

The Doctrine of the Affected Party

Realigning Standing, Notice, and the Burden of Proof
in Interdependent Urban Structures

*A Doutrina da Parte Afetada: Realinhando a Legitimidade,
a Notificação e o Ónus da Prova nas Estruturas Urbanas Interdependentes*

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Abstract

Portuguese administrative and civil law treat physically interdependent properties inconsistently, and the inconsistency runs in a predictable direction. Article 68(1) of the Código do Procedimento Administrativo grants legitimacy to constitute oneself as an interested party broadly enough, on its text, to capture the owner of a structurally connected property¹ — yet municipalities routinely deny that status through a doctrine holding that any effect on a neighbouring property is a mere reflexo de facto, outside the scope of a licensing decision. Article 1347 of the Civil Code, governing excavation damage, then assigns liability to whoever performed the works regardless of precautions taken, without asking whether the damaged structure's condition was already compromised and documented before anyone broke ground. The same two properties, in other words, are legal strangers when one of them seeks to be heard, and a single interdependent system the instant liability needs somewhere to land. The convenience of switching between those two characterisations is the whole of the problem, and it does not stop at liability. It reappears, in exact mirror, on the side of benefit. Where two units stand on one shared structure under a single alvará, a municipality will treat them as one interdependent whole when it grants and charges the first owner for a structural enhancement — a deeper foundation, an added storey — yet as two separate properties when the second owner later needs the very same enhancement. That need is not a matter of preference: the two units share a single foundation system, and a structure built to one depth standing against a neighbour later built to another is among the most common causes of differential settlement and cracking at the join — the same physical interdependence Criterion A is built to recognise produces, on the benefit side, a structural necessity to match what the first owner was already granted. The second owner therefore pays again for an entitlement the shared structure requires regardless of preference, or goes to court to establish a parity the municipality itself created and then declined to recognise. Liability flows to whoever is treated as connected; benefit is withheld from whoever is treated as separate; and which characterisation applies is determined, in both directions, by whichever answer costs the institution least. This paper argues that the inconsistency is not incidental but mechanical: it is the means by which Portuguese law converts ordinarily compliant property owners into bad-faith ones, by rewarding concealment

¹Código do Procedimento Administrativo, approved by Decreto-Lei n.º 4/2015, de 7 de janeiro, as subsequently amended, Article 68(1).

and silence at every stage where disclosure would be cheap and contesting it later is not. Drawing on a documented administrative history before the Câmara Municipal de Cascais and a structurally comparable incident in Lisbon, this paper proposes the Parte Afetada — the Affected Party — a status triggered only by objective, third-party-verified conditions, operating through a notice protocol that protects builders as much as neighbours, and requiring no new courts, no new institutions, and no admission of fault from any party it touches. The reform is structured so that every institution it implicates — the município, the courts, and the insurer underwriting the property — has reason to adopt it independently of whether the others do.

Section 1: Introduction

1.1 The Mechanism in Plain Terms

Because what follows is detailed, it is worth stating the whole of it once, plainly, before the apparatus arrives — so that the reader has the shape of the argument in hand throughout, and can see, at each step, which part of the problem that step addresses.

A builder wants to build next to a neighbour whose wall is visibly failing — held up, perhaps, by scaffolding that has stood in the street for years. Under the law as it stands, the builder cannot effectively raise this before starting, and the moment a crack appears once works begin, the builder is presumed to have caused it. So builders stay quiet and hope; and neighbours whose structures are already failing stay quiet too, because silence costs them nothing and the law will blame whoever happens to be digging. This paper changes one thing. It requires the builder to formally notify the neighbour before starting, and it gives that notice teeth: once notified, the neighbour can no longer sit in silence and blame the builder afterwards. They are given a defined period to act, and several ways to do so, running from easiest to hardest — take out insurance on the wall before work begins; repair it themselves, on their own terms and with their own contractor; or, if they cannot afford to, agree that the builder repairs it now and is reimbursed when the property is eventually sold, secured by a charge on the property that requires no eviction and no court. Each of these is a way of saying yes, and each leaves the neighbour better off than the slow and ruinous litigation that is the only outcome available today. Only if the neighbour refuses every one of them does a consequence follow: they lose the right to blame the builder for damage that traces to their own untreated decay — but not, and this is the point that keeps the rule fair, for damage the builder's own works actually cause. If the builder excavates recklessly against a wall that was sound enough, that remains the builder's responsibility exactly as it is now. The aim throughout is narrow and even-handed: to stop each side from pushing its own responsibility onto the other, by making honesty and cooperation cheaper, for everyone involved, than silence and blame. Everything in the sections that follow is an attempt to do that one thing without creating a single new court, agency, or tax.

1.2 The Problem

Portuguese law furnishes the property owner with two irreconcilable propositions, the choice between which is determined entirely by the moment at which he happens to ask. Prior to the commencement of construction, should he seek to be heard concerning the structural condition of an adjoining lot, the municipality informs him that the matter falls outside the scope of his legitimate interest: licensing decisions, on this view, confront only public urban norms, and whatever consequences may attend his own foundations are properly classified as private-law concerns, to be litigated, if at all, elsewhere and later. Once construction has begun, and once damage has occurred, the same legal order reverses its position without acknowledgment of the reversal: the two structures are now interdependent, the risk was knowable, and liability for what has transpired devolves upon him.

This is not best understood as an oversight in administrative practice. It is, this paper contends, the operative mechanism by which Portuguese administrative and civil law together convert ordinarily compliant actors into bad-faith ones, and it recurs with structural regularity wherever the law is asked to determine whether a given building is to be treated as a discrete unit or as part of an interdependent whole.

1.3 The Gap

The contradiction is sustained by the interaction of two distinct provisions, neither of which is, considered in isolation, unreasonable. Article 68(1) of the Código do Procedimento Administrativo permits a municipality to deny interested-party status to the owner of a structurally connected property on the ground that any effect upon that property is a mere *reflexo de facto*, incidental to and outside the scope of decisions taken in the public interest. Article 1347 of the Civil Code, governing excavations, then assigns liability for resulting damage to whomever performed the works giving rise to it, irrespective of the precautions observed.

The conjunction of these two rules produces an arrangement in which the party excluded, *ex ante*, from raising a known structural risk is invariably the party held liable, *ex post*, for its materialization — an arrangement that furnishes any owner harboring a concealed or undisclosed defect with every incentive to remain silent, secure in the knowledge that liability has already been allocated to whoever happens to be present when the defect manifests.

Nor is the consequence of this arrangement confined to the two parties most immediately concerned. The denial of standing at the administrative stage does not extinguish the underlying dispute; it merely defers its resolution to civil litigation, where it resurfaces, often years later, as a multi-party contest over causation among contractor, owner, architect, and municipality, conducted in the absence of any baseline established prior to the occurrence of damage. Portugal's civil courts, already bearing the largest share of a caseload in continuing expansion, thereby inherit disputes that a single document, obtained at the appropriate juncture, might have resolved before they arose.

1.4 The Contribution

This paper advances a status designed to dissolve that contradiction without recourse to any new tribunal, agency, or statute: the Parte Afetada, or Affected Party. The proposal does not invent new legal machinery; it redirects instruments already present within Portuguese administrative and civil law — the Termo de Responsabilidade under the Regime Jurídico da Urbanização e Edificação, through which the duty to notify an interdependent neighbour is discharged; the ordinary hipoteca voluntária, the consensual mortgage by which a remediation cost can be secured against a property and repaid on its sale; the lighter comunicação prévia track already available for works that alter no planning parameter; and the compensation formula already applied under Article 44 of the RJUE — toward a category of dispute for which they were never deliberately intended.

The argument is grounded in two evidentiary records: a documented administrative history before the Câmara Municipal de Cascais, concerning a pair of semi-detached lots constituted under a single alvará, and a structurally comparable incident in Lisbon, invoked here solely in respect of what is independently verifiable. Neither is offered as grievance. Both are offered as demonstration that the failure here described is structural in character, and that it will recur until the contradiction upon which it rests is identified and resolved.

