

REPORT MANCOMUNIDAD EL SOTO DE MARBELLA CLUB DE GOLF - CLUB SOCIAL

This report is drafted in my capacity as Secretary Administrator for the General Meeting regarding the important matters i have had to deal with and analyse since I was appointed to the office on the 21st of February 2020.

Express note is made that this report has been drafted in the most objective manner possible, with the sole objective of describing the Master Community's current situation and the problems that have to be resolved, without any intention of offending any of the members of the General Meeting.

Documentation:

The documentation was given to me on 24/03/2020, and not in the first week of March, as the former Administrator had committed to doing at the General Meeting.

The former Administrator was sent reiterated emails requesting the original documentation. Most of the documents handed over were copies, not original documents. In other cases, no documents were given. I highlight the claims that may have been filed from 2003 to 2020, an important matter that I will refer to later on. **DOC 1**, which was sent to the previous Administrator, is attached hereto. In addition, a letter was sent to the Official Association of Property Administrators [Colegio de Administradores de Fincas de Malaga] explaining that the original documents had not been received. In April 2020 the Association answered that Mr Emilio Moleon was not a member of the Association, information that was transmitted to the different Presidents. In the newsletter of October 2020, I reported that Mr Emilio Moleon had finally registered in the Official Association of Property Administrators, with number 2936 (**DOC 1- B**).

Share coefficients:

Due to the discussions at the General Meeting of 21/02/2020 regarding the share coefficients, and since the Administrator did no resolve the matter at the meeting and did not subsequently make any adjustments as requested, I have analysed the situation. I wish to stress the importance of this matter, because errors of this sort could alter the results of votes taken at General Meetings.

I thus drafted a report for the President regarding how the share coefficients and the fees should be established, taking into account that at the date of the General Meeting of 21/02/2020, the developer Taylor Wimpey no longer owned any property. The developer had already delivered the dwellings to the Communities Floresta Sur and Floresta de la Mairena. See **DOC 2 and DOC 3**.

Minutes:

The previous Administrator was appointed on 31/01/2004.

Having checked the Minutes, I must highlight the following: none of the budgets that were approved were included in the Book of Minutes.

This information is relevant and necessary in order to present requests for payment, to calculate past fees and to file legal claims against owners in arrears.

It is possible that the previous Administrator has a copy of the information sent to owners with the notice of General Meetings, but said information must later be included in the Book of Minutes.

At most General Meetings, mention is made of previous meetings at which explanations are provided regarding the problems encountered during the fiscal period. Once again it is difficult to determine the background of the most important matters, which is particularly problematic when information has to be submitted in court and is not available because it was not properly recorded.

Furthermore, the provisions of Article 14 of the Statutes should be followed in respect to the election of officers for the Governing Board, and also in respect to the notice of the General Meeting, including an invitation to the Ojen Town Council.

Recommendation: The Minutes are legal documents of Communities of Property Owners that are used to record and explain the resolutions adopted at General Meetings and the reasons for adopting them. Minutes do not have to include the discussions of Community owners and officers, but it is very important to include actions taken, presentations and resolutions adopted.

The accounts and the budgets must be included in the Book of Minutes, either in the Minutes themselves or as appendices. Preliminary meetings at which problems are explained are not valid for legal purposes; the analysis and conclusions adopted at said meetings must appear in the Book of Minutes. The Minutes from 2003 to 2019 have been scanned (**DOC 4**).

Statutes:

Article 4 of the Statutes refers to an agreement signed by the Ojen Town Council and Soto Mancomunidad whereby the former obliges the latter to maintain the green areas where the Golf Club is located.

Said agreement was not given to me by the previous Administrator. This matter is discussed further in the section on "Debtors", given the consequences that stem from the lack of said agreement (**DOC 5**).

Contracts:

As of today current contracts are the following:

- Carlos Lima (Greekeeper)
- LifeFitness (maintenance of machines in the gymnasium)
- Lip Seguridad (alarm system)
- Riversa (maintenance of machines)
- Selym (cleaning service)
- Contraplagas (pest control services)
- GoExtint (fire protection systems)

- Zurich (Community insurance)
- Richard Davies (restaurant rental contract)

All suppliers have been doing a good job and rendering their services properly.

As you all know, the issue raised by Mr Richard Davies has to be resolved. The contract signed by the Master Community was signed by him in his name and he has requested that it be changed to the company's name.

The previous Administrator issued invoices to a company. As Administrator I reported that if the contract was signed in the name of a natural person the invoice could not be issued to a company that does not appear in the contract. In addition, as mentioned above the amount that was invoiced was less than the amount agreed in the contract. This matter was resolved and duly reported.

In order to resolve this matter, a new contract should be signed; otherwise, the General Meeting should approve some other alternative.

