

HORIZONTAL PROPERTY ACT*

AS AMENDED

Revised text of the Horizontal Property Act 49/1960, as amended by Reform Act 8/1999, Civil Procedure Act 1/2000, and Equal Opportunities, Non-discrimination and Universal Access for Persons with Disabilities Act 51/2003

TRANSLATION INTO ENGLISH BY CASTILLO TRADUCTORES

PREAMBLE OF REFORM ACT (ACT 8/1999)

The extended period of time during which the Horizontal Property Act 49/1960, of 21st July, has been in force has evidenced its usefulness in a variety of fields, including the regulation of mutual relations between unit owners under this system of property ownership, real estate development and urban planning. With Act 2/1988, of 23rd February, and Act 3/1990, of 21st June, the Horizontal Property Act was adapted to social reality. However, the passing of time has created new social aspirations regarding the regulation of horizontal property.

At present, the unanimity rule is deemed excessively strict in as much as it hinders implementation of certain actions considered beneficial for property owners' communities and even for society at large, for environmental or other reasons. Therefore, it seems appropriate to introduce some flexibility in the adoption of resolutions aimed at establishing certain services (such as janitor service, lifts, removal of architectural barriers impeding the mobility of people with physical handicaps, telecommunication services, collection and use of solar energy, etc.).

Another pressing social need is to enable property owners' communities to legally recover debts due by their own members. The reform aims at implementing the so-called "fight against defaulting" with a series of measures: creation of a reserve fund, inclusion in the deed of any outstanding debts, real attachment of the property transferred to payment of those general expenses attributable to the year when the transfer took place plus the preceding year, joint and several liability of the transferor who fails to report the transfer, enforceability of resolutions adopted by the general assembly and recorded in the minutes of its meetings, establishment of a rapid and effective civil procedure for the collection of debts to the community, etc.

This Act also includes an updated regulation of the recording of minutes of meetings, duties of the community's governing bodies (particularly those of the administrator, whose position may be filled by any unit owner or by natural persons with adequate professional qualification), convening of meetings, exercise of voting rights, renunciation of the office of president and other matters encountered daily in community living and which were not sufficiently regulated.

With the above measures, the Horizontal Property Act gains not only flexibility and dynamism, but also effectiveness, adapting itself to the new social requirements so as to continue to be one of Spain's most far-reaching legal norms.

* **Note.-** This system of ownership is also known as *condominium ownership* in the US and most of Canada, *commonhold system* in England and Wales and *tenement law* in Scotland. Other names are used in other countries, such as *strata titles* (British Columbia, Singapore, Northern Australia, Southern Australia), *strata schemes* (New South Wales), *unit titles* (Western Australia), *sectional titles* (South Africa), *divided co-ownership* (Québec), and *flying freeholds* (Jersey). However, *horizontal property* is a synonym also used in a number of countries, along with their own specific designations.

CHAPTER ONE General Provisions

Section 1

This Act purports to govern the special system of ownership established in section 396 of the Civil Code, known as horizontal property.

For the purposes of this Act, “unit” means any part of a building that can be subject to independent use by reason of separate independent entrances from either the public thoroughfare or a common element, and shall be construed to include but not be limited to flats and business or other premises.

Section 2

This Act shall apply to—

- a) communities of property owners formed under the provisions of section 5;
- b) communities fulfilling the requisites established in section 396 of the Civil Code and for which no declaration of horizontal property [i.e. the master deed] has been executed. In any case, for matters relating to the legal system of ownership of individual units and common areas, and for those regarding reciprocal rights and obligations of unit owners, these communities shall be governed by the provisions of this Act; and
- c) private real estate developments, in the terms established in this Act.

CHAPTER TWO On the system of ownership of individual units in multiple-unit buildings

Section 3

In the ownership system provided for in section 396 of the Civil Code, each unit owner shall have—

- a) absolute ownership of a space sufficiently delimited, intended for independent use and enjoyment, together with the architectural elements and fixtures of any kind, whether apparent or not, included within its boundaries and for the exclusive service of the unit owner, and with appurtenances specifically set forth in the master deed, including those located outside the delimited space; and
- b) co-ownership, in conjunction with the other unit owners, of the common elements, belongings and facilities.

An assessment quota shall be allocated to every unit in relation to the value of the building and expressed as a percentage of said value. Said quota shall serve as a coefficient to determine individual unit shares in the expenses and benefits of the community. Improvements or impairments shall not affect the quota allocated to an individual unit, which may be altered only by unanimous agreement.

