



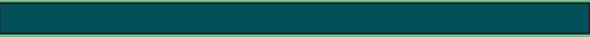
Little book

of

Peace of mind



# ÍNDICE

		
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# What does it mean to be a homeowner



# An exemplary homeowner

Homeownership is not just about possessing a home; it also includes a number of rights and obligations that you need to be aware of in order to be a responsible neighbour, and to contribute to the smooth running of the community as a whole.

## My Rights

As a homeowner, you have the right to:

- Attend board meetings, make proposals during these meetings, and vote, as long as your payments are up to date.
- To be informed of the state of the accounts, and of the general functioning of the community/-block.
- To participate in the establishment or modification of community statutes or norms.
- To carry out work on your own property as long as this does not compromise the security of the building, and that it is permitted in the new build deeds.
- To choose and to be chosen as president of the community.
- To be a co-owner of the common areas of the building.

## My obligations

As a homeowner, you have the obligation to:

- Respect the facilities of the community.
- Maintain your property in good order to avoid any risk of loss or damage to the community.
- To contribute a fixed amount to community expenses (community fee), and also to any extraordinary costs (communal repair charges).
- To allow repairs to be made to your property in order to remedy problems in other apartments within the community.
- To inform the secretary or administrator of your address for notification purposes.

# The residents association



## What is a resident's association?

The residents' association is the community of homeowners living in the same building. Commonhold property law does not recognise it as a legal entity, but nonetheless, through the figure of the president (the person who represents it), in some cases it may act as if it were: hiring employees, taking out civil liability policies, etc.

Under no circumstances does the association have limited liability in the way that could be the case with a company. The responsibility for meeting payments falls on each of the association's members in the same way as the income rights do. This means that residents are required to meet the expenses and take personal responsibility for those expenses, declaring them in the same way that income is declared.

**For example:** If the community receives a grant, each individual owner must declare his proportional part of this income, in the same way that if the decision were taken to sell the lobby as a dwelling or any other common element.

In the case of expenses, such as the repairing of a leak, each homeowner must make payment with his property in the case that he is unwilling to pay the amount due.

**BOTH PAYMENT OBLIGATIONS AND INCOME ARE DIVIDED ON A PER UNIT BASIS AMONG THE HOMEOWNERS**

# Roles and functioning of the community

## 1. THE PRESIDENT

The functioning of the community is a collaborative effort. In order for everything to work efficiently, there are designated roles that deal with different actions:

**President:** The president is the legal representative of the community in all areas, and has the capacity to enter into contracts (both for the hiring of employees and for the contracting of services). Moreover, s/he is the person who must sign official documentation for public authorities, call board meetings, and assure that agreed actions noted in the minutes are carried out.

Being the president of a residents' association **is not a paid job**, but is a legal obligation shared by all the homeowners. What do you do if you are the president but you are unable to undertake these tasks? Most presidents rely on property management companies so that they can comply with the needs of the role in a simple way, and with the peace of mind provided by the knowledge that they have the support of experts in the field.

**Practical example:** If at a board meeting it has been agreed to change the company that carries out the regular inspection of fire extinguishers, the president must seek alternatives, and then present several estimates so that the best choice can be made by all of the homeowners together. For this reason, it is important to have a property manager: S/he will perform these tasks for you efficiently, and will ensure the smooth functioning of the community.

**The president can be chosen by vote if there are volunteers, or by drawing lots if not. It is a role that cannot be delegated.**

## 2. Other Roles

In addition to the president, there are also other roles that are important, depending on the size of the community, and the needs that it has:

**Vice president:** The main function here is to stand in for the president in the case that s/he is unable to carry out her/ his duties due to incapacity, illness or any other case of force majeure. S/he must be available, and ready to take on the job if it should become necessary. There is no requirement for this role to exist, but it may be advisable.



**Secretary:** The secretary is responsible for many of the essentials needed to ensure the smooth functioning of the community. In most cases this role is taken on by the property manager, given the time required to carry out these tasks, and the fact that it can be difficult to combine these with work and family.

**The secretary prepares and sends out the meeting invitations,** attends the meetings, draw up the minutes and signs them. If there are homeowners who cannot attend the meeting, s/he will also **collect their votes and vote on their behalf** if there are actions proposed that require the approval of a specific number of homeowners.

