in any case harm the building in these respects, as it cannot harm the common parts.

In any case, he must always **give prior notice to the administrator** who reports to the meeting. This communication is always necessary before proceeding with the work.

Radio and television reception systems and production of energy from renewable sources of the individual

The condominium pursuant to art. 1122 bis of the Civil Code it can also build **radio and television reception systems and production of energy from renewable sources**.

It must take place in such a way as to cause the least possible damage to the common parts of the building and to the real estate units to which they do not serve for the entire location of the

system up to the individual branches of the users.

Furthermore, the architectural decoration of the building must be preserved in all cases, except for what is provided for public networks.

It is necessary to compare, even only in an abstract way, the possible places to perform the intervention: it can be realized where there is less nuisance for the building. Already the only prejudice is an obstacle to the activity of the individual, since there must be no extremes of concrete damage while the architectural decoration rises to an absolute limit: the decoration of the building must always be guaranteed.

The installation of plants for the production of energy from renewable sources is allowed even by a single condominium on a common surface, provided it is suitable, be it the flat roof or another common good.

For both types of plant (radio-television and production of energy from renewable sources), where appropriate changes are made to the common parts, the interested party notifies the administrator, indicating the specific content as well as the procedures for carrying out the interventions .

Communication is necessary in these terms to allow the condominium to understand the intervention that the individual wants to carry out.

It is believed that the administrator, having received the communication from the condominium, has the burden of bringing together an ad hoc assembly, although not expressly specified by art. 1122 bis of the Civil Code **The assembly authorizes the intervention** with the majorities prescribed by the fifth paragraph of art. 1136 c.c. that is, by a majority of those attending the meeting, who represent at least 2/3 of the value of the building.

The assembly may decide to impose **specific precautions** on the individual to safeguard the stability, security or architectural decoration of the building or request the release of a **suitable guarantee** for damages that may result to the common parts from the execution of the intervention.

It can also resolve, at the request of the interested parties, to **restart the use** of the flat roof and other common surfaces for the purpose of installing energy production plants from renewable sources.

The resolution must be taken by a majority of those present representing 2/3 of the participants in the condominium.

This is the faculty granted to other condominiums to have (their own) their own energy system.

The decision of the condominium must safeguard the clauses of the regulation, if any, which have as their object the "different forms of use" of the common areas involved in the interventions in question.

The notice of the condominium is in order to allow the administrator and the assembly to highlight to the interested party a possible substitute intervention compared to that foreseen and presented by the interested party, with a less invasive content for the condominium parties involved in the intervention. So it can also be for the indication of a different place, where to place the implant.

The decision of the condominium must safeguard the clauses of the regulation, if any, which have as their object the "different forms of use" of the common surfaces involved in the interventions under consideration, whether they are the flat roof or other suitable place.

This formulation can be interpreted in the sense that the space of the flat roof (or other common good) must allow the installation of as many systems as there are individual condominiums, in light of the principle of equal use of the asset pursuant to art. 1102 of the Italian Civil Code, or in any case must respect the specific destination of the surface which has been impressed on it by the condominium regulations.

In this regard, it is recalled that the **clause of the regulation in terms of the enjoyment of a**

common good does not require unanimity of consents, since it can also be assumed with the majority system.

In this respect, there is no distinction between the shareholders' meeting and the contractual regulations, unlike the case in which the right of ownership or other real right is attributed to a single condominium of a certain property that would otherwise fall within the condominium community.

In the latter case, the relative discipline can only be contained in the contractual regulation (see Anna Nicola, Guide to the condominium, volume II, Utet publishing house, 2011)

If the meeting, convened for the issues in question, does not consider it necessary to request the precautions envisaged by the standard in question, as it does not have to prescribe anything in this regard, the minutes that the meeting has been convened due to the communication are deemed appropriate. received by the administrator with whom the individual explained - attaching any **technical expertise - the methods of installation of the system**, be it broadcasting or renewable sources.

The report must also take care of the part concerning the condominium resolution, indicating that the assembly has nothing to highlight in this regard, "authorizing" the construction of the single system as per communication and documentation produced by the condominium.

In terms of the condominium system, the Government, in order to encourage the spread of photovoltaic systems for the production of clean energy, and with the aim of obtaining the containment of energy consumption in condominiums, in paragraph 2 of article 26 of Law 10 of January 9, 1991 and subsequently article 123 of Presidential Decree 380 of June 6, 2001, provided that it is sufficient to deliberate with the majority of thousandths of a quota to obtain the installation of a photovoltaic system in the condominium.

The incentives for the use of photovoltaics are susceptible of separate use while condominiums that do not want to use the energy produced by the photovoltaic system can by law request exemption from spending. In this case, condominiums that request exemption will not benefit from the photovoltaic system and the incentives of the Energy Bill.

Source: <https://www.condominioweb.com/quando-si-puo-parlare-di-edilizia-libera-in-condominio.17083>

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