§ 1

Law 49/1960 of 21 July 1960 on Horizontal Property

Head of State
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If, in general terms, any legal organisation cannot be conceived or established without taking into account the demands of the social reality for which it is intended, this must be even more so when it deals with an institution which, like horizontal property, has acquired, especially in recent years, such a thriving vitality, despite finding no other regulatory support than the clearly insufficient one represented by article three hundred and ninety-six of the Civil Code. The present law therefore aims to follow the social reality of the facts. But not in the simple sense of converting any data obtained from practice into a norm, but with a broader and deeper scope. On the one hand, because of the inherent future dimension of legal regulation, which prevents it from being understood as a mere sanction of what is happening today and makes it necessary to foresee what may happen. And on the other hand, because although the starting point and immediate purpose of the rules is to govern human relations, for which its adaptation to the concrete and historical demands and contingencies of life is of great importance, it should not be forgotten that its ultimate purpose, especially when positive law is conceived in terms of natural law, is to achieve an order of coexistence presided over by the idea of justice, which, as a moral virtue, prevails over both the reality of the facts and the legislator's determinations, which must always be limited and guided by it.

There is one basic social fact that has had a major influence on the development of urban property in modern times. It manifests itself through a constant factor, which is the insurmountable need for buildings, both for the life of the individual and the family and for the development of fundamental activities, such as commerce, industry and, in general, the exercise of professions. Alongside this factor, which is constant in the sense of being connatural to any system of life and coexistence within a basic civilisation, there is another factor today, provoked by very diverse determinations, which is expressed in very marked terms, and this is represented by the difficulties involved in the acquisition, availability and enjoyment of habitable premises. State action has considered and addressed this real situation in three spheres, albeit different, but very directly related: in the sphere of construction, by means of indirect measures and even, on occasions, by directly tackling the enterprise; in the sphere of renting, through frequently renewed legislation, which restricts the autonomous power of the will in order to ensure a permanence in the enjoyment of housing and business premises under economic conditions subject to a system of intervention and revision; and in the sphere of ownership, mainly through the so-called horizontal property, which projects this ownership over certain areas of the building. The essential raison d'être of the regime of horizontal property is based on

in order to achieve access to urban property by means of a capital investment which, as it can be limited to the space and elements essential to meet one's own needs, is less costly and, therefore, more affordable to all and the only one possible for large sectors of the population. This being so, the regime of horizontal property not only needs to be recognised, but also needs to be encouraged and channelled, providing it with complete and effective organisation. This is all the more so if it is observed that, on the other hand, while the current legislative provisions on urban leases are only occasional remedies, which resolve the conflict of interests in an imperfect way, since the strengthening of the institution of tenancy is achieved by imposing a burden on the property that it is difficult for it to bear; On the other hand, by combining measures aimed at increasing construction with a well-organised condominium system, the housing and related problems are dealt with on a more appropriate level, allowing for stable solutions; and this will ultimately be to the advantage of the tenancy system itself, which can, without the pressure of pressing requirements, be liberalised and fulfil its economic-social function normally.

The law represents, more than a reform of the current legislation, the "ex novo" regulation, in a complete manner, of the ownership of flats. It is carried out by means of a law of a general nature, in the sense of being applicable to the entire national territory. Article 396 of the Civil Code, as in similar cases, contains the essential features of this property regime and is otherwise reduced to a rule of reference. The general nature of the law is recommended, above all, by the reason of legislative policy derived from the fact that the need it serves is manifested equally throughout the territory; but a reason of legislative technique has also been taken into account, such as the fact that the provisions in which it is translated, without descending to regulations, are sometimes of a circumstantial concreteness that exceeds the typical tone of a Civil Code.

Horizontal property made its appearance in legal systems as a form of community of property. The progressive development of the institution has mainly tended to emphasise the profiles that make it independent of community of property. The modification introduced by the Law of 26 October 1939 in the text of Article 396 of the Civil Code already represented a step forward in this sense, since it recognised the exclusive or singular ownership of the flat or premises, leaving the community, as an accessory, circumscribed to what has been called common elements. The law -which takes up the material prepared with consideration and care by the Codes Commission-, going a step further, aims to take the individualisation of ownership as far as possible from the point of view of the object. To this end, the object of the relationship, constituted by the flat or premises, incorporates the property itself, its belongings and services. While the use and enjoyment of the flat "stricto sensu", or space, delimited and independently exploited, are private, the use and enjoyment of the "immovable", building, belongings and services - apart from the particular spaces - must naturally be shared; but the two rights, although different in their scope, are considered inseparably united, a unity which they also maintain with respect to the power of disposal. Based on the same idea, the coefficient or quota is regulated, which is no longer the participation in what were previously called common elements, but expresses, actively and also passively, as a module for charges, the proportional value of the flat and what is considered to be attached to it, in the whole of the property, which, at the same time as it is physically and legally divided into flats or premises, is thus economically divided into fractions or quotas.

This individualising purpose should not be seen as a dogmatic concern and much less as the consecration of an individualistic ideology. It is a matter of not forgetting the aforementioned social function of this institution, but of understanding that the aim of simplifying and facilitating the condominium regime is thus more satisfactorily realised. With the move away from the community of property system, it is not only congruent but also reassuring to see the express elimination of the rights of first refusal and pre-emption, recognised, with certain peculiarities, in the hitherto current wording of the aforementioned article three hundred and ninety-six. However, in this case it was not only this technical consideration that guided the law. Decisive influence has been exercised both by the notorious experience that nowadays the exclusion of these rights has become almost a clause of style.

The aim here is not to concentrate the ownership of flats or premises but, on the contrary, to spread them more widely.

The constitution of the condominium regime and the determination of the set of duties and rights that comprise it have been the subject of special study. Until now, and this has a historical justification, this matter has been left almost entirely to private autonomy, in the absence of legal rules, as reflected in the Articles of Association. These were frequently not the result of the free reciprocal decisions of the contracting parties, but were usually dictated, subject to certain types generalised by practice, by the promoter of the construction company, with the persons who joined the condominium regime limiting themselves to adhering to them. The law provides a regulation which, on the one hand, is sufficient in itself - with the exceptions left to private initiative - to constitute, in essence, the legal system that presides over and governs this type of relationship, and, on the other hand, allows certain rights and duties to be specified, completed and even modified by will, as long as they do not contravene the necessary rules of law, clearly deducible from the terms of the law itself. Hence, the formulation of statutes is not indispensable, although they can fulfil the function of developing the legal regulation and adapting it to the specific circumstances of the various cases and situations.

