
Horizontal Property Law

**Amended text of Law 8/1999, 6th of April, to reform the
Law 49/1960, of 21st of July, about Horizontal Property
(Property in Condominium)
(BOE (official state bulletin), 8th of April 1999)**

**Including modifications incorporated in the Laws
1/2000, 51/2003, 19/2009, 26/2011 and 8/2013.**



HESTRIA

Administración de Fincas S.L.

STATEMENT OF REASONS

The long period of validity of Law 49/1960, of 21st July, about Horizontal Property (Property in Condominium), has demonstrated its great usefulness in a variety of fields: in the regulation of relationships among the proprietors subjected to this system of property ownership, real estate development and town-planning. With Law 2/1988, of 23rd of February, as well as with Law 3/1990, of 21st June, the Horizontal Property Law 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 considered excessively stringent, as much as it hinders the implementation of certain actions considered beneficial for the community of proprietors and even, for environmental or other reasons, for the rest of the society. Therefore it has been considered necessary to soften the regime of majorities to establish certain services (janitor service, lifts, removal of architectural barriers hindering the mobility of people with a handicap, telecommunication services, collection and use of solar energy, etc.).

Another pressing social demand is to enable communities of proprietors to legally recover debts due by their own members. This reform aims at combating the so-called “fight against default”, by means of a series of measures directed for that purpose: creation of a reserve fund, publication of the amounts owed by the proprietors in the title deed, the real financial debt of the transferred property assigning the year that the acquisition took place and the preceding year, joint responsibility of the transferor who does not report the change of ownership, authority that is executive in nature, of the decisions taken in the general meetings formalized in the minutes, establishment of an agile and effective procedure of judicial execution for the collection of debts to the community, etc.

This present Law also includes an updated regulation of the recording of the minutes of general meetings, duties of the community’s governing bodies, in particular those of the Administrator whose position may be filled by any proprietor or a natural person with adequate professional qualification, regulations of invitations, exercise of voting rights, renunciation of the office of President and other numerous matters that in the daily reality of living in a community of proprietors became clear, were insufficiently regulated.

With this the Horizontal Property Law gains not only in flexibility and in dynamism, but also in effectiveness, adapting itself to the new social requirements in the conviction that it will continue to be one of the legal standards of great importance for our country.

CHAPTER I.

General Provisions

Article 1

The objective of the present Law is the regulation of the special form of property ownership established in Article 396 of the Civil Code, called Horizontal Property.

For the purpose of this Law, all those parts of a building which could be susceptible to independent use by having access to a common element or to the public thoroughfare will also be considered unit.

Article 2

This Law shall be applicable:

a) To the communities of proprietors constituted according to the provisions set forth in Article 5.

b) To the communities which fulfil the requirements established in Article 396 of the Civil Code and have not granted the constituent title of the Horizontal Property.

These communities will be governed, in any case, by the stipulations of this Law in relation to the legal regime of the property, the private and common elements, as well as with regard to the rights and reciprocal obligations of the co-proprietors.

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

d) To sub-communities, it is understood to be those which are formed as set forth in the provisions of the master deed, when several proprietors, under the community association regime, have certain elements or common services having unity and functional or economic independence for their exclusive use and enjoyment.

e) To urban entities in cases where it so provided for in their statutes.

CHAPTER II.

The system of ownership of individual units in multiple building

Article 3

In the system of ownership as established in Article 396 of the Civil Code it corresponds to the owner of each unit:

a) The singular and exclusive right of ownership of a space sufficiently delimited and susceptible for independent use, with the architectural elements and installations of all kind, visible or not, which are included within its limits and they exclusively serve the proprietor, as well as to those annexes that explicitly have been mentioned in the title deed, although they are located outside the delimited space.

b) The co-ownership with the other proprietors of the units of the remaining elements, belongings and common services.

To each unit will be allocated a participation quota in relation to the total value of the building and expressed as a percentage of the said value. The mentioned quota will serve as a coefficient to determine the participation of the expenses and the benefits of the community. The improvements or damages of a unit will not affect the participation quota, which may be altered only in accordance with the provisions set forth in Articles 10 and 17 of this Law.

Each proprietor can freely use his rights, without being able to separate the integrated elements and without that the transfer of enjoyment affects the obligations arising from this ownership system.

Article 4

Subdivision shall not proceed to cease the situation regulated by this Law. Subdivision may only be executed by joint owner of a determined unit, limited to same, and always that the division has not been established with the intention for the common service or benefit of all proprietors.

Article 5

The master deed shall describe, besides the building as a whole, each individual unit on its own, which will be assigned with the correlative numbers. The description of the building must express the required circumstances in the mortgage legislation and the building's facilities and services. The description of each unit shall express the dimensions, boundaries, floor where it is located and the annexes, such as a garage, attic or basement.

