

**ACT 49/1960 OF JULY, ABOUT PROPERTY IN CONDOMINIUM, REFORMED BY ACT 8/1999 (6TH APRIL)**

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**STATED PURPOSE**

The long period of validity of Act 49/1960, of 21st July, about Property in Condominium, has demonstrated its great utility many different scopes: in the regulation of relationships among the proprietors subjected to their regime in building development and town planning. Act 2/1998, of 23rd February, as well as Act 3/1990, of 21st June, meant a great advance in the approaching to social reality. However, when the time has gone by, society new aspirations have arisen as regards of Property in Condominium regulation.

The rule of the unanimity is considered nowadays rigorous excess, as it blocks the carrying out of certain performances which are convenient for the community of proprietors and even, for environmental or another nature reasons, for the rest of the guild. Making the regime of majorities more flexible for the establishment of certain services (Porter's houses, elevators, removal of architectural barriers, which hinder the mobility of disabled people, telecommunication services, use of solar energy, etc.) has been considered convenient.

Another of the big demands of the society is to achieve communities of proprietors rightfully be paid what the integral proprietors owe. What comes to be called the fight against bad payers, is aimed to be struggled by this reformation through a plurality of measures directed to such a goal: creation of a reservation fund, publicity in the public instrument for transferring figures owed by proprietors, real affection of the transferred property to the payment of general expenses corresponding to the annual payment in which the purchase takes place and to the very previous year, joint responsibility from the transferor who doesn't let know the ownership change, executive character attribution to formal agreements made at the Meeting of Proprietors, establishment of an agile and effective procedure of judicial execution for the collection of debts with the community, etc..

The present Act also carries out an up-to-dated regulation for meetings minutes creation, community board functions, in particular those of the administrator. (Any proprietor or natural person with enough professional qualification could be administrator), regime of call, vote right performance,

President's position abandonment and other numerous matters which have been pointed out as insufficiently regulated by daily reality. Therefore, the Property in Condominium Act acquires flexibility and dynamism, as well as effectiveness, and it complies with the new social requirements, and it will surely go on being one of the more transcendental ones for the coming decades in our country.

## **CHAPTER I General clauses**

### **1<sup>st</sup> Clause**

The present Law goal is the special regulation of property on clause 396 from Civil Code, called Property in Condominium.

All those parts of a building, which could be liable to be usable in an independent way, because they have an exit either to a common area or to public thoroughfare, will be considered premises for this Act purpose.

### **2<sup>nd</sup> Clause.**

This Law will be applicable:

a) To those communities which have been constituted in accordance to what is disposed on the 5th clause.

b) To those communities which fulfil all requirements settled down on article 396th from Civil Code and have not granted the constituent title of Property in Condominium.

Those Communities will be governed, in any instance, for the dispositions of this Act related to juridical Property regime, of their exclusive parts and common elements, as well as to the rights and reciprocal obligations of the co-owners.

c) To private real state housing, in the terms stated on this Act.

## **CHAPTER II About floors or premises Property regime**

### **3<sup>rd</sup> Clause**

According to what is stated by the regime of property on article 396 from Civil Code, the following points correspond to the owner of each floor or premises:

a) The singular and exclusive right of property on a sufficiently defined and susceptible of independent use space, with the architectural elements and facilities of all kinds, apparent or not, which are included inside their limits and are exclusively used by proprietor, as well as those annexes expressly indicated on the title deed, although they are located outside the defined space.

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

Every flat or premises will be attributed a participation quota according to the property total value and related in hundredths from it. This quota will be used as a module to determine the participation in duties and benefits at the risk of the community. The improvements or damages of each flat or premises will not alter the stated quota, which will only be to change for unanimous agreement. Each proprietor can freely use his right, without being able to separate the elements which integrate it and provided that the enjoyment transference does not affect derived obligations from this regime of property.

### **4<sup>th</sup> Clause.**

Division action will not proceed to cease the situation which regulates this Law. It will be able to be executed just by each proprietor pro-indiviso on a definite flat or premises, bounded to him, and whenever the pro-indivision has not been established as a purpose for common service or utility for all proprietors.

### **5<sup>th</sup> Clause**

The Property Title Deed for flats or premises will describe, besides the property as a whole, each one in particular, which will be assigned correlative numbers. The description of the property must express the required circumstances on mortgage legislation and all services and facilities which exist. That of each floor or premises will express its extension, boundaries, floor and annexes, such as garage, attic or basement.