The system of rights and duties within the condominium is structured according to the interests at stake.

The rights of enjoyment tend to attribute to the owner the maximum possibilities of use, with the limit represented both by the concurrence of the rights of equal nature of the others and by the general interest, which is embodied in the conservation of the building and in the subsistence of the horizontal property regime, which requires a material and objective basis. For the same reason, closely linked to the rights of enjoyment are the duties of an equal nature. An attempt has been made to configure them with criteria inspired by neighbourly relations, trying to dictate rules aimed at ensuring that the exercise of one's own right does not result in prejudice to the rights of others or to the detriment of the whole, in order to lay the foundations for normal and peaceful coexistence.

In addition to regulating the rights and duties corresponding to enjoyment, the law deals with other rights and duties that refer to the economic disbursements to be made jointly by the owners, either because they derive from the facilities and services of a general nature, or because they constitute charges or taxes that affect the building as a whole. The basic criterion taken into account to determine the participation of each one in the disbursement to be made is the expressed quota or coefficient assigned to the flat or premises, taking care to note that non-use of the service generating the expense does not exempt from the corresponding obligation.

One of the most important novelties contained in the law is to strengthen as much as possible the binding force of the duties imposed on the owners, both with regard to the enjoyment of the flat and the payment of expenses. Through the application of the general rules in force on the matter, the non-fulfilment of obligations generates the action aimed at judicially demanding their fulfilment, either in a specific manner, that is to say, imposing through coercion what has not been voluntarily observed, or by means of the relevant compensation. But this normal sanction for non-compliance may not be sufficiently effective in cases such as those considered here, and this for various reasons: one is that non-compliance with the duty has extremely disturbing repercussions for large groups of people, and hinders the functioning of the condominium regime; another reason is that, with regard to duties of enjoyment, judicial imposition of specific compliance is practically impossible due to the negative nature of the obligation, and compensation does not cover the intended purpose of harmonising cohabitation. For this reason, the possibility of judicial deprivation of the enjoyment of the flat or premises is foreseen in the event of the occurrence of specifically indicated circumstances, and on the other hand, the contribution to the common expenses is ensured with a real assignment of the flat or premises to the payment of this credit, considered preferential.

The concurrence of a collectivity of persons in the ownership of rights which, without prejudice to their substantial individualisation, are vested in parts of the same building, and

The law, which has always sought to be open to the lessons of experience, has taken particular account of this in this area. The law, which has always been open to the lessons of experience, has taken it into account in this matter. And the result of this, as well as of the careful weighing up of the various problems, has been to entrust the proper functioning of the condominium regime to three bodies: the Board, the Chairman of the Board and the Administrator. The Board, composed of all the owners, has the duties of a collective governing body, must meet once a year, and for the adoption of valid resolutions, as a general rule, the vote in favour is required both of the numerical or personal majority and of the economic majority, except when the importance of the matter requires unanimity, or when, on the contrary, due to the relative importance of the matter, and so that the simple passivity of the owners does not hinder the functioning of the institution, a simple majority of those present is sufficient. The post of President, who has to be elected from within the General Meeting, implicitly represents all the owners in and out of court, thus resolving the delicate problem of legitimisation that has been occurring. And, finally, the Administrator, who must be appointed by the General Meeting and is removable, whether or not he/she is a member of it, must always act in dependence on it, without prejudice to fulfilling the obligations directly imposed on him/her in any case.

On the other hand, this has been given a certain flexibility so that the number of these people in charge of representation and management can be greater or lesser depending on the importance and needs of the community.

Finally, it should be pointed out that the economy of the system established has interesting repercussions insofar as it affects the Land Registry and requires a brief reform of mortgage legislation. For the sake of clarity, it has been decided to add two paragraphs to article eight of the current Mortgage Law, the fourth and fifth, which sanction, in principle, the possibility of registering the building as a whole, subject to the horizontal property regime, and at the same time that of the flat or premises as an independent property, with its own registration folio.

The fourth number of the aforementioned Article 8 provides for the normal hypothesis of the constitution of the horizontal property regime, i.e. the construction of a building by an owner who intends to use it precisely for the alienation of flats, and the less frequent case of several owners of a building trying to leave the indivision by mutual agreement, or constructing a building with the intention of distributing it, "ab initio", among themselves, becoming individual owners of independent flats or fractions of flats. Exceptionally, for the same purpose of simplifying the entries, it is permitted to register at the same time the specific allotment of the repeated flats in favour of their respective owners, provided that all of them so request.

And number five of the same article eight allows the creation of an autonomous and independent folio for each flat or premises, provided that the property and the constitution of the horizontal property regime have been previously registered.

By virtue thereof, and in accordance with the proposal drawn up by the Spanish

Cortes, D I S P O N G O :

CHAPTER I

General provisions

Article 1.

The purpose of this Act is to regulate the special form of ownership established in Article 396 of the Civil Code, which is known as horizontal property.

For the purposes of this Law, those parts of a building that are susceptible to independent use because they have an exit to a common element of the building or to the public road shall also be considered as premises.

Article 2.

This Act shall apply:

a) To homeowners' associations established in accordance with Article 5.

b) To the communities that meet the requirements established in article 396 of the Civil Code and have not granted the constitutive title of the horizontal property.

These communities shall be governed, in all cases, by the provisions of this Law with regard to the legal regime of the property, its private parts and common elements, as well as with regard to the reciprocal rights and obligations of the co-owners.

c) To private real estate complexes, under the terms established in this Law.

d) Sub-communities, understood as those resulting when, in accordance with the provisions of the articles of association, several owners have, on a community basis, for their exclusive use and enjoyment, certain common elements or services that have functional or economic unity and independence.

e) To urban conservation associations in cases where their statutes so stipulate.