This paper continues a line of inquiry begun in a previous work examining an analogous divergence in the standard governing court-appointed expert recusal under Article 120(1) CPC, where an applied threshold materially higher than the statutory text was found to rest on an unexamined empirical assumption rather than

on legislative authority.² The pattern this paper identifies — a written standard that is sound, and an applied practice that has drifted from it without anyone's authorising that drift — is, on this evidence, not confined to one doctrine.

The specific mechanism proposed here — notice, a defined window, and a narrow evidentiary forfeiture — is itself a single instance of a more general structure. A companion paper terms that structure the Affected Party Engine, models it formally as a stable equilibrium rather than a moral failing, and demonstrates it operating, suitably adapted, across corporate, environmental, security, medical, consumer, and resource law.³ Nothing in the argument that follows depends on that general treatment. This paper is self-contained, and addressed entirely to Portuguese administrative and civil law; a reader interested in why the same correction recurs as the right fix well beyond property law will find the general case made there.

1.5 Structure

The argument proceeds in two movements. The first is diagnostic. Section 2 examines the practical application of Article 68 CPA, and the particular manner in which a municipality treats two structurally connected lots as independent when doing so is administratively convenient, and as a single interdependent unit the instant liability requires a destination. Section 3 traces this same failure into civil adjudication, where the liability default of Article 1347 CC, combined with the absence of any antecedent baseline, transforms a question properly resolved by reference to fact into protracted, multi-party litigation.

The second movement is constructive. Sections 4 and 5 introduce the Affected Party status in its operative detail: the conditions that trigger it, the notice mechanism, and the sequence by which cost is established and, where necessary, recovered. Section 6 extends the analysis to the inverse configuration of the problem — not a neighbour concealing a defect in order to escape liability, but a neighbour concealing an advantageous structural amendment in order to escape the obligation

²Carroll, S. (2026) Network Proximity and the Appearance of Impartiality: Applying Erdős-Equivalent Distance Measures to the Reform of Court-Appointed Expert Standards in Civil Law Jurisdictions. SSRN Working Paper No. 6905898. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6905898. Received by the Centro de Estudos Judiciários and entered into the Biblioteca Armando Leandro.

³Carroll, S. (2026) The Manufacturing of Bad Faith: Mechanism Design and the Doctrine of the Affected Party. SSRN Working Paper No. 6972499. Available at: <https://papers.ssrn.com/abstract=6972499>.

to share its cost — demonstrating that the underlying error, the treatment of physically interdependent properties as legal strangers, generates dysfunction in both directions, and not merely the direction most visible to the judiciary. Section 7 concludes.

A single criterion governs the evaluation of every mechanism proposed in the sections that follow: does its operation require a court to adjudicate between competing narratives, or does it resolve upon documentary evidence alone? Each section answers in favor of the latter, because in every instance examined here, the requisite documentation already existed. What was absent was never evidentiary; it was procedural — a means of compelling disclosure before the dispute arose, rather than extracting it in the course of one.

Section 2: The Administrative Divergence

2.1 The Statutory Text

Article 68(1) of the Código do Procedimento Administrativo grants legitimacy to constitute oneself as interessado in an administrative procedure to any holder of a right, legally protected interest, duty, burden, or onus within the scope of decisions that procedure may produce.⁴ Read on its own terms, the provision is broad enough to capture the owner of a structurally interdependent neighboring property without difficulty. In practice, Portuguese municipalities have settled on an interpretation that excludes that owner specifically, and the reasoning by which they do so repays close attention, because it does not deny the provision's words; it denies that this case falls within them.

2.2 The Reflexive-Effects Doctrine

The reasoning proceeds in three moves. First, the municipality is alheio às relações de direito privado — indifferent to private-law relations — which it holds belong to their own forum, not to the licensing procedure. Second, any effect a license produces on a neighboring property is classified as a mere efeito reflexo, de facto: an incidental consequence of a decision aimed elsewhere, not a legal effect the neighbor has standing to contest. Third, even where such an effect exists, standing requires that the neighbor's interest be protected no confronto da norma a aplicar — measured against the specific norm being applied — a test municipalities routinely find unmet, since the norm in question governs public urban planning, not the structural relationship between two properties. The license, once granted, is said to exhaust its effects in the relationship between its holder and the administration, granted always sob reserva de direitos de terceiros — under reserve of third-party rights, to be settled, if at all, by the neighbor and the licensee, privately, later.

2.3 The Administrative Record

This is not a hypothetical pattern. It appears, close to verbatim, in a documented refusal by the Câmara Municipal de Cascais, denying interested-party status to the owner of a lot structurally connected to a neighboring lot under the same alvará de

⁴Código do Procedimento Administrativo, approved by Decreto-Lei n.º 4/2015, de 7 de janeiro, as subsequently amended, Article 68(1).

loteamento⁵ — while the município’s own separate records showed, independently of that refusal, that the neighboring lot’s operating license had already been declared expired, and an earlier request to expand it had already been rejected years before. The administration’s own file, in other words, already contained the documentation that would have satisfied any honest inquiry into whether the two lots presented the ordinary case the doctrine assumes. The refusal did not depend on the absence of that documentation. It depended on its irrelevance to a test that was never going to ask for it.

2.4 The Hypothesis of Shifting Interconnectedness

That refusal is the first instance of what this paper terms the Hypocrisy of Shifting Interconnectedness, and it matters that its second instance, taken up in Section 3, belongs to an entirely different body of law. At the moment a structurally connected neighbor asks to be heard, the two properties are legal strangers, and the administration is indifferent to whatever passes between them. Civil law will not hold that position for long. The same structures that are strangers at the licensing stage become, the instant something fails, a single interdependent system whose risk was foreseeable and whose support was owed — a position the administrative file never once endorsed while it could still have prevented the failure it now explains.

2.5 The Fiction of Public Notice

A second, narrower failure travels alongside the first, and it has its own basis in the same Code. Article 112 of the CPA sets out the forms notification may lawfully take: registered letter, personal contact, and their electronic equivalents are the default.⁷ An edital may be used only where the parties to be notified are uncertain or of unknown whereabouts, and a general public announcement — the kind a notice in the *Diário da República* or a municipal bulletin provides — only where there are

⁵Administrative file before the Câmara Municipal de Cascais, Divisão de Assuntos Jurídicos, Informação ACC/29/2025 (5 September 2025) and Informação ACC/13/2026 (17 March 2026), concerning Lote 2D, Alvará de Loteamento n.º 268, Monte Estoril, freguesia de Cascais e Estoril. Cited for illustrative purposes; the underlying dispute is ongoing.

⁶Divisão de Licenciamentos de Operações de Loteamentos, Câmara Municipal de Cascais, notificação relativa ao Processo SPO n.º 1375/2021 (caducidade declarada por despacho de 27 de junho de 2025) e ao Processo SPO n.º 1611/2018 (indeferido por despacho de 16 de maio de 2017).

⁷Código do Procedimento Administrativo, Article 112(1)(a)-(e).

more than twenty-five of them. A structurally connected neighbour under a shared alvará is neither uncertain nor unidentifiable, and there are rarely more than two or three of them in any given case. Neither exception the Code allows for applies here.

Yet publication is not, in practice, the exception. It is the default. Municipalities discharge the notice obligation attaching to alvará amendments and comparable decisions by posting an edital and publishing in the *Diário da República* as a matter of routine, regardless of whether the affected parties are known, named, and individually reachable from the municipality's own files. The result is a notice no interdependent neighbour ever reads, addressed to a public that has no stake in it, while the one party with a documented stake — already identified, already on file — is told nothing directly. This is not an occasional category error at the margins. It is the standing mode of operation, and it is the operative cause of the failure this paper addresses: the affected neighbour does not object because the affected neighbour never learns there is anything to object to.

The município's use of edital and public announcement in this setting is therefore not a looser substitute for individual notice; it is a use of provisions the Code itself reserves for circumstances that do not exist in the ordinary case. The fix this paper proposes runs in the opposite direction to the default: it places the duty to notify the interdependent neighbour directly on the party who already knows the interdependence exists — the *técnico responsável* designing the new works — rather than leaving it to a publication no one reads. Section 6 extends the same point to a different kind of municipal decision, on the same reasoning: a duty the Code already imposes for a small, known number of parties does not relax just because the decision happens to be one the município finds convenient to publish rather than notify.

