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## **REPORT ON GARDENING MODIFICATIONS IN COMMON ELEMENTS**

### **AT THE COMPLEX HACIENDA RIQUELME**

#### **1. Scope of the Report.**

This Report has been produced in order to explain the regime of majorities for the gardening modifications. In particular, we are referring to the changes of location of the trees which have been required by different owners.

#### **2. Analysis of the legal situation: Law and Bylaws.**

The Law of Horizontal Property (hereafter the HPA) does not establish a clearly defined regime for the modification of the gardening in the common elements. The Court case has reflected that the modification of the gardening could be considered as an action of management (*acto de mera administración*), being necessary the simple majority (art. 17.7 HPA). In this case, only the Board of the General Community would vote and decide.

On the other hand, the modification of common elements requires unanimity (art 17.6 HPA). As well, art. 24.3.b) of the HPA establishes that when a qualified majority is required, this same majority has to be obtained in the Subcommunities too. In this case, this would apply in the involved Sub-communities.

The Statutes of the General Community establish, in its article 5.F), the common elements of the Complex are: "The roadways on the complex, **the green areas**, gardens and open spaces that are not configured as private elements in the corresponding declaration of new civil engineering work or horizontal property and, in particular, the unbuilt portions of the plots for residential-collective use." (*Los viales del complejo, las zonas verdes, jardines y espacios libres que no aparezcan*

*configurados como elementos privativos en la correspondiente declaración de obra nueva o propiedad horizontal, y especialmente las porciones no edificadas de las parcelas de uso residencial colectivo.”)*

Therefore, the changes in gardening should be considered a modification of common elements and requires unanimity.

In this sense, there is a high number of judgements which establish that is necessary an unanimous vote to modify the common elements (Madrid Provincial Court issued on 30<sup>th</sup> September 2014, Córdoba Provincial Court, on 31<sup>st</sup> January 2013, etc.). We have not found judgements expressly related to gardening modifications, but our legal point of view is that the Community should apply them by extension and analogy.

Therefore, it would be necessary the unanimous vote of the General Community Board and, at least, the unanimous vote of the owners of the involved Sub-communities.

### **3. Conclusions.**

Due to the legal consideration of the green zones as common elements, any modification should be approved by a unanimous vote of the General Community and, at least, the involved Sub-communities. On the other hand, if the modifications or changes are due to health and safety issues, it would require the simple majority (as it is not a qualified majority, this could be decided by the Board of the General Community).

This is a strict legal point of view, but Resortalia has to give the most accurate legal advice in order to avoid legal challenges, given that in a possible legal claim the Court could consider the agreement of simple majority as null and void.