



LEGAL TREATMENT OF THE ANTISOCIAL CONDOMINIUM OWNER IN THE LIGHT OF THE CIVIL CODE



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ABSTRACT

In this article, the rights and duties of the condominium owners and the legal solutions for antisocial behavior in the condominium environment were addressed, based on Brazilian legislation, specialized doctrine and judicial decisions. The objective was to understand the limitations and responsibilities of the condominium owners, analyzing how the Brazilian legal system regulates the coexistence in building condominiums. For this, a qualitative approach was used, based on documentary and jurisprudential analysis, focusing on cases judged by the Courts of Justice of São Paulo and Minas Gerais. The results of the research indicate that the legislation provides for the exclusion of the antisocial condominium owner in extreme situations, provided that the legal requirements are respected, such as the qualified quorum for deliberations. It is concluded that, although exclusion is a possible measure, it should be applied only as a last resort, and condominium coexistence requires constant mediation between the exercise of individual rights and collective interests.

Keywords: Condominium Owners. Antisocial Behavior. Jurisprudence. Building Condominium.

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INTRODUCTION

Initially, with regard to the condominium owners, antisocial behavior in condominiums was identified as a recurrent and complex issue, directly affecting peaceful coexistence and the management of collective spaces. In addition, with the increase in life in urban condominiums, conflicts between residents have become more frequent, which, in turn, has demanded clear and enforceable regulations.

On top of that, the Civil Code of 2002, through article 1,337, established clear sanctions for behaviors that disturbed order and peaceful coexistence in condominiums, providing for measures such as warnings and fines for the antisocial condominium owner, in order to protect the community. However, the practical application of these penalties faced significant challenges, especially due to the use of open-ended clauses and generic concepts, which ultimately left room for varied and inconsistent interpretations across courts. This lack of uniformity in the interpretation of the rule has generated legal uncertainty, in addition to having increased conflicts between condominium owners, prolonging disputes and making it difficult to adopt effective solutions in the judicial sphere.

The relevance of this study lay in the need for greater clarity and uniformity in judicial decisions, especially with regard to the application of the penalties provided for in the Civil Code for antisocial behavior in condominiums. This clarity was considered essential to ensure predictability and legal certainty, essential for the efficient management of condominiums, therefore, it was crucial for condominium administrators and legal professionals dealing with litigation of this nature to understand the legal nuances involved. Likewise, the lack of specificity in the legislation, in many cases, made it difficult to apply sanctions effectively, resulting in prolonged conflicts and inconsistent judicial decisions, which ended up negatively impacting community life, increasing both social wear and tear and legal expenses of the parties involved.

This article aimed to discuss how doctrine and jurisprudence approach the antisocial condominium owner in the light of the Civil Code of 2002. To this end, objectives are outlined, which include describing the rights and duties of the condominium owners, exploring the available legal solutions and analyzing judicial decisions. These objectives were addressed based on the analysis of bibliographic sources selected for their relevance and impact in the field of condominium law, as well as on judicial decisions that illustrate the application of the rules. By exploring the social and legal implications of antisocial behavior in condominiums, this article has contributed to a better understanding of the norms and practices that can enhance coexistence in collective spaces.



As for the methodology, the type of descriptive research was adopted, with a qualitative perspective, which was based on a detailed bibliographic review and documentary analysis of doctrine, jurisprudence and scientific articles relevant to the study. Thus, the research included a survey of the main reference works in the field of Condominium Law, in addition to an in-depth analysis of judicial decisions that dealt with coexistence in condominiums. This approach allowed not only a solid theoretical understanding of the rights and duties of condominium owners, but also a practical analysis of the decisions that shaped the condominium routine, providing a complete overview of the subject.

METHODOLOGY

This article used a qualitative approach, based on bibliographic and jurisprudential research, in addition to legislative analysis. The bibliographic research was carried out from reference works in Civil Law, including authors such as Carlos Roberto Gonçalves, Flávio Tartuce, Pablo Stolze Gagliano, Rodolfo Pamplona Filho, among others, where they address the rights and duties of the condominium owners, application of fines, as well as antisocial behavior in condominiums.

In addition, the legislative analysis was based on the Brazilian Civil Code of 2002, especially on articles 1,331, 1,335, 1,336 and 1,337, which deal with property in condominiums and the penalties applicable to antisocial condominium owners. The statement of the Federal Justice Council (CJF), No. 92, which assists in the interpretation and application of the legal rules relevant to the subject, was also used.