Personnel:

El Soto has 4 employees:

Mr Salvador Peña Molina / Gardener / February 2014. / Work hours from 7.30 to 15.30

Mr Víctor Elena Romero / June 2014 / Gardener / Work hours from 7.30 to 15.30

Ms Deborah Solari / January 2020 / Weekends / Saturdays from 15 to 18 hours- Sundays from 9 to 13 and from 15 to 18 hours / Gymnasium Reception

Mr Ivan Waring / January 2020 / from Mondays to Fridays from 9 to 13 hours and from 15 to 18 hours – Saturdays from 9 to 13 hours / Gymnasium Reception

All of them have been performing their functions well except as mentioned below.

The gardeners are in contact with Carlos Lima, the Greenkeeper, who supervises their functions. Mr Carlos Lima reports incidents to me, as well as the work performed by the gardeners.

Important matters to highlight:

Mr Ivan Waring is not happy with his contract / working hours / payslip.

The previous Administrator gave him a project and service-based contract, even though the General Meeting resolved on 11/11/2019 to give him a contract for one year. The contract was for a 6 day work week, from Mondays to Saturdays, with 40 hours per week, even though he worked 35 hours per week, from Mondays to Fridays. This issue caused a certain amount of friction between the employee, the previous President and the current Administration. I explained to him that our function was to implement the resolutions adopted by the General Meeting, and asked him to understand that. This matter was previously explained in an email dated 11/12/2020, and is attached as **DOC 6**.

The employee has informed me that he does not want to work on Saturdays, and only wants to work 35 hours per week.

The salary that he was paid was not correctly calculated pursuant to the contract signed. The new labour law advisors adjusted the salary in accordance with the provisions of the law.

It is important to note that said employee has had several confrontations with maintenance / gardening personnel, with owners in the Master Community who have held the office of President and with the current President, and also with the current Administration.

At that General Meeting, on being asked my opinion, I explained what I thought in respect to having a Community President be at the same time an employee of the Mancomunidad del Soto. Without knowing the gentleman, or the majority of the members attending the General Meeting, I clearly stated that the two positions were not compatible and that I believed that there WAS a conflict of interests.

In view of the foregoing, I clearly confirm that there does exist a conflict of interests regarding the contract entered into with this employee.

A document from the labour law consultants explaining the irregularities detected is attached to this report. The document also mentions a former employee hired as a cleaner with a 30 hour contract who did not fully comply with the work hours This employee decided to leave of her own will (**DOC 7**).

Fiscal matters:

The consultants in charge of labour law and tax matters have changed. At present these services are provided by a professional who is independent from the Administration. (I recommend doing it this way, and that no external consultant should have any employment or work relationship with the Administrator.)

After reviewing different matters, I realised that since this is a Master Community of property owners that obtains a profit from renting the restaurant, in addition to other extra income, the Master Community should have filed a tax return for these capital gains. In accordance with the law, these capital gains must be passed on to co-owners by means of Form 184. This is a problem, because the Tax Agency must be informed of the names and identification documents of all the co-owners of El Soto. Solving this matter is turning out to be difficult. This year we tried to arrange appointments with the Tax Agency to explain that it is impossible to obtain the information from all owners of all the Communities, and to see what alternative solution they propose.

The AGM should have been informed of this matter years ago to decide what measures should be taken. The problem has not been resolved, but at least now you are informed.

A letter with the details of the fiscal problems encountered and the tax penalties the Master Community has had to pay is attached (**DOC 8, DOC-8A, DOC 8-B and DOC 8C**).

Debtors – Claims:

Since 2003, the two major debtors have been GRUPO MENA and PROMOGEDESA.

Until 18/02/2011 **Grupo Mena** had a debt of **107,792.14 euros**.

The Minutes of 10/02/2012 state that Anida and Promogedesa S.A. are also in arrears.

The debtor balances reported at said AGM are the following:

Grupo Mena: 19,012.37 euros

Promogedesa: 100,566.37 euros

Anida- Altamira-Santander: 12,183.64 euros

I infer that Grupo Mena held title to a plot, that the plot was divided and the two plots were sold to two different buyers.

The only information that appears in the Minutes is that there are new owners. Once again I wish to insist on the importance of including relevant matters in the Minutes, such as the previous explanation which I have inferred, but which is not specifically stated.

There is no clear explanation of the situation with respect to changes with these balances (passing from 107,792.14 euros to 19,012.37 euros), of what happened to the debt claimed from Grupo Mena in receivership proceedings, and what happened with the debt inherited by the new company Promogedesa S.A. Once again, the accounts that you have been approved do not reflect anything regarding these matters, which are not explained and are not included in the Book of Minutes.

For the purpose of a complete analysis of the situation, and in order to understand it better, I have identified the plots as 1, 2 and 3.