In the same deed the participation quota that corresponds to each unit shall be established, determined by the sole proprietor of the building at the beginning of the sale of the units, by agreement of all the existing proprietors, by arbitration award or by judicial resolution. The basis for determining the said quota shall be the useable surface of each unit in relation to the building as a whole, its internal or external location, its situation and the reasonable foreseeable use of services and common elements.

The master deed may also contain constitution rules and the regulation concerning the exercise of rights and provisions not prohibited by law regarding

the use or destination of the building, its different units, facilities and services, expenses, administration and government, insurances, conservation and repairs, forming a private statute that shall not affect third parties if it is not registered in the Land Register.

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

Article 6

In order to regulate the details of living together and the adequate use of the services and common elements, and within the limits established by the law and the statutes of the community, the proprietors together may establish internal rules, which shall be binding on all proprietors until modified in the form prescribed to take agreements concerning the government of the community.

Article 7

1. The proprietor of each unit may modify the architectural elements, facilities or services of their unit when it does not deprive or alter the security of the building, the general structure, its configuration or exterior condition, or harm the rights of other proprietors, giving previously notice of such work to the person who represents the community.

The proprietor shall not make any alteration in the rest of the building and if the proprietor observes the need of urgent repairs, the proprietor must communicate this without delay to the Administrator.

2. The proprietor and the occupant are not allowed to develop in their unit, nor in the rest of the building, activities that are prohibited by the statutes, harmful for the building or infringe the general conditions concerning inconvenient, unhealthy, noxious, dangerous or illegal activities.

The President of the community, on his own initiative or that from the proprietors or occupants, shall summon the offender to end the activity prohibited by this article immediately, under warning to start proper judicial proceedings.

If the offender persists in his way of behaviour, the President, previously authorized by the Board of proprietors and duly convened for this purpose, may set up an injunction that, in the case that it is not regulated explicitly by this article, requests judgment through ordinary proceeding.

Once presented the demand, accompanied with the accreditation of the lawful notification to the offender and the certification of the adopted agreement by the Board of proprietors, the judge may determine the immediate ceasing of the prohibited activity as a precautionary measure, under warning of committing an offence of disobedience. The judge may also adopt whichever precautionary measures necessary to ensure the effectiveness of the injunction. The claim will go against the proprietor and, if applicable, against the occupant of the unit.

If the judgement were in favour of the plaintiff, the court could decide, besides the definitive ceasing of the forbidden activity and the compensation for the damages and up-coming expenses, the denial of the right to use the unit for a period of maximum three years, depending upon the seriousness of the offence and the damages caused to the community. If the offender is not the proprietor, the judgement may indicate the extinguishment of his rights with relation to the unit as well as the immediate dispossession of the same.

Article 8
(Repealed)

Article 9

1. The obligations of each proprietor are:

a) To respect the general installations of the community and any other common elements, whether for general or private use; belonging to themselves or any other proprietor, inside their unit or not, using them with due care and avoiding at all times that they cause any damage or flaws.

b) To maintain their own unit and private installations in good conditions; so that they do not cause harm to the community or to other proprietors; compensating for the damages caused by the carelessness of the proprietor or by the persons he is responsible for.

c) To allow in their unit the necessary repairs and to permit the necessary easements required to carry out work, actions or create common services carried out or agreed upon as set forth in the present Law, having the right to be compensated by the community for the damages caused.

d) To allow access to their unit with the purposes stated in the three preceding paragraphs.

e) To contribute, in accordance with the participation quota as laid down by the master deed or what may have been specifically established, to the general expenses for the adequate maintenance of the building, its services, obligations and responsibilities that are not allocated individually.

The assets in favour of the community arising from the obligation to contribute to the indictable general expenses, corresponding to the current year and the previous three years have the condition of preferential as foreseen in Article 1923 of the Civil Code, and take precedence over, as regards settlement, of the summery mentioned in Article 3, 4 and 5 of said regulation, without prejudice of the guarantees in favour of salaries and wages as established in the amended text of the Workers' Statute Law (Ley del Estatuto de los Trabajadores), approved by Spanish Royal Legislative Decree 1/1995, 24th of March.

The purchaser of a unit falling under the Horizontal Property Law, even where the title deed was registered in the Land Register, is responsible with his own purchased real estate for the amounts due to the community of proprietors for the general expenses by the previous proprietors up to the limit of those indictable fees of the part lapsed of the current financial year when the transfer of ownership took place and three previous natural years. The unit will be legally affected to comply with this obligation.