Individual unit owners can freely dispose of their estate, provided constituent elements are not separated and transferred enjoyment does not affect the obligations arising out of this ownership system.

Section 4

Subdivision shall not terminate the situation governed herein. Subdivision may only be carried out by joint owners of an individual unit with regard to such unit provided joint ownership was not expressly established for the common service or benefit of all the unit owners.

Section 5

The declaration of ownership of individual units in a multiple-unit building (hereinafter called 'the master deed') shall describe every unit, besides the building as a whole, and each unit shall be serially numbered. The description of the building shall set forth the circumstances required by legislation governing mortgages, along with the building's facilities and services. The description of each individual unit shall include its size, boundaries, floor where it is located and such appurtenances as garage space, attic or basement.

The same document shall set the assessment quota corresponding to each unit as established either by the sole owner of the building at the time sale of units was initiated, by agreement of all existing unit owners, by arbitration award or by court decision. The basis for determining said quota shall be the usable area of each unit in relation to the building as a whole, its internal or external location, its situation and the reasonable foreseeable use of common elements and services.

The master deed may also contain rules and regulations concerning the exercise of rights and other provisions not prohibited by law regarding the use of the building, its units, its installations and facilities, expenses, administration and management, insurance, maintenance and repair, thus constituting a private statute that shall not bind third parties unless it has been registered in the Registro de la Propiedad [Land Registry].

For any amendment of the master deed the same requirements shall be observed as for its creation, except as otherwise provided regarding the validity of resolutions.

Section 6

In order to regulate the particulars of co-existence and the appropriate use of the common services and elements, and within the limits set forth by law and the community statutes, the body of owners may establish internal rules, which shall be binding on all unit owners until amended in the form prescribed for resolutions regarding administration.

Section 7

1. Owners of individual units may modify the architectural elements, installations or services of their unit, giving proper notice to the community representative provided such work not impair or alter the safety of the building, its overall structure, its external appearance or condition, or prejudice the rights of another unit owner.

Unit owners shall not make any alteration whatsoever in the rest of the building. If unit owners notice the need for urgent repairs, they shall bring it to the attention of the administrator without delay.

2. The owner and the occupant of a unit shall not carry out in such unit or in the rest of the building any activities not permitted in the community statutes, or which may cause damage to the property or contravene the general regulations concerning inconvenient, unhealthy, noxious, hazardous or unlawful activities.

The president of the community, on his/her own initiative or at the request of a unit owner or occupant shall urge the person or persons carrying out the activities banned under this subsection to desist under admonition of court action.

Should the offender persist in his/her conduct, the president, subject to the authority of the meeting of the owners' general assembly, duly convened for this purpose, may undertake an injunction procedure, which, insofar as not expressly provided for in this section, shall be settled by ordinary proceedings.

Once the action is brought, including the accreditation of the authoritative notice to the offender and the certification of the resolution adopted by the general assembly, the judge may order as a precautionary measure the immediate cessation of the prohibited activity, under admonition of incurring an offence of disobedience. Furthermore, the judge may adopt any precautionary measures necessary to enforce the injunction. The action shall be brought against the owner and, if fitting, against the occupant of the unit.

Should the court adjudge in favour of the plaintiff, it may decree, besides downright cessation of the prohibited activity and award of damages as may correspond, the deprivation of the defendant's right to use the unit for no more than three years, depending on the seriousness of the offence and detriment caused to

the community. If the offender were not the owner, the judgement may definitely terminate the offender's interest in the unit and decree his/her immediate eviction.

Section 8

Individual units and appurtenances may be physically divided to form other, smaller, independent units, enlarged by the aggregation of adjoining units in the same building or reduced by the segregation of some of their constituent parts.

In such cases, besides the consent of the unit owners involved, the approval of the general assembly shall be required. The general assembly shall be responsible for establishing the new assessment quotas for the modified units pursuant to section 5 above, without altering the quota of the remaining units.

Section 9

1. The duties of unit owners are–

- a) to respect the general installations of the community and any other common elements in the property, whether for general or private use and whether included in their unit or not, using them with due care and avoiding at all times that any damages or impairments be caused;
- b) to maintain their own unit and private installations thereof in good repair so that no harm is caused to the community or other unit owners, making good any damages produced by their negligence or by their dependants';
- c) to consent to any repairs in their unit required for the service of the building and to permit indispensable easements required to create common services of general interest agreed in accordance with the provisions of section 17, being entitled to compensation from the community for any damages sustained;
- d) to allow access to their unit for the purposes stated in the three preceding subsections;
- e) to contribute, according to the assessment quota set forth in the master deed or to what may have been specially established, to the overall expenses for the appropriate maintenance of the building, its services, charges and any responsibilities that cannot be allocated individually.