CHAPTER II

The system of ownership by flats or premises.

Article 3.

In the property regime established in article 396 of the Civil Code, it corresponds to each flat or premises:

a) The singular and exclusive right of ownership over a space sufficiently delimited and susceptible of independent use, with the architectural elements and installations of all kinds, whether apparent or not, that are included within its limits and serve exclusively the owner, as well as that of the annexes that have been expressly indicated in the title, even if they are located outside the delimited space.

b) Co-ownership, with the other owners of flats or premises, of the remaining common elements, belongings and services.

To each flat or premises a participation share shall be attributed in relation to the total value of the property and referred to hundredths of the same. This share shall serve as a module to determine the participation in the community charges and benefits. The improvements or impairments of each flat or premises shall not alter the share attributed, which may only be varied in accordance with the provisions of Articles 10 and 17 of this Act.

Each owner may freely dispose of his right, without being able to separate the elements of which it is composed and without the transfer of enjoyment affecting the obligations deriving from this property regime.

Article 4.

An action for division shall not be brought to bring about the cessation of the situation regulated by this Act. It may only be brought by each owner in joint ownership of a specific flat or premises, limited to that flat or premises, and provided that the joint ownership has not been established for the common service or utility of all the owners.

Article 5.

The title deed of the property by flats or premises shall describe, in addition to the property as a whole, each one of them, to which a correlative number shall be assigned. The description of the property shall state the circumstances required by mortgage legislation and the services and facilities it has. The description of each flat or premises shall state its extension, boundaries, floor on which it is located and the annexes, such as garage, attic or basement.

The same title shall fix the participation share corresponding to each flat or premises, determined by the sole owner of the building when the sale of the building by flat is initiated, by agreement of all the existing owners, by award or by court decision. The useful surface area of each flat or locale in relation to the total of the building, its interior or exterior location, its situation and the use that it is rationally presumed will be made of the services or common elements shall be taken as the basis for its determination.

The title may also contain rules for the constitution and exercise of the right and provisions not prohibited by law regarding the use or destination of the building, its different floors or premises, installations and services, expenses, administration and government, insurance, conservation and repairs, forming a private statute which shall not be prejudicial to third parties if it has not been registered in the Land Registry.

In any modification of the title, and subject to the provisions on the validity of agreements, the same requirements shall be observed as for incorporation.

Article 6.

In order to regulate the details of coexistence and the appropriate use of the services and common things, and within the limits established by the Law and the Articles of Association, the owners as a whole may establish internal rules which shall also be binding on all owners until they are modified in the manner established for making agreements on administration.

Article 7.

1. The owner of each flat or premises may modify the architectural elements, installations or services of the flat or premises when this does not impair or alter the safety of the building, its general structure, its external configuration or state, or prejudice the rights of another owner, and must give prior notice of such works to the person representing the community.

The rest of the property may not be altered in any way and if he notices the need for urgent repairs he must inform the administrator without delay.

2. The owner and the occupant of the flat or premises are not permitted to carry out activities in the flat or premises that are prohibited in the bylaws, that are harmful to the property or that contravene the general provisions on annoying, unhealthy, harmful, dangerous or unlawful activities.

The president of the community, at his own initiative or at the initiative of any of the owners or occupants, shall require the person carrying out the activities prohibited by this section to cease them immediately, under penalty of initiating the appropriate legal action.

If the offender persists in his conduct, the President, with the prior authorisation of the Owners' Meeting, duly convened for this purpose, may bring an action for cessation against him, which, in matters not expressly provided for in this article, shall be dealt with by means of an ordinary lawsuit.

Once the complaint has been filed, accompanied by the accreditation of the reliable summons to the offender and the certification of the resolution adopted by the Owners' Meeting, the judge may order the immediate cessation of the prohibited activity as a precautionary measure, under penalty of incurring the offence of disobedience. He may also adopt any precautionary measures that may be necessary to ensure the effectiveness of the cease and desist order. The claim must be directed against the owner and, where appropriate, against the occupant of the dwelling or premises.

If the judgement is upheld, in addition to the definitive cessation of the prohibited activity and the appropriate compensation for damages, the right to use the dwelling or premises may be deprived for a period not exceeding three years, depending on the seriousness of the infringement and the damage caused to the community. If the offender is not the owner, the sentence may declare the definitive extinguishment of all rights relating to the dwelling or premises, as well as its immediate release.

Article 8 (Repealed).

Article 9.

1. These are the obligations of each owner:

a) Respect the general installations of the community and other common elements, whether they are for general or private use of any of the owners, whether or not they are included in their flat or premises, making proper use of them and avoiding at all times causing damage or damage.

b) To keep his own flat or premises and private installations in a good state of repair, in terms that do not harm the community or the other owners, making good any damage caused by his carelessness or that of the persons for whom he is responsible.

c) To consent in his dwelling or premises to the repairs required for the service of the property and to allow therein the essential easements required for the carrying out of works, actions or the creation of common services carried out or agreed in accordance with the provisions of this Law, having the right to be compensated by the community for the damages caused.

d) Allow entry into your flat or premises for the purposes set out in the previous three paragraphs.

e) Contribute, in accordance with the participation quota established in the deed or as specially established, to the general expenses for the adequate support of the property, its services, charges and responsibilities that are not susceptible to individualisation.

Claims in favour of the community arising from the obligation to contribute to the maintenance of the general expenses corresponding to the instalments attributable to the overdue part of the current year and the three previous years have the status of preferential for the purposes of article 1.923 of the Civil Code and precede, for their satisfaction, those mentioned in numbers 3, 4 and 5 of said precept, without prejudice to the preference established in favour of salary credits in the revised text of the Law of the Workers' Statute, approved by Royal Legislative Decree 1/1995, of 24 March.

The acquirer of a flat or premises under the horizontal property regime, even with a title registered in the Land Registry, is liable with the acquired property itself for the amounts owed to the community of owners for the maintenance of the general expenses by the previous owners up to the limit of those that are attributable to the expired part of the year in which the acquisition takes place and to the three previous calendar years. The flat or premises will be legally subject to the fulfilment of this obligation.