In the same title he/she will notice the participation quota that corresponds to each floor or local, determined by the unique proprietor from the building when beginning their sale for floors, for all the existent proprietors' agreement, for award or for judicial resolution. For their fixation he/she will take like base the useful surface of each floor or local in connection with the total of

the property, their interior or external location, their situation and the use of it, which shows off rationally that it will be made of the services or common elements.

The title will be able to contain, also, constitution rules and exercise of the right and dispositions not prohibited by the Law in order to the use or destination of the building, its different floors or local, facilities and services, expenses, administration and government, sure, conservation and repairs, forming an exclusive statute that won't harm third parties if it has not been inscribed in the Registration of the Property.

In any modification of the title, and safe what prepares about the validity of agreements, the same requirements will be observed than those for the constitution.

### **6<sup>th</sup> Clause**

The group of proprietors will be able to settle certain rules to regulate coexistence details and the proper use of services and common things, and within the statutory ceiling. Those rules will legally bind any holder whether they are not modified the expected wayform to come to agreements about the administration.

### **7<sup>th</sup> Clause.**

1. Proprietors of each flat or premises will be able to modify the architectural elements, its facilities or services when it does not impair or alter the building security, their general structure, their configuration or external condition, or it prejudice another proprietor rights, and the one in charge of representing the community, should previously be informed.

He will not be allowed to make any alteration in the rest of the property and if he notices the necessity of urgent mends, he/she should tell it to the administrator without any delay.

2. The proprietor and the occupant of the flat or premises are not allowed to develop activities which are forbidden by statutes for being harmful for the property or because they infringe the general provisions about annoying, unhealthy, noxious, dangerous or illicit activities.

The President of the community, on his own initiative or that from the proprietors or occupants, will require the one who is carrying out banned activities on this section the immediate ceasing of them, as official warning to take disciplinary action against him/her.

If the offender persists in his behaviour, the President, by getting a previous authorisation from the Proprietors Board, duly summoned to such effect, will be able to file a cessation action against him/her. It will be carried out adjusting to the rules which regulate declaratory proceedings if the actions are not foreseen on this clause.

Once the claim has been put in to the offender, together with a certificate of the reliable requirement and of the certification from the agreement adopted by the Board of proprietors, the Judge will be able to determine the immediate ceasing of the forbidden activity with preventive character, under provision of

committing disobedience crime. He will be able to decide as well all provisional measures that were necessary to ensure the discontinuance order effectiveness. The claim will go against the proprietor and, in its case, against the occupant of the house or premises.

If the judgement were approved, he could decide, besides the definitive ceasing of the forbidden activity, and the compensation for damages and prejudicial consequences which proceeds, the privation of the right to use the house or premises a term under three years, in accordance to the seriousness of infraction and damages caused to the community. If the offender were not the proprietor, the order could declare extinguished definitely all his rights concerning the house or premises as well as his immediate dispossession.

### **8<sup>th</sup> Clause.**

Flats or premises and their annexes could be divided into more reduced and independent ones, and enlarged by the aggregation of adjacent ones from building or reduced by any part segregation.

In such cases it will be required, besides the consent of the affected holders, the approval of the Proprietors Board as well as the affected holders approval, to who settlement of the new participation quotas for reformed flats concerns, according to what is disposed on clause 5th, without alteration of the remaining quotas.

### **9<sup>th</sup> Clause**

1. They are proprietor's duties:

a) Respecting general facilities of the community and other common elements, general or exclusive for any proprietor included or not in their flat or premises, making an appropriate use of them and avoiding damages or prejudices to be caused.

b) Keeping in good conservation condition their own flat or premises and exclusive facilities, so that they do not cause harm to the community or to the other proprietors, by compensating damages caused by their carelessness or that of people who should be responsible for them.

c) Allowing in their house or premises the repairings which the property service requires, and the indispensable servitude required for the creation of common services previously agreed for general interest, according to what is disposed on the article 17th, and being the community responsible for compensating possible damages.

d) Allowing the entrance in their flat or premises to the purposes from the three previous sections.

e) Contributing to general expenses for the proper maintenance of the property, their services, loads and responsibilities which are not liable to be individual,

according to the participation quota determined on the Title Deed or to what has been specially determined.

Credits in favour of the community which derive from the liability of contributing to general expenses for supporting, corresponding to imputable quotas to the due part of the annuity in course, and to the immediately previous natural year, they have the condition of preferential as far as the article 1923 from the Civil Code says, and they precede, for their satisfaction, to those which has been enumerated in the sections 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> from such provision, without prejudice to the established preference in favour of the salary credits on the Workers Act.

