

CASE STUDY 012

INVOICING CONCERNS

22 January 2021

The official Junta de Compensacion Statutes instruct us to share the costs of Cabrera Poligono 1 Outsourced Services, 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 Outsourced Services and Maintenance costs and the Land Owners (Developers) would continue to develop the Infrastructure recover the Infrastructure costs in the usual way.

Note that under both systems, the Home Owners made their required Infrastructure payment as part of the purchase price to the Developers. In summary, the difference between the two systems is that the Developers avoiding paying the costs of Outsourced Services and Maintenance to support development of the Urbanisation.

The Almeria Court Judgements, dated 13 December 2019 and 23 November 2020, clearly stated that the Statutes of the Junta de Compensacion Cabrera should be followed.

On 19 January 2021, we were all issued with our invoices for the forthcoming 6 months.

The Junta Board has issued invoices to the Homeowners without providing:

- A Treasurers Report (Article 17 of Statutes)
- Details of commitments/loans entered into or planned
- Any indication at all or approval of a proposed budget for 2021(Article 17 of Statutes)

In 2019, the Treasurer paid three invoices to a single company totalling €82,575.13. No details of works performed, or material and labour charges were provided. The description on two of the invoices shows only "Payment due from the Junta de Compensacion". The Treasurer has ignored our request for specific details of the transactions.

We should be rightly concerned. We have now been served with invoices against an undeclared forecast budget. Against this, the Junta has been paying out large amounts to companies for unspecified services. We could not possibly envisage a more unhealthy arrangement or lack of control.

The Junta's primary obligation is to manage the planning and progress of the Urbanisation. If you take a closer look at your Factura / Invoice which was sent out on 20 January 2021, you will see that this is not really the case.

Instead, the Junta seems to have converted itself into a Water Utility Company. Depending on your individual circumstances you may see that more than 50% of your bill is for Water Services. Those with sharper eyes may have also noticed that the unit price for water was increased by 20% in the June 2020 invoice although nobody seems to have been consulted or informed of this.

It is worth noting that the AGM Minutes (9 December 1998) clearly state that:

“It is against Spanish law for the Junta to sell services in exchange for money”.

Jose L. Jerez (Acting Secretary of Junta de Compensacion “Cabrera”) personally signed off these minutes. Today, he is the current Junta Treasurer so he is very well positioned to understand the legalities of the situation.

So, why is the Junta now selling water services to residents in exchange for money? The immediate answer that jumps to mind is that the Junta wishes to conserve water and feel that they can do so, by charging for it. However, we believe that there is an alternative motive.

The reason lies in the desire on the part of the Developers to distinguish between “Maintenance” and “Services”. It seems that they may well be under the misplaced belief that anything that they label as “Services” is something that they will never be obliged to pay for. In addition, it is easy under the current Junta Board to migrate “Water Services revenue” to cover other maintenance expenses or external service purchases thus lowering the apparent cost of these expenses for which the Developers are also liable.

Whichever way you dress it, all the money collected by the Junta should go into maintenance and external services such as accountancy services (for the benefit of Homeowners AND Developers). Unfortunately, we have also had to ward off efforts to spend our money on infrastructure such as transformers.

As the Junta is acting as a water utility company which provides services (albeit illegally) we need to revisit the previous questions posed to the Junta Board (8 November 2020). These questions have still not been answered by the Treasurer.

According to Spanish law 37/1992 deliveries of goods and services are subject to IVA. Registration for IVA is compulsory for any entrepreneur, entity or professional developing any transaction with tax significance in Spain.

Tax representation is also compulsory.

Question 1: Could the Junta confirm that the entity is registered for IVA and if not, provide details and written confirmation of the exemption category being used to eliminate the need for registration?

Question 2: Could the Junta confirm the official IVA basis under which it invoices Cabrera owners?

Question 3: Are Junta invoices to owners issued as *facturas completas* or *facturas simplificadas* under Spanish IVA regulations?

Question 4: Can the Junta explain why invoices issued to homeowners are not fully compliant with current regulations for both the *completa* and *simplificada* forms of invoicing?

In addition, please could the Junta Board provide us all with the following:

1. A briefing note, with text agreed and signed off by the Junta Board, on the impact of moving to the Junta Statutes and how it will affect owners in future.
2. A briefing note, with text agreed and signed off by the Junta Board, explaining the full reasons for appealing the Court decision, the expected cost of this action and the benefits that will accrue to owners as a result of this cost. A full cost benefit analysis would be helpful.
3. Written confirmation that an appeal has actually been lodged *with the Court*, showing signed and stamped Court papers and the date. It is not yet clear if this has happened.

An instruction to a lawyer to appeal the ruling does not suspend the ruling in the eyes of the law. The opening remark from the Treasurer's note of 21 January 2021... *once the sentence has been appealed...* suggests that it has not been appealed.

If the ruling has not been appealed within the required time limit, then the Junta Board is obliged to raise the January 2021 invoices on the basis of the Statutes.

The operation of the Junta Board is a source of great concern to many Owners. So, the Junta Treasurer needs to take urgent steps to communicate fully and openly with the Home owners to address all the issues raised above.

The protracted silence on all queries for over a year is baffling – why would you not wish to communicate fully and re-assure all the Home Owners?

While the Junta Board is responsible for creating this unacceptable situation, we must not lose sight of the fact that the Town Hall is accountable and responsible for allowing this to happen as they are supposed to control the Junta Board.

Kind Regards

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