The jurisprudential research included the study of judicial decisions handed down by the Court of Justice of São Paulo and Minas Gerais, involving cases of antisocial condominium owners. For this, valid, partially upheld and unfounded decisions were analyzed, allowing a broad view of the different interpretations of the Judiciary on the subject.

The choice of methodology was justified by the need to understand, from a theoretical and practical basis, how the rights and duties of the condominium owners are applied in practice, especially in the face of antisocial behaviors that impact condominium coexistence.



RIGHTS AND DUTIES OF CONDOMINIUM OWNERS

Initially, the rights and duties of the condominium owners, in the context of the building condominium, are related to the use of their autonomous units and common areas, always in accordance with current legislation and the internal rules of the condominium.

The Brazilian Civil Code (articles 1,331 to 1,358), in its chapter on building condominiums, establishes the legal bases for the regulation of the conduct of the condominium owners, ensuring the balance between individual rights and collective interests, thus having the right to enjoy their exclusive properties, participate in assemblies and make decisions about the use of common areas, Always respecting the limits imposed by the condominium agreement and the internal regulations.

Likewise, the duties of the condominium owners are aimed at preserving peaceful coexistence, contributing financially to the maintenance of common areas and respecting the established rules.

RIGHTS OF THE CONDOMINIUM OWNERS

The rights of the condominium owners are listed in article 1,335 of the Civil Code, with the exclusive ownership of their autonomous units being one of the main ones. The use of common areas and active participation in assemblies are also important prerogatives, which guarantee condominium owners the exercise of their condominium citizenship.

However, these rights are not absolute, and must be exercised in accordance with internal rules and the principle of good coexistence. Where coexistence in a condominium requires a balance between individual rights and collective interest, as well as the freedom of use of autonomous units must always respect the general well-being, avoiding behaviors that may harm other residents.

Therefore, the exercise of the rights of the condominium owners is directly related to the fulfillment of their duties, ensuring harmony among all.

Exclusive Ownership of the Unit

The right to exclusive ownership over the autonomous unit is ensured by article 1,331, paragraph 1 of the Civil Code, which gives the condominium owner the freedom to use, rent or sell his unit according to his needs. Gonçalves (2023, n.p.), points out that "Each condominium owner can use the thing according to its destination and exercise over it all the rights compatible with the undivided".

However, this freedom is limited by condominium rules and current legislation. The social function of property is a central principle in Brazilian law, and it also applies to the condominium context. The use of the unit must meet the interests of the community, avoiding damage to coexistence. Gagliano and Pamplona Filho (2023, n.p.), point out that "the right to property consists of the real right to use, enjoy or enjoy, dispose of and claim the thing, within the limits of its social function", and this includes the obligation not to disturb the peace and harmony in the condominium.

It can be understood that in vertical condominiums, the proximity between units can cause conflicts, especially when property rights are exercised inappropriately and for no reason, the commercial use of residential units, the holding of parties with loud music or the renovation without prior authorization are examples of attitudes that, although supported by the right to property, they must be limited for the sake of collective coexistence.

Collective Ownership of Common Areas

The ownership of the common areas of a condominium is shared by all condominium owners, as established in article 1,331, caput, of the Civil Code. These areas, which include corridors, stairs, gardens and leisure areas, are indivisible and intended for collective use.

Proper management of common areas is essential to ensure harmonious coexistence among residents, Tartuce (2023) states that efficient management of common areas is essential to ensure peaceful coexistence in the condominium.

The use of common areas must respect their destination and cannot be monopolized by any condominium owner. Changes in the use of the areas, such as the installation of equipment for exclusive use, depend on approval at the meeting, according to article 1,342 of the Civil Code.

According to Gonçalves (2023), the assembly represents the appropriate space for deliberation on the common needs and interests of the condominium owners. The responsible use of common areas is a duty of all condominium owners. Diniz (2011) mentions that the conscious and respectful use of common areas is an essential duty to ensure the order and well-being of all condominium owners. Thus, the individual use of these areas must always consider the interests of the collectivity, avoiding conflicts and losses.

In cases of non-compliance with the rules on common areas, the manager, according to article 1,348, V, of the Civil Code, must ensure the conservation and proper use of these spaces. The condominium owners have the right to demand measures when the common areas are not well managed or maintained, and may resort to justice in extreme situations.



Right to use the common areas

The right to use common areas is an extension of the right of co-ownership over them. Each condominium owner has the right to use these areas according to their destination, as stipulated by the condominium convention and the internal regulations. Gonçalves (2023, n.p.) indicates that "Every co-owner must use the common thing in a way that does not deteriorate it without depriving the other consorts of this use". In addition to the right of use, the condominium owners have the obligation to ensure the conservation and maintenance of these areas.