In the title deed through which the house or the premise is transmitted, by virtue of any title, the transferor shall have to declare to be up to date with the payment of the general expenses of the community of proprietors or to express that what is owed. The transferor shall provide at that moment a document that certifies the state of the debt with the community which shall correspond to the said statement. Without such, the execution of the title deed shall not be authorized unless the purchaser should expressly waive such requirement. The certificate shall be issued by the person acting as Secretary in a maximum period of time of 7 natural days from the date of request, with the signature of 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 participation quota, to the provisioning of the reserve fund of the community of proprietors that exists to attend maintenance and repairs of the building and, where appropriate, for rehabilitation works.

The reserve fund, whose ownership corresponds to all intents and purposes to the community, shall never be inferior to five percent from its last ordinary budget.

The community may subscribe, chargeable to the reserve fund, an insurance policy that covers the damages caused to the property, or alternatively, subscribe a contract for permanent maintenance of the building and its general installations.

g) To observe, with due care, the use of property and their relation with the other proprietors and respond to them for the infractions committed and the damages caused.

h) To notify the person acting as Secretary of the community, through any medium that permits the accreditation of its reception, the domicile in Spain for summons and notifications of any kind related to the community. By default, the domicile in Spain for summons and notifications shall be the unit belonging to the community, giving full legal power to all those delivered to the occupant of the unit.

If the attempted delivery of a summon or notification to the proprietor at the domicile indicated in the previous paragraph be impossible, it will be understood to be carried out by publishing the corresponding communication on the notice board of the community or at a visible place assigned for this purpose, indicating expressively the date and the reason why this form of notification is used, signed by the person acting as Secretary of the community with the signature of approval of the President. This way of notification shall produce full legal power in terms of three natural days.

i) To notify the person acting as Secretary of the community, through any medium that permits the accreditation of its reception, the change of ownership of the unit.

Who is neglecting this obligation shall remain responsible to the community, jointly and severally with the new proprietor, for the accrued debts incurred after the transfer, without prejudice the existing right to claim reimbursement from the new proprietor.

What is disposed in the previous paragraph shall not be applied where any of the established governing bodies as mentioned in Article 13 have had knowledge of the change of ownership of the unit by any means or unmistakable acts of the new proprietor or when the transmission is publicly known.

2. For the application of the rules stated in the previous paragraph, the expenses that cannot be attributed to one or various units will be considered general. Non-usage of a service shall not relieve the proprietor to fulfil the corresponding obligations, without any prejudice of what is established in Article 17.4.

Article 10

1. The below mentioned actions would be mandatory and will not require prior agreement of the Board of proprietors, even when it implies or not the modification of the master deed or the statutes, and when imposed by Government Bodies or requested by the proprietors:

a) The works necessary for the adequate maintenance and conservation of the building and its services and common facilities, always including, those necessary to meet the basic requirements of overall safety, habitability and accessibility, as well as aesthetic conditions and any other arising from the imposition by Government, regards to the legal duty of conservation.

b) Actions and accessibility works that are necessary to ensure reasonable adjustments in terms of overall accessibility and, in any case, those needed at the request of the proprietors, in whose units persons with disabilities or persons over seventy years of age live, work or lend voluntary services with a purpose to ensure adequate use of the common elements as per their necessities as well as the installation of ramps, lifts or other mechanical and electronic devices facilitating their orientation or communication with the outside, provided that the amount disbursed annually in such work once subsidies or public aid are deducted does not exceed ordinary common expenses of the community for a twelve month period. The fact that the rest of its cost, beyond the aforementioned monthly expenses, is assumed by those who have required it does not undermine the mandatory nature of these works.

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

d) The construction of new floors and any other alteration to the structure or the brickwork of the building or to the common elements, as well as the setting up of a real estate complex, as provided in the Article 17.4 of the amended text of the Land Law (Ley de Suelo), approved by Spanish Royal Legislative Decree 2/2008, of 20th of June, that may be prescribed as a result of the inclusion of the property within the scope of rehabilitation or regeneration and urban renewal.

e) The physical division of units and their annexes to form smaller and independent units, the enlargement of its area by appending other adjacent units of the same building or its reduction by the segregation of a constituent element, voluntarily made and at the request of their proprietors, when such actions are possible as a result of the inclusion of the property within the scope of rehabilitation or regeneration and urban renewal.

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

a) It shall be borne by the proprietors of the relevant community or group of communities, limiting the agreement of the Board to the distribution of the relevant special levy and for the determination of payment terms.

b) The proprietors who unjustifiably oppose or cause delay in the execution of the orders instructed by the competent authority shall be held individually responsible for the sanctions that can be imposed by administrative means.

c) The units will be subject to payment of expenses incurred in carrying out such works or actions as per the terms and conditions set forth in Article 9 on general expenses.