Denying standing on this basis does not resolve the structural question it refuses to consider. It removes the one forum in which that question could have been settled cheaply, before anything failed, on documents the administration already held. What happens once the question is removed from that forum is the subject of the section that follows.

Section 3: The Civil-Law Root and the Gridlock Paradox

3.1 The Statutory Default

Article 1347 of the Civil Code permits a landowner to excavate, mine, or sink wells on their own property, on one condition: the works must not deprive a neighboring property of the support necessary to prevent collapse or the displacement of earth.⁸ Where that condition is breached and damage results, liability falls on whoever performed the works — and falls regardless of the precautions taken. The provision does not ask whether the works were careful. It asks only whether support was lost and damage followed, and once both are true, the law assigns the cost of that damage to the party who was digging, full stop.

3.2 The Fiction of Uniformity

Considered against an ordinarily sound structure, this is a defensible rule: whoever disturbs the ground bears the risk of disturbing what depends on it. The difficulty is that the rule operates on a fiction it never examines — that the structure said to have been damaged was, before the works began, sound, properly licensed, adequately maintained, and free of any defect the law need concern itself with. Nothing in Article 1347 asks whether that fiction holds. It holds by default, for every structure, regardless of what is in fact known, visible, or already documented elsewhere in the same municipality's own files.

3.3 The Lisbon Illustration

A documented case from Lisbon makes the point concrete. At a site on Rua do Sol à Graça, in the São Vicente parish, an existing gap between two older buildings had stood empty for years, bridged by a steel truss system visible in dated imagery from at least 2014, holding up the side walls of both neighbors across the void. That arrangement persisted, unexamined and unremedied, for over a decade.⁹ In September 2025, works began on the cleared lot itself. Within days, the side wall of

⁸Código Civil, approved by Decreto-Lei n.º 47344, de 25 de novembro de 1966, as amended, Article 1347.

⁹Press and municipal reporting on the incident at Rua do Sol à Graça, freguesia de São Vicente, Lisboa, 3 September 2025; preliminary municipal statement attributing cause to adjacent construction works. Dated street-level imagery of the affected site is independently available through standard mapping archives, showing external structural support in place since at least 2014.

one of the two supported buildings gave way entirely; the other developed a structural crack. Sixteen residents of the two affected buildings were evacuated as a precaution, and the damaged structure required shoring of its own once the failed section had been made safe. No one was injured. The municipality, addressing the cause before any formal investigation had concluded, attributed it to the works underway on the adjacent lot.

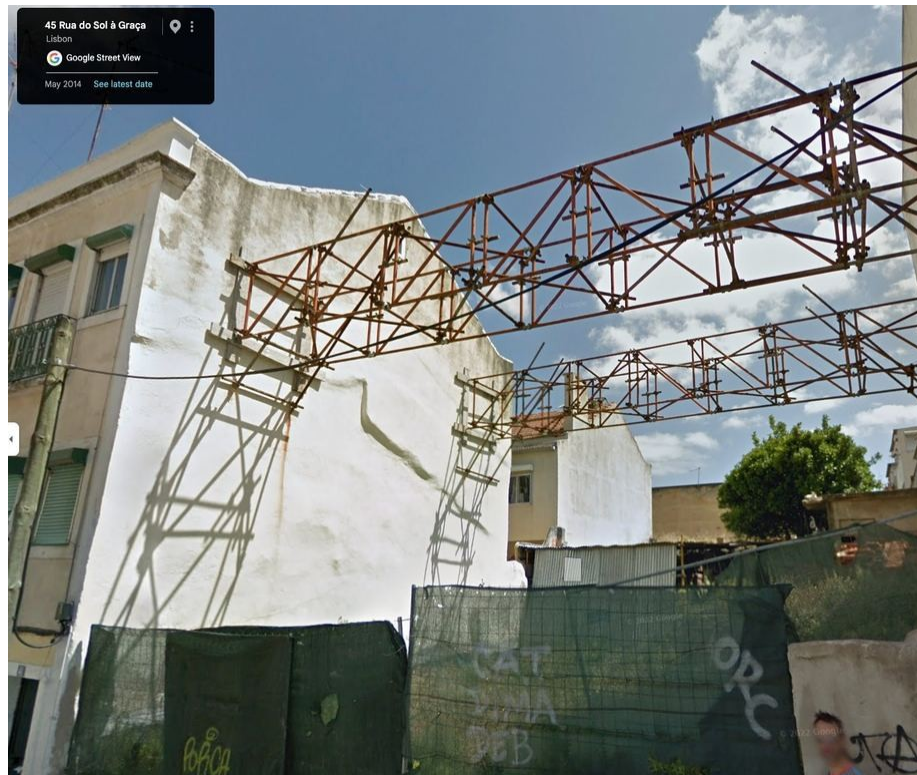


Fig. 1 — Street-level imagery, 45 Rua do Sol à Graça, Lisbon, May 2014. A steel truss system already bridges the gap between the two structures, providing external lateral support to both.



Fig. 2 — Street-level imagery, 30 Rua do Sol à Graça, Lisbon, June 2024. The same support structure remains in place a decade later, over a year before the September 2025 incident.



Fig. 3 — Aftermath of the incident, Rua do Sol à Graça, Lisbon, September 2025. The failure occurred on the side of the building already reliant on the support shown in Figs. 1 and 2. Site signage identifying the contractor has been redacted; responsibility for the incident remained formally undetermined at the time of writing.

What the episode illustrates is not who was ultimately at fault — that question remained, at the time of writing, formally open — but how completely a decade of visible, photographed, unaddressed structural dependency disappeared from the analysis the moment damage occurred. A structure that had required external support since at least 2014 was treated, for the purpose of assigning cause, as though that support had never been necessary at all.

3.4 The Second Hypocrisy

This is the second instance of the Hypocrisy of Shifting Interconnectedness introduced in Section 2, and naming it as such matters, because the two instances arise from entirely different bodies of law arriving at the same result by different routes. Administrative law treats interdependent structures as legal strangers when a neighbor seeks to be heard before anything has gone wrong. Civil law treats the same structures as bearers of an unexamined presumption of soundness once something has — a presumption that functions, in practice, exactly like the silo it administratively denied existed, except that it now points liability outward rather than withholding standing. Different doctrine, same architecture: convenience determines whether the structures are one system or two, and convenience changes its answer the instant cost needs somewhere to land.

3.5 The Gridlock Paradox

The combination produces what this paper terms the Gridlock Paradox. A municipality that denies standing at the administrative stage does not thereby resolve the underlying structural question; it merely ensures that question is litigated later, in civil court, as a multi-party dispute over causation among owner, contractor, architect, and municipality, conducted without the benefit of any baseline established before the damage occurred. Portugal's civil courts already carry the largest share of a national caseload approaching 606,000 pending matters, with civil cases taking, even after considerable improvement, close to two years on average to resolve.¹⁰ Every dispute of the kind described in this paper that reaches that system arrives there only because the one forum capable of resolving it on

¹⁰Direcção-Geral da Política de Justiça, Ministério da Justiça, statistical bulletin on pending caseload in first-instance courts, 2025, reporting 605,550 pending matters as of year-end and an average civil case duration of approximately 21 months following a five-year reduction from approximately 34 months.

documents, before the damage occurred, was closed to it by the reasoning examined in Section 2.

What the administration refuses to acknowledge before construction, and what the Civil Code refuses to examine after it, is the same fact viewed from opposite sides of the same event: that some structures are not independent of their neighbors, and that the law's insistence on treating them as though they were is not a neutral default. It is a choice that costs nothing to the institutions making it, and everything to whoever is left holding the consequence. The sections that follow propose the alternative.

Section 4: The Affected Party Status — Foundations

Sections 2 and 3 diagnosed a single failure appearing in two registers. In administrative law, structurally interdependent properties are treated as legal strangers at the moment standing is sought. In civil law, the same properties are treated as an interdependent system at the moment liability is assigned. The law answers the question of interdependence twice, inconsistently, and always after the fact. This section introduces a status designed to answer it once, in advance, on documents — and where documents are incomplete, on independently certified observation.