For Tartuce (2023), the preservation of common areas is crucial to maintain safety and quality of life in the condominium. In case of negligence, the condominium owners have the right to demand that the manager take the necessary measures.

The improper use of common areas, such as parking in rotating spaces for long periods or holding unauthorized events, can harm the coexistence between residents. To ensure good coexistence, it is necessary that everyone follows the established rules and respects the rights of the other condominium owners.

DUTIES OF THE CONDOMINIUM OWNERS

The duties of the condominium owners are essential for the maintenance of order and the proper functioning of the condominium. Article 1,336 of the Civil Code establishes the main duties, such as the payment of condominium fees, respect for internal rules and the duty not to harm coexistence in the condominium.

The fulfillment of these duties ensures the harmony and safety of residents, as well as the conservation of common areas. Condominium owners who do not respect these obligations can be penalized with warnings, fines and, in serious cases, lawsuits.

Contribution to condominium expenses

The payment of condominium fees is one of the most important duties of the condominium owners, according to article 1,336, I of the Civil Code.

Gagliano and Pamplona Filho (2023) comment that the default of the condominium owners can lead to serious problems for the management of the condominium, such as the lack of resources for the maintenance of common areas and the payment of employees.

Punctuality in payment is essential for the proper functioning of the condominium. Delinquent condominium owners can be charged in court, and in extreme cases, their units can be seized. Failure to pay fees affects all residents, who may suffer from the interruption of essential services.



In many cases, the condominium adopts preventive measures to avoid default, such as debt negotiation.

However, when the condominium owner refuses to pay, the legal sanctions provided for in the Civil Code are applied, ensuring that the community is not harmed.

Respect for internal rules

Respect for the internal rules of the condominium is essential to ensure peaceful coexistence among residents. The rules of coexistence, stipulated in the convention and in the internal regulations, include everything from the use of common areas to quiet hours.

Tartuce (2023) argues that non-compliance with condominium rules can generate conflicts and negatively affect coexistence in the condominium. Internal rules aim to maintain order and avoid behaviors that may harm the collective. Failure to comply with these rules can result in warnings and fines, depending on the severity of the infraction. The condominium owners have a duty to follow the rules to ensure the well-being of all.

The importance of cooperation and mutual respect to ensure a harmonious coexistence in the condominium can be emphasized (DINIZ, 2011).

Duty of Peaceful Coexistence

The duty of peaceful coexistence is one of the pillars of life in a condominium, implicitly provided for in article 1,336, IV of the Civil Code. The condominium owners must avoid behaviors that harm the peace and tranquility of the other residents. Failure to comply with this duty can lead to the application of sanctions, such as warnings and fines (GONÇALVES, 2023).

Peaceful coexistence involves respect for the rights of other condominium owners, including the right to silence and safety. Acts that disturb peace, such as parties at inappropriate times or unauthorized renovations, can be penalized.

In the most serious cases, where there is repeated conduct of disrespect for coexistence, the Civil Code provides for the application of severe fines. It is worth noting that the sanctions are intended to preserve harmony in the condominium and protect other residents from antisocial behavior. "The imposition of a fine [...] has the nature of a sanction, with an essentially punitive and pedagogical character" (GAGLIANO; PAMPLONA FILHO, 2023, n.p.).



SOCIAL FUNCTION OF PROPERTY AND CONDOMINIUM COEXISTENCE

The social function of property is a constitutional principle that imposes limits on the use of private property, especially in condominiums. Article 5, XXIII of the Federal Constitution establishes that property must meet the collective well-being.

According to Tartuce (2023), this principle guides condominium relations, ensuring that the use of property respects collective interests.

This principle is particularly important in condominiums, where the proximity between the units requires that the condominium owners respect the rights of the other residents. Considering, also, that the use of property in condominiums must be balanced with the duties of coexistence, aiming to ensure harmony between the individual and the collective (GAGLIANO; PAMPLONA FILHO, 2023).

LEGAL SOLUTIONS TO ANTISOCIAL BEHAVIOR

The antisocial behavior of condominium owners proves to be one of the biggest challenges faced by condominium managers. Characterized by attitudes that disturb peace, order, and peaceful coexistence, this type of behavior can compromise the condominium environment, making it necessary to adopt legal measures to ensure compliance with internal rules and the preservation of collective well-being.

The legal solutions applicable to antisocial behavior are mainly provided for in the Civil Code and in the condominium agreement, being complemented by jurisprudence and specialized doctrine.

