



SUMMARY AND CONCLUSIONS
**OF THE LEGAL REPORT DATED JANUARY 2020 ON THE SYSTEM OF
DIVISION INTO CONDOMINIUM OWNERSHIP OF THE ALCAZABA BEACH
COMPLEX SITUATED IN
ESTEPONA (MÁLAGA).**



26 February 2020

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1. ABBREVIATIONS.

ABBREVIATIONS	
Report	Legal Report on the Real Estate Aspect
Client	Alcazaba Beach Community of Owners
The Firm	AV LEGAL - M DOC LEGAL, S.L.U.
The Property	Properties forming part of the Community of Owners
The Complex	Alcazaba Beach Complex, made up of Phases I to V
Complex/Residential Complex	Private Residential Complex consisting of different communities within the Complex. There are four Residential Complexes set up in the Complex,
Complex 1/Residential Complex 1	Private Residential Complex to which the three Communities of Phase 1 belong, whose common elements are the beach-front pool, gardens, paths, entrances, etc.
Complex 2/Residential Complex 2	Private Residential Complex to which the two Communities of Phase 2 belong, whose common elements are the beach-front pool, gardens, paths, entrances, etc.
Complex 3/Residential Complex 3	Private Residential Complex to which the two Communities of Phase 3 belong, whose common elements are the beach-front pool, gardens, paths, entrances, etc.
Grouping (“Agrupación”) of Communities.	Private Residential Complex set up in 2004 with the intention of grouping together all the communities in the complex.
Common Property Act (LPH)	Act 49/1960, of 21 July, on common property.
TRLSRU	Royal Legislative Decree 7/2015, of 30 October, which approves the Land Urban Renewal Act.
CC	Royal Decree of 24 July 1889, which approves the Civil Code.
DGRN	General Directorate of Registry and Notary Offices.
DONc	Declaration of New Construction in progress
DONt	Declaration of New Construction completed
DO and DH	Declaration of New Construction and condominium division
RP	Land Registry
BOJA	Official Gazette of the Regional Government of Andalusia
N/A	Not applicable.

2. TERMS OF THE ENGAGEMENT

- I. The Report has been prepared on the basis of the request made by the Client, regarding the Property.
- II. We have not inspected the Complex, nor do we have specific data on the plots of land.
- III. In order to prepare the Report, the Client has provided the Firm with documentation as listed below. The legal opinions made herein are based solely on the documentation obtained, listed below.
- IV. This Report has been drawn up by the Firm for the exclusive use of the Client, in the context of the consultation made on the subject of the report. This Report does not give rise to any liability with third parties.
- V. The information provided in this Report, and the opinions contained herein are based on the documentation obtained for preparing it, itemised below and attached hereto.
- VI. This Report should not be taken as an opinion on the value and/or the condition of the Property. No opinion is given in this Report other than the legal-technical aspect relating to its purpose.
- VII. We start with the basic presumption that all the documents provided are authentic copies of their originals, and that all the replies given to the questions or requests, and any other statements made to the Firm during the course of the investigation of the legal review are exact and made in good faith.
- VIII. The issue of this report does not entail any opinion on the value of the activity or management carried out by the Client in the complex, and the parties disclaim any liability or responsibility.
- IX. We have assumed that:

- The copies of the documents that were supplied to us or made available to us are accurate, complete and true to the originals and that all the signatures and stamps are genuine:
- The documents were validly signed by the corresponding community and are in force and enforceable; we have not requested information about other parties to any of the documents.

Except where we have been informed otherwise, none of the documents has been cancelled, modified, altered or substituted;

X. This Report analyses certain legal aspects of the Property, but does not constitute a valuation. Although in this Report we have tried to identify any contingencies, it is up to the Client to determine the risks associated to those contingencies in the light of the content and the documents referred to. We have expressed no opinion on the business, commercial, financial, technical, insurance, tax or accounting implications of the documents reviewed, nor on the reflections made concerning the legal scope of the system of condominium ownership of the Property.

XI. Responsibility of M DOC LEGAL, S.L.U.

This Report has been prepared for the exclusive benefit of the Client. Consequently, M DOC LEGAL, S.L.U. assumes no liability towards any third parties other than the Client in relation to its content.

If the Client has been advised by one or more advisors and a limitation of liability has been arranged in respect of one or more of them, the Client agrees that the liability of M DOC LEGAL, S.L.U. toward the Client will not be increased due to any limitation of liability with other advisors. Our liability toward the Client according to our commitment will be limited to a proportion of the total losses, costs or expenses (after taking any negligence into account) calculated from the perspective of equity and justice, considering our responsibility in the losses, damages, costs or expenses in question.

The Client accepts that the maximum liability of M DOC LEGAL, S.L.U. toward the Client (including any negligence) or any others, shall not in any event exceed twice the amount billed by M DOC LEGAL, S.L.U. for the preparation of this Report.

This Report has been drawn up on the basis of the instructions received from the Client. The issues covered by this Report and the emphasis placed on them might not take into account all of the questions of interest to the Client.

If any of the previous points is considered invalid or inapplicable by any competent court, the rest of the points will remain in full force and effect, and will in no way be affected.

M DOC LEGAL, S.L.U. and the Client agree that this Report is governed by Spanish law and the courts of Madrid will have the sole jurisdiction for settling any dispute arising between the Client and M DOC LEGAL, S.L.U. in relation to this Report.