PLOT 1

Grupo Mena -

At present OGDEN: The Minutes indicate that the company GRUPO MENA filed for voluntary receivership and that the Master Community filed a notice of appearance in the proceedings as creditor. As Administrator I was not given any information in this respect, and no documents were handed over substantiating that the Community has appeared in said receivership proceedings.

Mr David Graham Ogden, the current titleholder of the plot, acquired the plot on 31/08/2018. On the basis of the information I have been given, no legal claim has been filed against him.

I was not given any legal documents in connection with this new owner, although legal action against the latter was approved at General Meetings.

The debtor balance at 01-01-2020 given to me by the previous Administrator was **155,544.59 euros**.

Actions taken: A mortgage note has been requested and an official fax was sent to the owner notifying the debt. The next step is to file a legal claim, since the debt is enforceable. A separate document contains the conclusions of the lawyer Marina Martinez regarding the issue, and the amounts that can be claimed.

Since no claim was filed against the previous owner or during the receivership proceedings, the debt has lapsed and cannot be claimed. In consequence the Master Community must allocate a loss of **84,735.04 euros** to the reserve account.

Recommendation: The General Meeting must demand that the previous Administrator hand over all the documents he still has in connection with this plot and the debts and the particulars of the lawyers in charge of the matters in connection with the plot, the previous owner and the current one.

PLOT 2

The plot acquired by Anida- Altamira- Santander: In accordance with the general ledgers I was given, it seems that it has been paying off the debt, although there is still an amount pending.

The debtor balance at 01-01-2020 that was given to me by the previous Administrator was **46,138.18 euros**.

Actions: Emails were sent to the contact persons provided by the previous Administrator. There have been no answers. Information was also given regarding payments transferred quarterly to El Vicario accounts (not to the account of El Soto) by the company Landcompany S.L. totalling 3,328.32 euros and 1,644.98 euros. These payments are still in the account of El Vicario marked as unknown clients pending clarification.

The previous Administration has not provided any information in this respect, and must clarify if this company is transferring these amounts on behalf of Altamira – Grupo Santander, and if that is the case, why they are transferred to El Vicario's account. The previous Administration must present the title sent by the entity, showing when it acquired the plot together with the registry information in order to request the corresponding mortgage note and begin the process of filing a legal claim, if appropriate.

It must also provide the mortgage note for that plot, since the Registry does not have any plot that corresponds to the information provided by the previous Administrator.

Actions: Mortgage notes were requested from the Land Registry, to no avail. The bank has many properties and the searches made have not been successful. We continue to look for the Cadastral Reference and the Registered Property. The debts have been notified by post, but no claims will be filed until the matter of the transfers to the El Vicario's account has been clarified.

PLOT 3

Promogedesa S.A.

Later called Joya Verde – later Casa Limitado S.L – at present FRD ANDALUCIA 1 GmbH & Co. Kg, Sucursal en España

Promogedesa S.A.: This current Administration was not given any information regarding these matters. We do not know if claims were filed against this company to collect outstanding amounts. The Minutes contain very little information regarding the actions carried out.

Joya Verde:

In accordance with the information provided by the previous Administrator, the debtor balance at 01-01-2020 was **359,166.21 euros**.

The previous Administrator commissioned the law firm Martínez Echavarría to file a claim against this company after it acquired the plot from Promogedesa SA on 18/09/2018. In consequence, in accordance with the company's legal liabilities, a claim was filed requesting payment of the debt for the years 2015-16-17-18. The amount claimed is **129,760.61 euros**.

The previous Administrator has not handed over any legal documents in respect to the claims filed.

Mr. Juan Rimbau, the former President, mediated with the legal firm Martínez Echavarría to have their lawyer send those documents to the current Administration. In fact, the lawyer in charge of filing the initial claim is no longer involved in this case, and the said firm appointed the lawyer Ms Ángela Lomeña to replace him.

After having analysed the claim and the answer to the claim (**DOC 9A and DOC 9B**), I must say that they could have done a better job. The claim was filed in accordance with the standard criteria applied to a normal community of property owners. But the case under consideration is different because the claimant is a Master Community of Property Owners, with specific conditions of use and statutes, located within an E.U.C. with conservation and maintenance obligations, etc.

Joya Verde claims the existence of a formal defect in the constitution of the Master Community (the Statutes were not registered and lack of an agreement between the Ojén Town Council and the Master Community) and adds that it only owned the property 8 months and that no debt had been claimed from the previous owner (a separate document with legal explanations provided by the lawyer Marina Martinez will be provided).

Notes: I am waiting for information from the Ojén Town Council regarding the existence or not of the agreement referred to in Article 4 of the Statutes (page 2 of DOC 5). This information was not given to me or to the lawyer by the previous Administrator.

Since no claim was filed against the previous owner, the debt has lapsed and cannot be claimed, and thus the amount of **194,184.82 eur** must be written off as a loss allocated to the Community reserve account.