Amounts payable to the community arising from the obligation to contribute towards the maintenance and general expenses of the building corresponding to the fees assessed for the period to date of the current year and for the previous year shall be deemed preferential for the purposes of section 1923 of the Civil Code, and they come, as regards settlement, before those stated in subsections 3rd, 4th and 5th of said section, subject to the guarantees in favour of salaries and wages established in the Estatuto de los Trabajadores [Workers' Statute].

Any person acquiring a unit in horizontal property ownership, even where the title was entered in the Land Registry, shall be liable for, and the unit acquired attached to payment of any outstanding amounts payable to the community for general expenses by the previous owners up to the limit of the fees assessed for the period to date of the year when the transfer of ownership took place and for the natural year immediately precedent. The unit shall be legally burdened with fulfilment of this obligation, and the rules on precedence of debts stated above shall be equally applicable in this case.

The deed shall include a statement by the transferor declaring that there are no outstanding debts for general expenses payable to the community or, in the event that there are, he/she shall declare their amount. The transferor shall produce at that moment a certificate concerning the state of debts with the community that shall coincide with said statement. Execution of the deed shall not be authorised unless the purchaser should expressly waive such requirement. The certificate shall be issued by the person acting as secretary within seven natural days of request, with the approval of the president. Both shall be accountable, in case of malfeasance or negligence, for the accuracy of the data on the certificate and for any damages resulting from delay as to its issue;

- f) to contribute, according to their respective assessment quota, to the endowment of the reserve fund that shall exist in the property owners' community for the maintenance and repair of the building.

The reserve fund, which shall belong to the community to all effects, shall be endowed with an amount not lower than five percent of its last ordinary budget.

This fund may be used by the community to subscribe an insurance policy covering damages in the building or, alternatively, to subscribe a contract for permanent maintenance of the building and its general installations;

- g) to observe due care in the use of the property and in their relationship with the other unit owners and to account for any violations or damages.
- h) to notify the person acting as community secretary, by any means ensuring proper evidence of service, of the domicile in Spain for any summons or communications of any kind related to the community. The unit shall be deemed to be the owner's domicile by default, and any notices served on the occupant shall have full legal effect.

Should service of notification or summons at the place indicated in the preceding paragraph be impossible, it shall be deemed to have taken place if the relevant communication is posted on the notice board of the community, or at a visible place assigned for this purpose, indicating the date and the reason why this form of notification is adopted, signed by the person acting as community secretary and endorsed by the president. A notice served in this fashion shall produce full legal effect in the term of three natural days;

- i) to notify the person acting as community secretary, by any means ensuring proper evidence of service, the change of ownership of their unit. Any unit owner failing to comply with this obligation shall remain liable to the community jointly and severally with the new unit owner for charges incurred after the transfer, but shall be able to claim reimbursement from the new unit owner. These provisions shall not apply where any of the governing bodies of the community, established in section 13, have had notice of the transfer of the unit by any other means or as a result of unmistakable acts of the new owner, or where the transfer is publicly known.

2. For the application of the rules stated in the preceding paragraph, those expenses not attributable to one or several units shall be deemed general expenses, and non-usage of a service by a unit owner shall not exempt the unit owner from fulfilment of the corresponding obligations subject to the provisions of section 11.2 of this Act.

Section 10

1. The community is obliged to carry out work necessary for the proper upkeep and maintenance of the building and its facilities in order to preserve appropriate conditions as regards its structure, imperviousness, habitation, accessibility and safety.

2. The community, at the request of owners of units in which persons with disabilities, or persons over the age of seventy, live, work or render voluntary or altruistic services, is obliged to carry out work to permit accessibility to and use of common elements in accordance with the disability of said persons, or work to install mechanical and electronic devices favouring their communication with the outside, provided the total cost of such work does not exceed the ordinary common expenses of three months.

3. Unit owners exercising opposition to or causing delay of the execution of orders decreed by the appropriate authority shall be held accountable individually and be subject to administrative sanctions.

4. Discrepancy concerning the nature of works to be carried out shall be resolved by the owners' general assembly. The interested parties may also apply for arbitration or for a technical opinion in the terms established by law.