3. The following shall require administrative approval, in any case:

a) The setting and modification of the real estate complex under the same terms referred to in Article 17.6 of the amended text of the Land Law (Ley de Suelo), approved by Spanish Royal Legislative Decree 2/2008, of 20th of June.

b) If so requested, subject to prior approval by 3/5 part of the total number of proprietors that also represent a 3/5 part of the participation quota, the physical division of units and their annexes to form smaller and independent units, the enlargement of its area by appending other adjacent units of the same building or its reduction by the segregation of a constituent element; the construction of new floors and any other alteration to the structure or the brickwork of the building, including the enclosure of the terraces and the modification of the surrounding to improve energy efficiency, or of common elements, when they meet the requirements referred to in Article 17.6 of the amended text of the Land Law (Ley de Suelo), approved by Spanish Royal Legislative Decree 2/2008, of 20th of June.

In such cases, the consent of the proprietors involved is required and it will be up to the Board of Proprietors in agreement with the involved parties and with 3/5 majority of the total number of proprietors to determine damages as appropriate. The establishment of new participation quotas, as well as the determination of the nature of works to be carried out, in the event of a discrepancy regarding them, shall require the adoption of appropriate agreement by the Board of Proprietors, by the same majority. In this regard, interested parties may also request an arbitrary or technical judgement in the terms set out by law.

Article 11

(Repealed)

Article 12

(Repealed)

Article 13

1. The governing bodies of the community are the following:

- a) Board of proprietors.
- b) The President and, where appropriate, the Vice-Presidents.
- c) The Secretary.
- d) The Administrator.

In the statutes, or by majority vote of the Board of proprietors, other governing bodies of the community may be established, but only insofar as this does not result in any impairment whatsoever of the functions and responsibilities to third parties that this Law attributes to the aforementioned.

2. The President shall be appointed from among the proprietors by election or, alternatively, by means of rotation or by drawing lots. The nomination shall be compulsory, although the appointed proprietor may apply to the court within one month of taking office for his/her relief, giving the reasons for that request. The judge, following the procedure established in Article 17.3^a shall issue an order as he/she shall see fit, appointing, 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.

3. Likewise, they may also turn to the judge when, for any reason whatsoever, the Board of proprietors found it impossible to appoint a President.

3. The President shall legally represent the community both in and out of court in all matters that affect the community.

4. The existence of Vice-Presidents shall be optional. The appointment shall be realized by the same procedure established for the designation of the President.

It corresponds to the Vice-President or Vice-Presidents in the order prescribed, to substitute the President in cases of absence, vacancy or inability, as well as to assist him in the exercise of his duties under the terms established by the Board of proprietors.

5. The functions of Secretary and Administrator shall be carried out by the President of the community except where the statutes, or the Board of proprietors by a majority decision, determine that such offices shall be held separately from the presidency.

6. The functions of Secretary and Administrator may be held by the same person or by persons appointed separately.

The post of Administrator and, where applicable, that of Secretary-Administrator may be exercised by any proprietor, as well as by natural persons with sufficient professional qualification and legally recognized to carry out said duty. It may also be held by corporations and other legal entities in the terms established in the legal code.

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

The designated persons may be removed from their posts before the expiration of their mandate by an agreement of the Board of proprietors, convened in an extraordinary general meeting.

8. When the number of proprietors of units in a building does not exceed four, they may adopt the administration regime of Article 398 of the Civil Code, if expressly established by the statutes.

Article 14

Corresponds to the Board of proprietors:

a) To appoint and remove those persons that exercise the offices, as mentioned in the aforementioned article, and resolve the complaints that the proprietors of the units lodge against their action.

b) To approve the budget of foreseeable expenditure and income and the corresponding accounts.

c) To approve the quotations and the execution for all repair work of the building, whether ordinary or extraordinary, and being informed of the urgent measures adopted by the Administrator in accordance with the provisions of Article 20 c.

d) To approve or reform the statutes and determine the internal rules.

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

Article 15

1. The attendance at the general meeting of the Board of proprietors shall be personal or by legal or voluntary representation, for which a by the proprietor signed proxy is sufficient accreditation.

Where a unit belongs jointly to different proprietors, they shall designate one representative to attend and vote in the general meetings. If the unit is held in usufruct, the attendance and the vote shall correspond to the bare proprietor, who, barring proof of the contrary, shall be presumed to be represented by the usufructuary. However, a proxy vote must be presented when it is about agreements referred to in the first rule of Article 17 or for extraordinary works and improvements.

