

## Building without a Building Permit

### *Legal consequences*

If your neighbor erects a building without a building permit, do you have any right to take legal action, based on civil law? Or is the government the only one who can litigate against your neighbor?

Based on art. 7 of the Building- and Dwelling Ordinance<sup>1</sup> (“**the Building Ordinance**”), it is prohibited to erect a building without a building permit. VROMI can also attach conditions to a building permit, and it is forbidden to erect a building that is not in compliance with these conditions. The Building Ordinance contains provisions that stipulate the requirements and conditions that must be fulfilled in order to get a building permit. VROMI will, among other things, look at the building integrity, the technical construction of the building, the safety for the direct environment (e.g., traffic situations), distances to public roads, other buildings and (boundaries of) neighboring properties, the safety of the building (including whether it is sufficiently fireproof), and whether the building is in accordance with the conditions of any applicable planning permit. In addition, VROMI will assess if a building may be disfiguring to the environment and/or cause a hindrance to the neighborhood.

In short, the procedure of requesting a building permit, as described in the Building Ordinance, ensures that the plans and drawings that must be submitted along with the request for the building permit, will be tested and approved (or not) by government.

If one builds without a building permit, one acts in conflict with a statutory obligation, and this can be qualified as a wrongful act. The same applies if one infringes upon the conditions attached to the building permit.

The next question is: who has a claim, based on a wrongful act, against the person that builds without a building permit? Is it only a wrongful act towards government or are there also other parties that may have a claim and course of action against the person or entity that is building without a building permit?

In caselaw<sup>2</sup>, it has been decided that building without a building permit can be considered a wrongful act against all persons whose interests are protected by the Building Ordinance/the building permit procedure. Therefore, you do have legal recourse if your neighbor builds on his property without a building permit, provided you have a direct interest. If you live in Philipsburg, for example, you cannot successfully complain about illegal building activities in Maho, because you don't have a direct interest in that area.

To revisit the questions in the first paragraph, civil law gives private persons (and legal entities) the right to act against such illegal building activities when there is a direct interest.

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<sup>1</sup> LANDSVERORDENING, houdende voorschriften betreffende het bouwen en de volkshuisvesting.

<sup>2</sup> For example: court decision in summary proceedings dated August 12, 2022, SXM2022-897/KG79/2022.

If you have questions about (potentially) dubious and/or possibly illegal building activities, the attorneys at BZSE Attorneys at Law/Tax Lawyers are happy to advise you.

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