3. OBJECT OF THIS SUMMARY AND CONCLUSIONS OF THE LEGAL REPORT PREVIO.

This document contains the conclusions of the report issued on 23 January 2020

The object of the report is to analyse the legal situation of the properties in the Alcazaba Beach Complex, situated in the municipal district of Estepona (Malaga).

To this end, we firstly analyse the legal system of condominium property, the Communities of Owners and Residential Complexes of which they form a part, set up under the public deeds executed for the purpose. The study is made on the basis of legislation applicable to the subject.

To date, the apartments forming part of the different communities of owners legally set up have been operating as a single community of owners known as Alcazaba Beach.

That is to say, the nine communities of owners, created progressively as the construction advanced and the sales of the five phases into which the complex is divided, have never operated independently, except in the meeting for setting up the Community of Phase IV, the owners of which were included in the “Single Community” in the following meeting.

According to information received since August of 2019 the 'Agrupación' of Communities has a Tax Number separate from that of the Community of the Alcazaba Beach Complex with which the five phases were being managed.

We think the majority of owners are unaware of the actual legal organisation of the Alcazaba Beach Complex, with nine communities and four residential complexes. A recognition of this legal reality is essential for understanding the legal proposal put forward as a guide in the final sections of the report.

The owners present at in the Meeting of 2 November 2019 notified us informally of the wish of the majority of owners for it to function as a single, collective community in which all the owners participate in the decisions adopted, including those for electing offices in the Community for managing and representing it. This wish must be confirmed by a resolution adopted in a general meeting.

The deed of creation of the 'Agrupación' (or grouping) of Communities excludes the owners of underground storerooms and garages in the Complex. While it is logical that ownership of storerooms and garages without an apartment does not give the right to common sports amenities, gardens or pools, some community regulations should be considered, possibly within the framework of the individual

community where they are located, of which it does have the right to use its common elements.

The Firm is commissioned by the Community of Owners to make the report in order to:

1. Define the existing or current legal situation.
2. Analyse the legal viability of it functioning as a single community of owners, taking into account the actual regulation in each of the condominium divisions, with communities, general communities and 'Agrupación" of communities executed and registered in the Land Registry.
3. Study the possible actions necessary for all the communities making up the Alcazaba Beach Complex to function as a single, collective community.

After the analysis of the system of condominium property applicable to the Complex, we look into the viability of it functioning collectively on a condominium basis, with the resolutions and documents necessary for implementing it. This course of action has to be studied and redefined from a tax aspect, which we recommend be analysed by a tax consultant.

4. LEGAL ORGANISATION OF THE FIVE PHASES OF THE COMPLEX.

In Phases **I, II and III** the Developer Inmobiliaria Medina, S.A. created seven communities of owners:

- (i) Three communities in Phase I,

- (ii) Two in Phase II and
- (iii) Another two in Phase III.

The definition and breakdown of the registered properties and apartments making up each of the Communities of Owners will be addressed below, expressed in tables relating to each one for greater understanding.

In these first three phases, each one originates from a single registered property number, which is segregated. The segregation gave rise to several new registered properties corresponding to:

- Plots of land on which apartments are built and the different communities in that Phase are set up.
- The rest of the main estate that is set up as a common element exclusive to the communities of that phase and, lastly,
- Private plots whose ownership was initially reserved for the developer with use for a pool or plot with tennis and padel tennis courts. Subsequently acquired by the owners of Phases I, II and III.

In each of the first three Phases a **general community [mancomunidad]** was set up with the segregated plots and which have the following as common elements for the use of those phases: the gardens, entrances, top pool, built on the rest of the main estate.
















PHASE I. MAIN ESTATE. SEGREGATIONS AND RESIDENTIAL COMPLEX 1

Property	Plot		Area	Description	Registered Property	Participation	
Main estate			52,336.90	N: Cadiz-Malaga Highway ; S: coastline; E: rest of the main estate; W: various owners and segregated land	31,180		
Segregated from the main estate							Use
A	1	Segregated	15,693.50		32,063	0.75%.	Tennis and padel tennis courts. Acquired under private contract by Communities Phases I to III on 29 July 1998 and incorporated as element for common use into the 'Agrupación' of Communities of Phases I to V of A. Beach Club on 9 Sept. 2014.
B	2	Segregated	10,191.88	Staircases 8,9,10,11,12,13,14,15 and 16	32,065	45%.	Units
C	3	Segregated	3,045.63	Staircases 5, 6 and 7	32,067	15%.	Units
D	4	Segregated	7,965.51	Staircases 1, 2, 3, 4, 17, 18, 19 and 20	32,071	39%.	Apartments and Beach Club
E	5	Segregated	1,225.13		32,069	0.25%.	Beach-front pool. NOT initially a common element of the complex of the three communities of Phase I. It is a separately owned plot belonging to the Developer Inmobiliaria Medina, S.A. Acquired later under private contract by the Communities of Phases I to III on 29 July 1998 and incorporated as element for common use into the 'Agrupación' of Communities of Phases I to V, Alc. Beach on 9 Sept. 2014.
		Rest main estate	14,215.20	5 areas contained within; plot 1 to 5	31,180		Common element of the complex formed by the three communities of Phase I, beach-front pool and recreational areas. Indoor pool Phase I. Roads, paths, pavements and squares, landscaped areas, parking, general drainage system, water pipe system, LV electricity system, lighting, electricity sockets telephony network and watering system.
TOTAL			52,336.85			100.00%.	