APPLICATION OF FINES AND WARNINGS

One of the first legal measures to combat antisocial behavior is the application of warnings and fines, as provided for in article 1,337 of the Civil Code.

This provision establishes that, in cases of repeated non-compliance with condominium rules, the antisocial condominium owner may be warned by the administration and, if the behavior persists, fined up to five times the amount of the condominium contributions.

For Tartuce (2023), sanctions are essential to maintain order and discourage behavior that is harmful to coexistence, and financial penalties are an effective way to curb abusive practices. Nevertheless, it is important that warnings are applied in a staggered manner, prioritizing educational measures before the imposition of more severe sanctions. Thus, observing that the progressivity of penalties, with the initial application of warnings, aims to promote the behavioral adequacy of the condominium owners.

In addition, this pedagogical character of the warnings aims to make the offending condominium owner aware of the impacts of his attitudes and encourage him to modify his behavior voluntarily, thus avoiding the need for pecuniary penalties.

When the warnings are not enough to modify the offender's behavior, the application of fines becomes the appropriate measure.

Gagliano and Pamplona Filho (2023), emphasize that fines should be applied in a moderate manner and proportional to the severity of the infractions committed. This means that pecuniary penalties must be proportional to the negative impact that the condominium owner's behavior generates in the condominium environment, avoiding abuses in the imposition of sanctions and respecting the principles of reasonableness and proportionality. Rizzardo (2021) defines antisocial behavior as that which disrespects the natural limitations of collective buildings and violates the principles of social coexistence, requiring a legal response to mitigate the damage that this conduct causes to the collectivity.

It is worth mentioning that Statement No. 92 of the I Conference on Civil Law clarifies that, for the application of the sanctions provided for in article 1,337 of the Civil Code, it is essential that the antisocial condominium owner be guaranteed the right of defense. This provision reinforces the principle of adversarial and full defense, provided for in the Federal Constitution, ensuring that the condominium owner has the opportunity to manifest himself before the imposition of fines or other sanctions provided for conducts that disturb coexistence in the condominium. In view of this, the statement ensures that penalties can only be applied after an adequate process, avoiding arbitrary measures and ensuring a fair trial.

LAWSUIT AND REDRESS OF DAMAGES

In more serious cases, when the antisocial behavior becomes recurrent or causes material or moral damage to the other condominium owners, it is possible to appeal to the Judiciary. Article 927 of the Civil Code provides that "anyone who, by an unlawful act, causes damage to another, is obliged to repair it". Consequently, the condominium owner who, for example, causes damage to common areas or harms the right to neighborliness of other residents can be held legally liable.

In these cases, the compensation for damages can include both property damage and moral damage. According to Tartuce (2023), the lawsuit can be used to repair damages or to compel the antisocial condominium owner to stop his conduct.

In this context, actions of obligation to do or not to do are common, in which the injured manager or condominium owners seek a court order that prevents the continuation

of the harmful acts. Such a measure is especially relevant in cases of repeated violation of internal rules, where warnings and fines prove ineffective.

On the other hand, case law has recognized the possibility of applying compensation in cases of moral damages, such as in situations of hostility or threats between condominium owners. Gagliano and Pamplona Filho (2023) point out that moral reparation is a relevant measure to inhibit conducts that, even without causing property damage, harm the well-being of residents. As a result, the judicial appeal becomes an effective solution when antisocial behavior reaches intolerable levels, generating irreparable damage to coexistence in the condominium.

Another point highlighted in the doctrine is that lawsuits against antisocial condominium owners must be well-founded and have robust evidence to ensure their effectiveness. Rizzardo (2021) argues that antisocial behavior causes direct discomfort to life in the condominium, making coexistence incompatible with other condominium owners. This perspective reinforces the need for sanctions and prosecutions to be anchored in a documented history of violations and for such measures to be applied only when other, more lenient methods of conflict resolution fail.

EXCLUSION OF THE ANTISOCIAL CONDOMINIUM OWNER

The exclusion of the antisocial condominium owner is the most extreme measure provided for by law and can be applied when the repeated behavior of the condominium owner makes it impossible to live with the other residents.

Although article 1,337 of the Civil Code does not expressly provide for the exclusion of the condominium owner, it allows the imposition of severe fines. Jurisprudence, however, has admitted the possibility of exclusion in exceptional cases.

Tartuce (2023) argues that the exclusion of the condominium owner is an extreme measure, adopted only when all other attempts to resolve the conflict have failed. For this measure to be adopted, it is necessary that the behavior of the antisocial condominium owner exceeds the limits of what is acceptable, putting at risk the safety or physical and moral integrity of the other condominium owners.