The purchaser of a house or premises in Property in Condominium regime, even with a registered Title inscribed on Property Register, responds with his own acquired property for the quantities he owes to the Proprietors Community, for the maintenance of general expenses by the previous takers right to the limit of those that are attributable to the due part of the annuity in which the purchase takes place, and to the immediately previous natural year. The flat or premises will be legally encumbered to such duty enforcement.

The house or premises transferee should declare to be up to date in the payment of community general expenses or to express what he owes in the public instrument through which the house or premises is transferred, whatever its Title is. The transferor should provide a certification about the state of debts with community at that time, and it has to coincide with his previous declaration, without which he will not be able to authorise the grant of the public document, unless he was specifically discharged from such duty by the purchaser. The certification will be issued in a maximum term of seven natural days from its application by people who does Secretary functions, with the President approval who will be responsible, in case of blame or negligence, for the accuracy of consigned data and for damages caused by delay in its issue.

f) Contributing, according to their respective participation quota, to the endowment of a reservation fund which should be provided for supporting maintenance works and property reparings

The reservation fund, whose ownership corresponds to the community for all purposes, will be endowed with a quantity that should not be inferior to five percent from its last ordinary budget.

The community will be able at their own expenses to subscribe an insurance contract which covers the damages caused in the property, or to reach a permanent contract for the property and its general facilities maintenance.

g) Taking into account the legal measures for the use of property and, concerning their relationships with the other neighbours, being responsible before them for infractions and damages.

h) Informing the person who acts as Secretary about his Spanish address in case he has to be required for either notifications or calls of any nature, which are related to the community matters. By default of it, the community flat or premises will be considered the address notifications and calls, and all those delivered to the occupants, will have juridical effects.

If the attempted notification or call were impossible to be practice at the place prevented in the previous paragraph, it will be understood to be carried out by the placing the corresponding communication on the community bulletin board, or in a visible place of on a general use place fit out for such effect, explaining the date and reasons for which they proceed to this notification way. The Secretary of the community should sign it, previous President approval. This way notification will produce full juridical effects in a three natural day's term.

i) Informing the Secretary of the community about the flat or premises change of holdership, for any means that allows to put it on record.

People who fail to fulfil such duty, will go on being responsible for the debts with the community although yielded after transmission, in a joint way with the new holder, without any prejudice of relapsing.

What has been disposed on the previous paragraph should not be pursued when any of the governments organs settled down on 13th clause is aware of the flat or premises change of ownership, by any other means or new proprietor's conclusive acts, or when transmission is notorious.

2. For the application of the rules from the previous section, expenses which are not attributable to any flat or premises will be reputed as general ones, and the disuse of a service will not exempt from the comply of duly duties, without any prejudice of what is settled down on this Act 11.2 clause.

### **10<sup>th</sup> clause.**

1. The community will be obliged to carry out necessary works for the property and its services proper maintenance and conservation, so that it should fulfil all due structural, tanking, habitability and safety conditions.

2. Proprietors who are unjustifiably opposed or delayed in the execution of the orders, which have been enacted by competent authority, will be individually responsible for the sanctions, which could be imposed by administrative action.

3. In case of disagreement on the nature of the works to be carried out, the Proprietors Board will decide what is reasonable and appropriate. Interested parties will also be able to request an arbitrary or technical judgement in the terms settled down by Law.

4. The flat or premises are affected by the payment of expenses derived from the realisation of maintenance works referred on the present article, under the same terms and conditions which were settled down on 9th clause for general expenses.

### **11<sup>th</sup> Clause**

1. None of the proprietors will be able to demand new facilities, services or improvements that are not required for the proper community maintenance, habitability and safety, according to its nature and features.

2. Whenever some agreements are adopted in order to carry out non-required innovations under the previous paragraph provisions, and whose installation quota exceeds the amount of three ordinary monthly payments of common

expenses, the dissident neither will be forced, nor his quota will be modified, even whether he cannot be deprived of the improvement or advantage.

If the dissident wants, at any time, to participate of the advantages of the innovation, he will be obliged to pay his quota concerning fulfilment and maintenance expenses, properly up-to-dated by applying the corresponding legal interest.

3. Innovations which become useless some part of the building for the proprietors quiet enjoyment, will require, in any case, the express approval.

4. Calls for contributions to the payment of finished or future property improvements will be at the expenses of the one who is the proprietor at the moment of the liveability of affected quantities for the payment of such improvements.