5. The obligation to satisfy expenses arising from maintenance and accessibility work herein stated shall be attached to the unit in the same terms and conditions as those established in section 9 for general expenses.

Section 11

1. No unit owner may demand new installations, facilities, services or improvements not required for the correct maintenance, habitation, safety and accessibility of the building, in accordance with its nature and characteristics.

2. Where resolutions are validly adopted to carry out improvements that may not be imposed in accordance with the provisions of the last preceding subsection and whose cost of installation exceed the

ordinary common expenses for three months, dissenters shall not be bound, nor their fee modified, even where they cannot be deprived of the improvement or benefit.

If dissenters wish at any time to take advantage of the benefits of the innovation, they shall have to share in the cost of installation and maintenance, duly updated by application of the legal interest rate.

3. Where resolutions are validly adopted to carry out work to ensure accessibility, the community shall be obliged to pay the cost even where it exceeds the ordinary common expenses of three months.

4. Innovations impeding or barring any unit owner from using and enjoying any part of the building shall require, in any case, the express consent of such owner.

5. Special assessments for the implementation of improvements made or to be made in the building shall be at the expense of whoever is the unit owner at the moment when the amounts corresponding to such improvements become due.

Section 12

The construction of new floors and any other alteration to the structure or the supporting walls of the building or common elements affect the master deed and must be submitted to the procedure established for its amendment. The resolution adopted to this respect shall determine the nature of the modification, the resulting alterations as to the description of the property and/or the units, the variation in the assessment quotas and the name of the owner(s) of the new units.

Section 13

1. The governing bodies of the community shall be the following:

- a) The owners' general assembly.
- b) The president and, where applicable, the vice-presidents.
- c) The secretary.
- d) The administrator.

The community statutes or a majority resolution of the owners' general assembly may establish other governing bodies of the community but only insofar as this does not entail any impairment whatsoever of the functions and responsibilities to third parties that this Act attributes to the aforementioned.

2. The president shall be appointed from among the unit owners by election or, if this could not be achieved, by rotation or by drawing lots. Acceptance shall be compulsory, although the unit owner designated may apply to the court for his/her replacement within one month of taking office, invoking the motives. The judge, following the procedure established in the last paragraph of section 17, shall issue an order as he/she shall see fit, designating, where appropriate, the unit owner who shall replace the president in office until such time as a new appointment is made within the term determined in the court decision.

The judge may be equally approached where, for any reason whatsoever, the general assembly found it impossible to designate a president.

3. The president shall legally represent the community both in and out of court in all matters related thereto.

4. The existence of vice-presidents shall be discretionary. They shall be appointed by the same procedure established for the designation of the president.

The vice-president, or vice-presidents in the order prescribed, shall replace the president in cases of absence, vacancy or incapacity, and assist him/her in the exercise of his/her functions under the terms established by the general assembly.

5. The functions of secretary and administrator shall be carried out by the president of the community except where the statutes, or the general assembly by a majority resolution, provide that such offices be held separately from the Presidency.

6. The post of secretary and that of administrator may be held by the same person or by persons appointed separately.

The position of administrator and, where applicable, that of secretary-administrator may be discharged by any unit owner, or by natural persons with adequate professional qualification and legally licensed to perform such functions. It may also be held by an artificial person, a corporation or other artificial person in the terms set out by the law.

7. The term of office for all governing bodies of the community shall be of one calendar year unless otherwise provided for by the community statutes.

The persons designated may be removed from their posts before the expiration of their term of office by a resolution of the general assembly, convened to hold an extraordinary session.

8. Where the number of unit owners in a building does not exceed four, they may opt for the system of administration provided for in section 398 of the Civil Code if so prescribed by the community statutes.

Section 14

The functions of the general assembly shall be—

- a) to appoint persons for the aforementioned offices, to remove them from office, and to deal with any claims presented by unit owners against the performance of their duties;
- b) to approve the budget of expenditure and income and the corresponding accounts;
- c) to approve bids for and authorise all repair work to be performed on the property, whether ordinary or extraordinary, and receive prompt information of any urgent measures adopted by the administrator in accordance with the provisions of section 20.c);
- d) to approve or amend the community statutes and establish the internal rules; and
- e) to inquire into and resolve on any other matters of general interest for the community, adopting those measures deemed necessary or suitable for the best common service.

Section 15

1. Unit owners may attend meetings of the general assembly in person or by legal or voluntary representation, for which a written proxy signed by the unit owner is sufficient accreditation.