4.1 Distinction from Interessado Status

Before its operative provisions can be stated, the Affected Party status must be distinguished from interessado status under Article 68(1) CPA. A proposal that appears merely to relabel a category the câmara has already rejected invites the same refusal, restated. The two differ in object, not only in name.

Interessado status admits its holder into the administrative procedure itself — the right to consult the file, to be heard before a decision is taken, to submit observations the decision-maker must address, and to challenge the outcome. It is a participatory right aimed at the substance of a licensing decision still to be made. The câmara's settled refusal to extend it to structurally connected neighbors is not without internal logic of its own: a participatory right of that breadth, available to any owner asserting structural connection to a neighboring project, risks entangling routine licensing in private disputes the administration is neither equipped nor properly burdened to resolve.

The Affected Party status asks for none of this. It does not seek entry into the licensing decision. It does not require the município to assess structural interdependence on the merits. It does not interrupt, delay, or condition the grant of any license. It is a narrow evidentiary status, triggered only by conditions that already exist independently of any licensing decision, and productive only of consequences external to that decision: a notice obligation, a window for establishing baseline structural condition, and a defined sequence for allocating the cost of doing so. Where interessado status would insert a new participant into an existing procedure, Affected Party status creates a separate procedure entirely,

running in parallel, whose sole function is to ensure a documented structural condition is recorded before construction proceeds rather than litigated after it concludes. The proposal does not ask the município to revisit its settled position under Article 68(1), and is not exposed to the objection that defeated the request it follows.

4.2 Criterion A: Physical Interdependence

The first condition for Affected Party status is physical interdependence between the two properties. This is satisfied where the properties share a structural skeleton, a common foundation system, a party wall, or an alvará de loteamento under which they were jointly constituted. This is not a finding the município must make case by case; it is a fact already recorded in the registo predial and the licensing file consulted for other purposes. Where a shared alvará exists, Criterion A is met without further inquiry.

4.3 Criterion B: Documented Irregularity

The second condition is documented irregularity on the part of the neighboring property. A property satisfies Criterion B where, at the relevant time, it exhibits at least one of the following:

- (a) its licença de utilização has been declared expired or has not been renewed;*
- (b) a request for its legalization, expansion, or regularization has been rejected by despacho of the competent authority;*
- (c) an engineering or architectural report filed with the município documents an unremedied structural deficiency;*
- (d) it has been the subject of a municipal order requiring shoring, conservation works, or restriction of habitability on structural grounds;*
- (e) no civil liability insurance responding to damage caused to the interdependent neighbour is available in respect of it, owing to its documented condition — a condition not satisfied or excluded by the mere availability of ordinary first-party structural or fire insurance on the property itself, which protects only its own owner and does nothing for the interdependent neighbour;*
- (f) the property exhibits visible, objectively ascertainable evidence of structural dependency or deficiency — including but not limited to external shoring, bridging supports, visible cracking of load-bearing elements, or progressive settlement —*

verifiable by a licensed engineer or architect without recourse to administrative archives;

(g) the property has been marketed, sold, or transferred under documentation — including sales particulars, licensed project materials, or engineering reports forming part of a prior transaction — that disclosed structural deficiency, instability, or a requirement for remediation as a known condition of the asset at the time of transfer, irrespective of any subsequent physical alteration of the property's appearance;

(h) a licence to carry out remediation, reconstruction, or structural alteration was granted but never completed or formally concluded — including where remediation works begun under licence were abandoned, or where a subsequent owner circumvented the granted licence by carrying out unpermitted work in its place — the granted-but-uncompleted licence itself evidencing a condition the competent authority had already recognised as requiring structural work that was never properly done;

(i) any other documented circumstance from which a licensed engineer or architect, on inspection or on the record, would conclude that the property carries an unresolved structural condition bearing on the interdependent neighbour. This residual category is anchored to a professional finding on objective evidence, not to suspicion or apprehension, and exists because the forms documented irregularity can take are not exhaustively foreseeable; it is not a general instrument for raising planning or amenity objections, which fall outside this status entirely.

Criteria (a) through (e) are archive-based: each rests on a third-party determination already made, a document already filed, or a policy already declined, requiring no new finding and no new judgment. Criteria (f) and (g) address the cases where the archive yields nothing despite what is visible or previously disclosed: the property objectively apparent on inspection — the Lisbon case examined in Section 3 being the clearest illustration of (f) — and the property whose defect was honestly disclosed at the moment of transfer but later concealed by a subsequent owner, where (g) ensures a known material defect discharged once under the duty of disclosure does not become unknown because it is plastered over. Criterion (h) addresses a pattern that fits none of the others cleanly: a licence granted for remediation or reconstruction, acknowledging the structure needed work, that was then left incomplete — or circumvented by a later owner who chose an unpermitted patch over the permitted repair. The granted licence is itself the record that the condition was known; its non-completion is the record that the work was never done. Criterion (i) is the deliberate acknowledgement that the catalogue cannot be closed:

documented irregularity takes forms a drafter cannot anticipate in full, and rather than force every such case through an ill-fitting category, the residual clause admits any condition a qualified professional would identify on objective evidence — anchored to that finding precisely so it cannot be stretched into a vehicle for the planning and amenity objections this status is built to exclude.

4.4 The Insurance Test

Criterion (e) functions differently from the others, because it submits the question to the market rather than to an archive or an inspection. The relevant policy must be civil liability cover that would respond to damage caused to the interdependent neighbour — not ordinary first-party structural or fire insurance on the owner's own building, which protects only the owner and does nothing for the neighbour regardless of how easily it is obtained. With the condition fully disclosed, a regulated insurer asked to underwrite that liability will price the risk accurately if it can be priced at all.

If a regulated insurer issues that cover, the condition is, by definition, no longer one this status exists to address, and the matter is closed. If every regulated insurer approached declines, in writing, with reasons referring specifically to the disclosed condition — a blanket refusal to write this category of risk at all does not count, since that is a market gap, not a finding about this property — the declination is itself strong evidence of the condition, alongside whatever else has already been established under 4.3.

4.5 Two Questions, Not One: Status and Baseline

Before the mechanism is set out, one distinction has to be drawn clearly, because conflating the two questions it separates is the single thing that would make this status unworkable. Establishing that the status applies and establishing what the structure's actual condition is are different questions, they cost different amounts, and they can fail independently of one another.

The first question is a threshold: does the status attach at all? That requires only that Criterion A interdependence exist and that at least one Criterion B condition be present. In the ordinary case this is answered on documents alone and collapses to almost nothing — an expired licence is on file, or a rejected legalisation, or a granted-but-uncompleted remediation licence, and there is nothing to rule on. The técnico

responsável certifies the interdependence and notifies the neighbour, and the threshold is crossed without anyone commissioning anything. The machinery of an independent assessor appears only when the non-conforming owner disputes that the status applies — contends the licence is not in fact expired, or that visible cracking is cosmetic rather than structural. Then, and only then, an independent assessor is engaged to answer that one binary question: does the status attach, yes or no. Nothing more.

The second question arises only if the first is answered yes: what is the structure's baseline condition, what would remediation cost, and — critically — how much of any later failure is attributable to the pre-existing defect as against the new works? This is the expensive question, because answering it requires a full forensic survey rather than a yes-or-no inspection. It is also the question that produces the figure on which a lien, a consensual charge, or a joint construction agreement is later built. Keeping it separate from the threshold question matters for a practical reason: if the two were merged, a non-conforming owner could force a full and costly baseline survey simply by being adjacent to new works, before anyone had even established that the status applied — and if it then did not apply, that expense would have been incurred for nothing, and who bore it would become its own dispute. Separating the stages means the expensive survey is commissioned only once it is known to be necessary.

This separation also settles who pays at the threshold stage, and the answer has to have teeth, because a costless objection is exactly the kind of perverse incentive this paper exists to remove. Where the non-conforming owner disputes that the status applies and an independent assessor confirms that it does, the cost of that threshold determination falls on the owner who disputed it. Object in good faith to a genuine doubt and be vindicated, and no such cost arises; object reflexively to a condition that was plainly documented, and force someone to pay an assessor to prove the obvious, and the cost is yours. Without that consequence, contesting status would become the rational opening move regardless of merit — delay the works, burden the builder, risk nothing — which is the silent-ambush incentive of the current law relocated to the threshold stage rather than cured. The cost rule closes it.