### **12<sup>th</sup> Clause.**

The building of new floors and any other alteration of the building structure, or of the common things, affect the Title Deed and they should undergo the established regime for its modifications. The adopted agreement will state the nature of the modification, the changes it originates in the description of the property all flats or premises, the change of quotas and the new flats or premises holder or holders.

### **13<sup>th</sup> clause.**

1. Community government Board remains as follows:

- a) Proprietors Board.
- b) President and, in any instance, the Vice-presidents.
- c) The Secretary.
- d) The Administrator.

Other community government positions could be appointed on the statutes or by the Proprietors Board majority agreement, but provided that it cannot mean any disadvantage for functions and responsibilities to third parties which Act attributes to the previous ones.

2. The President will be appointed by proprietors by voting, on a rota system or draw. The appointment will be compulsory, although the appointed proprietor will be able to request his relief to the Judge within the month after his access to the post, by explaining the reasons because of which him does it. The Judge will take a reasonable decision through the procedure on the 17.3th clause, appointing the proprietor who should substitute the President until a new appointment is appointed. The term should be determined on judicial resolution. They will go to the Judge as well, when for any reason, the Board finds not possible to appoint the President.

3. The President will be the legal community representative, in any trial and out of it concerning all matters which affect it.

4. The existence of Vice-presidents will be optional. His appointment will be carried out through the same procedure than the one for the President's appointment. The Vice-president or Vice-presidents should substitute the President in his absence, vacancy or impossibility, as well as help him in the exercise of his functions in the terms established by the Proprietors Board.

5. The Secretary's and of Administrator functions will be exercised by the community President, unless the statutes or the proprietors Board decide by majority agreement, to dispose such functions separated from the presidency.

6. Secretary and Administrator posts could be in one person or be appointed independently.

Administrator position and, in his case, that of Secretary-Administrator could be held by any proprietor, as well as by natural person, for with enough professional qualification and legally recognised to exercise those functions. It could be also held by corporations or another legal person, in the terms settled down on the legal system.

7. If the statutes of the community do not dispose the opposite, the appointment of government bodies will be made for one-year term. Appointed people could be removed from their position before the expiration of the mandate by the Proprietors Board agreement, summoned in extraordinary meeting.

8. When the number of proprietors of flats or premises in a building does not exceed four people they will be able to apply for the regime of administration on article 398 from the Civil Code, if they expressly set it down on their statutes.

**14<sup>th</sup> Clause.**

The Proprietors Board should be responsible for:

a) Appointing and removing people whom hold above-mentioned positions and to solving the claims which the holders of flats or premises make against their actions.

b) Approving the expected plan for expenses and incomes and the corresponding accounts.

c) Approving budgets and the execution of all repairing works of the property, either ordinary or extraordinary, and being informed of the urgent measures adopted by the Administrator according to what is disposed on the article 20th c).

d) Approving or reforming the statutes and determining rules of interior regime.

e) Knowing and deciding other matters of general interest for the community, taking the necessary or convenient measures for the best common service.

**15<sup>th</sup> Clause.**

1. The attendance to the General Proprietors Meeting will be personal or by legal or voluntary representation, being enough writing signed by the proprietor to certify it.

If any flat or premises belongs pro indiviso to different proprietors they should appoint a representative to attend and to vote in the meetings.

If the house or premises is in usufruct, the attendance and the vote will correspond to the proprietor who, except for stating the opposite, will be understood to be represented by the tenant, and the delegation should be express when they are agreements referred to the first clause on the article 17th or extraordinary works and improvements.

2. Proprietors who are not up-to-date in the payment of all the due debts with the community at the moment of beginning the meeting, and they have not refuted them judicially or proceeded to the judicial or notarial consignment of the owing sum, will be able to participate in their discussions, although they will not be entitled for voting. The meeting minutes will show the proprietors who have been deprived of the vote right, and whose person and participation quota in the community will not be estimated to effects of reaching majorities which are required on this Act.

### **16<sup>th</sup> Clause**

1. The General Proprietors Meeting will meet at least once a year to approve the budgets and accounts, and other times if the President consider it convenient or if the fourth part of the proprietors require it, or a number of them who represent at least a 25 % from the participation quotas.

2. Meetings calls will made by the President and, in default, the meeting developers, by informing about the matters to be dealt, the place, day and time at what it will take place in first or, in its case, in second call. Notifications should be made the stated way on article 9th. The citation will include a list of the proprietors who are not up-to-date in the payment of due debts to the community and it warn about the deprivation of vote right if assumption on the article 15.2 happen.

