



Are gutters and gargoyles common parts of the condominium?

Do gutters and drainage channels that convey rainwater from the top of a condominium building constitute common parts?

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The condominium is that particular building in which parts of common property coexist with parts of private property. The main feature of the condominium is that the property units of exclusive ownership cannot do without the common areas: think of a condominium building without stairs, lift or entrance hall.

For this reason it is said that the condominium is a forced communion: it is not possible to imagine it without the common parts.

With this contribution we will focus on some particular properties of the condominium, thus answering the following question: are **eaves and gargoyles common parts** ?

Whether or not belonging to this category is of enormous importance for the purposes of the correct division of maintenance and conservation costs: if, in fact, eaves and gargoyles belonged to the exclusive property of one of the condominiums (for example, to the owner of the pavement), then the costs could not be divided according to the usual criterion referred to thousandths.

A recent sentence of the Court of Reggio Calabria (n.1514 of 30 November 2021) took stock of the situation. So let's see if **eaves and gargoyles are condominium parts** .

Common parts of the condominium: what are they?

In order not to give rise to misunderstandings, **art. 1117 cod. civ.** expressly establishes which are the common parts in the condominium. To be precise, unless the **contractual regulation** establishes otherwise, they constitute common parts of the entire condominium:

- all the **parts of the building necessary for common use** , such as the ground on which the building stands, the foundations, the main walls, the pillars and supporting beams, the roofs and the flat roofs, the stairs, the entrance doors, the vestibules, passageways, arcades, courtyards and facades;
- the **parking areas** as well as the rooms for shared services, such as the concierge (including the porter's lodge), the laundry room, the drying racks and attics intended, due to their structural and functional characteristics, for common use;
- the **works** , installations, artifacts of any kind intended for common use, such as lifts, wells, tanks, the water and sewerage systems, centralized systems of distribution and transmission for the gas, for electricity , for **heating** and air conditioning, for radio and television reception and for access to any other kind of information flow, including from satellite or cable.

List of common parts in the condominium: can it be changed?

The **list of condominium common parts** prepared by law is neither mandatory nor mandatory. This means that the owners, in agreement with each other, could foresee additional areas and artifacts to be attributed to the generalized ownership of all or, on the contrary, assign the exclusive ownership of some parts normally considered common.

The exception to the common parts provided for by law can only be made by **contractual regulation** , i.e. regulation approved unanimously by all owners or drawn up by the original builder of the building and individually approved by the purchasers of the apartments at the time of the deed. .

The fundamental characteristic is that this regulation, although accepted not during an assembly, but in temporally distinct moments between them, reaches unanimity. Therefore,

precisely because it is approved unanimously, it can contain more meaningful and stronger constraints than the one approved by a majority (that is, the one of assembly origin).

In extreme practice, only the regulation approved by all owners can derogate from the law, perhaps by inserting areas or artefacts otherwise belonging to individual owners in the common parts or, as happens more often, by subtracting some areas from the list of common parts provided by the law. which are thus attributed by way of exclusive property.

It is the classic case of the flat roof which, by law, is owned by everyone but which the regulation can attribute to the exclusive ownership of a single condominium or of some of them.

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The **Court of Reggio Calabria** , with sentence no. 1514 of 30 November 2021 quoted at the beginning, recalling the consolidated orientation of the jurisprudence (*ex multis* , Cass., Sentence no. 27154 of 22.12.2014; Court of Naples, sentence no. 4841 of 9.7.2020), established that "*the eaves, gargoyles and drainage channels, which convey rainwater from the top of a condominium building, constitute common parts, given that, performing a function necessary for common use, they fall within the assets referred to in Article 1117 of the Civil Code*".

According to the jurisprudence, therefore, there are no doubts: the downspouts, the eaves, the wells and the gargoyles, as intended to dispose of the rainwater from the condominium roof, are accessories of the same and, since they are used for **common** use and **enjoyment** , fall within the assets referred to in Article 1117 of the Italian Civil Code. civ.

Now let's see how the **maintenance and repair costs** are divided , especially in the hypothesis in which these common parts access a private property, such as the flat roof which is owned by only one condominium.

Gutters and gargoyles: how are the costs divided?

According to the sentence n. 1514 of 30 November 2021 of the Court of Reggio Calabria, the costs relating to the gutters and gargoyles are always **borne by the entire condominium** , even when the pavement is of exclusive property or granted for exclusive use.

Thus verbatim the sentence in comment, according to which it does not reveal « *the circumstance that the roof of the building, from which these waters come, consists of a pitched roof, flagstone or terrace of exclusive property; therefore, the regime on expenses established by article 1126 of the civil code does not apply, which governs only the repairs or reconstructions of the pavement properly understood* ».

Therefore, "*even the expenses relating to all the work relating to the reconstruction of the downspouts and the conveyance and discharge of rainwater must be divided in proportion to the value of the individual exclusive properties, pursuant to Article 1123 of the Italian Civil Code*".

The downspouts (like eaves and gargoyles) are therefore considered common parts of the building even if the **flat roof is owned by a single condominium** , as these assets perform a necessary function for common use, because they serve all use and enjoyment of all condominiums.

Therefore, the related replacement or repair costs must be borne by all the condominiums of the underlying properties.

Gutters and gargoyles: who pays the damages?

From what has just been said it is also clear that the entire condominium is liable for **damage caused by gutters** , gargoyles and drainage channels, both for damage caused to third parties and for those caused to one of the condominiums themselves.

Therefore, if it has been ascertained with an expert opinion, that the damage caused to the real estate units comes from parts or common services of the building, as in the case in which the infiltrations come from the downspout, the entire condominium will have to answer for the damages.

Source: <https://www.condominioweb.com/gronde-e-doccioni-sono-parti-comuni-del-condominio.18741>

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