4.6 Why the Affected Party Should Not Wait for Notice Either

Subsection 4.7 below explains why a rational non-conforming owner uses this status voluntarily. The same logic runs the other way. A builder facing a visibly

compromised neighbouring structure usually cannot get construction or liability cover on ordinary terms at all — an insurer pricing an undocumented risk will decline or price defensively, and without insurable risk, financing rarely follows. The independent assessment under 4.3 does for the builder's own project exactly what it does for establishing the condition: it turns an unpriceable unknown into a documented, insurable fact. Nothing in this status requires either owner to wait for formal notice before commissioning it. The builder, in most cases, has the stronger and more immediate reason to move first — not because the law will eventually penalise the neighbour's silence, but because that silence is, right now, the reason the builder's own project cannot proceed.

Nor does any of this ask for diligence beyond what competent practice already implies. Design is conventionally produced without reference to a neighbour's actual condition; the assessment called for here is the investigation a careful architect or engineer should already be commissioning, not a new burden invented for this purpose.

4.7 Why a Rational Owner Uses This Status Voluntarily

This is worth stating plainly before the operative mechanism, because it is the actual argument for using the status rather than ignoring it. A property with a documented structural condition is not a static problem. It is one that surfaces as a cost eventually, regardless of what the owner does. Used voluntarily, the owner keeps their own contractor, their own schedule, and their own negotiated price — typically as part of a joint construction programme with the neighbour's new build, which is usually the cheapest way to resolve a shared structural problem, because a single contractor accountable for both jobs eliminates the liability ambiguity of two contractors working the same shared structure separately. The owner also ends the process with a property that is insurable and sellable again, which it currently is not.

Section 5: The Affected Party Status — Mechanism

5.1 The Independent Assessor

The independent assessor performs whichever of two distinct functions the situation calls for, set out in Section 4.5: resolving a disputed threshold question of whether the status applies at all, or conducting the full baseline survey once it does. Any licensed engineer or architect can perform either. No new institution is required — a roster maintained voluntarily by the Ordem dos Engenheiros or the Ordem dos Arquitetos, under their existing self-regulatory powers, is sufficient, and either body could publish such a roster and a model report without waiting on any legislative change. Whoever is chosen, the assessor should have had no prior professional relationship — as employer, employee, contractor, or co-author — with either owner, their architects or engineers, or their construction companies, within the preceding five years. This is a recommended standard rather than a legal one, but it matters: a report from a plainly conflicted assessor undermines the credibility the whole mechanism depends on.

The two functions carry different costs, and the difference is the point. A threshold determination — does interdependence exist, is a Criterion B condition present — is a yes-or-no inspection, modest in cost, and in the clean documentary case is not needed at all. A full baseline survey — condition, remediation scope, cost, and the apportionment data that lets a later failure be split between pre-existing defect and new works — is the forensic exercise, and the more expensive one. An indicative fee in the lower hundreds of euro for a threshold inspection, and a figure scaling with complexity for a full baseline survey, with a turnaround of about a fortnight in either case, are reasonable benchmarks. Who bears each cost is set out below and in Section 4.5: a threshold determination forced by a non-conforming owner who disputes the status and loses falls on that owner; an uncontested baseline survey is borne in the first instance by whoever commissions it, recoverable as part of the resolution that follows.

5.2 The Protocol

Either owner identifies the two facts — interdependence and a documented condition — and proposes use of the status to the other, by direct notice. Where the condition is documented and uncontested, the threshold is crossed on that basis

alone; no assessor is needed to confirm what the record already shows. Where the non-conforming owner disputes that the status applies, an independently selected assessor resolves that single question, and if the status is confirmed against an owner who disputed it, the cost of that determination falls on them.

Once the status is established, the non-conforming owner has a window to act, and the routes open to them run from cheapest and least intrusive to the consequence of refusing all of them. They may obtain insurance: a liability policy that would respond if the structure fails during the neighbour's works, secured before those works begin — the timing matters, since an insurer will not cover a structure already disturbed — which closes the matter outright, because a party now stands behind the risk. They may remediate the structure themselves, on their own terms, their own contractor, their own cost, within the window. Or, where they cannot fund it but will cooperate, they may agree that the Affected Party executes the remediation — ideally jointly with the new construction — secured by an ordinary hipoteca voluntária, a consensual mortgage created by authenticated private instrument and registered at the Conservatória exactly as any mortgage is, the cost reimbursed when the property is eventually sold. Each of these is a way of saying yes; the law's task is only to make saying yes more attractive than saying nothing.

Only if the non-conforming owner does none of these — will not insure, will not remediate, will not agree a charge, and will not commission the baseline survey — does the forfeiture set out in 5.4 take effect. The assessor facilitates any of these negotiations on request, without adjudicating anything. Where a baseline survey is produced, it does not go to waste even if the parties never reach agreement: it stands as the documentation of the structure's condition for whatever follows, so nothing has to be re-established from scratch. Every step described here is something the parties could already do today under current contract and property law.

5.3 An Existing Faster Track

Portuguese law already provides a lighter administrative track for works that don't require a full licença: comunicação prévia under the RJUE, where the promoter submits a complete project with the required technical declarations and can generally proceed without waiting on an individual municipal decision. Where the remediation works contemplated by this mechanism qualify, on their own classification, for that lighter regime — as structural reinforcement of an existing

building typically does, where it changes nothing about the building's urban planning parameters — a município needs no new regulamento and no policy decision to treat a completed assessment report as part of the file submitted under comunicação prévia. The município is asked to hold no new register and to maintain no new record: the duty to identify the interdependence and notify the neighbour sits entirely with the técnico responsável on the new project, who already knows it exists because they are designing against it. The município's only role is the one it already performs — receiving the Termo de Responsabilidade.

5.4 The Minimal Fix

This voluntary mechanism works whenever both owners have an incentive to use it. The problem this paper is actually about is the case where one of them doesn't — and current law gives the non-conforming owner every reason not to. Article 68(1) CPA denies the interdependent neighbour any participatory standing in the licensing of the adjoining property. Article 1347 CC creates no duty to document a structure's condition before a neighbour builds. And when damage does appear during adjacent construction, the evidentiary default runs against the builder: absent a documented baseline, the burden falls on the new construction's contractor to prove the damage pre-existed. Public notice of changes that might trigger any of this is achieved, formally, by publication in the Diário da República — a channel functionally no one reads, and one the município has no real incentive to make more effective, since the information that interdependence exists in the first place sits with the técnico responsável on the new project, not with the município processing a routine licence.

Put together, these things form a closed loop that rewards concealment. A non-conforming owner who says and does nothing faces no consequence under current law, and if the worst happens, the default presumption already protects them. This is not a court-avoidance problem. It is an incentive problem sitting inside the substantive law itself, and removing it is this paper's central claim.

When a dispute of this kind reaches a court today, there is no documented baseline for anyone to point to. The court must reconstruct, years after the fact and from degraded evidence, what condition the property was in before the works began, whether the works caused what is now visible, and how to apportion a cost between two parties who each have every incentive to tell a self-serving story. This is the default outcome current law produces whenever the voluntary mechanism isn't

used, because nothing in current law gives either party a reason to document anything before the dispute exists.

The smallest change that breaks this loop has three parts. First, a notice duty on the técnico responsável: where interdependence under Criterion A is certified in the Termo de Responsabilidade,¹¹ the técnico delivers direct notice of the documented condition to the interdependent owner — registered communication, physical posting, and any pre-existing professional channel — replacing reliance on Diário da República publication, since the duty belongs to the person who already knows the interdependence exists. Second, a defined window: notice opens a period of sixty days within which the non-conforming owner may take any of the routes set out in 5.2 — insure, remediate, agree a charge, or commission their own baseline survey. Third, a narrow evidentiary forfeiture: where the window closes with none of those routes taken, the non-conforming owner forfeits, specifically and only, the right to claim that the works caused structural damage attributable to the absence of a baseline. The forfeiture is evidentiary, not punitive: it does not touch title, does not ground eviction, and leaves every claim unconnected to the absent baseline untouched.