Actions: I have requested mortgage notes for Joya Verde in order to have information regarding its solvency. I have 7 mortgage notes corresponding to this owner's assets, mortgage

notes which the lawyer also has. In other words, if the Master Community wins the suit, it could collect these assets if the company refuses to pay.

I have been summoned to declare in the trial as a witness in March.

Recently the new company **FRD ANDALUCIA 1 GmbH & Co. Kg, Sucursal en España** acquired the plot in order to build a residential complex.

We had a meeting with the developers, who paid the 1st quarter fees on 30/01/2021, but did so with reservations.

The debt for the amount of **166,406.02€** has been certified, making note that at 28/01/2021 Casa Limitado S.L. had this outstanding debt corresponding to 2016-2017-2018-2019-2020. This amount has been withheld by the new owner, pending the Master Community's decision in respect to said owner's proposal..

A document explaining the problems encountered by the new owners and their offer to the Master Community is attached. They have been informed that the matter has to be discussed and voted on at the General Meeting (**DOC 10**).

Given the situations that have been analysed these past months and the difficulties encountered due to lack of information, Ms Marina Martinez, a lawyer with expertise in urban planning and horizontal property issues has been asked to provide an analysis of these legal matters. This decision was made following reiterated requests to the lawyer in charge of the Joya Verde proceedings for advice, without receiving any clear indication of the position she recommended.

Ms Marina Martinez' report includes the laws, regulations and updated case law on which she bases her analysis (**DOC 11**).

I recommend that the Governing Board have a meeting with the lawyer whenever possible in order to clarify the doubts members may have and thus be able to make the best decision.

Conclusions:

- One: you must all seriously analyse together whether the important matters of Mancomunidad El Soto have been properly controlled over the years by the members of the General Meetings and the Governing Boards.

It is logical to assume that Presidents normally base their actions on the advice of the Administrator. However, the Governing Board must have control of the most important matters such as applying correct coefficients, the accounts, fees, budgets, legal matters and claims for payment of debts and compliance with the Statutes. All the information must be properly presented and substantiated and recorded in the Book of Minutes, which as I have said is the legal document/ tool that the Master Community has in order to defend its interests.

- Two: In respect to the legal issues raised, following a correct analysis you must try to reach agreements for the defence of common interests, always having legal advice on which to base the decisions made.

- Three: Golf Club and Gym: On the basis of the previous comments, I do not recommend that the Master Community hire persons who are connected to the Communities of Property Owners that comprise the Master Community. As mentioned above, there have been events which might not have occurred had the employees not been part of the Master Community, and in which the Master Community would have immediately adopted necessary legal measures, without any exceptions.
- Relations between members of the Master Community: It is most unfortunate to see how adults who in addition are officers in their own Communities attack each other personally and by email, with endless discussions regarding the manner in which certain matters are dealt with, always looking for problems instead of solutions. Nobody is going to come from the outside to solve your problems: you must solve them yourselves on the basis of consensus and agreement. No Administrator should allow any type of attack to occur at a meeting, and if that happens, measures must be taken, cancelling meetings and not allowing the perpetrators to attend future general meetings.
The idea that the old and new parts of the Master Community are divided must be abandoned. This does not lead to a positive climate of understanding, and instead of contributing to the latter it detracts and creates a climate of uneasiness amongst members.

Lastly, I would like to reiterate that this report is not based on any personal interest. Instead, after one year as your Administrator and all the problems I have seen, the lack of collaboration I experienced and the conclusion that many things are not being managed properly, I believe that it is appropriate to express my professional opinion with the objective of resolving in due course the aforementioned problems and enabling the Master Community as a whole to move forward.

For owners who consider that I am not competent, I believe they are mistaken. Normally the Communities where I am the Administrator are appreciative of my work. When I make a mistake, I acknowledge the error and apologise. But honestly, I do not believe I have made any mistakes during the year I have been Administrator. On the contrary, I have worked more than what I am obliged to do in accordance with the fees I am paid. I think that after reading this report, you will agree that I have a thorough knowledge of the problems you have, and that I have advised you in respect to how to start resolving them.

To those who have said that Mr Juan Rimabu and Ms Lisbet Kristensen are incompetent, I also believe they are mistaken. Both are well mannered and educated persons who have tried to do their best, strictly complying with the law, with my advice and the external advice of lawyers when necessary.

I wish to thank the two Presidents, Ms Lisbet Kristensen and Mr Juan Rimabu, for their support and constant collaboration in the decision-making process this year, geared at finding solutions for the benefit of all the members of the Mancomunidad El Soto de Marbella Club de Golf Club Social.

Ms Laura Varela Lewenberg

Secretary - Administrator
Member no. 2387 of the Official Association of Property Administrators