The exclusion, when allowed, must be deliberated at a meeting, with the approval of three-quarters of the condominium owners, as provided for by case law.

Gonçalves (2023) observes that exclusion is a drastic measure, but it may be the only solution in cases of repeatedly antisocial behavior. Both doctrine and jurisprudence point out that the social function of property serves as a basis to justify the exclusion of the antisocial condominium owner. Gagliano and Pamplona Filho (2023) argue that the right to



property should be exercised in a way that is compatible with collective well-being and, when this does not occur, extreme measures, such as exclusion, can be applied to ensure peace and security in the condominium.

This understanding has been reinforced in recent rulings by state courts, such as the São Paulo Court of Appeals, which recognized the possibility of excluding the antisocial condominium owner in situations of extreme gravity, when coexistence becomes unbearable

LEGISLATIVE PERSPECTIVES: BILL NO. 616, OF 2021

Currently, the Brazilian legal system offers instruments to deal with antisocial behavior in condominiums, based on article 1,337 of the Civil Code, allowing, in extreme situations, the exclusion of the condominium owner after the deliberation of a meeting with a qualified quorum. However, in many cases, this procedure faces practical and formal obstacles, which hinder the effective application of the exclusion measure.

In order to improve the legal response to these situations, Bill No. 616, of 2021, still in progress in the Constitution, Justice and Citizenship Commission, proposes a modification to article 1,337. The proposal provides that, after the ineffective application of fines, a condominium assembly may deliberate on the judicial exclusion of the antisocial condominium owner, guaranteeing his right to defense. It should be added that the bill introduces the possibility for the judge to grant urgent relief, allowing the immediate removal of the condominium owner in cases of greater gravity.

If approved, the project will represent a significant advance in the fight against antisocial behavior, offering greater agility and effectiveness in the resolution of condominium conflicts. The provision of urgent relief will allow the Judiciary to act more quickly in situations where coexistence becomes unbearable, protecting the right to safety and well-being of the other condominium owners.

JURISPRUDENTIAL ANALYSIS OF DECISIONS ON ANTISOCIAL CONDOMINIUM OWNERS

The judicial decisions on the exclusion of antisocial condominium owners vary according to the severity of the conduct, the documentation presented and the measures taken by the condominium previously.

In this section, we will analyze several decisions rendered in cases involving antisocial condominium owners, highlighting the criteria used by the Judiciary to determine exclusion, as well as the legal implications of these decisions.



DECISIONS FULLY UPHELD

In cases where the judgments were considered fully valid, the Judiciary fully accepted the requests for exclusion of the antisocial condominium owner, in addition to, in some cases, applying convictions, such as moral damages, for example.

First, it is important to mention that the Court of Appeals of São Paulo (2024), in the case of case No. 1104691-10.2021.8.26.0100, in which the applicant Condominium filed a lawsuit against the respondent resident, considered favorable the decision to exclude the condominium owner, with her compulsory removal within ninety days, in addition to the application of a daily fine in case of non-compliance and compensation for moral damages in the amount of R\$ 10,000.00 due to the disturbances caused to the other condominium owners.

It was evident that in the case in question, the judge verified the condominium's attempt to carry out the problem of poor coexistence with the condominium owner, applying fines gradually, but that, unfortunately, the result was not sufficiently satisfactory, and there was a need to file the appropriate judicial measure.

Another significant example, from the same Court, is case No. 1002436-95.2023.8.26.0037, where the antisocial behavior included an attempted murder against a condominium employee. The defendant was compulsorily removed from the Condominium for representing a serious risk to the safety of the condominium owners. The judgment also determined the payment of procedural costs and attorney's fees of the plaintiff's counsel, which were arbitrated in R\$ 1,000.00 (one thousand reais).

It is clear that, although the courts, in general, prefer to guarantee some type of right to adversarial and ample defense to the condominium owner of antisocial conduct, such as the application of gradual fines and the subsequent quorum of three-quarters of the condominium owners to consider the filing of the action for exclusion of the condominium owner to be valid, in cases where it is possible to verify a more serious crime, such as attempted homicide, may be sufficient reason to consider exclusion of the resident from a condominium.

As for a 2nd degree decision, the judgment of the Court of Justice of Minas Gerais (2024), in case No. 1.0000.24.141394-7/001, involved the imposition of a fine on a condominium owner for antisocial behavior, without due prior notification and with the non-observance of the qualified quorum of three-quarters of the condominium owners, as required by article 1,337 of the Civil Code.