That forfeiture must be read precisely, because its single most likely misreading would make it unjust. It is not blanket immunity for the builder. What it transfers to the non-conforming owner is one specific risk: the risk of the unmeasurable pre-existing condition — and it transfers that risk for one specific reason, that the owner was given notice, a window, and every means to have the condition measured, and prevented the measurement by doing nothing. It does not transfer, and cannot transfer, the risk of the builder's own works. If the new construction brings a one-metre excavator bucket four metres down hard against the neighbour's foundation, and that excavation causes damage a sound structure would also have suffered, the forfeiture reaches none of it: that damage is attributable to the works, not to the absent baseline, and the ordinary liability of Article 1347 CC continues to reach it in full. The forfeiture withdraws from the non-conforming owner the benefit of the doubt on the portion of any failure that traces to their own untreated decay; it leaves the builder carrying the portion that traces to the aggression of the works. Each party bears the risk that was always theirs, and neither is permitted to push it onto the other — which is the entire purpose of the rule, and the reason the baseline

¹¹Lei n.º 31/2009, de 3 de julho, Article 21(2); Portaria n.º 71-A/2024, model Termo de Responsabilidade declaration.

survey, when it is done, is what makes the split between the two honest rather than a contest of self-serving accounts.

That is the entire minimal fix. Nothing here creates a new property right, a new registrable charge, or a new state body.

5.5 Why the Minimal Fix Is the Engine

It helps to be precise about what the minimal fix actually does, because it is not a second mechanism running alongside the voluntary one — it is what gives that mechanism teeth. Today, a non-conforming owner who ignores a neighbour's attempt to use it pays no price for ignoring it: silence is free, and the evidentiary default already protects them if the worst happens. The minimal fix changes exactly one thing: it puts a sixty-day clock on the silence, at the end of which the owner loses the one defence the current default hands them for free. Once that clock exists, using the voluntary mechanism within the window stops being a courtesy and becomes the rational choice for nearly everyone in this position, because the alternative is not “nothing happens” — it is “I lose my best defence and the other side gains the initiative.”

5.6 What Becomes of Court

The fix does not eliminate a court role; it narrows it to almost nothing. If, after forfeiture, the non-conforming owner still won't pay or agree, the Affected Party's recovery of remediation costs proceeds by an ordinary civil action for reimbursement — not a re-litigation of causation, since that question is already closed by forfeiture, but a comparatively narrow accounting dispute over a cost figure, protectable pending judgment by a *registo de ação* or an *arresto*, both already available under current law. Instead of a multi-year fight over whether the works caused the damage at all, the only thing left to argue, if anything is argued, is how much.

Court need not even be the forum for that narrower question, and nothing here requires it to be. Portugal's *Lei da Arbitragem Voluntária*¹² already allows parties to refer a civil dispute to arbitration by agreement, and a quantum dispute of the kind left over once forfeiture has closed the causation question is a natural candidate: the

¹²Lei n.º 63/2011, de 14 de dezembro, approving the *Lei da Arbitragem Voluntária*, replacing Lei n.º 31/86, de 29 de agosto.

parties may agree, at the point of notice or at any time before judgment, to refer the cost figure to a named arbitrator or to a sole independent expert determination, with the baseline survey already in hand serving as the technical record either forum would use. This requires no new tribunal and no amendment to existing arbitration law — only that the parties be told, as part of the notice protocol, that this route is available to them as an alternative to litigation, not merely a fallback once litigation has already begun. Making that option visible at the outset, rather than leaving it to be rediscovered mid-dispute, is itself a small way of keeping court a choice rather than a default.

5.7 What Legislative Change This Requires

The complete list is short: a CPA amendment enacting the status definition and Criteria A and B, together with the notice and forfeiture provisions set out below; and a corresponding amendment to the régime governing the técnico responsável — Lei n.º 31/2009 and the relevant RJUE provisions on the Termo de Responsabilidade — to create the certification and notice duty. No amendment to the Código Civil's catalogue of legal mortgages, no amendment to the Código do Registo Predial, and no new statutory body is required.

5.8 Proposed Statutory Text

The voluntary mechanism resolves the ordinary case without any new law, because it is simply the better deal for both parties. The minimal fix below is the reason it gets used rather than ignored: it is the smallest legislative change that removes the one thing current law currently gives a non-conforming owner for free — the right to do nothing and be protected for it.

Artigo 68.º-A (Estatuto da Parte Afetada e do Proprietário Não Conforme)

1. É Parte Afetada o proprietário de um imóvel urbano fisicamente interdependente com outro imóvel urbano — partilhando esqueleto estrutural, sistema de fundações, parede meeira, ou Alvará de Loteamento comum — quando esse outro imóvel satisfaça, no momento relevante, pelo menos uma condição do n.º 3. É Proprietário Não Conforme o titular desse outro imóvel. A qualificação assenta na condição documentada do imóvel, não em qualquer juízo sobre violação de dever.

2. Critério A é satisfeito pelos factos do número anterior, registados na Conservatória do Registo Predial ou no processo de licenciamento.

3. Critério B é satisfeito por, pelo menos, uma das seguintes condições: (a) licença de utilização caducada ou não renovada; (b) pedido de legalização, ampliação, ou regularização indeferido por despacho; (c) relatório técnico que documente deficiência estrutural não remediada; (d) ordem municipal de escoramento ou restrição de habitabilidade por motivos estruturais; (e) indisponibilidade, junto de seguradora regulada e com divulgação integral da condição, de seguro de responsabilidade civil que cubra dano causado ao imóvel interdependente; (f) evidência visível e objetivamente verificável de dependência ou deficiência estrutural, atestada por engenheiro ou arquiteto habilitado; (g) documentação de comercialização, venda, ou transmissão que tenha divulgado a deficiência como condição conhecida, independentemente de alteração física posterior; (h) licença de remediação, reconstrução, ou alteração estrutural concedida mas não concluída nem formalmente encerrada, incluindo o caso de obras iniciadas ao abrigo de licença e abandonadas, ou de proprietário subsequente que tenha contornado a licença concedida mediante obra não licenciada; (i) qualquer outra circunstância documentada da qual um engenheiro ou arquiteto habilitado, por inspeção ou pelo registo, conclua que o imóvel apresenta uma condição estrutural não resolvida com incidência sobre o imóvel interdependente, ancorada esta categoria residual a um juízo profissional sobre evidência objetiva e não a suspeição, não constituindo instrumento para oposições de natureza urbanística ou de amenidade.

4. O estatuto de Parte Afetada não constitui estatuto de interessado nos termos do artigo 68.º, n.º 1.

Artigo 68.º-B (Dever de Notificação)

1. Certificada a interdependência nos termos do artigo anterior, o técnico responsável notifica o Proprietário Não Conforme, por: (a) comunicação registada para o endereço constante da Conservatória ou da Autoridade Tributária; (b) afixação de aviso físico no imóvel, fotografado e datado; (c) contacto direto através de relação profissional pré-existente. Não sendo possível identificar ou localizar o proprietário, procede-se por citação edital com nomeação de curador.

2. Esta notificação substitui, para os efeitos deste regime, a publicação em Diário da República.

3. O incumprimento do dever de notificação não afeta a validade da licença, gerando responsabilidade pessoal do técnico responsável pelos custos decorrentes.

Artigo 68.º-C (Janela, Preclusão e Repartição de Risco)

1. A notificação abre uma janela de sessenta dias, durante a qual o Proprietário Não Conforme pode: (a) obter, antes do início das obras, seguro de responsabilidade civil que cubra dano causado ao imóvel interdependente; (b) remediar a sua própria custa; (c) acordar com a Parte Afetada uma solução

conjunta garantida por hipoteca voluntária; ou (d) promover, a expensas próprias, levantamento estrutural de base.

2. Onde o Proprietário Não Conforme conteste a aplicação do estatuto e perito independente confirme que o mesmo se aplica, o custo dessa determinação preliminar recai sobre o Proprietário Não Conforme.

3. Esgotada a janela sem qualquer das ações do n.º 1, o Proprietário Não Conforme perde o direito de invocar que as obras causaram dano estrutural atribuível à ausência de levantamento de base. Esta preclusão não se estende a danos não relacionados com essa ausência, não extingue a titularidade do imóvel, e não fundamenta despejo ou venda forçada.