Where a unit belongs jointly to different owners, these shall designate one representative to attend and vote on their behalf.

Where a unit is held in usufruct, the unit owner or landlord shall be entitled to attend and vote, but, unless otherwise stated, shall be presumed to be represented by the tenant or usufructuary. However, express representation shall be required for resolutions referred to in the First rule of section 17 concerning work for extraordinary repairs or improvements.

2. Unit owners who at the time the meeting is called to order are not up-to-date with payments of outstanding community assessments and have not judicially challenged them or consigned the amount thereof in court or with the notary public shall be allowed to take part in the debates but not to vote. The minutes of the meeting shall record the names of the unit owners deprived of their voting rights, and neither the person nor the respective assessment quota shall be used to compute the quorums for majority votes prescribed in this Act.

Section 16

1. The meeting of the general assembly shall be held at least once a year to approve the budget and the accounts, and in any other time the president sees fit or upon request of 25 percent of the unit owners or a number representing, at least, 25 percent of the assessment quotas.

2. The summons for the meeting shall be made by the president or, failing this, by the promoters of the meeting, and shall include the items to be dealt with, the place, day and time of the first call and, where applicable, of the second call. The summons shall be made in accordance with section 9. The summons for the meeting shall include a list of unit owners with outstanding debts payable to the community and advise of the deprivation of their voting rights where the case falls within the situation described in section 15.2.

Any unit owner may request the meeting to examine and resolve on any matter whatsoever concerning the community. For this purpose, a letter should be sent to the president setting out clearly the items requested to be dealt with. The president shall include them in the agenda of the following meeting to be held.

Should a majority of the unit owners representing a majority of the assessment quotas not be present at the time of the first call, the meeting shall then be convened on second call with no quorum being required.

The meeting shall be held on second call at the place and on the date and time set forth in the first summons and may take place the same day at least half an hour later than the first call. Failing this, it shall be called again, in accordance with the requisites set forth in this section within eight natural days of the meeting not held. In this case, the notification of summons shall be at least three days in advance.

3. The annual general meeting shall be called with, at least, six days' notice and extraordinary meetings shall be called with sufficient time to inform all parties concerned. A meeting not called by the president may be legally held provided all unit owners are present and willing.

Section 17

The resolutions of the owners' general assembly shall be subject to the following rules:

First.

Unanimity shall only be required for the validity of those resolutions involving the approval or amendment of the rules contained in the master deed or in the community statutes.

The establishment or elimination of the lift, janitor and security services, or other common services or facilities of general interest, even where they involve the modification of the master deed or the community statutes shall require the favourable vote of three fifths of the total number of unit owners representing three fifths of the assessment quotas. The lease of common elements lacking a specific use shall require the favourable vote of three fifths of the total of unit owners representing three fifths of the assessment quotas as well as the consent of the unit owner directly affected, if this were the case.

Notwithstanding the provisions of sections 10 and 11 of this Act, work carried out or new common services established to eliminate architectural barriers hindering the access or the mobility of persons with physical disabilities, even where such work or services may involve the amendment of the master deed or community statutes shall require the favourable vote of a majority of unit owners representing a majority of the assessment quotas.

To the effects established in the preceding paragraphs of this rule, the votes of duly summoned unit owners absent from the meeting shall be computed as favourable if, having been informed of the resolution adopted by those present in conformity with the procedure established in section 9, they did not state their dissent to the person acting as community secretary within thirty natural days, by any means ensuring record of delivery.

Resolutions legally adopted under the provisions of this rule shall be binding on all unit owners.

Second.

The installation of the common infrastructures providing access to telecommunication services regulated in the royal decree-law 1/1998, of 27th February, or the adaptation of existing ones, as well as the installation of solar energy supply systems, whether common or private, and infrastructures necessary to access to the new collective energy supply systems may be agreed at the request of any one unit owner by a third of the members of the community representing a third of the assessment quotas.

The community shall not charge unit owners who did not vote in favour of the resolution for the cost of installation or adaptation of the said common infrastructures or those derived from its upkeep and maintenance. However, should they subsequently request access to telecommunication services or energy supply systems, and this required using the new infrastructures or the adaptation of the existing ones, they may be authorised against payment of the amount that would have corresponded to them, duly updated with the application of the legal interest rate.

Notwithstanding provisions aforementioned concerning expenses for the upkeep and maintenance, the new infrastructure installed shall be considered to be a common element for the purposes of this Act.

