

BUYING A PROPERTY IN SPAIN: GENERAL TIPS FOR THE PURCHASER

Buying a home in Spain is very different to the process in England.

After having established this point, the first step is to find the property you want. An estate agent can help, but **DO NOT SIGN** any document drawn up by the estate agent or by any third person until your lawyer has checked it. You need to take care when you sign a document, even if it is a small reservation deposit agreement, because you will be obliged to adhere to it, even if it turns out the property is not exactly what you want in the end.

If the estate agent or the other party offers to prepare the purchase contract for you, do not sign it until your lawyer checks it. I know of some cases where the buyer has signed a contract prepared by a third person and then discovered the area established in the contract is not the same one registered at the Land Registry, the boundaries are not correct or the person who has signed the contract had no power of attorney to do so.

Once you have found your ideal home, tell your lawyer so he or she make the necessary checks and set up a purchase contract which protects your rights.

It is also important to decide in whose name are you going to buy the property: you, you name and your spouse, your children, or a limited company. Your lawyer can advise which is the best way to invest to reduce taxes or costs, depending on your personal circumstances.

Before signing the purchase contract or any other contract, like for example a contract of purchase option or a reservation deposit agreement, your lawyer will need to check the following points:

- information of the property that is registered at the Land Registry;
- deed from the vendor;
- latest paid-up utility receipts: water, electricity, telephone, gas;
- latest municipal real estate tax, and rubbish collection;
- latest receipt of the Community of owners;
- any plans that could affect the property at the Town Hall and at the Catastral; etc.

If this is not done, you may end up taking on debts from the previous owner or find out the property has to be demolished, because it has been illegally built. You may also find out the vendor is not in a position to sell because he or she is not the real owner according to the Land Registry or he/ she is not the sole owner and the co-owner is deceased. In this last case, there would also be a problem of inheritance and the purchase could not go ahead until that matter is solved some months later.

All contracts must be in Spanish and it would be helpful if your lawyer translates it in your own language. It must include a full description of the property, details of the previous purchase, full identification of buyer and seller, price and method of payment, etc.

All this information must be checked before signing.

If your seller is a non-resident in Spain, you must retain 5% of the declared price and deposit it at the Tax office on account of the seller's capital gains. Anyway, if the seller had bought the property before 1996, there will be allowances depending on the particular cases.

In order to talk about costs, another point is to determine who should pay them. First of all, we must establish that it is up to buyer and seller, as Spanish Law does not stipulate who must pay. Usually the purchaser pays Notary and Land Registry fees, purchase tax or VAT and stamp duty, when applicable; and the seller pays the Plusvalía and capital gains.

Unlike Britain, in Spain the purchase deed needs to be signed before a Public Notary. If you only sign a private purchase contract, you will not be able to register your purchase in the Land Registry. This is a very important point because the Land Registry is the only guarantee of ownership in Spain.

On this matter, you must take into consideration that the notary in Spain is a public official whose duty is to certify that parties have signed before him, they have declared that the payments are made, he also advises purchaser and seller about their tax obligations. In fact, he makes sure that legal requirements have been met in full, but he is not a private lawyer.

After signing the deed, you must pay 7% purchase tax on the declared price if you buy a second-hand property. If you acquire a new building, you must pay 7% VAT on the declared price and 1% stamp duty. We must also take into account that this rate of VAT will differ depending on the purchase of a plot or a building.

After that, you will be able to have your deed registered at the Land Registry.

Finally, we must add that every owner of a real estate in Spain, non-resident here, must pay yearly different taxes, that is: rubbish collection, municipal real estate tax, wealth tax and non-resident income tax.

It is highly advisable for any non-resident owner of a Spanish property to nominate a fiscal representative to whom the tax authorities can inform about any matter relating to your property. We can assist you in this matter too.

We will also have the utility charges transferred to your own bank account and look for a property insurance if you wish to.

With this short article we hope to help you in your acquisition of a property in Spain. You must, of course, take into consideration that this article does not substitute the specialised and professional advice, where we would study your concrete possibilities and we would look for the most convenient choice for your particular case.