The rapporteur pointed out that the lack of notification to the condominium owner to present a defense violated the fundamental right to an adversarial and full defense. The



initial sentence, which had upheld the request for the imposition of the fine, was reformed, declaring it unfounded due to the non-observance of legal and procedural formalities.

These cases demonstrate the severity of judicial decisions in cases of condominium owners who violate the duties of peaceful coexistence in an extreme way.

PARTIALLY UPHELD DECISIONS

In the partially upheld judgments, the exclusion of the condominium owner was decreed, but not all requests are accepted. The Court of Appeals of São Paulo (2024), in its case No. 1004738-93.2023.8.26.0006, where the exclusion of the defendant condominium owner from the requesting Condominium was confirmed due to his antisocial behavior, with the consequent compulsory removal. However, the request for moral damages made by the defendant in counterclaim was dismissed, resulting in a decision partially favorable to the condominium.

As if that were not enough, case No. 1010041-86.2022.8.26.0309, of the same Court, in which the defendant was excluded from the condominium due to the repeated disturbances caused to other residents.

In addition to the exclusion, the defendant was ordered to pay R\$ 1,500.00 in loss of profits and R\$ 5,000.00 for moral damages. Although the main request was granted, the immediate removal of the defendant was not granted, and a deadline was stipulated for him to leave voluntarily, which characterizes the decision as partially valid.

In the judgment in the second instance, of case No. 1.0000.23.324280-9/001, the Court of Justice of Minas Gerais (2024), recognized the seriousness of the allegations, but decided that the exclusion of the condominium owner is an extreme measure and should only be applied as an ultima ratio, that is, when other less severe penalties, such as warnings and fines, have already been tried without success.

As the condominium was unable to prove that it had adopted these measures before requesting the exclusion, the court reversed the original sentence, denying the resident's request for exclusion. However, it maintained the determination that the video camera installed by the defendant should only film the private space of its unit, respecting the privacy of the other residents

UNFOUNDED DECISIONS

In cases of dismissal, the Judiciary denied the request for exclusion of the condominium owner, highlighting the importance of observing all the formalities required by law. In case No. 1001334-40.2023.8.26.0004, the sentence recognized the antisocial

behavior of the condominium owner, proven by several conducts harmful to coexistence in the condominium, such as verbal aggression, disturbance of peace and non-compliance with internal rules. However, the request for exclusion was denied due to the absence of a qualified quorum of three-quarters of the condominium owners, as required by article 1,337 of the Civil Code. The decision reinforced the need to meet the formal requirements for the exclusion measure to be legally valid (TJSP, 2024).

Not only... but also, case No. 1016910-95.2023.8.26.0320, in which the Condominium requested the exclusion of the defendant, alleging that he, in an outbreak, endangered the safety of the other condominium owners by setting fire to his unit. Although the seriousness of the conduct was recognized, the request for exclusion was denied. To this end, the judge understood that the exclusion of a condominium owner should be applied as a last measure, when all other alternatives, such as the application of fines and pecuniary penalties, are ineffective (TJSP, 2024).

In this case, the condominium did not demonstrate that it had exhausted these measures before seeking judicial exclusion, resulting in the dismissal of the request.

In addition, case No. 1.0000.20.474696-0/002, judged by the Court of Justice of Minas Gerais (2022), the request for exclusion of the condominium owner for antisocial behavior was denied. The court considered that, although the behavior of the condominium owner was uncomfortable for the other residents, it was not proven that the administrative sanctions and fines provided for in the condominium agreement were exhausted before resorting to the extreme measure of exclusion.

In addition, the sentence highlighted that exclusion is a measure of last resort and that it is necessary to demonstrate that all attempts to resolve the conflict with less serious sanctions were unsuccessful.

Thus, the court dismissed the request, reaffirming the importance of following the appropriate legal and administrative procedures before judicially requesting the exclusion of a condominium owner.

In short, the analysis of the decisions demonstrates that antisocial behavior, when reiterated and proven by robust evidence, can lead to the exclusion of the condominium owner, based on article 1,337 of the Civil Code. However, the exclusion process requires strict compliance with formal requirements, such as the application of previous sanctions (fines) and deliberation at a meeting with a qualified quorum.

In extreme cases, such as attempted homicide, the Justice maintains firmness in ensuring the safety of the other condominium owners, ordering the immediate exclusion of the offender.

In view of this, the judicial decisions analyzed show the complexity of cases involving antisocial condominium owners and the importance of balancing the right to property with peaceful coexistence and the social function of property.

CONCLUSION

The present research aims to analyze the rights and duties of the condominium owners in the context of the building condominium, with a specific focus on antisocial behavior and possible legal solutions to deal with such conducts. From the beginning, it seeks to understand how Brazilian legislation, through the Civil Code and the Federal Constitution, balances individual property rights with the social function of property, aiming at the protection of the collectivity.

