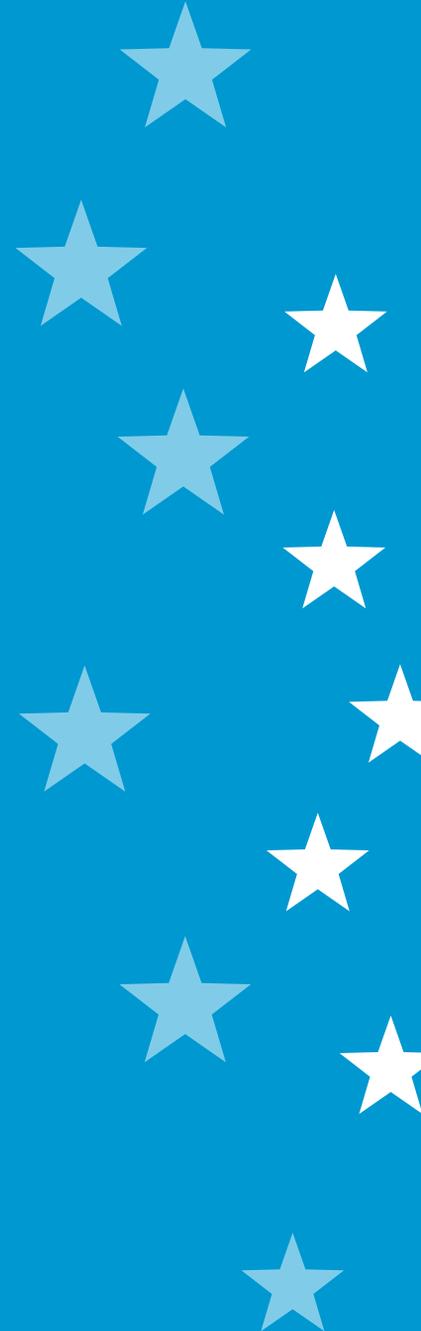


Condominium

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What is a condominium?

- It is the most appropriate and usual way of regulating ownership and the coexistence of neighbours in buildings.
- The basic regulations that govern condominiums in Spain include the Civil Code (art. 396) and Act 49/1960, governing condominiums, as well as the articles of association adopted for each homeowners association.
- These regulations can also apply to estates.
- It is a special property system where the owner of an apartment or premises is, on the one hand, the unique and exclusive owner of the said apartment or premises and, on the other, co-owner of the common elements of the building.
- The common elements shall include all those necessary for the appropriate use and enjoyment of the building and, in all cases:
 - Foundations and roof.
 - Main front
 - Exterior of terraces, balconies and windows.
 - Structural elements: walls, pillars, top slabs.
 - Entrance, stairs, corridors, common patios.
 - Enclosures used for: lifts, tanks, meters, telecommunications.
 - Lifts and entry phone.
 - Conduits, installations and pipes for drains and the supply of water, gas or electricity, including solar energy.
 - Heating, air conditioning, ventilation or smoke chimneys.
 - Firefighting prevention and detection installations and other building security installations.
 - Collective antennas and other installations for audiovisual or telecommunications services, all up to the entrance to the private area.
 - Whatever other elements which cannot be divided owing to their nature or purpose.
- In the Deed of Constitution of Condominium, each apartment or premises are allocated a participation quota (in one hundredths) with regard to the entire building. This quota is used as a module to determine the participation of each owner in the community's profits and expenses.

■ Deed of Constitution:

- The deed of Constitution of the condominium is the public document (deed of horizontal division) through which the owner(s) of a building decide(s) to attribute legal individuality to the apartments and premises (also to garages, lumber rooms, etc.) that make up the building. They decide to submit to the special condominium system, determine the common elements of the building and set the participation quotas that correspond to each apartment or premises in the community's profits and expenses.
- This document must contain a description of the building as a whole, including the services and installations and a description of the various apartments and premises, which shall be given correlative numbers.
- In the description of the apartments and premises, the deed of constitution shall indicate their size, borders, the floor on which they are located and the annexes, such as garages, lumber rooms, etc.
- In the new buildings, the builder is responsible for the horizontal division before selling the apartments and premises. It can also be carried out by the owners by mutual agreement or it can be ordered by a judge.
- This deed is signed before a notary public and registered in the property register.
- Occasionally, the deed of constitution includes, under the denomination of "community rules", the articles of association that will govern the internal operation of the homeowners association. The adoption of the said articles of association is not mandatory and they can be adopted later by the homeowners, but they must be done so unanimously.
- In the articles of association, it is possible to lay down, among other things, the uses or purposes of the building, the various apartments and premises and the installations and services, as well as matters related to the expenses, administration and government of the homeowners association, insurance policies, conservation and repair work. So that they can affect third parties, the articles of association must be registered in the property register.
- Besides the articles of association, the homeowners association can adopt what is known as internal regulations to govern the coexistence of neighbours and the use of common elements and services.
- The internal regulations are mandatory for the homeowners, as are the articles of association, and they are usually adopted to regulate specific activities or uses (e.g. times and rules for the use of a swimming pool or sports facilities, the use of lifts, rubbish collection times, etc.).



Governing Bodies

The governing bodies of the homeowners association are as follows:

- The Homeowners Meeting

- This is the highest body of the association and is made up of all the owners of the private elements in the building.



- It shall meet at least once a year in ordinary session to adopt the accounts corresponding to the previous year and the budget for the following year. The call to this meeting shall be made by the Chairman with at least six days' notice.



- Furthermore, it shall meet in extraordinary session when considered appropriate by the chairman or when requested by one quarter of the homeowners or a number thereof representing at least 25% of the participation quotas. In this case, the call shall be made with sufficient time to notify all the homeowners.



- The meeting may take place without the need for a call if all the homeowners are present and decide to constitute the meeting.

- The call shall be made by the chairman or, in his absence, the developers and shall:

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1. Be made in writing.
 2. Be notified to all homeowners.
 3. Indicate the place, time and date of the first and second call to the meeting.
 4. Include the agenda of the meeting.
 5. List the homeowners who have debts with the association and who therefore, may be deprived of their right to vote.



- Whatsoever homeowner may ask the chairman to include a matter on the agenda for the next meeting that is to be held.



- The meeting shall be understood as constituted at the first call if the majority of homeowners attend and, in turn, they total the majority of the participation quotas. If homeowners or participation quotas are insufficient, the meeting shall be understood as constituted at the second call after 30 minutes have passed.

- Among others, the following functions correspond to the Homeowners Meeting:

1. Appointing and dismissing the posts of the association (chairman, secretary, etc.) and solving the claims filed against their activities by the owners of the apartments and premises.
2. Adopting the income and expenses plan and the corresponding accounts. Adopting the budgets and the execution of the repair work for the building.
3. Adopting or reforming the articles of association and laying down the interior rules and regulations.
4. Being aware off and taking decisions on other matters of general interest for the association, adopting the necessary or appropriate measures to improve the common service.

- The chairman and, where applicable, vice-chairman.

- Only the owner of an apartment or premises in the building can be the chairman of the association.
- He shall be appointed by election or, in the absence of candidates, by turn or by draw.
- The appointment is mandatory and may be renounced only by the courts.
- Unless the articles of association lay down a different term, the appointment shall be for one year.
- The chairman may be dismissed by a majority agreement of the homeowners meeting.
- The chairman shall be the legal representative of the homeowners association.
- Should a vice-chairman be appointed, which is not mandatory, he shall substitute the chairman when he is absent or when the post is vacant or when the chairman cannot attend and he shall assist him in the exercise of his functions under the terms and conditions laid down by the homeowners meeting.



- The secretary and the administrator

- The posts of secretary and administrator can be carried out by the chairman.
- In addition, both posts, jointly or separately, can be carried out by any homeowner.
- They can also be carried out, jointly or separately, by an individual or body corporate who is not a homeowner but who is professionally qualified (chartered land agent).



- The secretary is responsible for the following:

1. Sending the calls for the homeowners meetings.
2. Writing the minutes of the homeowners meetings.
3. Ensuring compliance with legal requirements at the meetings.
4. Issuing certificates of the agreements adopted by the meeting.
5. Keeping the homeowners association's documents (for a term of five years).