2. The proprietors who are not up to date with the payment of all due community debts at the time of starting the general meeting, and have not judicially challenged them or earmarked the amount due by court or notary, shall be allowed to participate in the deliberations of the general meeting but shall not have the right to vote. The minutes of the general meeting shall reflect the proprietors deprived of their voting rights. Those persons and their participation quota in the community shall not be calculated to reach the majorities required by this law.

Article 16

1. The Board of proprietors will meet at least once a year to approve the budget, quotations and accounts, and on any other occasion that the President considers convenient or upon request of 25% of the proprietors or a number of proprietors that represent at least 25% of the participation quotas.

2. The convocation of the general meetings shall be made by the President, or failing that, by the promoters of the general meeting, with indication of the items to be dealt with, the place, date and time at which the first calling and, where applicable, the second calling will be held, carrying out the invitation in the way as established in Article 9. The invitation of the general meeting shall include a list of the proprietors who are not up to date with the lapsed community fees and shall indicate the deprivation of their voting rights where the case falls within the situation as described in Article 15.2.

Any proprietor will be able to ask the Board of proprietors to consider and give their opinion about any subject of interest for the community; in that case the proprietor should send a letter to the President in which they clearly specify the required subjects to be dealt with. The President will include them on the agenda of the next general meeting.

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

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

3. The notification of the invitation for the annual general meeting shall be made, at least, six days in advance, and the extraordinary general meetings with sufficient time to inform all parties concerned. A general meeting not called by the President may be legally held provided that all proprietors attend and decide to do so.

Article 17

The resolutions of the Board of proprietors shall be subject to the following rules:

1. The installation of common infrastructures providing access to telecommunication services regulated in Royal Decree-Law 1/1998, of 27th of February, on common infrastructures in buildings for access to telecommunication services, or the adaptation of existing ones, as well as the installation of systems, whether common or private for use of renewable energies, or of the infrastructure needed to get access to new collective energy supplies, may be agreed, at the request of any proprietor, by a third of the members of the community that also represent a third of the participation quota.

The community cannot charge the costs of the installation or adaptation of the said communal infrastructures, neither the costs derived from its upkeep and maintenance, to those proprietors who did not explicitly vote in favour at the general meeting. However, should they subsequently request access to telecommunication services or energy supply systems and this request requires the use of the new infrastructures or the realized adaptation of the existing ones; they may be authorized providing that they pay up the amount that would be their share, duly updated with the application of the legal interest.

Without any prejudice of what is established in the previous paragraph concerning the expenses for the upkeep and maintenance, the new infrastructure installed shall be considered a common element for the purpose established by this law.

2. Without prejudice of what is disposed in Articles 10.1b), work carried out or the establishment of new common services to eliminate architectural barriers hindering the access or the mobility of disabled persons and, in any event, the establishment of the lift services, even when it imply the modification of the master deed or the statutes, shall require a favourable vote of the majority of the proprietors that also represent the majority of the participation quota.

When agreements are validly adopted in order to carry out accessibility works, the community shall be obligated to pay for the costs even when the amount exceeds the twelve months of ordinary common expenses.

3. The establishment or cancelation of the services of the janitor, porter's office, security service or other common services of general interest, even where it involves the modification of the master deed or the statutes, shall require a favourable vote of a 3/5 part of the total number of proprietors that also represent a 3/5 part of the participation quota.

Identical regime shall apply to the leasing of common elements of the building which have not been assigned a specific use and the establishment or removal of equipment or systems, which are not included in paragraph 1, that are intended to improve energy or water efficiency of the building. In the latter case, agreements validly adopted pursuant to this rule are binding on all proprietors. However, if equipment or systems is for private use, and in order to adopt the agreement it only requires a favourable vote of a 1/3 part of the members of the community that also represent a 1/3 part of the participation quota, applying, in this case, the charging of costs as provided for in the relevant paragraph.

4. None of the proprietors may demand new installations, services or improvements not required for the adequate conservation, habitation, safety and accessibility of the building according to its nature and characteristics.

However, when by a favourable vote of 3/5 of the total number of proprietors, that also represent a 3/5 part of the participation quota, agreements are validly adopted in order to carry out, non-required innovations, new installations, services or improvements for the adequate conservation, habitability, safety and accessibility of the building, not enforceable and whose installation costs exceed the amount of three months of ordinary common expenses, the dissident will not be obliged to pay for such work, nor will his participation quota be modified, even in the event that they cannot be deprived of the improvement or benefit. If the dissident wants, at any time, to share the advantages of the innovation, he shall have to pay his share in the expenses for the implementation and maintenance, properly updated by means of the application of the corresponding legal interest.

