

EXTRAORDINARY GENERAL MEETING
COMMUNITY OF PROPRIETORS "ALTAMIRA"
MARBELLA, 20th SEPTEMBER 2019

The Meeting having been summoned at the request of Mr. Gareth Davies, in his capacity as President, and those belonging to the community having been summoned in the manner prescribed in Article 16 of the Horizontal Property Law, the Annual General Meeting of the Community of Proprietors ALTAMIRA, commenced in the conference room of "Rio Real Golf Club", Urb. Rio Real, Marbella, at 10:00h on first call with quorum.

In attendance:	Mr. Gareth Davies	President of the Community
	Mr. Less McGlasson	Vice President
	Mr. Torben Rossberg	Committee Member
	Mr. John Flanagan	Committee Member
	Mr. Jose Luis Castillo	Lawyer
	Mr. José Luis Cortés	Administration representative SAGESA.
	Ms. Ellen Gallardo	Community Coordinator, SAGESA
	Mr. Jeronimo Molina	Community Accountant, SAGESA

The property owners who attended the meeting themselves or by representation, are listed along with their participation quote as follows, none of them having been prohibited to vote, insofar as that referred to in Article 15.2 of the Horizontal Property Law.

Present at the Meeting:

PROPRIETOR	FINCA	COEF. %
DEN ENGELSMAN, MARINUS	APART.103	1,60
KHARRATI, FATOLAH	APART.107	1,57
OMMS, HENRICA J.M.H (DE KOSTER)	APART.108	2,05
DAVIES, GARETH & PENELOPE	APART.115	1,56
HALSEY, DOUGLAS & SHEILA M.	APART.116B	1,60
CIMA, PABLO	APART.118	1,90
LIZAND LIMITED (McGLASSON)	APART.122	1,54
BEHEERSMAATSCHAPPIJ PAROVA,S.L. (Philipsen)	APART.201	2,05
JUAN OROZCO	APART.204	1,64
ROSSBERG, TORBEN & BIRGITTE	APART.224	1,57
DUGGAL, SHANTI PRAKASH & MADHU	APART.225	1,59
FLANAGAN, JOHN & JENNIFER	APART.226	1,90
TOTAL		20,57%

Represented at the Meeting:

PROPRIETOR	FINCA	COEF	REPRESENTED BY:
DMP REALTY S.L. (Diana Morales)	APART.101	2,11	CIMA, PABLO
TEURLINGS, ADRIANUS & MARIE	APART.102	1,59	DAVIES, GARETH & PENELOPE
KOK, LAURENTIUS J M	APART.104	1,60	DAVIES, GARETH & PENELOPE
AMREIN HUNKELER, OSCAR	APART.105	1,68	DAVIES, GARETH & PENELOPE
EURO-WIDE CONSULTING S.L. (Galina Podstavina)	APART.106	1,62	DAVIES, GARETH & PENELOPE
GOMEZ LAGARES, JUAN JOSE	APART.111	1,90	CIMA, PABLO
WADMORE, DAVID & BRENDA	APART.113	1,43	DAVIES, GARETH & PENELOPE
KAMAL, LUTFE RABBI MUSTAFA	APART.114	1,43	DAVIES, GARETH & PENELOPE
RYGOL, AGNES /SRA.	APART.116	1,56	DAVIES, GARETH & PENELOPE