In the public instrument by means of which the property or premises are transferred, by whatever title, the transferor must declare that he/she is up to date with the payment of the general expenses of the community of owners or state the amount owed. The transferor must at this time provide certification of the state of his debts with the community, coinciding with his declaration, without which the execution of the public document cannot be authorised, unless he is expressly exempted from this obligation by the acquirer. The certificate shall be issued within a maximum period of seven calendar days from its request by the person acting as secretary, with the approval of the president, who shall be liable, in the event of fault or negligence, for the accuracy of the information contained therein and for the damages caused by the delay in its issue.

f) Contribute, in accordance with their respective participation quota, to the endowment of the reserve fund that will exist in the community of owners to attend to the works of conservation, repair and rehabilitation of the property, the carrying out of the accessibility works set out in article ten.1.b) of this law, as well as the carrying out of the accessibility and energy efficiency works set out in article seventeen.2 of this law. The reserve fund, the ownership of which corresponds for all purposes to the community, will be endowed with an amount that in no case may be less than 10 percent of the community's total amount. last regular budget.

From the reserve fund, the community can either take out an insurance contract to cover damage to the property or conclude a contract for the permanent maintenance of the property and its general installations.

g) To observe due diligence in the use of the property and in their relations with other owners, and to answer to them for any infringements committed and damages caused.

h) Communicate to the person acting as secretary of the community, by any means that allows proof of receipt, the address in Spain for the purpose of summons and notifications of any kind related to the community. In the absence of this communication, the address for summons and notifications shall be deemed to be the flat or premises belonging to the community, and those delivered to the occupant of the same shall have full legal effect.

If it is impossible to serve a summons or notice on the owner in the place provided for in the previous paragraph, it shall be deemed to have been served by posting the corresponding notice on the notice board of the community, or in a visible place of general use provided for this purpose, with a note stating the date and reasons for this form of notification, signed by the person exercising the functions of secretary of the community, with the approval of the president. The notification made in this manner shall produce full legal effects within three calendar days.

i) Communicate the change of ownership of the dwelling or premises to the person acting as secretary of the community, by any means that allows proof of receipt.

Whoever fails to comply with this obligation shall continue to be jointly and severally liable with the new owner for the debts to the community accrued after the transfer, without prejudice to the right of the new owner to recover from the new owner.

The provisions of the previous paragraph shall not apply when any of the governing bodies established in Article 13 have become aware of the change of ownership of the dwelling or premises by any other means or by conclusive acts of the new owner, or when such transfer is notorious.

2. For the application of the rules of the previous section, expenses that are not attributable to one or more flats or premises shall be considered general expenses, without the non-use of a service exempting the fulfilment of the corresponding obligations, without prejudice to the provisions of Article 17.4.

Article 10.

1. The following actions will be compulsory and will not require prior agreement by the Owners' Meeting, whether or not they imply modification of the constitutive title or of the Articles of Association, and whether or not they are imposed by the Public Administrations or requested at the request of the owners:

a) The works and works that are necessary for the adequate maintenance and compliance with the duty of conservation of the building and its common services and installations, including in any case, those necessary to satisfy the basic requirements of security, habitability and universal accessibility, as well as the conditions of ornamentation and any others derived from the imposition, on the part of the Administration, of the legal duty of conservation.

b) The works and actions that are necessary to guarantee reasonable adjustments in terms of universal accessibility and, in any case, those required at the request of the owners in whose home or premises disabled persons or persons over seventy years of age live, work or provide voluntary services, in order to ensure that they can use the common elements in accordance with their needs, as well as the installation of ramps, lifts or other mechanical and electronic devices that favour orientation or communication with the exterior, provided that the amount charged annually for the same, after deducting public subsidies or aid, does not exceed twelve ordinary monthly payments of common expenses. The fact that the rest of the cost of these works, beyond the aforementioned monthly payments, is assumed by those who have requested them, shall not eliminate the obligatory nature of these works.

It will also be compulsory to carry out these works when the public aid to which the community may have access reaches 75% of the amount of the works.

c) The occupation of common elements of the building or private real estate complex for the duration of the works referred to in the previous letters.

d) The construction of new floors and any other alteration to the structure or fabric of the building or the common elements, as well as the constitution of a real estate complex, as provided for in article 17.4 of the revised text of the Land Law, approved by Royal Legislative Decree 2/2008, of 20 June, which are mandatory as a result of the inclusion of the property in a rehabilitation or urban regeneration and renovation area.

e) The acts of material division of flats or premises and their annexes to form other smaller and independent ones, the increase in their surface area by aggregation of other adjoining ones in the same building, or their reduction by segregation of any part, carried out at the will and request of their owners, when such actions are possible as a consequence of the inclusion of the property in an area of action for rehabilitation or urban regeneration and renovation.

2. Taking into account the necessary or obligatory nature of the actions referred to in points (a) to (d) of the previous paragraph, the following shall apply:

a) They will be paid by the owners of the corresponding community or group of communities, the resolution of the Meeting being limited to the distribution of the relevant charge and the determination of the terms of its payment.

b) Owners who oppose or unjustifiably delay the execution of orders issued by the competent authority shall be individually liable for any penalties that may be imposed administratively.

c) The flats or premises shall be subject to the payment of the expenses derived from the carrying out of such works or actions under the same terms and conditions as those established in Article 9 for general expenses.

3. They shall be subject to the relevant administrative authorisation regime:

a) The constitution and modification of the real estate complex referred to in Article 26.6 of the rewritten text of the Law on Land and Urban Rehabilitation, approved by Royal Legislative Decree 7/2015, of 30 October, in the same terms.

b) When this has been requested, and in accordance with the regime established in the legislation on territorial and urban planning, with the prior approval of the majority of owners that in each case is appropriate in accordance with this Law, the material division of flats or premises and their annexes, in order to form other smaller and independent ones, the increase of their surface area by aggregation of other adjoining ones in the same building or their reduction by segregation of any part, the construction of new floors and any other alteration to the structure or fabric of the building, including the enclosure of terraces and the modification of the envelope to improve energy efficiency, or of the common things.