This study allows a reflection on the legal mechanisms available to ensure harmonious coexistence in condominiums, addressing both the rights of the condominium owners and their obligations.

The first part of the research addresses the rights of the condominium owners, highlighting the importance of exclusive ownership over the autonomous units and co-ownership over the common areas. It is clear that, although the condominium owners have the prerogative to exercise their freedom over their units, this freedom is limited by the internal regulations of the condominium and the rights of the other condominium owners.

The social function of property, by demanding respect for collective well-being, is one of the guiding principles of this study. In this way, both the use of the individual unit and the use of common areas are regulated by norms that aim to ensure the balance between individual freedom and collective rights.

The second part deals with the duties of the condominium owners, with emphasis on the need for a financial contribution to the condominium's expenses and respect for internal rules. Default and non-compliance with the rules of coexistence are discussed as problems that directly affect condominium harmony.

The central focus of this research is addressed as an issue that challenges condominium management, requiring stricter measures, such as the application of fines and, in extreme cases, the exclusion of the condominium owner. The application of article 1,337 of the Civil Code and the CJF's statement No. 92, which reinforce the seriousness of this type of conduct, are fundamental to understand the available legal solutions.

The analysis of the jurisprudence in the third section reveals the complexity of judicial decisions in cases involving antisocial condominium owners. It is verified that the application of sanctions, such as fines and warnings, is often not enough to resolve conflicts



of coexistence, and in some cases, judicial intervention is necessary to determine the exclusion of the condominium owner. Decisions analyzed in this work demonstrate that antisocial behavior can be considered very serious, even including actions of a criminal nature, such as attempted homicide, which further expand the scope of action of the Law.

The study also demonstrates that the exclusion of antisocial condominium owners is an extreme measure, applied only when other conflict resolution mechanisms prove ineffective. Despite the protection of the right to property, the Judiciary has recognized that the social function of property and the protection of harmonious coexistence within the condominium must prevail in situations of severe conflict. Based on the decisions analyzed, it is concluded that the exclusion of condominium owners is a viable and necessary solution when the individual's behavior makes coexistence unsustainable, compromising the safety and well-being of all.

Finally, it is important to highlight that the role of the Judiciary in cases like these is extremely relevant, because, in addition to ensuring the application of laws, it seeks to balance individual and collective rights. The social function of property and neighborhood rights are fundamental principles that guide judicial decisions, and antisocial behavior is one of the greatest challenges to peaceful coexistence in condominiums.

From the results presented, it can be seen that the legal treatment given to antisocial condominium owners evolves, with judicial decisions aligning themselves with the needs of protection of collective rights without disrespecting individual rights.

It is suggested, therefore, that future research continue to investigate the impact of judicial decisions on condominium management and property rights, especially in situations involving serious antisocial behavior. In addition, the development of preventive measures and alternatives for conflict resolution, before judicialization, can contribute to the improvement of coexistence in condominiums.