**Practical example:** the association wants to change the gas supplier, and for this to be approved, a vote by one third of all the homeowners is required. In this case, the secretary will be responsible for collecting the votes of **those who have not been able to attend the meeting, and to vote on their behalf.**

When there is no property manager, the secretary will have additional duties: receiving communications from the community, modifications in flat ownership, initiating debt collection procedures against homeowners who are behind with payments, and preparing housing debt statements when properties are sold.

**IN SOME COMMUNITIES THERE ARE ALSO PEOPLE DESIGNATED TO TAKE RESPONSABILITY FOR ESPECIFIC AREAS (LIFT, SWIMMING POOL, ETC)**

# The property manager



# What does a property manager do?

The property manager is a qualified professional, who ensures the proper functioning of the community, and takes on the roles of secretary and assistant to the president.

S/he is a versatile figure, and depending on the property management company s/he works for, will offer a range of different services (for example not all companies offer added-value services in addition to the standard services provided by such firms).

The actual duties of the property manager are:

1. To ensure the efficient functioning of the community, its facilities and services, warning homeowners of any deficiencies.
2. To arrange, prepare for and chair meetings together with the president of the residents' association, presenting a statement of foreseeable expenses, and suggesting ways in which money can be saved for the community as a whole.
3. To manage incidents that have occurred, repairs and changes in suppliers that are necessary in order for the proper functioning of the community.
4. To implement actions decided upon at meetings, and make and collect payments as required.

**A property manager takes care of everything needed to ensure the smooth functioning of the community.**

# What does it mean for the community to have a property manager?

A qualified property manager saves time for the community and gives the assurance of a job well done. In addition to the standard duties, in many cases the property manager also manages the bureaucratic aspects and digital signatures, data protection legislation, debt claims, and helps the community to make savings on energy and other supplies. The property manager is the best ally that the managing committee could have.

# How do you go about choosing a good property manager?

Not all communities of homeowners have the same needs, there are very small communities comprising a small number of homeowners with almost no common elements apart from the stairs and some mailboxes. And then there are others that include sporting facilities, gardens etc., and who hire employees.

The property manager is more or less essential in all cases given that the paperwork and bureaucratic processes s/he takes care of are almost impossible to combine with work and family. When choosing a property manager, it is very important to look for quality, and not to focus solely on price.

Not focusing too much on price as the only significant factor when selecting a property manager does not, however, mean that the price needs to be high; you need to try to find the option that best suits you in terms of quality/price, a personalised service, and essentially one that will improve your quality of life and avoid unnecessary problems.

# Benefits of having a property manager for your community

Taking on a property manager has a lot of advantages:

- 1.Speeding up administrative procedures:** having a professional to take care of all of the residents' association's paperwork with no time restrictions and no need to juggle with other activities means that administrative procedures can be dealt with quickly and on time.
- 2.Debt control:** Legal support from a property management company makes collecting debts much simpler.
- 3.Accounting:** Professional management of the residents' association's accounts avoids many problems.
- 4.Digital signature management:** Managing the mailbox, requesting digital signature registration with the tax office, and waiting on communications can prove to be an additional problem.
- 5.Data protection management:** A property manager who is up to date with data protection norms, will ensure that the residents' association is always in compliance with current legislation.
- 6.Mediation:** Dealing with problematic neighbours can be a nightmare. Mediating in disputes between neighbours is one of the duties of a property manager.
- 7.Peace of mind:** Knowing that there is someone on hand to take care of any incidents that may occur, operational matters, sourcing suppliers, and above all making sure that civil liability insurance is in place to provide cover in the case of a serious incident is extremely important.

# COMMON PROBLEMS



# 1. Defaulters

Every community suffers to a greater or lesser extent from the problem of defaulters at some point. It is very important to be aware of the importance of paying community fees, because it is thanks to those fees that the community functions smoothly. If just one member of the community does not pay his or her fees it may go more or less unnoticed, but when the number of defaulters rises, it can cause significant problems for the community as a whole

## What can you do about a defaulter?

First of all, try your utmost to resolve the matter amicably: contact the homeowner by email, phone or WhatsApp, and to the extent possible, offer payment facilities.

Many property managers offer payment facilities to people of good will who are in financial difficulty. If the problem is a lack of means, you should always offer a helping hand: talk to the property manager, offer flat fees, or the payment of small amounts so that the defaulter can pay off their debt.

