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A) GENERAL COUNCIL OBJECTIVES

1. UNIVERSITY STUDIES

The General Council of Property Managers in Spain deems that the property sector, that is the sector with the greatest economic value and to which the presence of the housing adds a social character, must have a number of exclusively trained professionals to intervene in all the activities that are undertaken in the sector. A single professional with a specific university training who can work to promote buildings, communities and cooperatives and act as an intermediary in the management of buildings, in advising on property – that is, in all the dealings and requirements that are generated by the industry.

This profession should have a specific syllabus for the industry; studies that must be university level, and have an official nature with validity throughout the country.

Several years ago, this General Council initiated negotiations for the official confirmation of these studies, with the backing of several universities, although the recent situation created by the Spanish university system's integration into the European university studies arena forces this request to be reconsidered, adapting it to new demands.

According to the Decree 693/1968 of 1 April, through which the National Association of Property Managers is being created (Official State Gazette [BOE] of 9 April), access to the Property Manager profession is permitted through recognition of certain advanced university degrees: Graduates in Law, in Political, Economic and Business Sciences, in Business, in Management and Leadership of Companies, in Architecture, in Chemical Sciences, holders of Diplomas in Business Sciences, teachers of Commerce, Lawyers in the Courts of Justice, Agricultural Engineers, Forestry Engineers, Veterinary Medicine, Technical Agricultural Engineers, Forestry Assistants, Technical Forestry Engineers, Technical Architects, Graduates in Labour Relations and holders of Diplomas in Labour Relations, Technical Public Works Engineers, Civil, Canal and Port Engineers, Industrial Engineers and Technical Industrial Engineers, Mining Engineers, Geography and History graduates, graduates in Finance and Accounting, Technical Engineers in Topography, Computing Engineers, Technical Telecommunications Engineers, Psychology graduates, graduates in Philosophy and Educational Sciences, and Technical Naval Engineers (*), and to those who pass a test that currently consists of a curriculum approved by the former Ministry of Public Works which lasts three years, that affords 180 credits, and which is taught at present via seven Spanish universities that have created their own degree that is adapted to this curriculum, and with which this General Council has signed an agreement.

Until they obtain official university studies, our organization has been supplied with the degrees appropriate to each university with whom it has an agreement which, although they are not official, have academic value and constitute a rigorous university education.

() The list has increased with new courses, given that their studies are considered to be equivalent to those listed in Article 5, 1 of the said Decree, all in accordance with the Judgement of the Third Chamber of the Supreme Court, dated 9th of February 2004, through which the right of access to the licensing of graduates in Architecture was recognised.*

2. STATUTES.

In addition to the above situation, this Council has an endemic problem with its General Statutes, which were approved through the *Resolution of the General Secretariat of the Movement, dated 28 January 1969 (Official State Gazette of June 3)* and regulating what at that time was a National Association. Later, according to the Royal Decree 1612/1981 of 19 June (Official State Gazette of 31 July), the establishment of the current Regional Associations of Property Managers and of the General Council of Associations was authorised. Since this latter date, approval of the new General Statutes has been attempted on many occasions, without this being achieved. Recently, the proposed text with the General Statutes proposal from the Property Management Profession and from its General Council of Associations, adapted to the requirements of the designated Omnibus Law has just been submitted to the Ministry of Public Works for processing and subsequent approval by the Government, if applicable.

3. COLLABORATION

This Council is aware that the role of Professional Associations, in their capacity as public law corporations, must extend beyond simple corporate functions for its members' benefit, and must also act in the interests of society, in those matters which are related to the professional activities of its members. Based on this understanding, according to its capabilities, it has lent its collaboration in the dissemination of the law on urban leases in cadastral revisions in technical reviews of old buildings, and most especially in the proposition of a Popular Legislative Initiative for the reform of the Horizontal Property Law, obtaining the support of 830,000 signatures and whose initiative was approved unanimously in the Congress of Deputies, being the only popular proposal to date that has achieved the status of law.

We wish to reiterate again our unconditional offer of collaboration in all that which relates to the housing sector. We Property Managers have been highly active in our participation, and have sent out several reports and suggestions which have been requested by the current Ministry of Housing.