4. A preclusão do número anterior transfere para o Proprietário Não Conforme exclusivamente o risco da condição preexistente não mensurada, por este ter impedido a sua medição. Não transfere o risco das próprias obras: o dano que resulte da escavação, sobrecarga, ou método construtivo da nova obra, e que uma estrutura sã igualmente teria sofrido, permanece sujeito à responsabilidade do artigo 1347.º do Código Civil, não sendo abrangido pela preclusão.

5. A recuperação de custos de remediação não cobertos por acordo procede por ação civil comum, podendo a Parte Afetada proteger essa pretensão, na pendência da ação, mediante registo de ação ou arresto, nos termos gerais.

6. As partes podem acordar, no momento da notificação prevista no artigo 68.º-B ou em qualquer momento posterior, submeter o litígio previsto no número anterior a arbitragem voluntária, nos termos da Lei n.º 63/2011, de 14 de dezembro, ou a determinação por perito único, em alternativa ao tribunal comum, valendo para esse efeito o levantamento de base já produzido nos termos deste regime.

Section 6: The Joint Right Principle

6.1 The Problem, Plainly Stated

This section addresses the other side of the same coin. The preceding sections dealt with a property carrying a hidden problem — a structural defect nobody disclosed — and the unfair burden of dealing with it once it surfaces. This section deals with a property carrying a hidden advantage instead.

Where two units are built in stages under one shared permit, the owner who builds or amends first often secures a real benefit — a deeper foundation, more floor area, an extra basement level — that the connected unit will eventually need to match, simply because the two structures cannot diverge without risking each other's stability. The município charges that first owner for the upgrade, grants it, and tells no one else anything has happened. When the second owner is finally ready to build, they discover that matching what their own neighbour already has is not a right that came bundled with it — it is a second bill, or a lawsuit, for something the physical reality of their own building already requires them to have.

This is the same failure examined throughout this paper — physically interdependent properties treated by the law as legal strangers — showing up on the side of an advantage rather than a defect.

6.2 The Same Rule, Twice Unapplied

This section does not ask the município for anything new. It asks for the same thing Section 2 already establishes and Section 5 already operationalises: that a known, identifiable, locatable party is owed individual notice, not a publication addressed to no one in particular. Section 2 shows the município treating a structurally connected neighbour as an unknown stranger when the file already contains their name. This section shows the identical treatment applied to a different kind of decision — not a licensing dispute, but a structural amendment to a shared alvará — with the same consequence. The rule the município already owes known parties does not currently distinguish between these two contexts, and it should not need to be argued twice. Where Section 5 additionally established that a status triggered by documented, fault-independent conditions requires no admission about anyone's past conduct, this section asks for nothing different: a forward-looking rule, owed to a known party, costing the município nothing it doesn't already collect.

6.3 The Failure, Diagnosed

The pattern is visible in a documented case. A municipality's own technical assessment of a proposed change to two adjoining lots found the change incompatible with the established character of the surrounding row of properties,¹³ on the ground that altering one lot's height or floor count would distort a uniform pattern repeated along the street. The request was refused on that basis.¹⁴ Within the same year, the same department approved exactly that change — the identical increase in floors — for a different lot in the same row.¹⁵ The município's own reasoning had already treated these lots as a single coherent unit when that served a refusal. Its later conduct treated one of them as entirely independent when that served an approval.

The billing followed the same logic. The amendment was formalised with a compensation payment for the increased construction area,¹⁶ processed through public posting and a website notice that produced no objections — unremarkable, since the one party with a documented stake in the outcome was never told individually that anything was happening.

6.4 Why the Município, and No One Else

Two parties currently benefit from this silence at once, and naming that requires assigning bad faith to neither. The município gains the option of charging twice, or of letting a future dispute resolve a question it should have priced correctly the first time. The owner who amends first gains the absence of any friction or cost-sharing demand that disclosure might invite. Placing the fix on a técnico responsável, or on that first-moving owner, would relieve the one party that already holds every relevant fact, in its own file, of a responsibility that belongs to it alone.

¹³Regime Jurídico da Urbanização e Edificação, approved by Decreto-Lei n.º 555/99, de 16 de dezembro, as amended, Article 44.

¹⁴Regulamento do Plano Diretor Municipal de Cascais, Articles 63 and 70(1).

¹⁵Processo SPO n.º 2296/2018, Requerimento SPO n.º 7971/2018, Câmara Municipal de Cascais, Divisão de Licenciamentos de Operações de Loteamentos, informação técnica de 29 de outubro de 2018 and parecer de 13 de novembro de 2018, final despacho of 19 March 2019.

¹⁶Aditamento ao Alvará de Loteamento n.º 268, Câmara Municipal de Cascais, 12 de março de 2021, Processo SPO 1428/2018, approved by deliberation of 15 July 2019, Proposta n.º 740/2019-DLOP.

6.5 The Fix

Where Criterion A interdependence is recorded in the município's own loteamento file and a structural-parameter amendment is sought for one unit before the connected unit has been built, the município's compensation calculation under Article 44 RJUE must proceed by one of two elections, never both: charge the joint amount, banking the matching entitlement for the connected unit at no future charge, or charge only the individual amount, forfeiting any future compensation claim against the connected unit for matching those parameters. A companion duty requires disclosure of the interdependent unit's already-approved parameters when the connected unit later applies for its own licence — information transfer only, with no standing created to object or delay.

Both duties apply prospectively only, to determinations made after this provision takes effect. Neither reopens, revisits, nor creates any liability in respect of compensation already collected, notice already given, or amendments already granted under prior practice. The município is asked only to apply, going forward, the same rule it already owes known parties everywhere else.

Artigo 44.º-A (Compensação em Situações de Interdependência Física)

- 1. Onde se verifique interdependência física, nos termos do Critério A do artigo 68.º-A do CPA, entre um lote e outro lote ainda não edificado constituído sob o mesmo Alvará de Loteamento, a compensação devida nos termos do artigo 44.º pela alteração de parâmetros estruturais de um dos lotes deve ser calculada e cobrada segundo uma de duas opções, não cumuláveis: (a) como montante conjunto, cobrindo o direito equivalente de ambos os lotes, ficando este direito reservado ao lote ainda não edificado sem encargo adicional; ou (b) como montante individual, relativo apenas ao lote em causa, com renúncia definitiva, por parte do município, a qualquer cobrança futura de compensação ao lote ainda não edificado pela equiparação aos mesmos parâmetros.*
- 2. O município, ao processar pedido de licenciamento relativo ao lote ainda não edificado, deve incluir no processo disponibilizado ao técnico responsável os parâmetros estruturais já aprovados para o lote interdependente.*
- 3. O disposto neste artigo aplica-se prospectivamente, a decisões tomadas após a sua entrada em vigor, não reabrindo, revendo, ou gerando responsabilidade quanto a compensações já cobradas, notificações já efetuadas, ou alterações já concedidas ao abrigo da prática anterior.*

4. O disposto neste artigo não condiciona nem restringe o poder do município de apreciar e decidir sobre o mérito urbanístico de qualquer pedido de alteração.

6.6 Closing

Once the município's compensation is correctly priced and its own records disclosed, there is no unshared entitlement left for one owner to hold and no unpaid-for burden left for the other to carry. The asymmetry dissolves the same way Section 5's does — not because anyone was made to answer for what came before, but because the one thing worth staying silent about no longer exists going forward.

Section 7: Conclusion

7.1 The Reflex, Not the Actor

This paper has advanced a single argument with three independent supports. The argument is that Portuguese administrative and civil law, applied to physically interdependent properties, produce a contradiction that is not incidental: a property is a legal stranger when its owner seeks to be heard, and a single interdependent system the instant liability needs somewhere to land — and the same inconsistency reappears, in mirror form, wherever a benefit rather than a burden is at stake. The three supports are legal, structural, and evidentiary. Each independently sustains the argument. Together they make it conclusive.