Third.

All other resolutions shall be adopted with the vote of a majority of the total number of unit owners representing a majority of the assessment quotas.

Where the meeting is held on second call, the resolutions adopted by a majority of those present shall be valid if they represent more than half the value of the assessment quotas of those present.

Where a majority cannot be reached by the procedures provided for in the preceding paragraphs, the judge, on petition of an interested party, made within a month of the date of the meeting held on second call, and after hearing the litigants, duly cited, shall adjudge in equity within twenty days from the date of the petition, awarding legal costs to the corresponding party.

Section 18

1. The resolutions of the general assembly may be challenged in court, in accordance with the provisions of the general procedural law, in the following cases:

- a) where such resolutions are contrary to the law or to the community statutes;
- b) where they are seriously detrimental to the interests of the community and benefit one or several unit owners.
- c) where they are seriously detrimental to some unit owner who has not the legal obligation to sustain such detriment or where they have been adopted in abuse of power.

2. Unit owners who expressed and recorded a dissenting vote at the meeting, those who were absent for any reason and those who were illegally deprived of their right to vote shall be entitled to challenge these resolutions. In order to challenge a resolution, a unit owner must have satisfied all community fees due or, alternatively, must have consigned them in court before proceeding. This rule shall not apply where the resolution challenged regards the establishment or alteration of owners' assessment quotas, as provided in section 9.

3. The action shall prescribe three months after the adoption of the resolution by the general assembly or one year in the case of resolutions contrary to the law or the community statutes. For unit owners not present at that meeting the three-month term shall begin to count from the date of notification of the resolution pursuant to the provisions of section 9.

4. Where a resolution of the general assembly is challenged in court, its implementation shall not be suspended, unless the judge, at the plaintiff's request and having heard the community, so resolves as a precautionary measure.

Section 19

1. The resolutions of the general assembly shall be recorded in a book of minutes stamped and validated by the Land Registrar in accordance with the applicable regulations.

2. The minutes of each meeting of the general assembly shall express, at least, the following circumstances:

- a) the date and place of the meeting;
- b) the person having summoned the meeting and, where appropriate, the unit owners who promoted it;
- c) whether it was ordinary or extraordinary and whether it was held on first or on second call;
- d) the roster of those present and their respective offices, as well as unit owners represented;
- e) the agenda for the meeting;
- f) the resolutions adopted, with indication, where relevant for the validity of the resolution, of the names of unit owners who voted in favour and against, as well as the assessment quotas corresponding to each unit owner.

3. The president and the secretary shall sign the minutes at the end of the meeting or within the following ten days. Once the minutes are signed, the resolutions shall be in force, unless otherwise provided by law.

The minutes shall be sent to the unit owners, pursuant to the procedure established in section 9.

Any defects or errors contained in the minutes may be rectified provided that they are signed by the president and the secretary and that the date and place of the meeting are correctly expressed, as well as the names of those unit owners present and those represented, the resolutions adopted, the votes in favour and against, and the assessment quotas thereby represented. Corrections shall be made prior to the following meeting of the general assembly and submitted to it for ratification.

4. The secretary shall keep custody of the general assembly's minutes book and he shall conserve the summons for meetings, notifications, proxy-forms and other relevant documents during a five-year period.

Section 20

The duties of the administrator shall be–

- a) to ensure the proper management of the house, its installations and services, and to advise and admonish unit owners to that effect;
- b) to prepare the budget of expenditures with sufficient anticipation and to submit it to the general assembly, proposing ways to cover the expenses;
- c) to see to the upkeep and maintenance of the property, arranging for urgent repairs and measures, and to report promptly to the president or, where appropriate, to the unit owners;
- d) to carry out the resolutions adopted regarding maintenance work and to make and receive payments as appropriate;
- e) to act, where applicable, as secretary to the general assembly and to keep custody of community documents available for perusal by the unit owners; and
- f) any other function conferred by the general assembly.

Section 21

1. The obligations paragraphs 9.e) and 9.f) refer to shall be fulfilled by the unit owner in the time and form determined by the general assembly. Otherwise, the president or the administrator, if so agreed by the general assembly, may seek judicial redress through monition proceedings.

2. Recourse to monition proceedings shall require prior certification of the general assembly's resolution to claim assessments due to the community of property owners, issued by its secretary and endorsed by the president, providing said resolution was notified to the unit owners concerned in the form provided for in section 9.