Any proprietor will be able to ask the Proprietors Board to study and give their opinion about any subject of interest for the community. He should send a writing for the President to that end, on which it is clearly specified the required subjects to be dealt and including them on the following Meeting agenda.

If most of the proprietors who represent, in turn the majority of participation quotas do not attend the Meeting, in first call, a second call will be made, this time without quorum liability.

The Board will meet in second call in stated place, day and time than in the first citation, and it would be possible to meet the same day if half hour from the previous one has gone by. By default, it will be summoned again, according to the stated requirements on this article, within the eight following natural days to the not-celebrated meeting, the citations being filed if so, with a minimum of three days notice.

3. The call for the Annual Ordinary Meeting should be made, at least, at six days notice, and for the extraordinary ones, to be able to let all the interested

people know. The meeting can meet even without the President's call, provided that all proprietors attend

### **17<sup>th</sup> Clause**

The agreements from the Proprietors Meeting will be subject to the following rules:

1<sup>a</sup>. Unanimity will only be possible to be required for the validity of agreements which imply the approval or modification of the rules, which are included on the Title Deed of Property in condominium or on the community statutes.

The establishment or suppression of elevator, porter, front desk, surveillance, or other common or general interest services, even when they mean the modification of the Title Deed, or the statutes, it will require the favourable vote from 3/5 parts of the total of proprietors who, in turn, represent the 3/5 parts from the participation quotas. The leases of common elements which have not been assigned a specific use in the property will require, as well, the favourable vote from 3/5 parts from the total of the proprietors who, in turn, represent 3/5 parts from the participation quotas, as well as the directly affected proprietor's consent, if he existed.

The carrying out of works, or the establishment of new common services, whose goal is the suppression of architectural barriers which hinder the access or disabled people's mobility, when they imply the modification of the Title Deed or statutes, will require the favourable vote of most of the proprietors who, in turn, represent most of the participation quotas

For above mentioned purposes, those votes from absent proprietors to the meeting, properly mentioned, who, once they have been informed about the agreement adopted by the present ones, and according to the procedures stated on article 9th, do not declare their discrepancy to who exercises community secretary functions, in a thirty natural days term, by any means which allows to have a record of its reception, will be considered as favourable votes.

The agreements validly adopted according to what has been disposed on this rule, they oblige all the proprietors.

2<sup>a</sup> The installation of common infrastructures for the access to telecommunication services which are duly regulated on the Royal Decree-law 1/1998, of February 27th, or the adjusting of the existent ones, as well as the installation of common or exclusive systems, to use solar energy, or necessary infrastructures to accede to new collective energy supplies, will be able disposed, at any proprietor request, by a third of the members of the community who represent, in turn, a third of the participation quotas.

The community will not be able to have repercussions either on the cost of common facilities or common infrastructures adjusting, neither on those derived from its conservation and later maintenance, on those proprietors who had not voted expressly for such maintenance at the Meeting. Nevertheless, if they later requests the access to services of telecommunications or to adjustments carried out in the pre-existents, they could be authorised provided they pay their corresponding amount, properly up-to-dated by applying the due legal interest.

Without any prejudice of what has been stated previously concerning conservation expenses and maintenance, the new installed infrastructure will have the consideration of common element, according to what is stated on this Act.

3<sup>a</sup> the vote of most of the total of the proprietors who, in turn, represent most of the participation quotas will be enough to make the other agreements valid. In second convocation they will be valid the agreements adopted by most of the attending proprietors, provided that it represents, in turn, more than half of the value of their participation quotas.

When the majority could not be achieved for the procedures stated on the previous paragraphs, the Judge, at the request of deduced part in the following month at the time of the second meeting, and listening to previously mentioned contradictory parties, he will decide what proceeds ex aequo et bono in a twenty days term from the request, making a pronouncement about costs payment.

### **18<sup>th</sup> Clause**

1. The agreements from the General Meeting will be refutable before the Courts, in compliance with what is stated on the General Procedural Act, in the following hypothetical cases:

- a) when they are contrary to the Law or to the community statutes of the community.
- b) When they are serious prejudice for community interests, in benefit of one or several proprietors.
- c) When they mean a serious prejudice for any proprietor who has not legal duty of suffering it or they have been determined with abuse of law.

2. Proprietors who have saved their vote at the meeting, the absent ones for any reason and those who unduly have been deprived of their vote will be legitimated for the objection to these agreement. The proprietor should be up-to-date about all the payment of due debts with the community or to proceed previously to the judicial consignment of the same ones in order to refute the meeting agreements. This rule will not be applicable for objection to meeting agreements concerning the setting or alteration of proprietors participation quotas which have been mentioned on clause 9th.