In these cases, the consent of the affected owners must be recorded, and it shall be the responsibility of the Board of Owners, by mutual agreement with them, and according to the majority of the owners that in each case is appropriate in accordance with this Act, to determine the corresponding compensation for damages and losses. The fixing of the new participation fees, as well as the determination of the nature of the works to be carried out, in the event of disagreement on the same, will require the adoption of the appropriate agreement of the Board of Owners, by the same majority. In this respect, the interested parties may also request arbitration or a technical opinion under the terms established by Law.

Article eleven (Repealed).

Article 12 (Repealed).

Article thirteen.

1. The governing bodies of the community are as follows:

a) The Owners' Meeting.
b) The chairman and, where appropriate, the vice-chairmen.
c) The Secretary.
d) The administrator.

In the Articles of Association, or by majority agreement of the Meeting of Owners, other governing bodies of the community may be established, without this implying any impairment of the functions and responsibilities before third parties that this Law attributes to the previous ones.

2. The chairman shall be appointed from among the owners by election or, alternatively, by rotation or by drawing lots. The appointment shall be compulsory, although the designated owner may request the judge to relieve him of his post within the month following his accession to the post, invoking his reasons for doing so. The judge, by means of the procedure established in Article 17.7.ª, shall decide what is appropriate, designating in the same decision the owner who is to replace, if applicable, the chairman in the post until a new appointment is made within the period determined in the judicial decision.

The judge may also be called upon when, for any reason, it is impossible for the General Meeting to appoint a president of the community.

3. The president shall legally represent the community, in and out of court, in all matters affecting the community.

4. The existence of Vice-Chairmen shall be optional. They shall be appointed by the same procedure as for the appointment of the Chairman.

The vice-chairman, or vice-chairmen in their order, shall substitute the chairman in the event of absence, vacancy or impossibility of the latter, as well as assist him in the exercise of his functions under the terms established by the Owners' Meeting.

5. The duties of the secretary and the administrator shall be performed by the president of the community, unless the Articles of Association or the Owners' Meeting, by majority agreement, provide for the filling of these offices separately from the presidency.

6. The offices of secretary and director may be combined in the same person or appointed independently.

The position of administrator and, where appropriate, that of secretary-administrator may be held by any owner, as well as by natural persons with sufficient professional qualifications and legally recognised to exercise these functions. It may also be held by corporations and other legal persons under the terms established in the legal system.

7. Unless the statutes of the community provide otherwise, the appointment of the governing bodies shall be for a period of one year.

Appointees may be removed from office before the expiry of their term of office by resolution of the Owners' Meeting, convened in extraordinary session.

8. When the number of owners of dwellings or premises in a building does not exceed four, they may make use of the administration regime of Article 398 of the Civil Code, if expressly provided for in the articles of association.

Article 14.

It is the responsibility of the Owners' Meeting:

a) Appointing and removing the persons who hold the positions mentioned in the previous article and resolving any complaints made by the owners of the flats or premises against their actions.

b) Approve the forward expenditure and revenue plan and the corresponding accounts.

c) Approve the budgets and the execution of all repair work on the property, whether ordinary or extraordinary, and be informed of the urgent measures adopted by the administrator in accordance with the provisions of article 20.c).

d) Approve or amend the statutes and determine the rules of procedure.

e) To know and decide on other matters of general interest for the community, agreeing on the necessary or convenient measures for the best common service.

Article fifteen.

1. Attendance at the Owners' Meeting will be personal or by legal or voluntary representation, with a written document signed by the owner being sufficient to accredit this.

If a flat or premises belong "pro indiviso" to different owners, these shall appoint a representative to attend and vote in the meetings.

If the dwelling or premises are in usufruct, the attendance and the vote shall correspond to the bare owner, who, unless otherwise stated, shall be understood to be represented by the usufructuary, and the delegation shall be express when it concerns the agreements referred to in the first rule of Article 17 or extraordinary works and improvements.

2. Owners who at the time of the commencement of the meeting are not up to date in the payment of all debts due to the community and who have not challenged the same in court or have not proceeded to the judicial or notarial consignment of the sum owed, may participate in its deliberations, although they will not have the right to vote. The minutes of the Meeting shall reflect the owners deprived of the right to vote, whose person and share in the community shall not be counted for the purposes of reaching the majorities required by this Law.

Article sixteen.

1. The Owners' Meeting shall meet at least once a year to approve the budgets and accounts and on such other occasions as the Chairman deems appropriate or as requested by a quarter of the owners, or by a number of owners representing at least 25 per cent of the participation quotas.

2. The notice of meeting shall be issued by the chairman or, failing this, by the promoters of the meeting, indicating the business to be transacted, the place, day and time of the meeting on first or, where appropriate, second call, and the summons shall be issued in the manner established in article 9. The notice shall contain a list of the owners who are not up to date in the payment of the community debts due and shall warn of the deprivation of voting rights in the event of the circumstances set out in article 15.2.

Any owner may request that the Board of Owners study and decide on any subject of interest to the community; to this end, he shall send a letter, clearly specifying the matters he requests to be dealt with, to the Chairman, who shall include them on the agenda of the next meeting to be held.

If the meeting is not attended, on first call, by the majority of the owners representing the majority of the participation quotas, a second call will be made, this time without a quorum.

The General Meeting shall meet on second call at the place, day and time indicated in the first summons, and may be held on the same day if half an hour has elapsed since the previous one. Failing this, it shall be reconvened, in accordance with the requirements established in this article, within eight calendar days following the Meeting not held, in which case the summons shall be issued at least three days in advance.

3. Notice of the ordinary annual General Meeting shall be given at least six days in advance, and for extraordinary meetings, as much notice as is possible to ensure that all interested parties are aware of the meeting. The Meeting may validly meet even without the Chairman's summons, provided that all the owners are present and so decide.

Article seventeen.