3. Sums arising from expenses incurred in claiming payment prior to court action may be added to the sum claimed by virtue of the provisions of the preceding subsection, provided there is documentary evidence of the previous claim and that proper receipts for said expenses are attached to the application.

4. Where the previous unit owner must answer jointly and severally for the outstanding debt, and notwithstanding the right to claim reimbursement from the current unit owner, action may initially be brought against the former. The action may also be brought against the titleholder appearing on the Register, who shall be entitled to the aforesaid right. In all these cases, the initial claim may be filed [severally] against any of the parties to the obligation or jointly against all of them.

5. Where the debtor opposes the initial claim provided for in the monition proceedings, the plaintiff may request a general lien of attachment on such debtor's assets as deemed sufficient to cover the amount claimed plus interest plus costs. The judge shall decree a general lien without asking the creditor to post bond or bail. The debtor may enervate the lien by providing a bank guarantee for the amount for which the general lien was decreed.

6. Where in the initial application of the monition proceedings the professional services of lawyer and solicitor are used to claim sums due to the community, the debtor shall pay, subject in any case to the limits established in subsection 394.3 of the Ley de Enjuiciamiento Civil [Civil Procedure Act], the fees and duties incurred as a result of their intervention, irrespective of whether the debtor satisfied the payment requested or did not appear in court. In those cases where there is opposition, the general rules regarding costs shall be followed. However, should the plaintiff's claim be fully upheld, the judgement

should include the lawyer's and solicitor's fees, even where their intervention was not legally compulsory.

Section 22

1. The community of property owners shall be liable with all its assets for any debts to third parties. However, as a second option, the creditor may claim from every unit owner who was party to the corresponding process payment of his/her share of the amount not satisfied after having served a request for payment on such unit owners.

2. Any unit owner may oppose execution if he/she accredits that all debts to the community are fully settled at the moment of the request mentioned in the preceding subsection.

If the debtor should pay up upon request, he/she shall bear the corresponding proportion of the costs incurred up to that moment.

Section 23

The horizontal property regime shall terminate–

1. upon destruction of the building, save for stipulation to the contrary. Destruction shall be deemed to have taken place when the cost of reconstruction shall exceed fifty percent of the value of the property at the time of the accident, unless the excess of such cost is covered by insurance; or
2. by conversion to ordinary ownership or co-ownership.

CHAPTER III

On the regime of private real estate developments

Section 24

1. The special system of property ownership provided for in section 396 of the Civil Code shall apply to real estate developments that–

- a) are formed by two or more detached buildings or independent plots used mainly as dwellings or commercial premises; and where
- b) the owners of such buildings or of the units in which they are divided participate in an indivisible co-ownership of other immovable elements, roads, installations or facilities.

2. The private real estate developments referred to in the preceding subsection may–

- a) form one community of property owners through any of the procedures provided for in section 5.2. In this case they shall be subject to the provisions of this Act, which shall be entirely applicable to them; or
- b) form a master community comprising various communities of property owners. For this purpose, the master deed of the master community must be executed by the sole owner of the development or by all the presidents of the component communities, duly authorised by a majority resolution of their respective assemblies. The master deed shall include the description of the whole real estate development and of the common elements, roads, installations and facilities. It shall also contain the participation quota established for each one of the component communities. These shall be jointly liable for the expenses of the master community. The master deed and the statutes may be registered in the Land Registry.

3. The aforementioned master community shall have the same legal status as communities of property owners and shall be governed under the provisions of this Act with the following specifications:
- a) The general assembly of property owners shall be formed, unless otherwise agreed, by the president of each component community in representation of its individual unit owners;
 - b) the adoption of resolutions for which the law prescribes qualified majorities shall require, in turn, a prior appropriate majority at the general assembly meeting of each one of the communities belonging to the master community;
 - c) unless the general assembly decides otherwise, the provisions of section 9 concerning a reserve fund shall not apply to the master community.

The powers of the governing bodies of the master community shall only cover common immovable elements, roads, installations and facilities or services. Their decisions shall in no event impair the powers of the governing bodies of the component communities.

4. The provisions of this Act, with the same specifications indicated in the preceding section, shall apply to those private real estate developments that do not adopt any of the legal forms indicated in subsection 2 of this section, as a complement to the covenants adopted by the property owners.