The legal support establishes that the contradiction is not required by the statutes that produce it. Article 68(1) CPA, read on its own terms, is broad enough to capture the interdependent owner; the reflexive-effects doctrine that excludes them is an interpretive accretion, not a textual command. Article 1347 CC's liability default is a sound rule against an ordinarily maintained structure; nothing in its text requires it to ignore a documented decade of visible disrepair. Article 44 RJUE's compensation formula already prices the value of a structural amendment; nothing requires that price be collected twice. In every instance, the statute already permits the correction this paper proposes. Nothing here asks a legislature to overturn settled law. It asks institutions to stop reading settled law selectively.

The structural support establishes why the contradiction persists despite this: it is not an oversight an institution would correct on noticing, but an arrangement current incentives make rational to maintain. Denying standing costs the município nothing and exports the resulting dispute to a court system it never has to staff. Billing an entitlement once while reserving the option to bill it again costs the município nothing and exports the unfairness to whichever owner builds second. A non-conforming owner who says nothing is, under current defaults, protected by the very silence the law should be asking them to break. None of this requires bad faith from any institution or individual. It requires only that the relevant actor notice, correctly, that silence currently costs them nothing and candour currently costs them something — the precise condition under which an ordinarily compliant actor begins to resemble a bad one.

The evidentiary support establishes that the fix is proportionate, because it asks for no expansion of judicial or administrative power, only the substitution of documents for adjudication wherever documents already exist. Every mechanism this paper proposes — the Affected Party status, the notice protocol, the Joint Right principle — passes the same test: does it require a court to weigh competing narratives, or does it resolve on a despacho already issued, a report already filed, an alvará already amended? In every section, the answer is the latter, because in every case examined here, the documentation existed before the dispute did. What was missing was never evidence. It was a procedure for using it in time.

7.2 What This Reform Does and Does Not Claim

The Affected Party status does not create a new property right, a new registrable charge, or a new state body. It does not constitute interessado status, and it confers no power to object to, suspend, or delay a licensing decision on its merits — the distinction Section 4 draws is deliberate and load-bearing, not incidental. It does not ask any município to answer for, reopen, or pay for any transaction that predates its enactment; every operative provision in this paper, including the Joint Right principle's compensation rule, applies prospectively only. It does not ask any individual — técnico, civil servant, or owner — to admit misconduct, because the conditions that trigger it are documentary and fault-independent by design.

One further limit is worth stating explicitly, because a reader who has followed Section 3 might reasonably expect this paper to propose amending Article 1347 CC itself, and it deliberately does not. The forfeiture mechanism in Section 5 operates entirely on the evidentiary plane: it changes what a non-conforming owner may claim once notice has been given and every cooperative route ignored, not the substantive liability rule the article states. Article 1347 CC's allocation of excavation risk to whoever performs the works, irrespective of precautions, is left untouched here. The civil-law root identified in Section 3 is real, and it reaches further than an evidentiary fix can address — but reworking the substance of a Civil Code liability rule that has stood since 1966 is a separate undertaking, with its own doctrinal history and its own audience, and this paper does not attempt it in passing. It is left for treatment on its own terms.

What it does is supply, for the first time, a forum that resolves a structural question on documents that already exist, before that question becomes a dispute resolved by

whichever party can sustain litigation longest. It is narrower than the standing right it is sometimes mistaken for, faster than the litigation it is designed to prevent, and cheaper, for every institution it touches, than the alternative each currently tolerates.

7.3 Why the Burden Falls Where It Falls

The allocation of duty across this paper's mechanisms is not arbitrary, and it is worth restating as one rule rather than several separate decisions. Each duty falls on whichever party already holds the relevant fact at the lowest cost of discovery. The técnico responsável bears the notice duty in Section 5 because the técnico alone knows, before anyone else does, that a new project is interdependent with a documented condition elsewhere. The município bears the billing and disclosure duty in Section 6 because the município, and no one else, holds the loteamento file from which that duty could ever be discharged. The non-conforming owner bears the cost of remediation because the condition is theirs, documented and unrebutted. The Affected Party bears nothing they did not choose to advance, secured and recoverable. No duty in this paper was assigned by sympathy. Each was assigned to whoever could discharge it most cheaply.

7.4 Beyond Cascais

Nothing in this argument depends on the particular município, lot, or street examined here. Wherever a continental civil-law jurisdiction pairs an administrative standing doctrine that treats interdependent properties as legal strangers with a civil liability default that does not distinguish a structure's documented baseline condition from the incremental risk a new project adds, the same contradiction will recur, because the same incentive produces it. The reform proposed here borrows nothing from outside Portuguese law to close that gap — every mechanism is already present in the CPA, the Código Civil, the RJUE, or ordinary contract and property practice — which is itself the strongest evidence that the gap was never a matter of missing legal technology. It was a matter of which existing tool got pointed where.

The generalisation reaches further still. The three conditions that produce this contradiction — genuine interdependence between two parties, no cheap channel through which one may disclose a known condition before harm occurs, and liability or entitlement allocated at the moment of crisis rather than the moment of

knowledge — are not peculiarities of property law, of Portugal, or even of the relationship between a neighbour and a builder. A companion paper models that structure formally, shows the resulting gridlock to be a genuine equilibrium that moral exhortation cannot dislodge, and demonstrates the same notice-window-forfeiture mechanism proposed here operating, suitably adapted, across corporate, environmental, security, medical, consumer, and resource law.¹⁷ What this paper offers is one jurisdiction, worked through in the full statutory detail a legislature would need to act on it. What the companion paper offers is the reason this is not a coincidence.

The case for adopting it does not depend on persuading every institution at once. The município adopts it because it collects the same or greater revenue with less litigation risk attached. The courts adopt it because it removes, from a caseload already exceeding 600,000 pending matters, a category of dispute current law guarantees will take years to resolve on evidence that should have existed from the outset. The insurer adopts it because a documented risk prices more accurately than an undocumented one. None of these institutions needs to be persuaded the others are right. Each needs only to notice that the alternative it currently tolerates costs it more than the alternative this paper proposes.

¹⁷Carroll, S. (2026) The Manufacturing of Bad Faith: Mechanism Design and the Doctrine of the Affected Party. SSRN Working Paper No. 6972499. Available at: <https://papers.ssrn.com/abstract=6972499>.

Complete Bibliography

Primary Legal Sources

Código do Procedimento Administrativo, approved by Decreto-Lei n.º 4/2015, de 7 de janeiro, as amended.

Código Civil, approved by Decreto-Lei n.º 47344, de 25 de novembro de 1966, as amended.

Regime Jurídico da Urbanização e Edificação, approved by Decreto-Lei n.º 555/99, de 16 de dezembro, as amended.

Lei n.º 31/2009, de 3 de julho.

Lei n.º 63/2011, de 14 de dezembro, approving the Lei da Arbitragem Voluntária.

Portaria n.º 71-A/2024.

Regulamento do Plano Diretor Municipal de Cascais.

Related Work by the Author

Carroll, S. (2026) Network Proximity and the Appearance of Impartiality: Applying Erdős-Equivalent Distance Measures to the Reform of Court-Appointed Expert Standards in Civil Law Jurisdictions. SSRN Working Paper No. 6905898. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6905898.

Carroll, S. (2026) The Manufacturing of Bad Faith: Mechanism Design and the Doctrine of the Affected Party. SSRN Working Paper No. 6972499. Available at: <https://papers.ssrn.com/abstract=6972499>.

Administrative and Judicial Sources

Aditamento ao Alvará de Loteamento n.º 268, Câmara Municipal de Cascais, 12 de março de 2021, Processo SPO 1428/2018.

Câmara Municipal de Cascais, Divisão de Assuntos Jurídicos, Informação ACC/29/2025 (5 September 2025).

Câmara Municipal de Cascais, Divisão de Assuntos Jurídicos, Informação ACC/13/2026 (17 March 2026).

Câmara Municipal de Cascais, Processo SPO n.º 2296/2018, Requerimento SPO n.º 7971/2018 (Pedido de Informação Prévia).

Câmara Municipal de Cascais, notificações relativas aos Processos SPO n.º 1375/2021 e SPO n.º 1611/2018.

Statistical and News Sources

Direcção-Geral da Política de Justiça, Ministério da Justiça, statistical bulletin on pending caseload in Portuguese first-instance courts, 2025.

Press and municipal reporting on the structural incident at Rua do Sol à Graça, freguesia de São Vicente, Lisboa, 3 September 2025.