The resolutions of the Owners' Meeting shall be subject to the following rules:

1. The installation of common infrastructures for access to telecommunication services regulated in Royal Decree-Law 1/1998, of 27 February, on common infrastructures in buildings for access to telecommunication services, or the adaptation of existing ones, as well as the installation of common or private systems for the use of renewable energies, or of the infrastructures necessary for

access to new collective energy supplies may be agreed, at the request of any owner, by one third of the members of the community representing, in turn, one third of the participation quotas.

The community may not pass on the cost of the installation or adaptation of said common infrastructures, nor those derived from their subsequent conservation and maintenance, to those owners who have not expressly voted in the Meeting in favour of the resolution. However, if they subsequently request access to telecommunications services or energy supplies, and this requires taking advantage of the new infrastructures or the adaptations made to the pre-existing ones, they may be authorised to do so, provided that they pay the amount that would have corresponded to them, duly updated, applying the corresponding legal interest.

Notwithstanding the provisions of the previous paragraph with respect to conservation and maintenance expenses, the new infrastructure installed shall be considered, for the purposes established in this Law, as a common element.

2. Without prejudice to the provisions of article 10.1.b), the carrying out of works or the establishment of new common services aimed at removing architectural barriers that hinder access or mobility for disabled persons and, in any case, the establishment of lift services, even when they imply the modification of the constitutive title, or of the Articles of Association, will require the favourable vote of the majority of the owners, who, in turn, represent the majority of the participation quotas.

When agreements are validly adopted to carry out accessibility works, the community shall be obliged to pay the expenses, even if the amount charged annually exceeds twelve ordinary monthly payments of common expenses.

The carrying out of works or actions that contribute to the improvement of energy efficiency that can be accredited through the building's energy efficiency certificate or the implementation of renewable energy sources for common use, including, where appropriate, the modification of the building envelope, as well as the application for aid and subsidies, loans or any type of financing by the owners' association to public or private entities for the carrying out of such works or actions, shall require the favourable vote of a simple majority of the owners, who in turn represent a simple majority of the participation quotas, provided that the amount charged annually, after deducting the subsidies or public aid and after applying the financing, if applicable, does not exceed the amount of twelve ordinary monthly payments of common expenses. The dissenting owner shall not have the right recognised in section 4 of this Article, and the cost of these works, or the amounts necessary to defray the loans or financing granted for this purpose, shall be considered as general expenses for the purposes of applying the rules established in letter e) of Article 9.1 of this Act.

3. The establishment or suppression of porter's lodge, concierge, surveillance or other common services of general interest, whether or not they involve modification of the constitutive title or of the Articles of Association, shall require the favourable vote of three fifths of the total number of owners who, in turn, represent three fifths of the participation quotas. The same regime shall apply to the leasing of common elements that have not been assigned a specific use in the building and the installation or removal of equipment or systems, not included in section 1, that are intended to improve the energy or water efficiency of the building. In the latter case, agreements validly adopted in accordance with this rule are binding on all owners. However, if the equipment or systems have a private use, for the adoption of the agreement, the favourable vote of one third of the members of the community representing, in turn, one third of the participation quotas will suffice, in this case, applying the system of repercussion of costs set out in that paragraph.

4. No owner may demand new installations, services or improvements not required for the proper conservation, habitability, safety and accessibility of the property, according to its nature and characteristics.

However, when by the favourable vote of three-fifths of the total number of owners representing three-fifths of the participation quotas, agreements are validly adopted to carry out innovations, new installations,

services or improvements not required for the proper conservation, habitability, safety and accessibility of the property, which are not demandable and whose installation fee exceeds the amount of three ordinary monthly payments of common expenses, the dissenting party shall not be obliged, nor shall his share be modified, even in the event that he cannot be deprived of the improvement or advantage. If the dissenting party wishes, at any time, to participate in the advantages of the innovation, he will have to pay his share in the costs of realisation and maintenance, duly updated by applying the corresponding legal interest.

Without prejudice to the provisions of the preceding sections, the material division of flats or premises and their annexes, to form smaller and independent ones, shall be subject to the favourable vote of three fifths of the total number of owners representing three fifths of the participation quotas; the increase of their surface area by the addition of other adjoining units of the same building or their reduction by the segregation of any part; the construction of new floors and any other alteration to the structure or fabric of the building, including the enclosure of terraces or the modification of common things.

Innovations that render any part of the building unusable for the use and enjoyment of an owner may not be made without the express consent of the owner.

5. The installation of an electric vehicle charging point for private use in the car park of the building, provided that it is located in an individual parking space, will only require prior notification to the community. The cost of said installation and the corresponding electricity consumption shall be borne entirely by the person or persons directly interested in the installation.

6. Agreements not expressly regulated in this Article, which imply the approval or modification of the rules contained in the Articles of Association or in the Community Bylaws, shall require for their validity the unanimous vote of the total number of owners who, in turn, represent the total number of participation quotas.

7. For the validity of the other resolutions, the vote of the majority of the total number of owners who, in turn, represent the majority of the participation quotas, shall be sufficient. On second call, the resolutions adopted by the majority of those present shall be valid, provided that this in turn represents more than half of the value of the quotas of those present.

When the majority cannot be obtained by the procedures set out in the preceding paragraphs, the judge, at the request of a party filed within one month of the date of the second meeting, and after hearing the parties previously summoned, will decide in equity what is appropriate within twenty days of the request, making a ruling on the payment of costs.

8. Except in the cases expressly foreseen in which the cost of the services cannot be passed on to those owners who have not expressly voted in favour of the agreement at the Meeting, or in those cases in which the modification or reform is made for private use, the votes in favour shall be those of those owners absent from the Meeting who have been duly summoned, who, once informed of the agreement adopted by those present, in accordance with the procedure established in article 9, do not express their disagreement by notifying the Secretary of the Community within the period of time established in article 9, duly summoned, who, once informed of the resolution adopted by those present, in accordance with the procedure established in Article 9, do not express their disagreement by notifying the person acting as secretary of the community within a period of 30 calendar days, by any means that allows proof of receipt to be recorded.

9. Resolutions validly adopted in accordance with the provisions of this article are binding on all owners.

10. In the event of a discrepancy regarding the nature of the works to be carried out, the Board of Owners will decide what is appropriate. The interested parties may also request arbitration or a technical opinion under the terms established in the Law.