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

5. the installation of a recharge point for electric vehicles for private use in the parking lot of the building and provided it is located in the individual lot of the garage, it only requires a prior notification to the community about its installation. The cost of the said installation shall be completely borne directly by the concerned party or parties.

6. The validation of agreements not expressly regulated in this article, which imply the adoption or modification of rules contained in the master deed of horizontal property (property in condominium) or in the statutes of the community, shall require unanimity of the total number of proprietors that also represent totality of the participation quota.

7. To be valid, all other agreements shall require a favourable vote of the majority of all the proprietors that also represent the majority of the participation quota. When the general meeting is held on second call, the agreements shall require a favourable vote of the majority of those present that also represent the majority of the participation quota to be valid.

Where a majority cannot be reached by the procedures established in the preceding paragraphs, the judge, on petition of a party concerned, in the subsequent month after the date of the general meeting held on second call, and after hearing the litigants, duly cited, shall adjudge in fairness within twenty days from the date of the petition, awarding legal costs to the corresponding party.

8. Except as expressly provided for wherein cost of services cannot be levied on those proprietors who have not specifically voted in the Board meeting in favour of the agreement, or in cases where the modification or reform is to be done for private use, the votes of the proprietors who were absent at the duly convened general meeting, shall be computed as favourable if, once informed of the agreement adopted by those present in conformity with the procedure as established in Article 9, do not declare their disagreement to the person acting as Secretary of the community within thirty calendar days, through any medium that allows the accreditation of its reception.

9. The agreements validly adopted pursuant to this article are binding on all owners.

10. Discrepancy concerning the nature of works to be carried out shall be resolved by the Board of proprietors. Interested parties may also request an arbitrary or technical judgment in the terms set out by law.

11. The special levy for the execution of the improvements made or to be made in the building shall be the responsibility whoever is the proprietor at the moment when the affected amounts of these improvements are claimable.

Article 18

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

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

b) When they are seriously detrimental to the interests of the community and benefit one or several proprietors.

c) When they are a seriously detrimental to some proprietors who has not the legal obligation to sustain such detriment or when they have been adopted in abuse of power.

2. Proprietors who expressed and recorded a dissenting vote at the general meeting, those who were absent for any reason and those who were illegally deprived of their voting right shall be entitled to challenge these agreements. In order to challenge the agreements adopted by the Board of proprietors, the proprietor must be up to date with their lapsed community fees or have consigned them in court before proceeding. This rule shall not apply for the challenge of the agreements of the general meeting regarding the establishment or alteration of the participation quota of the proprietors, as referred to in Article 9.

3. The action shall expire three months after the adoption of the agreement by the Board of proprietors, except in the case of agreements contrary to the law or the statutes of the community; in that case the action shall expire after one year. For the proprietors not present at the general meeting the said terms shall begin to count from the date of the notification of the agreement in accordance of the provisions of Article 9.

4. The challenging of the adopted agreements of the Board of proprietors shall not suspend the execution, unless the judge determines so as a preventive measure, at the plaintiff's request and having heard the community of proprietors.

Article 19

1. The agreements of the Board of proprietors shall be recorded in a minute book stamped and validated by the Land Register in accordance with the applicable regulations.

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

a) The date and place of the general meeting.

b) The person having convened the general meeting and, where appropriate, the proprietors who promoted it.

c) Whether the general meeting was ordinary or extraordinary and whether it was held on first or on second call.

d) A list of those present and their respective offices, as well as the proprietors represented; indicating, in any case, the participation quotas.

e) The agenda for the general meeting.

3. The resolutions adopted, with indication, where relevant for the validity of the agreement, of the names of the proprietors who voted in favour and against, as well as the participation quota corresponding to each proprietor.

The minutes shall be signed by the President and the Secretary at the end of the general meeting or within the following ten natural days. The agreements shall be in force from the moment that the minutes are signed, except when the law stipulates otherwise. The minutes shall be sent to the proprietors, according to the procedure established in Article 9.

Any defects or errors in the minutes may be rectified, provided that the date and place of the general meeting, the names of the assisting proprietors, present or represented, the agreements adopted with the indication of the votes in favour and against, as well as the respective participation quotas, are expressed correctly and that they are signed by the President and the Secretary. The said rectification shall be made prior to the following general meeting of the Board of proprietors and submitted to it for ratification.

4. The Secretary shall keep custody of the Board of proprietors' minute book as well as maintain the invitations for general meetings, notifications, proxy-forms and other relevant documents of the general meetings during a five-year period.