MCKIMMIE, JOHN	APART.121	1,88	DAVIES, GARETH & PENELOPE
ARRAEZ, M.ANGEL / MANRIQUE, MARIA C	APART.123	1,43	CIMA, PABLO
	GARAJE 1	0,05	DAVIES, GARETH & PENELOPE
URWIN, JOHN A. & PATRICIA ANNE	APART.125	1,57	DAVIES, GARETH & PENELOPE
GOODALL, GEOFFREY ALAN	APART.126	1,57	DAVIES, GARETH & PENELOPE
LYNCH, JAMES CONOR & MARY ELLEN	APART.127	1,59	CIMA, PABLO
ZAMBRANO, MARIA ISABEL	APART.128	1,90	CIMA, PABLO
CARAMBANO STATES S.L. (SRA. HENING)	APART.131	2,37	BAQUERIZO M. F./ RUEFFLER, FRANK
LAKEVIEW ESTATES LIMITED (NASRIN ZHIYAN)	APART.132	2,00	DAVIES, GARETH & PENELOPE
LOPEZ-MARIN PEREZ, IGNACIO	APART.134	1,92	CIMA, PABLO
WILLMOTT, RICHARD JOHN	APART.135	2,02	DAVIES, GARETH & PENELOPE
RYGOL, AGNES /SRA.	APART.136	2,02	DAVIES, GARETH & PENELOPE
KAYE, SUSAN	APART.137	1,97	DAVIES, GARETH & PENELOPE
MOREVE, ROBIN & CAROL	APART.138	2,34	CIMA, PABLO
HUBATOMA S.L. (Schilders)	APART.202	1,59	DEN ENGELSMAN, MARINUS
BAQUERIZO M. FABIOLA / RUEFFLER, FRANK	APART.203	1,62	DAVIES, GARETH & PENELOPE
PIETERS, JOHANNES & HANNIE	APART.206	2,06	DEN ENGELSMAN, MARINUS
ARSCOTT, ALINA	APART.211	1,90	DAVIES, GARETH & PENELOPE
GUT, DIETER & HANNELORE	APART.212	1,53	DAVIES, GARETH & PENELOPE
DAVIES, MARK FALCON / ICETON, JANET	APART.213	1,56	DAVIES, GARETH & PENELOPE
MASSEY, GRAHAM	APART.215	1,58	DAVIES, GARETH & PENELOPE
MARTINEZ PIAZZA, MARIA DOLORES	APART.216	1,90	CIMA, PABLO
MESPREUVE, MARC / BVBA DR RADIOLOOG	APART.221	1,88	DAVIES, GARETH & PENELOPE
SCHMIDT-JORGENSEN, KERRN	APART.222	1,54	DAVIES, GARETH & PENELOPE
LEVER, DAVID SPENCER	APART.231	2,37	DAVIES, GARETH & PENELOPE
ALONSO, LORENZO	APART.232	2,00	CIMA, PABLO
GOHIL, RAMESH U. & SHILA	APART.234	2,02	DAVIES, GARETH & PENELOPE
VAN SCHAIK, NICOLAAS	APART.235	2,00	DAVIES, GARETH & PENELOPE
CONLEY, RICHARD & LESLEY	APART.236	2,37	DAVIES, GARETH & PENELOPE
TOTAL		67,14%	

TOTAL OWNERS PRESENT AND REPRESENTED:	87.71%
TOTAL OWNERS NEITHER PRESENT NOR REPRESENTED:	21.29%
TOTAL COEFFICIENTS:	100.00%

According to Spanish Communal Law the meeting should be held in Spanish, however in cases whereby the majority of attendees present are not Spanish, the Meeting can be held in the majority language spoken of those that are present. As this was the unanimous wish of those present, the meeting was held in English, but the minutes registered in the book of "Acta" would be in Spanish as is the requirement of the Law.

AGENDA

- 1. Within the Community of Altamira new activities of tourist apartment rental can be prohibited as referred to in letter (e) of Article 5 of the Urban Rental/Leasing Law, and by virtue of means as established in Article 17, paragraph 12 of the Horizontal Property Law.**
- 2. Increase of 20% in community fees of those apartments which are for tourist rental as referred to in letter (e) of Article 5 of the Urban Rental/Leasing Law, by virtue of means as established in Article 17, paragraph 12 of the Horizontal Property Law.**
- 3. Debtors list**

The President of the community, Gareth Davies, opened the Meeting and thanked all those present for their attendance and introduced the members of the top table

- 1. Within the Community of Altamira new activities of tourist apartment rental can be prohibited as referred to in letter (e) of Article 5 of the Urban Rental/Leasing Law, and by virtue of means as established in Article 17, paragraph 12 of the Horizontal Property Law.**

The President took the floor and informed the decision at the last AGM to create a group of people as ambassadors in order to inform all other owners about the new article in the horizontal property law. The new law authorizes communities to prohibit or limit the activity of tourist rentals within the community. The purpose of this meeting is to take a decision and vote on this matter.

As no questions arise, the President asks for the vote on the first item on the agenda

By majority of those present and represented, with 2 votes against (4.48%) prohibit new activities of tourist apartment rental as referred to letter e of Article 5 of the urban Rental Law, has by virtue of means as established in Article 17, paragraph 12 of the horizontal property Law has been.

Next, the meeting votes on item number two of the agenda;

- 2. Increase of 20% in community fees of those apartments which are for tourist rental as referred to in letter (e) of Article 5 of the Urban Rental/Leasing Law, by virtue of means as established in Article 17, paragraph 12 of the Horizontal Property Law.**

By majority of those present and represented, with 1 vote against (2.37€) increase of 20% in community fees of those apartments which are for tourist rental as referred to in letter (e) of Article 5 of the Urban Rental/Leasing Law, by virtue of means as established in Article 17, paragraph 12 of the Horizontal Property Law, has been approved.