RESIDENTIAL COMPLEX 1 Phase I									
SEGREGATION, DNC and DH. Deed 13.11.1986									
PHASE I. MAIN ESTATE. SEGREGATIONS AND RESIDENTIAL COMPLEX 1									
Property	Plot	Area	Description	Registered Property	Participation	Properties contributed in deed of constitution of 'Agrupación' of Communities Phases I to V. Deed 05.11.2004, rectified under deed of 24.07.2014.			
Main estate		52,336.90	N: Cadiz-Malaga Highway; S: coast; E: rest of the main estate; W: various owners and segregated land	31,180					
Segregated from the main estate					Use	Deed of Condominium Division	Blocks/ Sectors	Built area, incl. common areas	Bylaws
A	1	Segregated 15,693.50		32,063	0.75%.	Tennis and padel tennis courts. Acquired under private contract by Communities Phases I to III on 29 July 1998 and incorporated as element for common use into the 'Agrupación' of Communities of Phases I to V of A. Beach Club on 9 Sept. 2014 (incorrectly).			
B	2	Segregated 10,191.88	Staircases 8,9,10,11,12,13,14,15 and 16	32,065	45%. Units	Cond. Div. Third. 10.09.1987 (Staircases 8,9,10,11,12,13,14,15 and 16).	1?	6,470.25	13.11.1986
C	3	Segregated 3,045.63	Staircases 5, 6 and 7	32,067	15%. Units	Cond. Div. Second. 15.06.1987 (Staircases 5,6, and 7).	1	2,105.09	13.11.1986
D	4	Segregated 7,965.51	Staircases 1, 2, 3, 4, 17, 18, 19 and 20	32,071	39%. Apartments and Beach Club	Cond. Div. First. 13.11.1986 (Staircases 1, 2, 3, 4, 17, 18, 19 and 20).	2	5,953.91	13.11.1986
E	5	Segregated 1,225.13		32,069	0.25%.	Beach-front pool. NOT initially a common element of the complex of the three communities of Phase I. It is a separately owned plot belonging to the Developer Inmobiliaria Medina, S.A. Acquired later under private contract. by the Communities of Phases I to III on 29 July 1998 and incorporated as element for common use into the 'Agrupación' of Communities of Phases I to V, Alc. Beach on 9 Sept. 2014.			
	Rest main estate	14,215.20	5 areas contained within; plot 1 to 5	31,180		Common element of the complex formed by the three communities of Phase I, beach-front pool and recreational areas. Indoor pool Phase I. Roads, paths, pavements and squares, landscaped areas, parking, general drainage system, water pipe system, LV electricity system, lighting, electricity sockets telephony network and watering system.			
TOTAL		52,336.85			100 %.				

The properties of the Residential Complex and buildings making up the three communities and the remaining plots of Phase I are approximately identified on the following plan:



- | | | | |
|---|---|---|---|
| Plot 4. Community of Owners 1: Registered Property number 32.071 |  |  |  |
| Plot 3. Community of Owners 2: Registered Property number 32.067 |  |  |  |
| Plot 2. Community of Owners 3: Registered Property number 23.065 |  |  |  |
| Rest main estate: 31.180: Common Elements Comm. 1-2-3 |  |  |  |
| Plot 1. Tennis and Padel: Property 32,062, and Indoor Pool: Property 32,069 |  |  |  |

RESIDENTIAL COMPLEX 2 PHASE II											
SEGREGATION, DNC and DH. Deed 15.12.1987											
Property	Plot		Area	Description	Registered Property	Participation					
Main estate			27,218.00		35,526 (?)						
Segregated from the main estate											
							Use	Cond. Div.	Blocks/Sectors	Floors	Built area, incl. common areas
A	7	Segregated	9,982.34	Staircases 25,26,27,28,29,30,31,32 and 33	35,530	55.85%.	Units	Cond. Div. 15.09.1988	3	Ground floor +2	6,482.30
B	8	Segregated	7,660.21	Staircases 21,22,23.24.; 34,35 and 36	35,534	43.90%.	Apartments and Beach Club	Cond. Div. 15.12.1987	2	Ground floor +2 Staircase. 35 Gr.+2+ basement (commercial premises)	5296.52 + 509.65 of Terraces
D	9	Segregated	988.75		35,532	0.25%.	Beach-front pool. NOT initially a common element of the complex of the three communities of Phase II. it is a separately owned plot belonging to the Developer Inmobiliaria Medina, S.A. Acquired later under private contract. by the Communities of Phases I to III on 29 July 1998 and incorporated as element for common use into the 'Agrupación" of Communities of Phases I to V, Alc. Beach on 9 Sept. 2014.				

Rest main estate	8,586.70	3 areas contained within; plot 7 to 9	Common element of the complex formed by the three communities of Phase I, beach-front pool and recreational areas. <u>Indoor pool</u> Phase II. Roads, paths pavements and squares, landscaped areas, parking, general drainage system, water pipe system, LV electricity system, lighting, electricity sockets telephony network and watering system.
TOTAL	27,218.00	44.15%.	