- The Administrator is responsible for the following:

1. Ensuring the correct operation of the building, its installations and services.
2. Looking after the conservation and maintenance of the building, taking the appropriate measures and carrying out urgent repairs, and immediately notifying the Chairman of the Association or, where applicable, the homeowners themselves.
3. Issuing the corresponding warnings to homeowners regarding their behaviour.
4. Preparing and submitting the annual expenses plan to the meeting.
5. Implementing the agreements adopted regarding building works and making and collecting the corresponding payments, as appropriate.



- The articles of association or a majority agreement of the homeowners meeting may establish the governing bodies for the association, where this shall not reduce the functions and responsibilities with regard to third parties attributed to the above by the Condominium Act in whatsoever way.



■ Adoption of Agreements

- Attending and voting at the homeowners meeting shall be personal or by representation. To award the said representation, written authorisation signed by the represented party shall suffice.
- The agreements adopted at the homeowners meeting are binding for all the homeowners, except when the agreement corresponds to that of unnecessary building work.
- Should a homeowner owe whatsoever amount to the homeowners association not have filed a judicial claim against the said debt, he may take part in the discussions at the meeting, but he may not vote.
- A unanimous vote shall be required only when agreeing the adoption or modification of the rules laid down in the deed of constitution or in the articles of association.
- Certain agreements shall require the vote in favour of $\frac{3}{5}$ of the total number of homeowners representing, in turn, at least $\frac{3}{5}$ of the participation quotas:
 - Establishment or elimination of the lift, porter, porter's office, security or other common services of general interest, including when they imply the modification of the deed of constitution or the articles of association.
 - The lease of common elements that have not been given a specific use in the building. In this case, should the agreement imply whatsoever damage to a homeowner, it must be approved by the said homeowner.
- The installation of common infrastructures for access to telecommunications services or the adaptation of existing telecommunications services, as well as the installation of solar energy systems or infrastructures required to access new collective energy supplies may be agreed by $\frac{1}{3}$ of the members of the association representing, in turn, $\frac{1}{3}$ of the participation quotas.
- For the remaining agreements to be valid, the vote of the majority of the homeowners representing, in turn, the majority of the participation quotas shall suffice.
- This simple majority shall also be sufficient for the adoption of building work or the establishment of new common services whose purpose is the removal of architectural barriers that hinder the access or mobility of disabled individuals, including when they imply the modification of the deed of constitution or the articles of association.
- In the second call, the agreements adopted by the majority of those in attendance shall be valid, as long as the said majority represents, in turn, more than half the value of the quotas of those in attendance.



- The agreements adopted at the homeowners meeting shall be recorded in the minutes book.

- Challenging agreements

- It shall be possible to challenge the agreements adopted by the homeowners association in the civil courts and in the following cases only:

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1. When they are against the law or the articles of the homeowners association.
 2. When they are seriously damaging for the interests of the association itself in benefit of one or more homeowners.
 3. When they are seriously damaging for a homeowner who does not have the legal obligation to bear the damage or when they have been adopted in the abuse of law.

-The agreements may be challenged by the following parties only:

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1. Those who voted against.
 2. Those who did not attend the meeting.
 3. Those unduly deprived of their right to vote.

- The agreements may not be challenged by homeowners who own money to the association unless the vote is for the establishment or modification of the participation quotas.



- The challenge may be filed within the term 3 months from the date on which the agreement was adopted or in the term of one year in the case of agreements that are against the law or the articles of association.

■ Homeowners' Obligations

The homeowners' main obligations to the association and the other homeowners are as follows:

- To respect the association's installations and common elements, using them appropriately and avoiding causing damage or faults.
- Maintaining their own apartment or premises in a good state of repair so that they do not damage the association or the other homeowners, compensating the damages they cause.
- Consenting to the repairs required for the service of the building in their home or premises and allowing the easements therein (access, cables, drains) essential for the creation of common services of general interest (e.g. lift, porter's office, porter, surveillance, etc.), with the right to the association paying indemnification for whatsoever damages caused.
- Contributing to the general expenses of the building in accordance with their participation quotas.
- Contributing, in accordance with their respective participation quotas, to the reserve fund that must exist in the association to attend the conservation and repair work for the property. This fund shall be allocated an amount that is no less than 5% of the association's last ordinary budget.
- Observing due diligence in the use of the property and their relations with the other homeowners and responding to the said homeowners for the infractions committed and damages caused.
- Notifying the secretary of the association of their address in Spain for the intents and purposes of all kinds of notices and calls related to the association.
- Notifying the person acting as the secretary of the association of the change of ownership of the home or premises by whatsoever means that include a record of receipt.
- Neither the owner or occupant of the apartment or premises are allowed to carry out the activities in the said apartment or premises or in the rest of the building that are prohibited in the articles of association, are damaging for the estate or contravene the general provisions laid down for upsetting, unhealthy, noxious, hazardous or illegal activities.
- The breaches of the homeowners regarding the association or the other homeowners shall be decided by the civil courts of justice.