**For example a minimum fee in line with their income.**

## Different types of defaulter

Not all defaulters are the same, there are those that fall behind with payments because they cannot avoid it, defaulters who simply forget to pay (people who have the property as a second home for example), defaulters who owe small sums, and then the most dangerous of all: long term defaulters who have no intention of paying their fees.

What do you do in these cases?

The most sensible thing to do is to leave things in the hands of a professional and experienced property manager who will be able to manage the whole process. If you take this on yourself, it is very possible that you may miss out one of the essential steps that needs to be taken.

# 2.The debt collection process

1. The first thing you need to do is to hold a residents' association meeting to agree the certification and liquidation of the debt. You will also need to give the president or the residents' association's property manager authorisation to collect the debt in the name of the community. It is advisable, after approving the claim, to notify the defaulter by registered fax, registered post or by posting the information on the bulletin board (as a last resort).
2. Next, it is necessary to draft the minutes of the meeting at which the certification and liquidation of the debt was agreed upon, breaking down the debt in terms of dates and amounts, and communicating this agreement to the defaulter in question, using the methods noted previously.



3. At this point, if you have no news regarding intent to pay, it is advisable to draft a debt settlement agreement. This document constitutes a letter that is addressed to the debtor and in which it is explained that after the approval of the liquidation of the debt and the agreement to instigate legal action, the process will go ahead. There will be a clear warning that if within the period of X days, no notification is received to say that the debt has been paid, small debt proceedings will follow. This communication needs to be signed by the secretary-property manager and approved by the president.

# DEBT PROCEEDINGS

What are debt proceedings?

Debt proceedings are the final step in the debt collection process (when the defaulter does not want to pay). This is a process that serves to demand the payment of any debt, regardless of the amount. Requirements for the implementation of debt proceedings:

1. The debt must be in money (of monetary amounts in legal tender).
2. Payment must be due (the normal payment period having expired).
3. It must be enforceable (not dependent on any consideration or be subject to any conditions).
4. The debt must be clearly defined.

**THIS DEBT MUST BE DOCUMENTED, AND IT WILL BE THE JUDGE WHO IMPOSES THE SENTENCE OF PAYMENT ON THE DEBTOR**

# PROCEEDINGS TO DETERMINE PARAMOUNT RIGHTS

Proceedings to determine paramount rights is a process that can be implemented when a defaulter has various distrains, and the debts s/he has incurred are written off.

The process consists of filing a lawsuit in the court corresponding to the district of residence through which the right to preferential collection is requested once payment has been made to official bodies and in accordance with the statute of workers' rights (debts that the defaulter may have incurred with the state or with employees). In this way, when legal action is taken, debts will be settled in this order of preference, ensuring in most cases that they are paid.

# 3. Works

Building work is another of the most common problems that arise within a community, both in terms of a neighbour who makes a lot of noise during rest periods, or when you yourself want to do some renovation work. Here we will explain what you need to do in each case.

## I have an annoying neighbour who is having works done on their home

In general terms, the first thing to do when a neighbour is carrying out building work during un-social hours is to try to talk to them. Although each municipal ordinance can modify the times when making noise is permitted, generally speaking making noise is permissible on weekdays from around 9 in the morning until 9 in the evening (but not between 3 and 5 in the afternoon), and Saturday mornings. If your neighbour is doing building work on Sundays or bank holidays, you can be sure that in doing so they will be in breach of local regulations.

In most places there is a requirement that when major work is undertaken (work affecting the layout of the house), the homeowner must put their building permit up in an area near the entrance where it is visible to all to make the work of the local authorities easier. So if you have not seen a building permit, it is very possible that your neighbour does not have one.

Given current data protection legislation, there is no way that it is possible to find out whether or not there is a permit in place without making a report to the police, or to the local town planning department. If the problems are serious, and it is impossible to sleep due to unhealthy noise levels or noise at unreasonable times, you will need to report your neighbour in order to stop the building work, because as well as being an annoyance, this sort of noise over time can have a serious effect on long term health.

# I want to do some works on my home

If things are the other way around (you now want to have some work done on your apartment), there are a few things that you will need to bear in mind:

## 1. The type of work to be done:

**Minor work:** for example painting a room, installing air conditioning, repairing pipework, putting down a new floor in the lounge, etc. In other words, any type of work that does not require a professional project, does not modify the layout of the flat and does not affect either the common areas or other flats.