The properties of the Residential Complex and buildings making up the three communities and the remaining plots of Phase II are approximately identified on the following plan:



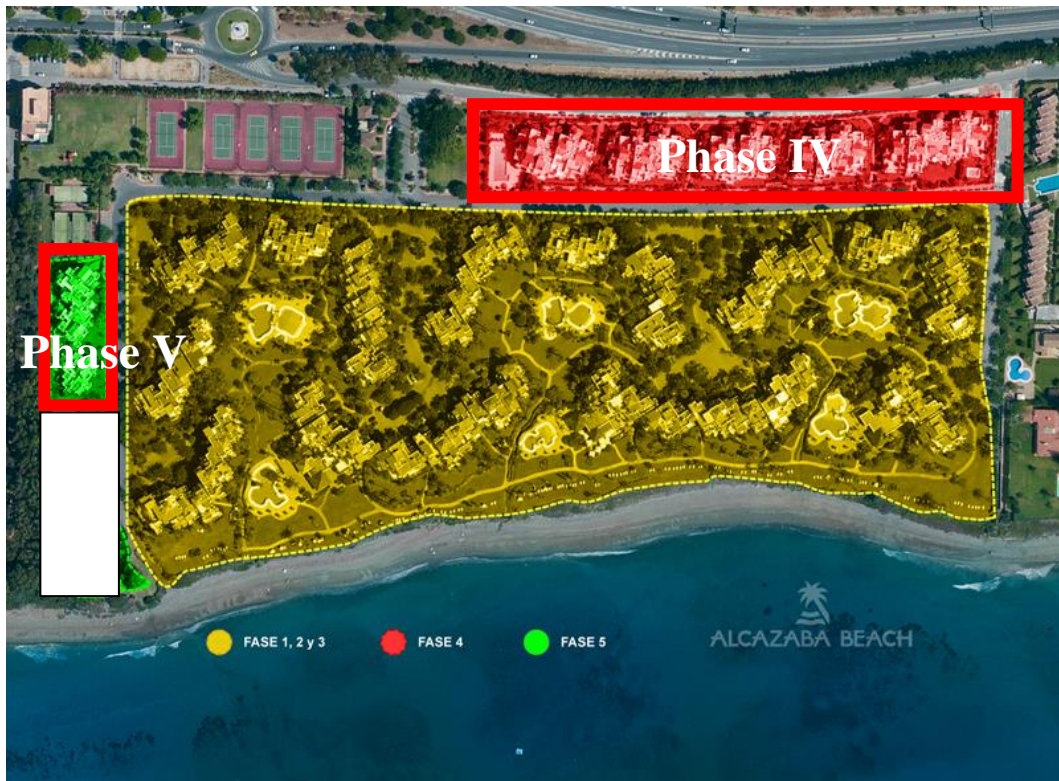
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|--|-------|
| Community of Owners 4: Registered Property number 35.534 | — — — |
| Community of Owners 5: Registered Property number 35.530 | — — — |
| Rest main estate: 35,526: Common Elements Comm. 4-5 | — — — |
| Outdoor Pool: Property 35,532 | — — — |

RESIDENTIAL COMPLEX 3 PHASE III SEGREGATION, DNC and DH. Deed 27.10.1988												
Property	Plot		Area	Description	Registered Property	Participation						
Main estate			27,429.69		35,528							
Segregated from the main estate				Use				Cond. Div.	Blocks/ Sectors	Floors	Built area incl. common	Bylaws
A	10	Segregated	7,132.38	7 Staircases: 37,38,39,40, 50,51 and 52.	38,379	43.50%	Apartments and Beach Club	Cond. Div . 27.10.1988	2	Ground floor +2 Staircase. 51 Gr+2+ basement (commercial premises)	6,482.30	27.10 1988 deed Incomplete
B	11	Segregated	832.00		38,381	0.25%	Beach-front pool. NOT initially a common element of the complex of the three communities of Phase II. it is a separately owned plot belonging to the Developer Inmobiliaria Medina, S.A. Acquired later under private contract. by the Communities of Phases I to III on 29 July 1998 and incorporated as element for common use into the 'Agrupación" of Communities of Phases I to V, Alc. Beach on 9 Sept. 2014.					
C	12	Segregated	9,238.38	9 Staircases: 41.42,43, 44, 45, 46.47. 48 and 49.	38,383	56.25%	Units	Cond. Div. 01.03.1989	1	Ground floor +2	6.478,94 m2 built area+ 652.72 m2 of Terraces	27.10.1988
		Rest main estate	10,226.93		35,528		Common element of the complex formed by the three communities of Phase I, beach-front pool and recreational areas. Indoor pool Phase III. Roads, paths pavements and squares, landscaped areas, parking, general drainage system, water pipe system, LV electricity system, lighting, electricity sockets telephony network and watering system.					
TOTAL			27,429.69			100.00 %.						



Community of Owners 6: Registered Property number 38.379	■ ■ ■ ■ ■
Community of Owners 7: Registered Property number 38.383	■ ■ ■ ■ ■
Rest main estate: 35,528: Common Elements Comm. 6-7	■ ■ ■ ■ ■
Outdoor Pool: Property 38,381	■ ■ ■ ■ ■

On the plots of Phases **IV and V** a single community of owners was set up on each one, with common elements pertinent to each community composed of the apartments, plus storerooms and garages situated beneath ground level of the buildings.



Phases IV and V are not physically joined to phases I to III, although they are separated by the interior streets of the complex, now municipal roads as we have been verbally informed, without having any documentary evidence of their being handed over to the Estepona Council.