Additional Provision

1. Notwithstanding the provisions enacted by Regional Governments in the exercise of their powers, the creation of the reserve fund regulated in section 9.1.f) shall comply with the following rules:

- a) The fund shall be created at the time the general assembly approves the ordinary community budget corresponding to the financial year immediately after this Act takes effect. Communities formed after this Act takes effect shall create their reserve funds when adopting their first budget.
- b) Initially, the fund shall be endowed with no less than 2.5% of the ordinary community budget. For this purpose, unit owners shall make in advance the necessary contributions in accordance with their respective assessment quota.
- c) When the ordinary budget for the financial year following the creation of the reserve fund is approved, said fund should be endowed with the amount necessary for it to attain the minimum amount established in section 9.

2. The amount of the reserve fund shall not, at any time during the fiscal year, be under the limit legally established.

Those amounts drawn from the reserve fund during the financial year for taking care of the upkeep and maintenance costs of the property allowed under this Act shall be computed as part of the fund for the purposes of calculating its minimum amount.

Those contributions necessary to cover the amounts detracted from the reserve fund shall be effected at the outset of the following financial year

THE FOLLOWING ARE SPECIFIC PROVISIONS OF THE REFORM ACT 1999

Additional Provision

1. Section 396 of the Civil Code shall henceforth read as follows:

“The different units (dwelling, business or other units) in a building or parts thereof that can be subject to independent use by reason of separate independent entrances from either the public thoroughfare or a common element may be the object of separate ownership, which shall carry with it an inherent right of co-ownership of the common elements in the building, which are all those necessary for its proper use and enjoyment, such as floors, air, foundations and roofs; structural elements, including pillars, beams, steel meshes and supporting walls; façades, with the exterior revetments of terraces, balconies and windows, including their image or configuration, the elements of enclosure shaping them and their exterior facings; the entranceway, stairways, reception desk or janitor-quarters, corridors, passages, walls, ditches, courtyards, wells, precincts for lifts, tanks, meters, telephone lines, or for other facilities or fittings, including those for private use, lifts, installations, conduits and piping for drainage and for the supply of water, gas or electricity, even those for solar energy systems, hot water system, heating, air conditioned, ventilation and smoke extraction; those for fire detection and prevention, electronic doors and safety devices in the building, as well as those for collective aerials and other installations for audio-visual or telecommunication services; all of them up to the inlets or outlets to private areas, easements, and any other material or juristic elements which are indivisible because of their nature or use.

The co-owned parts may not, in any case, be subdivided, and they may only be alienated, encumbered or seized together with the specific individual unit to which they are inseparably attached.

Where a unit is alienated, the owners of the other units shall not enjoy by virtue of their ownership any right of pre-emption or redemption.

This form of property shall be governed by special legal provisions and, insofar as such provisions allow, by the will of the unit owners.”

2. Notwithstanding the provisions of the previous paragraph, the amendments introduced in the Civil Code and in the Mortgage Act by the original drafting of sections 1 and 2 of the Act 49/1960, of 21st July, on Horizontal Property shall remain in force with their current drafting. (1)

(1) The original drafting of Section 2 of the Horizontal Property Act 49/1960 is as follows:

“Subsection 3 of section 8 of the Ley Hipotecaria (Mortgage Act) is amended and two subsections, 4 and 5, are added thereto. In addition, subsection 11 is added to section 107. These shall read as follows:

“Section eight.

3. Urban properties and buildings in general belonging to different persons, even where ownership is absolute or qualified.

4. Multiple-unit-ownership buildings, the construction of which is completed or, at least, under way.

The registration of title shall include, besides the overall description of the building, that of the units apt for independent use, serially identified with a number written in letters, and the assessment quota corresponding to each one in relation to the building. The registration of the plot of land or building as a whole shall include the projected units.

Furthermore, such rules contained in the master deed and the statutes which may shape the contents and exercise of ownership shall also be included.

The registration of the building shall be made in favour of the owner creating the ownership system or of all the unit owners.

Fifth. The units of a building in horizontal property regime, provided the registration of the building included the constitution of said regime.”

“Section 107.

11. The units in a building in horizontal property regime, registered as prescribed in section eight.”

Transitional Provision

The rules contained in section 21 of the Horizontal Property Act, as amended by this Act, shall not apply to lawsuits already initiated under the former legislation. Such lawsuits shall proceed in accordance with said legislation until their conclusion.

Final Provision

1. Any general provisions contrary to this Act are hereby repealed. Likewise, those articles contained in the statutes of communities of property owners which may be contrary to or incompatible with this Act are hereby declared null and void.
2. Communities of property owners shall adapt their statutes to the provisions of this Act within one year.