3. The action will expire three months after the agreement the meeting agreement has been determined, unless acts are contrary to the Law or to the Statutes. If so, the action will expire after a year. For absent proprietors, this term will be computed starting from the agreement notice, according to the stated procedure on article 9th.

4. Meeting agreements objection should not cancel its execution, excepting when the Judge decides it that way, with preventive character, at claimant application, once the community has heard it.

### **19<sup>th</sup> Clause**

1. The Proprietors meeting agreements will be written on a minute book, which should be conducted by the Register of Deeds in the regulatory disposed way.

2. Minutes from each meeting should express, at least, the following circumstances:

- a) Date and holding place.
- b) The author of the call and, in its case, proprietors who have promoted it.
- c) Its ordinary or extraordinary character and the information about its holding in first or second call.
- d) Attendants' list and their respective positions, as well as represented proprietors, with indication, in any case, of their participation quotas.
- e) Agenda of the meeting.
- f) Determined agreements, with a list of the names from proprietors who had voted for and against them, as well as participation quotas which they respectively represent, provided it were relevant for the validity of the agreement.

3. Minutes will be closed with President's and Secretary signatures at the end of the meeting or in ten following natural days. From their closing, agreements will be executive, excepting when law decides the opposite.

Meeting minute will be send to the proprietors, according the procedure stated on article 9th.

Minutes defects or mistakes will be rightable whenever it expresses unequivocally the date and holding place, the attending proprietors, present or represented, and determined agreements, with indication of for and against votes, as well as the participation quotas they respectively hold, and it is signed by the President and the Secretary. This correction should be made before the following meeting when the correction will be ratified.

4. The Secretary will keep meeting minute books. He should also keep calls, notices, powers, and other relevant documents from meetings, for a five years term.

### **20<sup>th</sup> Clause**

It corresponds to the Administrator:

a) Looking after the house good condition, their facilities and services, and making for this purpose the appropriate warnings and provisions to the Courts.

b) Preparing the expected expenses plan in advance and submit it to the approval of the proprietors, by proposing the necessary means to face them.

c) Assisting for the house conservation and entertainment, deciding repairs and urgent measures, reporting immediately the President about it, or, in its case, to the proprietors.

- d) Executing the determined agreements with regard to building works, making the payments and collecting due debts.
- e) Acting, in its case, as secretary of the Meeting and safekeeping the community documents at holders' disposal.
- f) All the other conferred attributions by the Meeting Board.

### **21<sup>st</sup> Clause**

1. Mentioned duties on sections e) and f) from clause 9th should be accomplished by the house or premises proprietor in the time and form determined by the Meeting. Otherwise, the President or the Administrator, if Proprietors Board agrees it this way, will be able to sue someone judicially through the procedure stated on this article.
2. The use of this procedure would require the previous certification from the meeting agreement, and the one who acts as the Secretary should approve the debt settlement with the community, under the President approval, provided that such an agreement has been previously notified to the affected proprietors in the way stated on clause 9th.
3. Territorial jurisdiction will correspond only to the Judge of the place where the property is, and the collecting through a lawyer or barrister is not compulsory, without any prejudice of what has been stated on the section 10 of this clause.
4. The process will begin with the succinct claim, and the mentioned certification on the number 2 from this article, will be enclosed. If the previous holder must be responsible in solidum for the payment of the debt, and without any prejudice of his right to repeat against the current proprietor, it will be demanded jointly with him. Anyway the holder who is registered is the one who should be the respondent.
5. Once the lawsuit has been presented and given leave to go ahead, the Judge will call upon the defendant so that, in a twenty days term, he must pay to the plaintiff, by certifying it either before the Court or appearing in Court to declare on an opposition writing the reasons for which he believes he has not to settle the required amount or part of it. The notification should be made at his home in Spain, previously designated by the debtor, or by its default, at his flat or premises, under the official warning that, whether he does not neither pay nor appear explaining the reasons for it, an enforcement will be issued against him, according to what is disposed on the following number.
6. If the defendant does not appear in Court or he does not object to the demand, the Judge will make an order, on which he will issue the enforcement, which will proceed according to what is disposed for judicial decisions, for the owed amount plus expected interests and costs and previous extrajudicial expenses from the notifications related to debt liquidation, provided that they have proceeded by notarial means.