COMUNIDAD PROPIETARIOS. Phase IV										
Property	Plot	Area	Registered Property 2	Participation	Description	Cond. Div.	Blocks/ Sectors	Floors	Built area, incl. common areas	Bylaws
Main estate		6,239.75 m2 (before segregation 22,546.85 m2).	17,016							
					One building in the basement and 5 buildings above ground level	Deed New Const.+ Cond Div. 30.09.2005	5	Basement+Gr. Fl+2,	19,145.04 m2 built area. 5,374.13 m2 basement; 1,141.53 m2 common areas and 12,629.38 apartments, of which 4,384.54 m2 are terraces.	Deed New Const.+ Cond Div. 30.09.2005



COMMUNITY OF OWNERS Phase V										
DNC concluded and Cond. Div. Deed 13.05.2008 (originating from DNC and new construction 27.10.2006)										
Property	Area (m ²)	Cadastral Reference	Registered Property	Description	Cond. Div.	Blocks/ Sectors	Floors	Built area, incl. common areas	Bylaws	
Property	2,712.30	9934029UF0393S0001PG	56,403	2 buildings, 12 apartments divided into 3 staircases, 3 apartments in building 1 and 9 apts. Basement joined with 15 parking spaces and 12 store rooms. In building 2. Floors: Ground+ 2+ basement.	13.05.2008	2	Ground+ 2 +basement		13.05.2008	



While Phase IV has common elements which can be used by the rest of the phases of the Complex, gymnasium, sauna and pool; Phase V only has gardens around the perimeters of the apartment blocks.

To summarise, there are nine communities of owners in the Complex: seven in Phases I to III, one in Phase IV and one in Phase V. In addition there are three general communities, each of the first three Phases has a general area community ("Mancomunidad"), plus an 'Agrupación' of Communities of Owners, the last to be set up, in 2004.

5. THE DEVELOPMENT COMPANY HAS RESERVED OWNERSHIP OF FOURTEEN REGISTERED PROPERTIES, PARTLY ON THE LAND SEGREGATED FROM THE MAIN ESTATES OF PHASES I, II AND III.

In the Communities of Phases I, II and III, the **developer reserved ownership of fourteen registered properties on which** the sports, social and administrative facilities had been built within the Complex: tennis and padel tennis courts, 3 beach clubs, pools, administration building etc.

The Communities of Phases I, II and III acquired them under private contract dated 30 May 1995, placed on public record in the Deed executed on 29 July 1998. The private contract established that the Developer would transfer ownership of the Properties to the Community of Owners, composed of Phases I, II and III, for the price of 75,000,000.00 pesetas, equivalent to 450,759.078 euros.

The content of the contract was supplemented by the Deed dated 18 July 2013 executed by the President of the Alcazaba Beach Community at that time, under which those properties were contributed to the 'Agrupación' of Communities of Phases I to V, set up in 2004, as elements for common use.

6. CREATION OF THE 'AGRUPACIÓN' OF THE COMMUNITIES OF THE ALCAZABA BEACH RESIDENTIAL COMPLEX AND PRIVATE CONTRACTS WHICH LEAD TO IT.

6.1. Private contracts for integrating Phases IV and V into the Complex.

The rights of the communities of Phases IV and V to use the common elements of Phases I, II and III of the Alcazaba Beach Complex and of the latter to use the common elements of the former, were agreed upon by the developers of the apartments of those phases and Phases I, II and III of the Alcazaba Beach Community which at that time was managing the seven communities and three general communities collectively.

6.2. Private contract giving rise to the rights of Phase IV to use the common elements of Phases I, II and III of the Complex.

The private contract signed on 13 August 2002 between the Alcazaba Beach Community and the company Jardines de las Fuentes, S.A. described the future promotion of 72 apartments by the latter on the land of Phase IV and the following was agreed:

- a) The use and enjoyment by the apartments of Phase IV of all the common elements of the Complex, and in turn this Phase IV would also contribute all of its common elements, facilities and services in the following terms expressed in their clause 3, (underlining is ours):

“Three.-

(...) With this, the new apartments will have full use and enjoyment (as components of phases one, two and three), of all the common elements of the Complex (gardens, pool, security and control service, cleaning, beach clubs (chiringuitos), sunbeds, tennis and padel tennis courts. etc.), in turn contributing all their common elements, facilities and services as common elements of the 'Agrupación', which will also be managed and administered collectively.”

- b) The creation of a Residential Complex, as a form of organisation agreed upon for managing the facilities collectively and for incorporating Phase IV into the Complex.
- c) Compensation by the Developer of Phase IV, with the obligation to pay the Community of Owners for work carried out in its benefit as detailed in the contract, to a maximum amount or cost of 901,519.00 €. At the date of this report we have no record of the payment or the implementation of the work agreed in the documentation received, which will have to be confirmed by the Administration of the Community once checked.

Due to the relevance of this contract for the matter under analysis, it is attached as **Document 1**.

In the contracts examined we have not found any prior agreement that expressly legitimises the signing of this contract. However, in the AGM held on 10 August 2000 the meeting was informed of the negotiations and conditions to be included in the contract were approved, specifically in point three of the Agenda.

6.3. Private contract giving rise to the rights of Phase V to use the common elements of Phases I, II, III and IV of the Complex.