B) THE INVOLVEMENT OF PROPERTY MANAGERS IN REAL ESTATE ACTIVITY

The professional activity of the Property Manager extends throughout the whole property sector. In this way, they manage buildings on a horizontal property basis, as well as rural leases, leases of urban property and sites, shopping centres, the establishment of housing cooperatives and communities of property owners for building their own homes, as well as the management of collaborative urban bodies envisaged in the Land Law (Administrative Taxpayers Associations, Conservation Organisations and Compensation Boards).

It is not easy to summarize the characteristic functions of Property Managers, but it can be noted that the Manager is responsible for all the activities and efforts that are necessary to meet the obligations that their role demands, in the name of preserving the property and exploiting it to its best economic advantage, extending this power to where the owner could exercise it within the realm of management without further limitations than are expressly given. In other words, with respect to the entrusted property, the manager has the same powers of management as its owner, and may perform all the activities and arrangements that are appropriate to undertake their duties in the best possible way.

THE CURRENT SITUATION OF THE PROPERTY SECTOR

The property sector is, by its very nature, one of the most dynamic and changing sectors. New buildings are constantly emerging that require a qualified professional to manage them. Property Managers have the training and knowledge of legislations as varied as civil law, rural and urban leases, legislation on state subsidised housing, horizontal property, employment, tax, town planning and construction laws, as well as the practical sense with which to attempt to resolve the multifarious situations that arise in the property sector.

Among the new urban complexes at the present time, special mention must be given to housing estates, the communities of property owners for building their own homes and large shopping centres, some of which do not have specific legislation.

- Buildings on a horizontal property basis.

Within the field of horizontal property, the manager is responsible for: maintaining the status of the property with all its facilities and services, and is vested with the necessary authority to notify title holders who infringe its good supervision, they must draw up revenue and expenditure budgets and should also conduct the final accounts. They must attend to the preservation of the building and its services, taking into account that this obligation, depending on the size of the property and its facilities, may result in the hiring of porters, caretakers, cleaners, gardeners, mechanics, plasterers, etc, each one with its own labour agreement and the immediate consequence of developing payrolls and carrying out the

settlement of social security, deduction of personal income tax (IRPF) and the labour relations they involve. The property managers have to agree and monitor the maintenance contracts with specialised companies and as a matter of course, the general facilities of the property should be inspected regularly, with the appropriate technical assistance. The resolutions of the Board should be implemented and the charges and payments should be met, which involves the keeping of accounts. A Secretary of the Board may be appointed (which is what happens in the vast majority of cases), who should also be the person to make official announcements and keep the minutes of the meetings of the Board. This person is responsible for the custody of the building's documentation and, finally, should perform any other duties conferred upon them by the Board.

The development of administrative activities will have to be governed by the general rules of the Horizontal Property Law and also according to that which is provided in the Statutes and Code of Internal Procedures of the property, if there are any, and if these are not contrary to the provisions of the necessary law.

- Buildings on a lease basis.

In terms of leases, the professional actions of the Property Manager are drawn up through their relations with the property owner, a single person, either an individual or a legal entity. Now there is but one negotiator and a single criterion, in place of the various people with various criteria, which occurs with horizontal property.

The management of these properties continues to be aimed towards the preservation of the asset entrusted, to its repair and maintenance, but it has an additional objective which is to obtain the best possible return.

The management of leased properties entails great difficulties when, because of their age, the same contracts were awarded at different times, which may be regulated by different legislations, so that the management of an old building is nothing like one of more recent construction.

If the property is old, it must be born in mind that its upkeep and maintenance may turn out to be costly – that is, because of its age, it is almost certain that the majority of the tenants enjoy privileged contracts with inadequate rents, even with the update planned in the existing Urban Lease Act. Because of its poor condition, when a living space is vacated, the rents payable cannot be set very high in view of the characteristics of the building.

On the other hand, the administrative management is much easier in newly constructed buildings, which are designed and planned to be handed over for leasing, bearing in mind market conditions, the costs, the profitability, the features and the services that make it competitive with the rest of the property that is available. Furthermore, only a single legislation is applicable, which is much simpler and more liberal than the previous ones.