In these cases, you will not need a building permit, it is enough to make a declaration stating that the work will be carried out in a responsible way, and to inform your neighbours when it will start, and by when it will be completed.

**Major work:** such as adding a new floor, in any way changing the size of height of the existing buildings. In these cases, the technical complexity of the work to be done means that a professional project signed by the relevant official college or association is required.

This type of work does require a building permit, and also permission from the residents' association if it will affect any common areas, or other flats.

**Please note:** You also need to be aware that depending on location and on the specific type of work to be carried out, in addition to the project and the building permit, you may need other permits, such as street use and right of way permits if you are going to use skips for debris, etc.





## While the work is being carried out

Once you have decided what sort of work you are going to have done in terms of technical characteristics and are ready to start, you need to bear in mind that the first thing you need to do is to place the building permit in a visible area around the door (this is necessary in order to make the work of building inspectors and the relevant authorities easier).

Noise: You should aim never to cause noise levels that may endanger the health of your neighbours, but if this is unavoidable then you must ensure that the noise does not continue for extended periods of time (for example drilling for hours), and under no circumstances are you permitted to make such noise on Sundays or bank holidays.

Cleaning up: The work you are having done should have no negative impact in terms of cleanliness. Try not to dirty common areas, do not leave debris or an excessive amount of rubbish in the entrance area, and needless to say avoid excessive use of the lift, as the rest of the community has the right to use it in the normal way.

# Always aim to cause a minimum of nuisance to your neighbours

# 5. Holiday lets

One of the most common areas of conflict between neighbours is the use of private housing for holiday lets. Often those using this type of housing have scant respect for the norms of the community as a whole, and misuse common areas.

The problem lies in the fact that during the brief time that the property is occupied by these guests, Spain's commonhold property act cannot regulate such misuse, and the community has no protection against these activities.

In most autonomous communities it is necessary to present a statement of compliance and to register the dwelling with the relevant authority. Additionally, it is essential that the person who gains economic benefit from holiday lets should declare those earnings for tax purposes.

**WE  
EXPLAIN THE LAST  
CHANGES IN  
LEGISLATION**



# Legislation regarding holiday lets, common to all autonomous communities in Spain:

At state level, there is a series of established norms or regulatory principles that must be complied with:

- 1.The owner of the property to be used as a holiday let must evict any guests who fail to respect the norms of the community within 24 hours if their behaviour is demonstrably unacceptable.
- 2.If 3/5 of the neighbours on the board of the residents' association decide to prohibit holiday lets, and this is duly recorded in the community statute, holiday lets will not be permitted in the building.
- 3.The homeowners within the building may agree to increase by up to 20% the community fees payable for flats that are put to this use.
- 4.Owners and guests may not simultaneously use community facilities.

## What do I do if there is a holiday let in my building that is causing a nuisance?

If the owner of the property fails to comply with any of the provisions stated in the above-mentioned regulations, the best thing is to speak to the owner and attempt to resolve the issues amicably. If the owner refuses to listen to reason, the most effective way to proceed is to reach an agreement with other members of the community, and then the president of the community will be the one to place a complaint regarding the anti-social behaviour of these guests with the competent authority for the location.

## What do i need if i want to use my property as a holiday let?

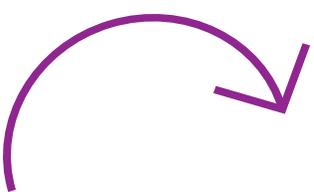
If you want to use your property as a holiday let, what is most important is to do so responsibly. Call a residents' association meeting, explain your plans clearly to the other homeowners, and try to choose guests who will respect community norms. Make sure that these norms are clearly explained to them, do not accept stag and hen party tourism, and meet your guests in person to give them a 24-hour contact number that they can call any time to avoid problems.

# Frequently asked questions



## What do I do if there is a dangerous dog in my building?

Dogs and other pets are not usually dangerous as such, it is more of a question of training, which is the responsibility of the owners. If there is a very noisy animal, or one that is urinating/ defecating in common areas, the best approach is always to speak to the owner and explain the issues in the hope that these will be understood. If the problem persists, contact security to officially register the issue so that the case can be reported.