Under the private contract signed on 13 August 2002 between the Alcazaba Beach Community, the company Jardines de las Fuentes, S.A. (Phase IV) and Promociones Alfa 94, S.L. (Phase V), agreements were made in the same terms, transcribed, as in the contract signed with the developer of Phase IV, in reference to the common elements.

The compensation arranged with the Developer of Phase V, with the obligation to pay the Community of Owners for work to be carried out in its benefit as detailed in the contract, to a maximum amount or cost of 141,237.80 €. At the date of this report we have no record of the payment or the implementation of the work agreed in the documentation received, which will have to be confirmed by the Administration of the Community once verified.

In addition, in this contract, Jardines de la Fuente, S.A. (Phase IV), undertakes to bear the infrastructure expenses for a new road connecting the Complex with the UEN-R32 Development Sector, bordering with Phase V. At the date of this report we have no record of the payment or the implementation of the work agreed in the documentation received, which will have to be confirmed by the Administration of the Community once verified.

The companies reciprocally accepted the incorporation of Phases IV and V into “the Alcazaba Beach Complex”.

This contract was ratified after signing. It was specifically ratified under the resolution taken in point three of the agenda for the AGM of the Alcazaba Beach Community held on 14 August 2003, which was at that time made up of Phases I, II and III. The contract was ratified by a majority, not a unanimous, vote.

The transformation of the present 'Agrupación' of Communities of Owners into a single community as recommended in the final part of this report.

Due to the relevance of this contract for the matter under analysis, it is attached as **Document 2.**

6.4. Creation of the 'Agrupación' of the Communities of the Alcazaba Beach Residential Complex.

The President of the Community and his Committee were delegated to implement the private contracts signed by the Community of Owners of Phases I, II and III, and were granted powers to execute public and private documents and contracts.

Due to the existence of three residential complexes in Phases I to III, the correct procedure, by law, would have been to submit the resolutions in these complexes and the communities owning the fourteen properties purchased from the Developer Inmobiliaria Medina, S.A.

This was the result of the decision taken by majority vote at the AGM of the Community of Owners of Alcazaba Beach held on 14 August 2003, point four of the agenda.

On 5 November 2004 was executed the deed of **Creation of the 'Agrupación' of the Communities of the Alcazaba Beach Residential Complex** which formalised the obligation to set up a private residential complex between the Communities of the first three phases of the Complex and Phases IV and V, in **implementation of the private contracts previously analysed.**

Due to the relevance of the deed for a better understanding of the report, it is attached as **Document 3.**

Party to the Deed were the President of the Community of Owners of Phases I, II and III of the Alcazaba Beach Residential Complex, providing the resolution taken in the Meeting, and the representatives of the companies owning the plots on which Phases IV and V are located, which at that time were not yet built.

The object of the 'Agrupación' of Communities is the **common use and maintenance** of certain common elements belonging to Phases I, II, III and IV, the latter under construction at that time.

Without repeating the determining legal factors indicated for the existence of the communities and complexes in Phases I to III, the **Deed of constitution of the 'Agrupación' of Communities has the following omissions and flaws:**

1. It does not contain the registered properties which are the remainders of the main estates from which each phase originates and on which the three private residential complexes were set up, one for each phase, on which part of the properties are found whose common use by the five phases is regulated in the deed of 'Agrupación' of communities.
2. There is no list of the fourteen registered properties acquired by the owners of Phases I to III from the developer Inmobiliaria Medina, S.A. under the contract of 30 May 1997, although article 13 of the bylaws includes the beach clubs, tennis courts and beach-front pools within the properties of common use, despite not being included in their deed of constitution.
3. The deed of constitution of the 'Agrupación' of Communities does not include any element that belongs jointly to the Communities grouped together, in spite of being executed as for a private residential complex under article 24 of the Common Property Act, in which the existence of any common element between the different communities or properties is an unavoidable requirement.

Ten years later, under the deed of 24 July 2014 to which the “President of the 'Agrupación' of Communities” was party, also called in this Deed <<“Community of Owners of Alcazaba Beach”, made up of Phases I, II, II, IV and V>>, **three deeds are rectified:**

- (i) The deed dated 5 November 2004 which sets up the 'Agrupación' of the Communities of the Alcazaba Beach Residential Complex.
- (ii) The deed executed on 29 July 1998 for placing the private settlement contract of 30 May 1995 on public record, under which Phases I to III acquired 14 properties from the Developer and the deed which supplements it dated 18 July 2013.

The deed of rectification is attached as **Document 4**.

With the rectification of the deed the 14 properties acquired by the owners of Phase I, II and III from the Developer Inmobiliaria Medina, S.A. were contributed to the 'Agrupación' of Communities, as elements for common use, and the fourteen properties were registered in the Land Registry as elements for common use of the 'Agrupación' of Communities on 9 September 2014. We consider this registration to be legally questionable although to dispute it now would not be beneficial to the intended aim of functioning as a single community.

The fourteen properties are acquired by the “Alcazaba Beach” Community of Owners made up of phases I, II and III in the form of common elements of the three phases, under the private contract of 30 May 1997 which was subsequently placed on public record. **Document 5**.

The owners of phases IV and V did not participate in the purchase of those properties; those communities did not exist either at the date of purchase nor at the time of completion, nor had the “Agrupación” of Communities in the “Alcazaba Beach” Residential Complex been created yet (5 November 2004).

The justification for providing these fourteen properties for common use could be the interpretation made to that effect of the private contracts signed on 13 August

and 16 October 2002 between the Community of Owners of Phases I, II and III and the companies owning the land that would later be Phases IV and V.