The main purpose of the management of these properties is focused on their profitability, whose management requires, as indispensable measures: the effective recovery of the rent due, the impact of costs for services, repairs and taxes and, where legally applicable or through a valid agreement, the careful selection of tenants and, in the promotion of new buildings, adequate publicity.

- Communities of property owners for the construction of their own homes.

One facet of being a Property Manager is the promotion, organisation and development of communities of property owners who are interested in the construction of a building, and the allocation of an individual home to each one of the community members. That is, from the drafting of the Statutes that regulate this type of community to the acquisition of the site by *pro indiviso* instalments (that will correspond with the portion to be partaken, that will be later be allocated), continuing through the contracting phase of the material implementation, determination and collection of the corresponding special levy that relates to each owner, and then proceeding to the preparation of the Statutes and also to the deed of new works declaration, physical division and the constitution on a horizontal property basis, and finishing with the allocation of each living space to a different owner. The whole of this process is a characteristic function of the Property Manager.

- The management of shopping centres.

A new aspect in management is the shopping centres, which are ever more numerous and really are a type of real estate on a horizontal property basis, with private spaces and common facilities and services. The manager of these centres is responsible for all the administrative functions already mentioned, both those inherent to the horizontal property and also to those leased (because the shopping centre may have premises for sale and for rent). Furthermore, added to these obligations, is that of an intensive participation in marketing to promote the centre, both in relation to the traders established in the centre and also to the customers.

C) ACCESS TO THE PROPERTY MANAGER DEGREE

Currently the degrees that entitle the holder to direct access to licensing are the following: Graduates in Law, Political, Economics and Business Science, in Business, Business Management and Leadership, in Architecture, in Chemical Sciences, those holding Diplomas in Business Sciences, teachers of Commerce, Lawyers of the Courts of Justice, Agricultural Engineers, Forestry Engineers, Veterinary Medicine, Technical Agricultural Engineers, Forestry Assistants, Technical Forestry Engineers, Technical Architects, Labour Relations Graduates and holders of Diplomas in Labour Relations, Technical Public Works Engineers, Civil, Canal and Port Engineers, Industrial Engineers and Mining Engineers

In 1994 the Official School of Property Managers was formed and it was approved by the former Ministry of Public Works, which has developed a curriculum that is taught by those universities who want to formalise an agreement with the School, for the purpose of creating a separate degree in property studies, based on the programme approved by the School. Passing this study programme entitles the holder to obtain the degree of Property Managers. At this time, the agreements have been signed with the most prestigious Spanish universities to teach the approved study programme by the Official School of Property Managers.

The essential purposes of the Association of Property Managers are: the regulation of the profession within a legal framework for the benefit of society as well as for the general interests of the profession, monitoring of professional practice, facilitating understanding and achievement of all kinds of legal provisions that affect their activity, enforcing ethical standards and establishing a disciplinary system to sanction infringements, defending professional interests, exclusively representing the profession and providing assistance to the Public Administration. Furthermore, these Associations are also obliged to establish a financial guarantee and professional indemnity insurance for its members.

- PROFILE OF PROPERTY MANAGERS

Between 1995 and 2009, the academic profile of the new additions to the Regional Associations of Property Managers was as follows:

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| • Law | 64% |
| • Economics-Business- Teachers of Commerce | 28% |
| • Solicitor | 0.5% |
| • Technical Agricultural Engineers, Forestry Engineers, Veterinary Medicine and Political Science | 1% |
| • Graduates of Architecture and Technical Architecture | 1% |
| • Social Graduates | 5% |
| • By examination | 0.5% |

- COMPULSORY LICENSING FOR PROFESSIONAL PRACTICE

Beyond the Decree 693/1968, of 1st of April, through which the National Association of Property Managers was formed and whose preamble recognised the “*social necessity*” of the profession, “*because it is society that has to make use of the activity of those who practice the profession*”, and the subsequent Royal Decree 1612/1981 of 19th of June authorising the establishment of Regional Associations and the General Council of the Association of Property Managers in Spain, no other professional association exists that is legally attributed this professional activity, and for the practicing of which (Article 2) deemed expressly that “*in order to practise the profession of rural and urban Property Manager legally, an*

indispensible requirement will be membership of the professional body, which is created through the current Decree”.