Article 20

It corresponds to the Administrator:

a) To look after a proper management of the property, its installations and services and to this end give appropriate advice and warnings to the proprietors.

b) To prepare the budget with sufficient anticipation and to submit it to the Board of proprietors, proposing ways to cover the expenses.

c) To look after the upkeep and conservation of the building, arranging for urgent repairs and measures and report them promptly to the President or, where appropriate, to the proprietors.

d) To carry out the agreements adopted regarding maintenance work and make and receive payment as appropriate.

e) To act, where applicable, as Secretary to the Board of proprietors and to keep custody of the community documents and to keep those available for the proprietors.

f) Any other function conferred by the Board of proprietors.

Article 21

1. The obligations set forth in paragraphs e) and f) of Article 9 shall be fulfilled by the proprietor of the unit in the time and form determined by the general meeting. Otherwise, the President or the Administrator, if so agreed by the Board of proprietors, may seek judicial redress through monition proceedings.

2. The use of the monition proceedings shall require prior certification of the agreement of the Board of proprietors, approving the liquidation of the debt with the community of proprietors, issued by its Secretary and endorsed by the

President, providing that the said agreement was notified to the proprietors concerned in the form as established in Article 9.

3. To the sum claimed by virtue of the provisions of the preceding paragraph may be added the expenses caused by the summons prior to court action, provided that there is documentary evidence of the said claim and that proper receipts for these expenses are attached to the claim.

4. When the previous proprietor of the unit must answer jointly and severally for the outstanding debt, action may initially be brought against the former, without prejudice his right to claim reimbursement from the current proprietor. The action may also be brought against the titleholder appearing on the land register, who shall be entitled to the aforesaid right.

In all these cases, the initial claim may be filed against any of the parties to the obligation or jointly against all of them.

5. When the debtor opposes the initial petition for the monition proceedings, the plaintiff may request a preventive seizure on such debtor's assets as deemed sufficient to cover the amount claimed plus interests and costs.

The court shall decree, in any case, the preventive seizure without asking the creditor to furnish security. Notwithstanding, the debtor may enervate the seizure by providing a bank guarantee for the amount for which the preventive seizure was decreed.

6. Where in the initial claim 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 the third paragraph of Article 394 of the Civil Procedure Law (Ley de Enjuiciamiento Civil), 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.

Article 22

1. The community of proprietors shall be liable with all its assets for any debts to third parties. Supplementary, and after having served a request for payment to the respective proprietor, the creditor may claim from every proprietor who was party to the corresponding process payment of their corresponding share of the amount not satisfied.

2. Any proprietor may oppose execution if he/she accredits that all debts due to the community are fully settled at the moment of the request for payment mentioned in the preceding paragraph.

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

Article 23

The horizontal property regime shall terminate:

1. Upon destruction of the building, unless otherwise is agreed. 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.

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

CHAPTER III.

On the regime of private real estate developments

Article 24

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

a) Being formed by two or more buildings or independent plots used mainly as dwellings or premises.

b) The titleholders of such buildings or of the dwellings or premises, in which they are divided horizontally, with inherent character to said right, participate in an indivisible co-ownership of other related (fixed) assets, roads, installations or services.

2. The private real estate developments referred to in the preceding paragraph may:

a) Constitute in one community of proprietors through any of the procedures provided for in the second paragraph of Article 5. In this case they shall be subject to the provisions of this Law, which shall be entirely applicable to them.

b) Constitute a master community. To this end, it is required that the master deed of the new master community is executed by the sole proprietor of the complex or by the Presidents of all the communities called together to be integrated in the master community, duly authorized by a majority agreement of their respective Board of proprietors. The master deed shall include the description of the whole real estate complex and of the common elements, roads, installations and common services. It shall also contain the participation quota established for each one of the component communities. These shall be jointly liable for the general expenses for the maintenance of the master community. The master deed and the statutes shall be registered in the Land Registry.

3. The grouping of communities as established in the previous paragraph shall have, to all intents and purposes, the same legal status as communities of proprietors and shall be governed under the provisions of this Law, with the following specifications:

a) The Board of proprietors shall be formed, unless otherwise agreed, by the Presidents of de communities integrated in the master community, in representation of the all proprietors of each individual community.

b) The adoption of agreements for which the law prescribes qualified majorities shall require, in any case, the prior and appropriate majority of the Board of proprietors of each one of the communities belonging to the master community.

c) Unless the Board of proprietors decides otherwise, the provision of Article 9 of this Law concerning a reserve fund shall not apply to the master community.

The powers of the governing bodies of the master community shall only cover land-related (fixed) assets, roads, installations and common services.

Their decisions shall in no event impair the powers of the governing bodies of the component communities.