The wording of those private contracts, in the part relative to the report, is literally transcribed above and attached.

The wording is not clear; what is ascertained from reading is that it says that the apartments of phases IV and V *“will have access to the full use and enjoyment (like the components of the first, second and third phases) of all the common elements of the Complex (...), in turn contributing all their common elements, facilities and services as common elements of the 'Agrupación”, which will also be managed and administered collectively.”*

The contradiction between full use and enjoyment with the contribution as common elements of the 'Agrupación" results from the wording of the private contracts, was settled by the deed of constitution of the 'Agrupación" of the Community of Owners in 2004 where, points V, VI and VII of the Recitals and also article 13 of its bylaws, specifically limit the right of Phases IV and V to the use of common elements, with each community conserving its right of ownership to its common elements.

The rectification is based on the majority decision taken at the AGM of the Community of Owners of Alcazaba Beach held on 14 August 2003, point four of the agenda. We interpret this as a reference to the registration of the contract for the fourteen elements of common use of Phases I, II and III by the purchasers in the contract, the owners of phases I, II and III, who paid the price through additional service charges collected years before.

7. PHYSICAL OR REAL FUNCTIONING OF THE COMMUNITY OF OWNERS OF ALCAZABA BEACH.

The different communities of owners of the Complex have been functioning as a single community of owners since the first of them was set up, on 10 December 1987, i.e. Staircases 1-2-3-4-17-18-19-20. Other than this first community, there is only record of the creation of the community of Phase IV, with no information regarding its functioning.

The rest of the owners of the apartments that were being sold, including those of the apartments of Phases IV and V, were then gradually incorporated into the community. The owners of the garages and apartments of these phases do not belong to the 'Agrupación' of the Community of Owners in accordance with its bylaws, article 2.

The creation of this community for functioning as a single unit does not meet the requirements of legal form and set-up executed by its developers in the five phases of which it is composed, which includes the mentioned nine communities and three general communities.

8. RECOMMENDATION TO TRANSFORM THE “AGRUPACIÓN” OF COMMUNITIES INTO A SINGLE COMMUNITY RESIDENTIAL COMPLEX, WHEN THE TAX EXPENSES CAN BE ASSUMED.

The format with the legal status that comes closest to the owners’ intention for the Complex to function as a single unit, with its nine communities and four residential complexes, is to convert the present “Agrupación” of Communities set up in 2004 to the format of a Single Community Residential Complex provided for in article 24.2 letter a) of the Common Property Act (LPH).

This requires the unanimous agreement of the owners, article 17.6 LPH, and also administrative authorisation from the Estepona Council, article 10.3 LPH and 26.6 TRLSRU.

The recommendation for transformation into a Single Community will serve to avoid the legal limitations in the scope of actions and resolutions of the "Agrupación" of Communities, which will depend on the communities of which it is composed for any enhanced agreements (important), in addition to limiting its effect to the elements that are common ownership of the 'Agrupación' of Communities, without being able to affect the common of the communities included.

That is to say, in the 'Agrupación's of Communities, resolutions could only be adopted on elements for common use, not on the rest of the communal elements (e.g. gardens). This is what led to the interpretation prior to transposing the private contracts signed between Phases I, II and III with Phases IV and V to the Deed of Constitution of the 'Agrupación'. Article 24.3 LPH is transcribed:

"24.3. The 'Agrupación' of communities referred to in the previous sub-section will to all effects and purposes be covered by the same legal situation as the communities of owners and will be governed by the provisions of this Law, with the following particularities:

b) the adopting of resolutions for which the law requires qualified majorities will, in any case, need to have obtained the majority in question in each Owners Meetings for the communities making up the 'Agrupación'.

The authority of the governing bodies of the grouping of communities only extends to the items of common property, roads, facilities and services. Its resolutions cannot in any case diminish the faculties corresponding to the governing bodies of the communities making up the 'Agrupación' of communities."

It is essential to have a tax expert look into the possibility of avoiding the tax expense of transforming the 'Agrupación' of Communities of Owners created under the provisions of article 24.2.b) LPH, into a Residential Complex to be created as a single community, in accordance with article 24.2 letter a) LPH.

The transformation of the present “Agrupación” of Communities of Owners into a Single Community Residential Complex:

- a) Will avoid having to resort to agreements from the individual communities in certain resolutions which have to be adopted under a qualified majority, or which limit the actions of the “Agrupación” to common services (for common use if the present ones are kept); this is a necessary or compulsory piece of law that cannot be replaced by the independent wishes of the co-owners in accordance with article 1.255 CC, which is only applicable to regulatory standards.
- b) Resolutions may be adopted on all elements contributed as common items, which today are not, such as gardens, upper pools, façades of the buildings, etc.

9. PROPOSAL FOR ACTION TO BE TAKEN

In order to adapt the effective functioning as a single community to all of the Communities making up the Complex, the margin of autonomy provided under article 24 LPH should be utilised for choosing the legal form for the organisation of residential complexes.

The current “Agrupación” of Communities set up in 2004 will have to be adapted and converted to legal requirements, combined with the standard regulation for elements that do not fall under the joint ownership of the “Agrupación”.

This atypical situation will bring greater freedom to owners for organising themselves, and will also allow for a more flexible legal framework governing multiple properties and entitlements affected.