The applicant of this process and the enforced debtor will not be able to claim subsequently in ordinary proceeding, the required amount or the refund of the one obtained through execution.

Once the order is remanded and issued, the debt will bear the legal interest from the increased quantity in two points.

7. If the debtor attended to the payment requirement, as soon as he settles it, he will deliver the document on which the debt appears and all procedure records will be shelved.

Nevertheless, he will pay the mentioned costs, which have been pointed on number 10 from this article and referred expenses on the previous number.

8. If the debtor objected by alleging reasons, in order to refuse the whole or part of the payment, the Judge, previous transfer to the plaintiff of the objecting writing, will proceed to file oral trial, starting from the moment of the notification for oral trial. Nevertheless, when objection has been submitted, he could require general lien for the debtor's goods, which are enough to face claimed quantity, as well as interests and costs.

The Judge will determine attorney's lien, in any case, without needing creditor's deposit. The debtor will be able to get rid of lien by standing bank guarantee for decreed lien amount.

9. If the debtor appears in due time and objects partially to the payment, alleging plusrequirement, the objection will be admitted, only if he credits to have paid or put at the plaintiff's disposal the amount he recognises as a debt, before the filing of the claim. If the objection is bases in pluspetition, general lien could only be required for the amount, which has not been settled by the debtor yet.

10. Relapsing order will have the strength of a judged issue.

Costs will be charged to the litigant which has seen completely underrated their pretences. If the claim were estimated partially, each part will bear costs caused to his requirement and the common ones half-and-half. The sentence to pay court costs will include the Lawyer's fees and those from the Barrister corresponding to the winning party, if he had required their professional services in the claim demand or reply.

11. Due quotas could be accumulated during the course of the process, without implying the proceeding back and after putting the claim in. Stages which have preceded, are considered as common to the amplification. This faculty will extend to the phase of the decision enforcement.

The accumulation of the due debt with the community during the process, after the presentation of the claim will require its previous attestation by means of a new certificate from the approbatory payout agreement, which should be issued in accordance to what has been disposed on section 2.

12. The appeal against the judgement will not grant an application if the defendant does not credit, when interposing, to have paid or consigned the clear amount to what verdict of guilty contracts.

If the verdict condemns him to the payment of clear amounts for non-fulfilment of terms or due quotas, the appeal will remain void if during its proceeding the appellant gives up paying or consigning, in due time, those of the same nature which go expiring.

### **22<sup>nd</sup> Clause**

1. The community of proprietors will be responsible for its debts to third parties with all funds and credits to its favour. Subsidiarily and it foresaw payment requirement to the respective proprietor, the creditor could go against every proprietor who has taken part at the due process on his corresponding quota for the unpaid amount.

2. Any proprietor could object to the execution if he certifies that he is up-to-date in the payment of due debts with the community as a whole, when the mentioned appearance in court on previous section is filed.

If the debtor pays at such appearance time, he will be responsible for the costs which have been caused till that moment, in the proportional corresponding part.

### **23<sup>rd</sup> Clause**

The regime of Property in Condominium lapses:

1. By building destruction, excepting for an agreement of the opposite. Destroy will be considered when the cost of reconstruction exceeds 50% of the property value at the time of the catastrophe, unless the excess of this cost is covered for an insurance.

2. By conversion either in ownership or ordinary co-ownership.

### **CHAPTER III About the regime of the private real state properties.**

#### **24<sup>th</sup> Clause**

1. The special regime of property stated on article 396 from the Civil Code would be applicable to that private real state property which gather the following requirements:

- a) including two or more buildings or independent plots whose main destination is the house or premises.
- b) If holders of these properties, (or houses or premises on those which are divided horizontally), participate with inherent character to this right, as an indivisible co-ownership regarding other real state elements, facilities or services.

2. Private real state properties which have been mentioned on the previous section will be able to:

- a) Be constituted in a single community of proprietors through any of the stated procedures on the second paragraph on clause 5th. In this case they will be subjected to this Act dispositions, which will be entirely of application.
- b) Be constituted in a group of proprietors' communities. To such purpose, the new community Title Deed should be required to be executed by the unique holder of the property or by the Presidents of all the called communities to compose it, being previously authorised by majority agreement by their respective Boards of Proprietors. The Title Deed will include the description of the real state property as a whole and its elements, facilities and, common services. It will also determine the participation quota of each one of the integrated communities, which will be jointly responsible of their duty to contribute to the supporting of the communities' group general expenses. The Title and statutes of the communities group will be recordable on the Land Registry.

