

The undersigned lawyer, at the request of the **COMMUNITY OF OWNERS OF NARANJOS DE ALHAMA I GOLF RESORT ON CONDADO DE ALHAMA PRIVATE PROPERTY COMPLEX** issues this **report** on the criteria established in the Foundational Titles and Statutes of the Urban Entity and of the different Levels existing in the property complex, in order to determine the contribution to the general expenses and the possibilities of instigating their possible modification.

The system of contribution to the general expenses, in the Urban Entity, at Level I and in the Level II Communities, was established by the developer of the urbanisation and Condado de Alhama complex in their respective Foundational Titles and Statutes. In the case of the Urban Entity and the Level I, the developer established the contribution to the general expenses under the criteria of the buildable area of each plot. For the buildings making up each of the five independent grouped Communities subject to the legal regime of horizontal property, which includes the Community of Owners of Naranjos de Alhama I Golf Resort, the developer accepted the reference to the surface area of plot in order to set the participation coefficients. The Foundational Titles and the Statutes of the Urban Entity and of the different Levels, with these criteria of contribution to the general expenses, were registered in the Property Register, such that all subsequent buyers of plots and properties assumed the legal obligation to abide by them.

Starting from the legal situation described, in order to give a grounded reply to the questions submitted to consultation, in the specific scope of horizontal property and specifically in relation to the different contribution to the general expenses assigned to the owners making up the Villas Jana within the Community of Owners of Naranjos de Alhama I Golf Resort, it is necessary to start from the consideration that the criteria provided for setting the legal regime of contribution that each owner must make for the maintenance of the general expenses are established in article 9.1 e) of the Law of Horizontal Property, which states the following:

“The obligation of each owner is:

e) To contribute, in accordance with the participation quota set in the title or what is specially established, to the general expenses for the appropriate upkeep of the complex, its services, charges and responsibilities, which are not susceptible to individualisation.”

In accordance with these budgets, it should be stated that, in general, it is possible to modify the system of the distribution of common expenses by participation quota originally established by the developer, as this is expressly allowed by the aforementioned article 9.1 e) of the abovementioned law which, by indicating the obligations of owners, determines what they will contribute to the general expenses of the complex in accordance with the participation quota or ***“what is specially established”***, which leaves open the possibility that in the Foundational Title itself or subsequently by agreement between owners, a different

system of contribution to the common expenses can be established, by equal parts and not by participation quota.

In our specific case, the contribution to the common expenses by each owner in the Community of Owners of Naranjos I de Alhama Golf Resort is originally established in the Foundational Title by the participation quota set, and is thus recorded as included in the Property Register. In order to change the system of distribution provided for at this time for another for contributing to the common expenses by equal parts, it would be necessary to have an agreement unanimously adopted in a general meeting. And this by imperative of article 17.6 of the Law of Horizontal Property, which establishes that the agreements involving the modification of the rules contained in the Foundational Title of horizontal property or in the Statutes, will require for their validity the unanimity of all owners who, at the same time, represent the total of participation quotas.

This is the criteria accepted for the most part by the Supreme Court. Among others, the **Ruling dated 6th February 2014** can be quoted:

“The form of contribution to the common expenses is according to the participation quota set in the Title or what has been specially established, therefore, in principle, all owners must contribute in accordance with their coefficient..., and, although it may be the Owners’ Meeting that establishes a singular system in order to pay certain items for expenses or maintenance, this involves a statutory modification contrary to the law, susceptible to being legally challenged in order to obtain the cancellation of the agreement.”

In the case proposed, as another option in order to lower the fee assumed by owners on Villas Jana, of the possibility of excluding them from contributing to some expenses, we must bear in mind that the Supreme Court also requires unanimous agreement in order to exclude certain common expenses from the general obligation to contribute to their maintenance by considering them for possible individualisation, when the determination of these expenses as individual and susceptible to exclusion for some owners is not previously reflected in the Foundational Title or in the Statutes. In this sense, **Supreme Court ruling no. 335/2009 dated 29th May: “For the origin of the legal consideration of certain common expenses for a Community of Owners as individual, it is necessary for their exclusion to be decided in the Foundational Title, or, as appropriate, in the Community Statutes and, similarly, via an agreement in the Owners’ Meeting, adopted unanimously.”**

Therefore, unless an agreement in accordance with the requirements of article 17.6 of the Law of Horizontal Property is adopted unanimously, it does not appear possible to legally modify the system of the distribution of expenses currently established in the Foundational Title and in the Statutes governing the current legal regime for all members of the Community of Owners of Naranjos de Alhama I Golf Resort.

If, for owners on Villas Jana, it was considered that the current criteria for contributing to the common expenses are prejudicial to them due to being incorrect or disproportionate with regard to the other members of the Community of Naranjos de Alhama I Golf Resort, and it was not possible to change them by unanimous agreement, there would remain the possibility of going to Court and initiating a proceedings in order to instigate their modification, although the court action would necessarily have to be brought against all the remaining owners making up the Community of Owners of Naranjos de Alhama I Golf Resort, therefore, one way or another, their participation quotas could be altered with the modification that might result from the ruling to be handed down.

In this specific scenario, if the other owners on this Community of Owners are not taken to court, it would be causing them obvious harm by affecting the legal and economic regime of their property rights, and it would not be legally possible to require them to comply with the obligation to abide by and submit to a legal pronouncement included in a ruling handed down in a proceedings in which they would not have been part, and in which they would not have had the opportunity to oppose or, at the least, to be heard by the judicial authority. In this sense, we can quote the **Ruling of the Provincial Court of the Balearics, Section 5.^a, 197/2012, dated 27th April** and also the **Resolution of the General Directorate of Registries and Notaries dated 9th April 2014**.

Finally, another circumstance that should be considered when weighing up the procedural viability of legal action by the owners on Villas Jana, in order to instigate the modification of the current criteria for contributing to the common expenses, is the length of time elapsing during which, with their own actions, they have peacefully assumed these expenses from the very moment when the Community of Owners to which they belong was itself constituted.

In Murcia, for Alhama de Murcia, on eighth July two thousand and twenty-one.

José Montoya del Moral