- CENSUS OF MEMBERS

The census of the members on the 31 of December 2009 amounts to 15,031 in the whole of Spain.

D) RESPONSIBILITIES OF THE PROPERTY MANAGER

The undertaking of a profession entails certain rights but also specific obligations and responsibilities. Furthermore, it is good to talk about responsibilities, because their seriousness will be the yardstick of importance for the profession.

a) *Vis-a-vis the administered.*

Even if doubts still exist, the administrative contract is deemed to be mandated, and certain obligations apply to the same, as is consistent with the provisions of the Civil Code, and thus, the agent is liable for any harm or damages incurred (Article 1718); he/she must comply with the instructions received from the principal (Article 1719), he/she is obliged to account for his or her operations and to credit that which might have been received by way of the mandate (Article 1721), he/she is debtor for the interest of the amounts that applied to personal usage (Article 1726) and is responsible for wilful misconduct and liability (Article 1726).

b) *General responsibilities inherent to the practice of management.*

In accordance with the specific rules that constitute the management contract, following the Civil Code, the manager is required to administer the properties subject to the law, ensuring common interest, performing duties that lead to its preservation and government, and working to obtain optimal performance according to the usage planned for the property.

It is not possible to detail the duties that a Manager should develop for the proper accomplishment of their responsibilities on a case by case basis, and these will differ depending on whether the work concerns rural or urban properties, and within this field, if these are on a horizontal property basis or given up for lease. However, three groups of professional obligations could be established: one, common to any kind of property, which would be related to the preservation of the property and which would require actions of prevention, maintenance and repair, differentiating the ordinary and unique works in these latter aspects. These works require the owner's instructions or the agreement of the Board of Proprietors. Within this common group, legal knowledge would have to be included in relation to the specific legislation applicable (rural or urban leases, the law of horizontal property, Civil Code regulations, etc.), fiscal, administrative and occupational obligations and also accounting knowledge (regulation of receipts and payments, accountability, budgeting of

income and expenses, etc.). Another set of obligations are enforceable in real estate on a horizontal property basis, such as the implementation of the resolutions of the Board and custody of the documentation from the property. And, finally, in relation to the rental properties, the professional will have to carry out the obligations relating to the contracting (knowledge of the market for setting adequate rents, drafting of contracts with the correct clauses), maintenance of rents (application of legal increases and agreements, as well as the effects of works and services), monitoring of irregular situations (possible relinquishments, subleasing, transfers, etc...).

The violation of these duties involves responsibilities. “They continue to be subject to paying compensation for the damages and harm caused in the carrying out of their duties where wilful misconduct, negligence or defaulting is incurred...” (Article 1, 101 Civil Code). There is not time to relate all the items that would be applicable in demanding accountability for failures because this involves going deeper into the general principle of professional practice and into the penalties that could ensue when this is undertaken inadequately.

E) POPULAR LEGISLATIVE INITIATIVE

On 6 April 1999 an extremely important reform of the Horizontal Property Law (Law 8/1999) came into force. This reform was prompted mainly by the Popular Legislative Initiative proposing a Law concerning the collection of community debts, as advanced by Property Managers and supported by more than 832,000 signatures of Spanish citizens.

This has been the first Popular Legislative Initiative taken into account since the enactment of our Constitution on 6 of December 1978. For the first time in twenty years, a Popular Legislative Initiative makes the citizens’ participation effective in the drafting of new regulations, a right enshrined in our Constitution.

The proposal of the Property Managers on reclaiming community debts was based on the fact that late payments were the Community of Property Owners’ biggest problem. The unpaid community bills were worsening good neighbourly relations, and prevented the undertaking of work on preservation and maintenance that the building might require, besides impeding the payment of the invoices from suppliers in the Community.

More than eight years after the Law 8/1999 on Horizontal Property came into force on 6 of April, the results of what the current Law has involved for the Communities of Property Owners and their neighbourhood relations have been analysed. **It should be noted, as the most positive aspect, the reduction in arrears**, which had risen from **180 million to 39 million Euros in four years**, which must make clear, nevertheless, the need for further reform of the Horizontal Property Law in the other aspects that have not produced results as favourable as has happened with the recovery of the debt for arrears in the Communities of Property Owners.

Madrid, 6 April 2010