

CASE STUDY 002

AVAL 2014

The official Junta de Compensacion Statutes instruct us to share the costs of Cabrera Poligono 1 Maintenance and Infrastructure in proportion to land ownership. This means that Home Owners and Land Owners (Developers) should share the costs in proportion to their respective land holding.

The Junta has not followed the legal Statutes since 1993 when the concept of the so-called "1993 Agreement" was established. The idea was that the Home Owners would pay for all the Maintenance costs and the Land Owners (Developers) would cover the Infrastructure costs.

To understand the AVAL situation, the following statement from the Treasurer (Developer and single biggest Land-owner) should be read:

Back in the early days 1989, when the Plan Parcial of Cortijo Cabrera was being prepared, one of the legal conditions for approval was and still is that a Bank Security for the Plan Parcial has to be lodged in the Town Hall. Peter Grosscurth at that time had some difficulties in obtaining this Aval from his bank, and asked me if my bank would provide it for a short period of time, as he was expecting some funds, as at that time I was building Fuente de Cabrera, every single building here including the ones I was building were then classified as technically illegal.

I agreed to this request but only for a short period of time.

My bank gave me this Aval for the Ayuntamiento on 4 October 1989, for the sum of 26.686.983 pesetas, in euro's its 160,392€ ,but before we could revert it back to Peter, he passed away 4 years later on the 22 Oct 1993.

Had my bank not provided the Aval, 90% of all the properties in Cabrera would not have been built, consequently Cabrera as we know it would not exist? Whilst the development of Cabrera continued at a steady rate I was indolent, paying the whole of the annual Aval. However, as no development has taken place since 2007 then this ongoing cost is unfair an unsustainable from one person. To maintain Cabrera as a legal ongoing urbanisation, it should be added to the Cabrera overall running cost to ensure continuity. The cost for the Aval is 1604 euro's per year.

So, if the above is to be believed, it seems that Peter Grosscurth (effectively, Founder of Cabrera) convinced the Treasurer\Developer to fund an Aval in order to enable the further development of Cabrera and to guarantee the completion of the Urbanisation.

The Treasurer\Developer then passed the costs of the Aval onto the Purchasers (Home Owners) in 2014. So the Purchasers (Home-Owners) have now acquired an ongoing commitment to maintain the AVAL payments to enable the Treasurer\Developer to secure ongoing building licences. The Land-Owner \ Developers pay nothing towards this.

But, it doesn't stop there:

It seems that, subsequently, the Home Owners found out that they had taken over the AVAL commitment itself (Bank Guarantee of €160,392) thus seemingly freeing the Treasurer and his ex-wife of the commitment.

It seems that this obligation to take over the commitment itself in addition to the payments was stated in the Spanish Agenda when voted on at the AGM but it was not mentioned in the English translation.

While there was strong opposition to paying for the AVAL, let alone taking over the liability, the decision to pass this on to the Home-owners was made on the basis of the Developer's vast majority vote.

So the Junta Treasurer has managed to offload the AVAL payments **and** obligations onto the Home Owners.

The current situation is that the Home Owners have paid the annual premium since 2014 (currently €1634.00 per year).

None of the original AVAL documentation has been found or supplied by the Treasurer as requested. At some point this AVAL could be called upon and the holders of the AVAL (Home Owners) would become liable for an amount of up to €160,392.

It should be noted that the AVAL relates to infrastructure provision and not maintenance. Therefore the expenditure should be charged against an urbanisation budget. However, because the Junta never produce an urbanisation budget it can only be charged against maintenance.

Under the 1993 agreement the Developers are responsible for urbanisation costs so this cost and liability should be shared amongst the developers.

Since 2014, The Home Owners have paid for **ALL** the costs of the AVAL and the Developers have paid **NOTHING AT ALL**. Instead of the Developers, the Home Owners are now carrying the potential liability for €160,392 under the AVAL.

CAUTIONARY NOTE TO HOME OWNERS

IF YOU AGREE WITH THIS WAY OF WORKING YOU SHOULD NOT BE SURPRISED IF THE VALUE OF YOUR HOME IS AFFECTED AND THE TIME TAKEN TO SELL IS EXTENDED.

FOR THOSE CONTEMPLATING SELLING THEIR PROPERTY, PLEASE ENSURE THAT YOU INFORM YOUR BUYER OF ALL THE KNOWN RISKS, ENCUMBRANCES AND LIABILITIES ON THE PROPERTY.

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