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

Additional Provision

1. Without prejudice of the provisions enacted by Regional Governments in the exercise of their powers, the setting up of the reserve fund regulated in Article 9.1.f) shall comply with the following rules:

a) The fund shall be set up at the time the Board of proprietors approves the ordinary community budget corresponding to the financial year immediately after this Law takes effect.

Communities formed after this Law takes effect shall create their reserve funds when adopting their first budget.

b) At the time of the creation of the reserve fund, it shall be endowed with no less than 2.5% of the ordinary budget of the community. For this purpose, the proprietors shall make in advance the necessary contributions in accordance with their respective participation quota.

c) When the ordinary budget corresponding to the financial year immediately following the creation of the reserve fund is approved, said fund should be endowed with the amount necessary for it to attain the minimum established in Article 9.

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

Those amounts drawn from the reserve fund during the financial year for works and actions included in Article 10 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 in accordance with what is set forth in the preceding paragraph.

Transitional Provisions

First Transitional Provision

The present law shall govern all the communities of proprietors, whatever the moment of its constitution and the content of their statutes, which may not be applied in contradiction of what is established by this law.

Within 2 years, starting from the publication of this law in the Official State Bulletin (Boletín Oficial del Estado (BOE)), the community of proprietors shall adjust their statutes which are in contradiction with the present law.

Once lapsed 2 years, any of the proprietors may judicially enforce the adjustment provided for in the present provision by the procedure as indicated in norm 2^a of Article 16.

Second Transitional Provision

In the current regulatory statutes of the ownership of individual units, in which the right of pre-emption and buyout in favour of the proprietors is established, it shall be understood that the same are modified in the way that the mentioned rights will stay without efficacy, unless, in a new general meeting, and by a majority that represents, at least, 80% of the proprietors, shall agree the maintenance of the mentioned rights of pre-emption and buyout in favour of the proprietors of the community.

Final Provision

Any general provisions contrary to what is established in this Law are hereby repealed.

Additional Provision (Reform law 8/ 1999)

1. Article 396 of the Civil Code shall henceforth read as follows: “The different units of a building or parts thereof that can be subject to independent use by reason of separate independent entrances from either a common element or the public thoroughfare 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, surface, foundations and roofs; structural elements, including pillars, beams, top slab and supporting walls; façades, with the outside coverings of the terraces, balconies and windows, including their image or configuration, the elements of enclosure shaping them and their exterior coatings; the entranceway, stairways, janitor offices, corridors, passages, walls, ditches, courtyards, shafts and precincts for lifts, tanks, meters, telephone lines or for other facilities or fittings, including those for private use, lifts and its 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 conditioning, ventilation or smoke extraction; those for fire detection and prevention, electronic doors and other safety devices in the building, as well as those for collective aerials and other installations for audiovisual or

telecommunication services; all of them up to the entrance of the private area, 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 subject of subdivision, 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 proprietors of the other units shall not have, by virtue of their ownership, any rights of pre-emption and buyout. This form of property shall be governed by special legal provisions and, insofar as such provisions allow, by the will of the unit owners.” Without prejudice of the provisions of the previous paragraph, the amendments introduced in the Civil Code and in the Mortgage Law (Ley Hipotecaria) by Article 1 and 2 of the Law 49/1960, of 21st July, on Horizontal Property shall remain in force with their current drafting.¹

Transitional Provision (Reform law 8/ 1999)

The rules contained in paragraph 21 of the Horizontal Property Law, as amended by this Law, 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 (Reform law 8/ 1999)

1. Any general provisions contrary to this Law are hereby repealed. As well as those clauses in the statutes of communities of proprietors that are contrary to or incompatible with this Law are without effect.
2. Communities of proprietors shall adapt their statutes to the provisions of this Law within one year.

¹ The original drafting of Article 2 of the Horizontal Property Law 49/1960 is as follows: Paragraph 3 of Article 8 of the Mortgages Law (Ley Hipotecaria) is amended and two paragraphs, 4 and 5, are added thereto. In addition, paragraph 11 is added to Article 107. These shall read as follows:

“Article 8

3. Urban properties and buildings in general, although belonging to different persons in full or qualified ownership.

4. Buildings under the regime of the ownership of individual properties of which the construction is completed or, at least, under way.

The registration of title shall include, with the circumstances prescribed by law, besides the building as a whole, each individual unit on its own, which will be assigned with the correlative numbers, written in letters, and the participation 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.

It shall also contain the rules mentioned in master deed and the statutes which may shape the contents and exercise of ownership.

The registration shall be made in favor of the owner of the building creating the ownership system or of the proprietors of all the units.

5. The houses or premises of a building in horizontal property regime provided the registration of the building included the constitution of said regime.”

“Article 107

11. The houses or premises of a building in horizontal property regime, registered as prescribed in Article eight.”