3. The group of referred communities on the previous section will enjoy, to all purposes, the same juridical situation than that of the communities of proprietors and it will be governed by the dispositions of this Acts, with the following specialities:

- a) The Board of Proprietors will be compound, except for a contrary agreement, by Presidents of the communities integrated in the group, who will be in charge of the representation of proprietors group from each community.

b) The adoption of agreements for which law requires qualified majorities, will demand, in any case, the previous majority securing from each one of the meetings of communities of proprietors which integrate the group.

c) Except for a contrary agreement from the Board, what has been disposed on clause 9th from this Act about reservation funds, will not be of application to the communities group.

The competence of groups of community government bodies, only prevails for real state elements, facilities and common services. Their agreements will not be able to impair, in any case, powers which correspond to government bodies of the communities of proprietors integrated in the group of communities.

4. Private real state properties which do not adopt any of the mentioned legal ways on section 2nd, will be applicable additionally, dispositions on this Act with the same stated specialities on the previous section, concerning agreed pacts among the co-proprietors.

**Additional provision.**

1. The constitution of the reservation fund regulated on article 9.1 f), without any prejudice to adopted dispositions by Autonomous Communities in the use of their competencies, will be subject to the following rules:

a) The fund will be constituted at the moment of being approved the ordinary community budget by the Board of Proprietors, corresponding to the following annual exercise after the present disposition becomes effective.

New communities of proprietors will constitute the reservation fund when they approve their first ordinary budget.

b) At the moment of their constitution, the fund will be endowed with not less than 2,5% amount from the ordinary budget of the community. To such purpose, proprietors will previously make the necessary contributions according to their respective participation quotas.

c) When the ordinary budget corresponding the following annual exercise after that one in which the reservation bottom was first contributed, the endowment of it will reach the minimum amount stated on clause 9th.

2. The endowment of the reservation fund will not be less than the fixed legal minimum, At any time during the budgetary exercise.

Removed quantities from funds during the budgetary exercise in order to assist maintenance expenses and repairs of the property, which are allowed by the present Act, will be estimated as integral part of it, for the figures of its minimum quantity.

Necessary contributions will be made at the beginning of the following budgetary exercise in order to cover removed quantities from the reservation fund, according what has been stated on the previous paragraph.

**Unique additional provision**

1 Article 396 from the c.c., will be written in the following terms:

The different flats or premises in a building, or parts of them liable to independent use for having an exit to a common element common or to the public road, will be object of separate property, which have an inherent a co-ownership right on necessary common elements of the building for their appropriate quiet enjoyment, such as the floor, foundations, roofs, structural elements, among which there are the pillars, beams, forgings and main walls; facades, with external sheatings of terraces, balconies and windows, including their appearance or configuration, the closing elements which shape them and their external sheatings; the entrance hall, the stairways, porch, corridors, passes, walls, moats, patios, wells and the areas for elevators, tanks, meters, telephonies or to other services or common facilities, even those which were of exclusive use; elevators and facilities, pipings and gutters for drainage, for water, gas or electricity supplies, even those for use of solar energy; those of sanitary hot water, heating, conditioned air, ventilation or smoke evacuation; those for fire detection and prevention; those for entryphone and others for the building safety, as well as those of collective antennas and other facilities for audio-visual services or telecommunication, all of them just to the private area

entrance; servitude and any other material or juridical elements which are indivisible for their nature or destination.

Parts in co-ownership are not liable in case of division and they will only be able to be transferred, encumbered or confiscated together with the exclusive part of which they are inseparable annexes.

In case of alienation of a flat or premises, the owners of the other ones, just for that power, will not be entitled for pre-emption.

This type of property is governed by special legal provisions and, in what they allow, for the will of interested ones.

2 without damage of the willing one in the previous section, Introduced modifications on the Civil Code and on the Mortgage Act for clauses 1 and 2 of Act 49/1960, of July 21, about Property in Condominium, they remain in force with their actual writing.

**Unique transitory provision.**

Contained rules on the Act article 21st from Property in Condominium Act, according to the new writing conferred to that order by the present Act, will not be applicable to proceedings which have already started according to the previous effective legislation. They will go on being issued in accordance to it until its result.

**Final provision.**

1. Whatever general provision which is against to what has been stated on the present Act are abolished. Contained clauses on the statutes of the communities of proprietors which are against or incompatible with this Act remain as well without any effect.

2. The statutes of the communities of proprietors will adjust themselves, in one-year term, to what has been disposed on the present Act.