The President thanked everyone present and represented and pointed out that it seems that this particular issue has unified the owners of Altamira more than ever. This is reflected in the large number of participation and the percentage of the vote in favor to ban this type of rentals

He then gives the floor to Mr. Jose Luis Castillo, the community lawyer to clarify all doubts that may exist on how to proceed to implement the adopted decision.

The lawyer took over and explained the importance of the difference between apartments that are already registered and those that are not. The first step after adapting the agreement today, would be to contact the owners directly and ask them for the registration number. He pointed out that there is no possibility to apply the law in a retroactive manner in the case where there are already properties that are not duly registered in the "Junta de Andalucia", and there is evidence that they are renting their property as a tourist apartment in a clandestine manner, the community can report the case to the Junta de Andalucia. He also added that the community has always the possibility of apply Article 7.2 of the horizontal property law, that clearly states:

"Article 7.2

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."

He noted that the properties of Altamira do not have a licence of first occupation, without which they cannot be legally registered with the Junta for tourist rental

He informed that those apartments that as of today are already registered, the community has the right to increase the ordinary fees to a maximum of 20%, in order to support the general expenses of the community.

The lawyer informed the meeting, that those apartments that are legally registered as tourist apartments, have the obligation to keep a record and also inform the police of each of their tenants. The community should first find out who is renting and ask the owner for the corresponding documentation. Surely there will be owners who do not answer. In this case, the community will report the facts to the appropriate authorities and start legal actions as indicated in the aforementioned article of the Horizontal property law.

There was a discussion which included the merits of applying the 20% charge, the effects of commercial properties of the Community insurance and the possibility of immediately moving to apply restrictions. The Meeting agreed to follow the process and sequence set out by Snr. Castillo. The first step is to require the owners of apartments being rented to tourists to provide their registration details. In the absence of this they would be denounced to the Tourist Authority of the Junta.

The President thanked the lawyer and requests the collaboration of all the owners to identify more quickly those tourist rental apartments.

NOTE: A brief informative summary on this matter written by the lawyer is attached as **ANNEX N°1**

3. DEBTORS LIST

- Debtors List at 19th of September 2019: Please refer to ANNEX N°2. –

The President presented the debtors list and ask for the vote to start legal actions against the debtors enlisted in the debtors list, if necessary.

By unanimity of those present and represented, the debts listed were declared expired to date of the meeting, according to Art.21 of the Horizontal Property Law.

By unanimity of those present and represented it was approved to authorize the President to give powers to Lawyers and Procurators to initiate and/or continue legal action against the debts listed in order to recover the outstanding amounts, arranging the necessary legal process and documentation against those debtors, to also include that the cost associated with the judicial actions would be passed onto the debtor.

By unanimity of those present and represented it was approved to take legal action against the property owners listed that have outstanding debts to the Community, it was also approved to utilize debt recovery companies and Lawyers either through the Spanish judiciary system, or by means of a European Order of Payment outside of Spain.

By unanimity of those present and represented it was ratified that total Community fees already include a €150 prompt-payment discount if owners paid last year's fees by un-rejected direct debits or before 1st January (S1) & 1st July (S2).

Likewise the decision to add a 20% surcharge if the bill is not paid within 30 days of the due date was ratified by unanimity of those present and represented.

With no other business to be discussed, the President thanked the attendees for their presence to the meeting, and declared the meeting closed at 11:10 hrs.

Mr. Gareth Davies
President of the Community ALTAMIRA

Mr. John Walsh
SAGESA Secretary / Administrator

TOURIST APARTMENTS IN COMMUNITIES OF OWNERS

The issue of tourist apartments does not go to the Horizontal Property Law directly, but through Royal Decree Law 7/2019 of March 1, whose title is "Urgent Measures in Housing and Rentals", and with the modifications introduced in the Law of Urban Leases and in the Horizontal Property Law, what it tries to obtain is an increase in the offer of apartments for rent for long term, penalizing somehow the tourist apartments, because many owners of apartments that previously rented for long term to families, now they prefer to rent them to tourists for short terms, because they get a greater benefit.

In many Communities of Owners, these tourist apartments are causing problems, because the customers do not respect the rules and make the lives of other neighbors very difficult.

With regard to tourist apartments, a new section, number 12, is introduced in Article 17 of the Horizontal Property Law.