**THE RESPONSIBILITY FOR THE BEHAVIOUR OF A PET ANIMAL ALWAYS LIES WITH ITS OWNER**

## Privacy within the community

It is totally forbidden to place security cameras in common areas without giving prior warning or obtaining authorisation, and material such as photos, voice recordings and film recordings within the community are illegal without the knowledge and consent of the person concerned. Furthermore, the misdirection or opening of private correspondence is a criminal offence punishable in law by means of a fine or a prison sentence.

**PHOTOGRAPHS TAKEN WITHOUT PERMISSION CAN NEVER BE USED IN COURT**



## Illegal storage rooms

Illegal storage in common areas is a frequent problem, but how do you know if a storage room is illegal? A storage room is presumed to be illegal if it does not appear in the newly constructed building and horizontal division deed. If it does not appear in this document, the community may require it to be removed, or demand compensation.

## Community cleaning fees

There are often cases where a member of the community offers to clean common areas in return for the community agreeing to waive their community fees. This is illegal, and could cause a big problem for the community if that person should be injured while carrying out weekly cleaning duties.

## Squatters

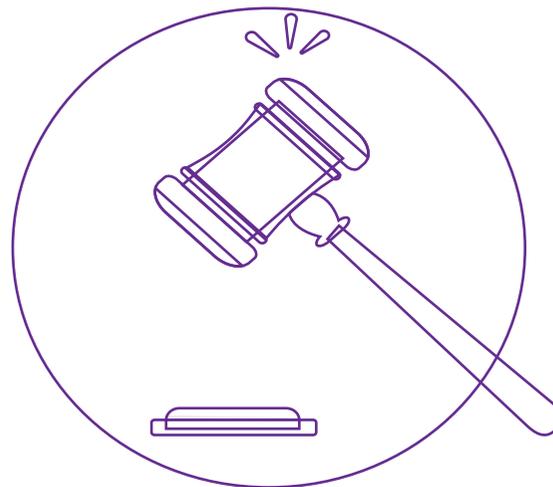
Squatters can be a big problem in terms of coexistence, and in many cases can reduce the real value of the surrounding flats. Unfortunately even though they represent a nuisance for homeowners, the only person who can start the eviction process by making a report to the police is the owner of the flat in question, who will have to wait for the judge to issue an eviction order that can then be implemented by the bailiffs. In many cases it can be worth discussing community norms with the squatters in an amicable way, and try to arrive at an agreement between them and the community.

## What is a digital signature?

The digital signature is a system used by public bodies to send relevant notifications to the community, which are received via a virtual mailbox. It is mandatory, and in order to register with the system the president needs to go to the tax office to register the community. Moreover it is very important to monitor notifications carefully in order to avoid future problems.

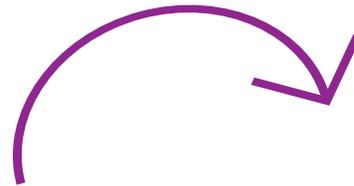
## What is the data protection Act?

The Data Protection Act is a law that ensures the correct custody of personal data, and the right of the individual to honour and privacy. As the community of homeowners is a hybrid entity, somewhere between a legal a natural person, it is like a company that manages personal data (including that of members of the community) and for this reason compliance with legislation regarding data storage and processing is important.



## Do the locals have to pay for the community's expenses?

Yes, the premises will have to pay the common costs such as administration and insurance and in addition to these the costs of installing a lift if necessary.



## Is a secret vote possible at a residents' association meeting

No, absolutely not. The law is clear in that a register of votes needs to be kept, and so this is impossible. All of the homeowners have, and must have, access to information on votes and agreements.

## Can i dispute a record in writting?

No, the only way to dispute the residents' association register is by taking the matter to court, and this should only be done for a reason that is fully justified. There needs to have been some form of irregularity on the part of the board.

## Can i act as president on behalf of someone else?

No, under no circumstances. Not even in the case of parent to son or daughter, or between spouses, or in the case of the existence of any other form of relationship.

**THIS POSITION CAN NEVER BE DELEGATED, NOT EVEN UNDER POWER OF ATTORNEY.**

## Is it possible that an apartment of exactly the same size should pay a higher fee?

Yes, under the terms of article 5 of Spain's commonhold property act, it is not only the number of square metres occupied by the property that determines the rate, other factors such as the specific location of the apartment, height, aspect, etc., can also be taken into account.



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