11. Contributions for the payment of improvements made or to be made to the property shall be borne by the owner at the time when the sums due for the payment of such improvements become payable.

12. The agreement limiting or conditioning the exercise of the activity referred to in letter e) of Article 5 of Law 29/1994, of 24 November 1994, on Urban Leases, in the terms established in the tourism sector regulations, whether or not it entails modification of the constituent title or the statutes, will require the favourable vote of the three

fifths of the total number of owners who, in turn, represent three-fifths of the participation quotas. Likewise, the same majority shall be required for a resolution establishing special expense quotas or an increase in the share of the common expenses of the dwelling where such activity is carried out, provided that these modifications do not imply an increase of more than 20%. These agreements shall not have retroactive effects.

Article eighteen.

1. The resolutions of the General Meeting of Owners may be challenged before the courts in accordance with the provisions of general procedural legislation, in the following cases:

a) When they are contrary to the law or to the statutes of the community of owners.

b) When they are seriously detrimental to the interests of the community itself for the benefit of one or more owners.

c) When they cause serious damage to an owner who is not legally obliged to bear it or when they have been adopted with abuse of rights.

2. Owners who have saved their vote at the Meeting, those absent for any reason and those who have been unduly deprived of their right to vote shall be entitled to challenge these resolutions. In order to challenge the resolutions of the Meeting, the owner must be up to date in the payment of all the debts due to the community or previously proceed to the judicial consignment of the same. This rule shall not be applicable to the challenge of the resolutions of the Meeting relating to the establishment or alteration of the participation quotas referred to in Article 9 between the owners.

3. The action shall expire three months after the resolution is adopted by the Owners' Meeting, except in the case of acts contrary to the law or the Articles of Association, in which case the action shall expire after one year. For absent owners, this period shall be calculated as from the communication of the resolution in accordance with the procedure established in article 9.

4. Challenging the resolutions of the general meeting shall not suspend their execution, unless the judge so orders as a precautionary measure, at the request of the plaintiff, after having heard the community of owners.

Article 19.

1. The resolutions of the Owners' Meeting shall be recorded in a book of minutes recorded by the Land Registrar in the manner provided for in the regulations.

2. The minutes of each meeting of the Owners' Meeting shall state at least the following circumstances:

a) The date and venue.

b) The author of the call and, where applicable, the owners who promoted it.

c) Whether it is an ordinary or extraordinary meeting and whether it is to be held on first or second call.

d) List of all attendees and their respective positions, as well as the owners represented, indicating, in all cases, their participation quotas.

e) The agenda of the meeting.

f) The resolutions adopted, indicating, if relevant to the validity of the resolution, the names of the owners who voted for and against the resolutions, as well as the respective shares they represent.

3. The minutes shall be closed with the signatures of the chairman and the secretary at the end of the meeting or within ten calendar days thereafter. As soon as the minutes are closed, the resolutions shall be enforceable, unless otherwise provided by law.

The minutes of the meetings shall be forwarded to the owners in accordance with the procedure laid down in Article 9.

Defects or errors in the minutes may be rectified provided that the minutes unequivocally state the date and place of the meeting, the owners present or absent, the owners present or absent and the date and place of the meeting, the owners present or absent, the owners present or absent and the date and place of the meeting.

represented, and the resolutions adopted, indicating the votes in favour and against, as well as the respective share quotas involved, and signed by the chairman and the secretary. Said correction must be made before the next meeting of the Board of Owners, which must ratify the correction.

4. The secretary shall keep the minute books of the Owners' Meeting. He/she shall also keep, for a period of five years, the notices, communications, proxies and other relevant documents of the meetings.

Article 20.

1. It is the responsibility of the administrator:

a) To ensure the proper running of the house, its installations and services, and for this purpose to issue the appropriate warnings and admonitions to the owners.

b) Prepare in due time and submit to the Board the plan of foreseeable expenses, proposing the necessary means to meet them.

c) To attend to the upkeep and maintenance of the house, arranging for any repairs and measures that may be urgently required, reporting immediately to the Chairman or, where appropriate, to the owners.

d) Execute the agreements adopted in the field of works and make the appropriate payments and recoveries.

e) Act, where appropriate, as secretary of the Board and keep the documentation of the community at the disposal of the owners.

f) All other powers conferred by the Board.

Article twenty-one. *Non-payment of common expenses, conventional preventive measures, judicial claim of the debt and mediation and arbitration.*

1. The owners' meeting may agree on dissuasive measures to discourage late payment for the period of time in which this situation persists, such as the establishment of interest rates higher than the legal interest rate or the temporary deprivation of the use of services or facilities, provided that they cannot be considered abusive or disproportionate or that they affect the habitability of the properties. These measures may in no case be retroactive and may be included in the community statutes. In any case, the credits in favour of the community shall accrue interest from the time when the corresponding payment is due and is not made.

2. The community may, without prejudice to the use of other legal proceedings, claim from the obligor to pay all amounts due to it in respect of common expenses, whether they are ordinary or extraordinary, general or individualised, or reserve fund, and by means of the special payment order process applicable to communities of owners of properties under the horizontal property regime. In any case, the registered owner may be sued, in order to support the execution on the property registered in his name. The professional secretary-administrator, if so agreed by the owners' meeting, may judicially demand the obligation to pay the debt through this procedure.

3. In order to file the claim through the payment order procedure, the claim must be accompanied by a certificate of the debt settlement agreement issued by the person acting as secretary of the community with the approval of the president, unless the former is a secretary-administrator with the necessary professional qualifications and legally recognised who is not going to intervene professionally in the judicial claim for the debt, in which case the signature of the president will not be necessary. This certificate must state the amount owed and its breakdown. In addition to the certificate, the accrediting document stating that the debtor has been notified must be provided together with the initial application for payment order proceedings, which may also be posted on the notice board or in a visible place in the community for a period of at least three days. The approved fees accrued until the notification of the debt, as well as all the expenses and costs involved in claiming the debt, including those derived from the intervention of the secretary-administrator, which will be paid by the debtor, may be included in the initial petition for payment of the debt.