According to this new section it is possible to prohibit or limit the existence of tourist apartments in a Community of Owners. How? So by convening a General Meeting to decide on this particular issue, and 60% of all owners who at the same time represent 60% of the coefficients in the Community vote in favor of this prohibition or limitation.

This prohibition or limitation cannot be retroactive, which means that if in a Community of Owners there are already tourist apartments, its activity cannot be limited or prohibited, but an agreement can be adopted at the General Meeting so that these existing tourist apartments pay a higher contribution to support the general expenses of the Community, without this increase in the contribution exceeding 20% of what was previously paid for the tourist apartment.

The Horizontal Property Law obviously refers to the "legal" tourist apartments, that is, the tourist apartments that are duly registered with the Tourist Authorities, in this case with the Junta de Andalucía. Of course, against the owners of apartments that illegally and unregistered rent them for very short terms, complaints can be lodged with the tourist authorities.

In any case, against any apartments whose owners, tenants and / or occupants, cause problems in the Community, devote themselves or not to tourist activity, whether duly registered or not, the Community has the route of Article 7.2 of the Horizontal Property Law, which has always been there, and that can be used to stop problems and discomforts, because after the corresponding judicial procedure, the Judge could condemn to the cause of the problems and inconvenience not only to cease his activity, but even can be banned from using the apartment for up to a period of two years. I do not hide that it is a complicated procedure, but that it is always possible to apply the referred Article 7.2.

APARTAMENTOS TURÍSTICOS EN COMUNIDADES DE PROPIETARIOS

El asunto de los apartamentos turísticos no llega a la Ley de Propiedad Horizontal directamente, sino a través del Real Decreto Ley 7/2019 de 1 de Marzo, cuyo título es "Medidas Urgentes en materia de Vivienda y Alquiler", y con las modificaciones introducidas en la Ley de Arrendamientos Urbanos y en la Ley de Propiedad Horizontal, lo que se trata de conseguir es un incremento de la oferta de los apartamentos en alquiler para larga temporada, penalizando de alguna forma los apartamentos turísticos, porque muchos propietarios de apartamentos que antes alquilaban por larga temporada a familias, ahora prefieren alquilarlos a turistas porque obtienen un mayor beneficio.

En el caso de muchas Comunidades de Propietarios, estos apartamentos turísticos están causando problemas, porque los inquilinos no respetan las normas y hacen la vida de los demás vecinos muy difícil.

Por lo que respecta a los apartamentos turísticos, se ha introducido un nuevo apartado, el número 12, en el Artículo 17 de la Ley de Propiedad Horizontal.

Según este nuevo apartado se puede prohibir o limitar que haya apartamentos turísticos en una Comunidad de Propietarios. ¿Cómo? . Pues convocando una Junta General para decidir sobre este punto, y que voten a favor de esta prohibición o limitación un 60 % de todos los propietarios que al mismo tiempo representen un 60 % de las cuotas de participación en la Comunidad.

Esta prohibición o limitación no puede tener carácter retroactivo, lo que quiere decir que si en una Comunidad de Propietarios ya existen apartamentos turísticos en funcionamiento, no se puede limitar o prohibir su actividad, pero sí puede adoptarse un acuerdo en Junta General para que estos apartamentos turísticos ya existentes paguen una contribución más elevada para soportar los gastos generales de la Comunidad, sin que esta elevación de la contribución supere el 20 % de lo que se venía pagando anteriormente por el apartamento turístico.

La Ley de Propiedad Horizontal se refiere obviamente a los apartamentos turísticos "legales", es decir, los apartamentos turísticos que están debidamente registrados ante las Autoridades Turísticas, en este caso ante la Junta de Andalucía. Por supuesto, contra los propietarios de apartamentos que de forma ilegal y no registrada los alquilan por muy cortos periodos de tiempo, se pueden interponer denuncias ante las autoridades turísticas.

En todo caso, contra cualesquiera apartamentos cuyos propietarios, arrendatarios y/o ocupantes, causen problemas en la Comunidad, se dediquen o no a la actividad turística, y estén debidamente registrados o no, la Comunidad tiene la vía del Artículo 7.2 de la Ley de Propiedad Horizontal, que siempre ha estado ahí, y que puede utilizarse para que los problemas y molestias cesen, pues tras el procedimiento judicial correspondiente, el Juez puede condenar al causante de los problemas y molestias no sólo para que cese en su actividad molesta, sino incluso le puede prohibir utilizar el apartamento por hasta un periodo de dos años. No se oculta que es un procedimiento complicado, pero siempre es posible aplicar el Artículo 7.2 referido.