

Adverse possession in horizontal property

Uniform ruling by the Superior Court of Justice

On 19 November 2025, the Supreme Court of Justice handed down ruling no. 18/2025 (case no. 916/19.OT8GDM.P1.S1), which standardises case law on the acquisition by adverse possession of spaces in condominium buildings.

Although uniformity rulings are not binding on future decisions, having effect only between the parties to the proceedings in which they are handed down- having no force of law or extra-procedural effect- they are nevertheless relevant and important for future case law as a guiding and interpretative principle, seeking to avoid decisions involving the same law and the same question of law obtaining different responses from the courts.

On this issue of law, it was and is possible to find, in the case law of the higher courts, decisions that, on the one hand, deny the possibility of acquiring part of a building under horizontal property by adverse possession, and decisions that, on the other hand, accept the possibility that adverse possession may operate on part of an autonomous fraction or a common thing.

This judgment took the side of the latter understanding, provided that a set of conditions are met.

It follows from the Civil Code that not every part of a building is eligible for acquisition by adverse possession. Only those spaces which, due to their characteristics, could have been configured from the outset as autonomous units, forming an independent and isolated unit with its own exit to a common area or to the outside, are eligible.

Some case law opposed the possibility of adverse possession operating in the context of horizontal property. In this judgment, the STJ counters this argument and defends the opposite understanding, in support of the contrary case law.

In summary, the STJ based its understanding on the legal autonomy that horizontal property allows to be conferred on independent and isolated spaces with their own exit, the eminently private nature of the interests at stake in the relationship between co-owners, as well as the possibility of introducing changes to the title constituting the condominium without a unanimous decision by the co-owners, in cases where the changes result from the functioning and application of the law, as is the case with adverse possession, and do not have a negotiated and consensual basis.

This judgment concerned a storage space, which was considered *to be a separate, independent and isolated unit, with its own direct access to the common area of the building*. In other words, the space in question, due to its characteristics, was eligible to be acquired by adverse possession.

A space located in a building under horizontal property may be acquired by adverse possession, provided that the requirements for this are met, if it constitutes an independent, distinct and isolated unit with its own exit to a common part of the building or to the public

Such space, in the Plaintiff's view, was part of her autonomous fraction, due to the content of the land registry. However, it had been used by the Defendants for over 20 years, who had the key, which is why they claimed to have acquired it by adverse possession. Based on these premises, the STJ proceeded to analyse the requirements for adverse possession: possession with certain characteristics, of something that can be subject to adverse possession, maintained for the legal time limits.

In this case, it was considered proven that the Defendants had possessed the storage space for more than 20 years, using it exclusively and acting as if they were its owners, having acquired its possession without violence or opposition (peaceful) and exercising it in full view of everyone (public). It was also considered that this space was *a distinct, independent and isolated unit, with its own unique and direct access to the common area of the building*, i.e. with the characteristics and autonomy necessary, in accordance with the Civil Code, to make it eligible for acquisition by adverse possession.

In conclusion, the STJ established the following uniformity of jurisprudence: *a co-owner may acquire, by adverse possession, a storage space in a building, already constituted as horizontal property, provided that the possession meets the requirements for adverse possession and the storage space has the physical and structural characteristics provided for in Articles 1414 and 1415 of the Civil Code*.

This decision, although not binding outside the proceedings, will now serve as a guideline for the owner's precautions by way of contract or succession in defence of their right to spaces integrated into a building under horizontal property and, from the opposite perspective, for the exercise of the possessor who, in this context, intends to invoke adverse possession.

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