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LUNES, 10 DE FEBRERO DE 2014

La reforma de la Ley de Propiedad Horizontal y la división de locales 1

La Ley 8/2013, de 26 de junio, de rehabilitación, regeneración y renovación urbanas ha reformado parcialmente la Ley 49/1960, de 21 de julio, de Propiedad Horizontal.

A pesar de ser una reforma parcial, ha modificado aspectos básicos en el funcionamiento de la comunidad de propietarios, como el régimen de adopción de acuerdos en la Junta General (artículo 17) o el de realización de obras y actuaciones (artículo 10).

De entre todo el contenido de la reforma me voy a referir en esta entrada a una cuestión particular, de importancia en la práctica notarial y registral.

Se trata del supuesto de división, segregación, agrupación o agregación material de locales privativos en la propiedad horizontal.

La reforma incide en dos aspectos fundamentales: el régimen del acuerdo de la comunidad autorizando estos actos y su sujeción a autorización administrativa.

Hasta ahora el artículo 4 de la Ley de Propiedad Horizontal, actualmente derogado por la Ley 8/2013, regulaba estos actos de modificación jurídica de locales, disponiendo que:

"Los pisos o locales y sus anejos podrán ser objeto de división material, para formar otros más reducidos e independientes, y aumentados por agregación de otros colindantes del mismo edificio, o disminuidos por segregación de alguna parte.

En tales casos se requerirá, además del consentimiento de los titulares afectados, la aprobación de la Junta de propietarios, a la que incumbe la fijación de las nuevas cuotas de participación para los pisos reformados con sujeción a lo dispuesto en el artículo 5.º, sin alteración de las cuotas de los restantes".

En el análisis de esta norma, del que partiremos para comentar después el alcance de la reforma, cabe distinguir los siguientes aspectos:

su ámbito.

Deben distinguirse en relación con pisos o locales en una división horizontal, diversas situaciones posibles:

- La división y agrupación o comunicación material, que no afecta a la estructura de la comunidad en cuanto no varían el número de elementos privativos y sus cuotas.

- La constitución en un piso o local de un régimen de sub-comunidad. Lo analiza la Resolución DORH de 24 de enero de 2002. Se trataría de crear dentro de un local mayor que forma parte como elemento privativo de una división horizontal, varios locales, los cuales participarían en copropiedad en algún elemento común que perteneciera también al local originario. Para eso no se acude a la división o segregación jurídica, sino a constituir una división horizontal dentro de dicho local que a su vez es elemento de otra división horizontal. Según la DORH "no existe prohibición legal o estatutaria sobre el establecimiento de subcomunidades y, en el caso concreto, el propietario del local, sin alterar el mismo ni su cuota, ha adoptado el vender la propiedad a diferentes personas y como forma de organización interna de la comunidad así creada las normas de la propiedad horizontal como mejor forma de regular los accesos comunes y el reparto de gastos y adopción de acuerdos, asignando una cuota de participación a cada tranjero en el local sin que en ningún momento desapareciera ni se altere la cuota total del local". La diferencia con la división o segregación jurídica es que no se crean nuevos locales que sean elementos de la propiedad horizontal originaria, en cuanto el local matriz de la subcomunidad permanece inalterado, con su cuota y como un local único, en la estructura de la propiedad horizontal inicial.

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