■ Obligations of the Homeowners Association

The homeowners association's main obligations include the following:

- The work necessary for the appropriate maintenance and conservation of the building and its services so that it meets the corresponding conditions of habitability, accessibility and safety.
- The work necessary and the installation of the appropriate mechanisms to enable the accessibility of disabled individuals or persons over the age of 70 years who live or work in the building and so request the said work or installation.
- Allowing whatsoever homeowner to modify the architectural elements, installations or services in his apartment or premises when they do not affect or alter the safety of the building, its general structure, its exterior configuration or condition or damage the rights of other homeowners.



■ Termination of the Condominium

This special ownership system shall expire as a result of the following:

- The destruction of the building, unless agreed otherwise. The destruction shall be considered complete when the rebuilding cost exceeds 50% of the value of the estate at the time of the loss unless the excess over the said cost is covered by an insurance policy.
- Through conversion to ordinary co-ownership or ownership.



■ Recommendations

- As a homeowner, it is recommendable to keep all the documentation that refers to the homeowners association (receipts, minutes, calls, etc.) for at least five years.
- Request information, including in writing, from the chairman, the administrator, on all the matters on which you have doubts (payments, activities, building work, etc.).
- If so agreed by the homeowners meeting, it is possible for the calls, as well as the other documents generated by the homeowners association, to be written in languages other than Spanish. You can ask for this proposal to be voted at the homeowners meeting.

- It is advisable to pay the quotas corresponding to the homeowners association, otherwise, besides it being considered as not very civic behaviour, it will prevent you from taking part in the taking of decisions. It is best to pay the quota by direct debit in a bank.
- It is highly recommendable for the homeowners association to take out an insurance policy that covers the common elements of the building and the possible damages caused to others by the said elements (e.g. the breakage of pipes in the building). As a homeowner, check that the insurance policy exists and, if it does not, ask for it to be taken out.
- Remember that the minutes book must be legalised in the property register.
- It is recommendable to apply for a tax number (CIF) for the homeowners association since, besides the fact that it is a legal obligation, it will enable, among other things, the issuing of bills in the association's name by anyone providing a service, which will make it easier to claim if the association is not satisfied with the said service.
- It is also recommendable to register the articles of association in the property register.
- Before purchasing a home, you must always request a certificate stating that the home does not have whatsoever debt with the homeowners association, since you would otherwise assume part of the said debt when you buy the home.
- It is a good idea to use the services of a land agent, especially when the building includes more than 10 homes. This speeds up matters such as repairs, regular checks, etc.
- When you sell your home, notify the change of ownership to the homeowners association.

■ Reference Legislation

- Código Civil [Civil Code]. Articles 396, 398 and 401.
- Act 49/1960, dated 21 July, governing condominiums, amended by Act 8/1999, dated 6 April.
- Mortgage Act, adopted by Decree dated 8 February 1946, Articles 8 and 107.
- Act 1/2000, dated 7 January, governing Civil Proceedings.



Offices and Registers

- Offices of notaries public and property registers of Alicante, whose addresses can be found on the following websites.

- Association of Chartered Land Agents of Alicante and Province.
C/ San Fernando, 12, 1º, izquierda C.P. 03002. Alicante. Tel. 965 20 81 96 Fax: 965 14 40 31.



Useful Websites



- Consejo General de Administradores [General Council of Land Agents]
www.cgcafe.org/index.htm

- Colegio de Administradores de Fincas de Alicante y provincia [Association of Chartered Land Agents of Alicante and Province].
www.fincasnet.com/index.asp?pag=inicio



- Page with information on notary activities and addresses and telephones of all the notaries public of Spain.
www.notariado.org



- Page with information on the functions of the property register and the addresses and telephones of all the property registers of Spain.
www.registradores.org