We propose taking advantage of the framework for private residential complexes, with resolutions adopted by the owners as part of their margin of freedom of choice, with the restrictions of imperative law.

The proposal to be considered by the owners of the "Agrupación" of Communities would be as follows:

1. Continuing with the present system for the Community of Alcazaba Beach as a single community will require adopting resolutions and rectification of the deed of constitution of the "Agrupación" of Communities.
2. The course of action proposed must previously be studied by a tax expert who will advise the Complex and verify/adapt the procedure proposed in order to avoid tax expenses.
3. Taking as a basis the legal requirement of the existence of common elements in order to validly set up and register the "Agrupación" of Communities.
4. The formula of the "Agrupación" of Communities or any other formula that is not a Residential Complex set up as a single community of owners, is not legally permitted to function as a community independent from the communities of which it is composed when taking the most important resolutions for the complex (e.g. the seafront pathway or pedestrian access to the beach under construction). Under Article 24.3 of the Common Property Act the following are necessary:

- a) Prior adoption of resolutions by each of the Communities when, depending on the subject of the resolution, they have to be adopted by a qualified majority, higher than a simple majority. Any modification of the bylaws requires a qualified majority and this resolution needs to be previously approved by the existing communities.
- b) The resolutions of the "Agrupación" are limited to the property elements, streets, amenities and common services.

To avoid these limitations and unify the functioning of all the Communities and complexes of the Complex, the **most appropriate concept from the legal aspect is the transformation of the current "Agrupación" of Communities into a Residential Complex set up as a Single Community which incorporates all the communities and residential complexes that have been constituted**, article 24.2 letter a) of the Common Property Act.

We recommend that before formally calling the meeting of the "Agrupación" of Communities of owners referred to above, the tax implications of transforming the "Agrupación" of Communities into a residential complex set up as a single community should be analysed, under the terms of article 24.2.a) of the Common Property Act. The obstacle to this transformation is that it could involve a high tax expense.

With these assumptions, the procedure to follow, once validated by a tax advisor and the owners of the Complex are:

- To call and hold a meeting of the owners of all Phases of the Complex, in representation of the communities of owners, for the resolution on the functioning as a single community, when the tax expense permits.

The terms of its functioning will be those of the following resolution which would correspond to the "Agrupación" of the Community of Owners.

- If there is no tax expense, or if it is low, we recommend converting the current "Agrupación" of Communities into a Residential Complex set up as a Single Community, amending the bylaws in the terms described below.

The concept of a Single Community Residential Complex is found in article 24.2 letter a) of the LPH, for setting up and functioning as a single community.

In order to convert the present "Agrupación" of Communities in Complex into a single community the following are required:

- a) Unanimous agreement of the apartment owners of the five phases, article 17.6 LPH, and,
- b) Administrative authorisation from the Estepona Council, article 10.3 LPH and 26.6 TRLSRU, before executing the public deed.

Option 2 supplementary to 1.

If the tax expenses of the transformation of the "Agrupación" of Communities into a Single Community Residential Complex are high, it is proposed continuing with the current format of the "Agrupación" of Community.

A meeting of the "Agrupación" of Communities should be called and held with the following agenda:

1.1. Resolution for the constitution of the "Agrupación" of Communities of the five phases of the Complex, electing a Committee in accordance with article 4 of the "Agrupación" bylaws.

1.2. Resolution for rectification of the public deed of constitution of the "Agrupación" of Communities in the following terms:

- a) Description of the registered properties on which common use and maintenance is established, essentially the description of the complexes of Phases I, II and III plus the pool, gymnasium and sauna of Phase IV.
- b) Description of the fourteen registered properties that are set up as elements for common use, with reference to the prior resolution to be adopted by the owners of Phases I to III which ratifies their contribution as elements for common use of the "Agrupación" of Communities.

These fourteen properties also have a percentage of participation in the three Residential Complexes of Phases I, II and III, whose description and participation has to be included.

- c) Description of the elements or properties on which common use or ownership is not established but rules or regulations are drawn up which grant powers to the "Agrupación" of Communities. For example, on the appearance and maintenance of façades of the buildings, as currently regulated for the "Agrupación" of Communities.

1.3. Amendment of the bylaws of the "Agrupación" of Community, after receiving tax advice.

- a) In order to define the regulations relating to the elements for common use, those relating to elements of Communities for Phases subject to rules and common maintenance (façades and roofs) and those elements of Communities not subject to rules and common maintenance (e.g. lifts of Phases IV and V), establishment and regulation of the common services to be provided and funded by the Association (mancomunidad) (administration, gardening, security, maintenance of areas of common use or ownership, etc.).
- b) Modification of article 9 of the bylaws of the "Agrupación" of owners which requires adopting resolutions, even in second call, by owners representing over half of the participation percentages of the apartments of the five phases, whether they are present at the meeting or not.

We propose that the resolutions be counted in respect of the owners present at the meeting and in accordance with the majorities required in the Common Property Act;

The above system for adopting resolutions would be maintained in a Residential Complex with common elements, classified as being for common use in the current registration entry, organised under the system of "Agrupación" of Communities.

The system of "Agrupación" of Communities is mixed, as it also includes specific rules for the Complex, which are useful for continuing with those applied in the functioning and management in recent years.

These conclusions are set out in the legal report drawn up on 23 January 2020.

Madrid, 25 February 2020.

M DOC LEGAL, S.L.U.

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