4. If the debtor opposes the initial application for an order for payment, the community may request the freezing of sufficient assets of the debtor to cover the amount claimed, interest and costs.

The court shall in any event order the attachment without the creditor having to provide security. However, the debtor may prevent the attachment by providing the guarantees provided for in the procedural law.

5. When in the initial application for the order for payment procedure the professional services of a lawyer and/or solicitor are used to claim the amounts owed to the Community, the debtor shall pay, subject in all cases to the limits established in section three of Article 394 of the Civil Procedure Act, the fees and rights accruing to both for their intervention, whether he complies with the request for payment or does not appear before the court, including those of enforcement, if applicable. In the cases in which there is opposition, the general rules on costs shall be followed, although if the Community obtains a judgement entirely in favour of its claim, the lawyer's fees and the solicitor's fees derived from his intervention shall be included therein, even if it has not been compulsory.

6. Claims for community and reserve fund expenses or any question relating to the obligation to contribute to them may also be subject to mediation-conciliation or arbitration, in accordance with the applicable law.

Article 22.

1. The Community of Owners shall be liable for its debts to third parties with all the funds and credits in its favour. Alternatively, and after having requested payment from the respective owner, the creditor may take action against each owner who has been a party to the corresponding proceedings for his share of the unsatisfied amount.

2. Any owner may oppose enforcement if he proves that he is up to date with the payment of all debts due to the community at the time of the summons referred to in the preceding paragraph.

If the debtor pays at the time of the order, the costs incurred up to that time shall be borne by the debtor in proportion to his share of the costs.

Article 23.

The horizontal property regime is extinguished:

First. For the destruction of the building, unless otherwise agreed. This shall be deemed to have occurred when the cost of reconstruction exceeds fifty per cent of the value of the property at the time of the incident, unless the excess of said cost is covered by insurance.

Second. By conversion to ordinary ownership or co-ownership.

CHAPTER III

The regime for private housing complexes

Article 24.

1. The special property regime laid down in Article 396 of the Civil Code shall apply to private real estate complexes that meet the following requirements:

a) Consisting of two or more independent buildings or plots of land whose main purpose is housing or premises.

b) The owners of these properties, or of the dwellings or premises into which they are divided horizontally, inherent to this right, participate in an indivisible co-ownership of other real estate elements, roads, installations or services.

2. The private real estate complexes referred to in the previous paragraph may:

a) In this case, they will be subject to the provisions of this Law, which will be fully applicable to them.

b) To form a grouping of communities of owners. For this purpose, it will be required that the constitutive title of the new grouped community be granted by the sole owner of the complex or by the presidents of all the communities called upon to integrate it, previously authorised by majority agreement of their respective Owners' Meetings. The title of incorporation shall contain the description of the property complex as a whole and of the common elements, roads, installations and services. It shall also establish the share of participation of each of the integrated communities, which shall be jointly liable for their obligation to contribute to the general expenses of the grouped community. The title and the statutes of the grouped community shall be registrable in the Land Registry.

3. The grouping of communities referred to in the previous section shall enjoy, for all purposes, the same legal status as communities of owners and shall be governed by the provisions of this Law, with the following special features:

a) Unless otherwise agreed, the Board of Owners shall be composed of the presidents of the communities belonging to the grouping, who shall represent all the owners of each community.

b) The adoption of resolutions for which the law requires qualified majorities will require, in any case, the prior obtaining of the majority in question in each of the Owners' Meetings of the communities comprising the grouping.

c) Unless otherwise agreed by the general meeting, the provisions of Article 9 of this Law on the reserve fund shall not apply to the grouped community.

The competence of the governing bodies of the grouped community only extends to the common real estate, roads, installations and services. Under no circumstances may their agreements undermine the powers that correspond to the governing bodies of the communities of owners integrated in the grouping of communities.

4. The provisions of this Act shall be applicable to private real estate complexes that do not adopt any of the legal forms indicated in section 2, with the same specialities indicated in the previous section, in addition to the provisions of this Act in respect of the agreements established between the co-owners.

ADDITIONAL PROVISION

1. Without prejudice to the provisions adopted by the Autonomous Communities in the exercise of their powers, the constitution of the reserve fund regulated in Article 9.1.f) shall be subject to the following rules:

a) The fund shall be constituted at the time of approval by the Owners' Meeting of the ordinary budget of the community for the year immediately following the entry into force of this provision.

New homeowners' associations shall constitute the reserve fund when adopting their first ordinary budget.

b) At the time of its constitution, the fund shall be endowed with an amount not less than 2.5 per cent of the ordinary budget of the community. For this purpose, the owners must first make the necessary contributions in accordance with their respective participation quota.

c) When the regular budget is adopted for the financial year immediately following that in which the reserve fund is established, the allocation to the reserve fund shall reach the minimum amount laid down in Article 9.

2. At no time during the financial year may the allocation to the reserve fund be less than the statutory minimum.

Amounts drawn from the Fund during the financial year to cover the cost of the works or measures referred to in Article 10 shall be counted as an integral part of the Fund for the purpose of calculating the minimum amount of the Fund.

At the beginning of the following financial year, the necessary contributions shall be made to cover the amounts drawn from the reserve fund in accordance with the preceding paragraph.

TRANSITIONAL ARRANGEMENTS

First.

This law shall govern all homeowners' associations, regardless of the time at which they were created and the content of their statutes, which may not be applied in contradiction to the provisions of this law.

Within a period of two years from the publication of this Act in the Official State Gazette, homeowners' associations must adapt their articles of association to the provisions of this Act, insofar as they are in contradiction with its precepts.

After the two years have elapsed, any of the owners may request the adaptation provided for in this provision through the procedure indicated in the second number of article sixteen.

Second.

In the current bylaws regulating the ownership of flats, in which the right of first refusal is established in favour of the owners, the same shall be understood to be modified in the sense that such right shall be ineffective, unless, in a new meeting, and by a majority representing at least 80 per cent of the owners, it is agreed to maintain the aforementioned right of first refusal in favour of the members of the community.

FINAL DISPOSITION

Any provisions contrary to the provisions of this Act are hereby repealed.