REFERENCES

1. Gonçalves, C. R. (2020). *Direito Civil 2 Esquematizado: contratos em espécie - direito das coisas* (8. ed.). São Paulo: Saraiva Jur. (ISBN 9788553617401).
2. Gagliano, P. S., & Pamplona Filho, R. (2023). *Manual de Direito Civil: volume único* (7. ed.). São Paulo: Saraiva Jur.
3. Tartuce, F. (2023). *Manual de Direito Civil: volume único* (13. ed.). Rio de Janeiro: Método. (ISBN 978-65-5964-699-9).
4. Diniz, M. H. (2011). *Curso de Direito Civil Brasileiro: Teoria Geral das Obrigações* (28ª ed.). São Paulo: Saraiva.
5. Rizzardo, A. (2021). *Contratos* (19. ed.). Rio de Janeiro: Forense. (ISBN 9788530991036).
6. Souza, J. G. de, Mairink, C. H. P., & Fiorini, B. H. M. (2022). Considerações sobre o condômino antissocial e a possibilidade de exclusão do condomínio ante a ineficácia das multas. *Intrépido: Iniciação Científica*, 1(2). Disponível em: <https://www.periodicos.famig.edu.br/index.php/intrepido/article/view/339>. Acesso em: 11 set. 2024.
7. Morsello, M. F. (2014). O condômino antissocial sob a perspectiva civil-constitucional. *Revista da Faculdade de Direito, Universidade de São Paulo*, 109, 171–186. Disponível em: <https://revistas.usp.br/rfdusp/article/view/89231>. Acesso em: 11 set. 2024.
8. Machado Borba, L., & Verdival, R. (2023). Direito à propriedade versus direito de vizinhança: a possibilidade jurídica de exclusão do condômino antissocial. *Revista Conversas Civilísticas*, 3(2), 73–92. DOI: 10.9771/rcc.v3i0.58566. Disponível em: <https://periodicos.ufba.br/index.php/conversascivilisticas/article/view/58566>. Acesso em: 11 set. 2024.
9. Rebello, D. H. P. (2022). A possibilidade de exclusão do condômino antissocial no condomínio edilício. *Research, Society and Development*, 11(1), e33511124945. DOI: 10.33448/rsd-v11i1.24945. Disponível em: <https://rsdjournal.org/index.php/rsd/article/view/24945>. Acesso em: 11 set. 2024.
10. Brasil. (2002). *Lei n.º 10.406, de 10 de janeiro de 2002. Institui o Código Civil*. Brasília, DF: Presidência da República. Disponível em: https://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm. Acesso em: 27 set. 2024.
11. Brasil. (1988). *Constituição da República Federativa do Brasil de 1988*. Brasília, DF: Senado Federal. Disponível em: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acesso em: 27 set. 2024.
12. Conselho da Justiça Federal (CJF). (2002). *Enunciado n. 92 da I Jornada de Direito Civil*. Brasília: CJF. Disponível em: <https://www.cjf.jus.br>. Acesso em: 18 set. 2024.



13. Brasil. Senado Federal. (2021). *Projeto de Lei nº 616, de 2021. Altera a Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil), para disciplinar a expulsão do condômino ou possuidor antissocial do condomínio edilício*. Iniciativa: Senadora Daniella Ribeiro. Disponível em: <https://www25.senado.leg.br/web/atividade/materias/-/materia/146961>. Acesso em: 18 set. 2024.
14. São Paulo. Tribunal de Justiça. (2024). Sentença nº 1104691-10.2021.8.26.0100. Relator: Juiz Rodrigo de Moura Jacob. São Paulo, SP, 30 de agosto de 2024. Procedimento Comum Cível: Condomínio, p. 210-215.
15. São Paulo. Tribunal de Justiça. (2023). Sentença nº 1002436-95.2023.8.26.0037. Relator: Juiz Paulo Luis Aparecido Treviso. São Paulo, SP, 15 de setembro de 2023. Procedimento Comum Cível: Condomínio, p. 329-331.
16. Minas Gerais. Tribunal de Justiça. (2024). Acórdão nº 1.0000.24.141394-7/001. Relator: Desembargador Marco Aurelio Ferenzini. Belo Horizonte, MG, 04 de junho de 2024. Apelação Cível: Despesas Condominiais, p. 1-4.
17. São Paulo. Tribunal de Justiça. (2024). Sentença nº 1004738-93.2023.8.26.0006. Relator: Juíza Vivian Bastos Mutschaewski. São Paulo, SP, 17 de setembro de 2024. Procedimento Comum Cível: Direitos / Deveres do Condômino, p. 682-692.
18. São Paulo. Tribunal de Justiça. (2023). Sentença nº 1010041-86.2022.8.26.0309. Relator: Juiz Fernando Bonfietti Izidoro. Jundiaí, SP, 12 de abril de 2023. Procedimento do Juizado Especial Cível: Obrigações, p. 318-329.
19. Minas Gerais. Tribunal de Justiça. (2024). Acórdão nº 1.0000.23.324280-9/001. Relator: Desembargadora Cláudia Maia. Belo Horizonte, MG, 25 de abril de 2024. Apelação Cível: Direito de Vizinhança, p. 1-9.
20. São Paulo. Tribunal de Justiça. (2024). Sentença nº 1001334-40.2023.8.26.0004. Relator: Juíza Adriana Genin Fiore Basso. São Paulo, SP, 25 de junho de 2024. Procedimento Comum Cível: Condomínio, p. 403-409.
21. São Paulo. Tribunal de Justiça. (2024). Sentença nº 1016910-95.2023.8.26.0320. Relator: Juíza Graziela Da Silva Nery Rocha. Limeira, SP, 27 de maio de 2024. Tutela Antecipada Antecedente: Liminar, p. 115-118.
22. Minas Gerais. Tribunal de Justiça. (2022). Acórdão nº 1.0000.20.474696-0/002. Relator: Desembargador José Augusto Lourenço dos Santos. Belo Horizonte, MG, 22 de julho de 2022. Apelação Cível: Administração, p. 1-6.