

An Introduction to the Property Buying Process and the Costs in Spain

Agents

If you are coming to Spain to buy a property chances are it will be through an agent. It is worth noting that currently there is no law regulating this industry in Spain, however, there are two professional associations that require examinations and set standards for their members. These are Agente de la Propiedad Inmobiliaria (API) and the Gestor Intermediario de Promociones y Edificaciones (GIPE). Even so if you suffer a loss through the negligence or error of the agency then you will have a hard time recuperating your money under the current Spanish system. A good pointer then when using an agency is to ensure that they have a Bonded Clients Account which is untouchable except for the stated purpose of the deposit/reservation fee and that all monies go into it, never directly to the seller.

It's worth bearing in mind that agents commissions on the coasts start at around 5% and can go as high as 10%. This high charge is deemed necessary because of the high costs of marketing to a foreign clientele base and the need to network through other agencies and referrers to close the deal. In my own personal opinion this charge was justified 5 years ago when properties were much lower in value in Marbella, but commissions have remained high despite huge rise in the price of property.

The importance of a Lawyer

One of the key steps to a smooth property transaction is to employ a good Spanish lawyer, and they will ensure you receive a copy of all of the above. Furthermore their services will help you with some of the trickier aspects of Spanish property law particularly when buying resale properties. I also recommend that you already appoint your own lawyer before coming to Spain, and have a meeting with them prior to looking at property. Always avoid the lawyer recommended by the agent or the developer, as there will be a conflict of interests.

The most important duties that you should expect from a lawyer are as follows:

- Consult with the land register to check on the properties outstanding debts
- Confirm whether you can get planning permission and apply for you (if applicable)
- Contact the town hall to ensure all other payments on the property have been made
- On new builds they will ensure that bank guarantees and building insurance is in place
- Ensure the seller is legally entitled to sell the property
- Prepare a will to protect your Spanish assets
- Ensure the clauses in the purchase agreement and whatever clauses you agree with the vendor are legal
- Set up accounts to ensure that the deposits are not lost

The standard buying process

Properties in Spain are registered in the Land Registry (Registro de la Propiedad), which documents and hold records of all financial charges made against the property and any other factors which may affect title. The lawyer will check the Nota Simple (part of the property deeds and works as an executive summary) which will show any unpaid charges, such as unpaid mortgages, or loans, or associated taxes. If you purchase the property without this check you will be liable to pay for any encumbrances discovered at the point of sale, and thereafter.

If there charges or encumbrances are discovered you can then negotiate them off of the price with the vendor, or obtain a written undertaking that they vendor will deal with them prior to sale.

Once the property has been checked and you are happy with the agreements, you will be asked to sign a purchase contract (Contrato de Compra Venta) and the lawyer will then ensure that it is properly notarized. All documents in Spain that require proper binding protection of the law need to be checked and signed by a Spanish recognized notary.

The lawyer will also check in the town hall to ensure that all utilities bills have been covered, again you are liable if they do exist and you have purchased with due diligence. If you are buying a plot or refurbishing a property the lawyer will also check out the prospect of obtaining the relevant consent from the Town Hall and other associated authorities.

The grant of Power of Attorney

It may not always be convenient to fly back and forth to Spain, the grant of Power of attorney is a formal legal document through which you can give someone else the power to do certain things on your behalf; this includes signing on your behalf at the notary's office.

Granting your lawyer power of attorney ensures that they are accountable to the Spanish equivalent of the Law Society and that they are under a duty to act in accordance with your instructions.

The grant of power of attorney can again be drawn up by your lawyer and this document will have to be notarized. The process can be performed in the UK too. Notaries can be found in most major towns, the document created will then be authenticated for use in Spain by the foreign and commonwealth office in London and the document will then be held by your empowered representative in Spain.

Signing the Purchase Contract

The Contrato de Compra Venta is made between the purchaser and the vendor and sets out the terms under which the property will be purchased.

- Agreed purchase price
- Payment of deposit
- Provision for payment of the balance of purchase monies
- Any extras that have been agreed
- The intended completion date
- All terms and conditions
- A declaration that the purchaser and vendor are legally in a position to buy or sell the property respectively

When you sign the contract you will be required to pay a lump sum deposit that is non refundable and usually around 10% of the purchase price for re-sales and 20-40% for off plan. From the time of payment the agreement is binding on both parties and gazumping is not possible. If required an “Arras” or clause to break the contract can be inserted that allows either party to back out, but to agreed penalties. This is usually with the loss of the deposit on the purchaser’s side, and payment of double the deposit on the vendor’s side.

Completion Phase

It is quite possible in Spain for a vendor and a seller to come to a quick agreement and move to this phase of the purchase and avoid the private purchase contract once the background checks on the property are complete.

When parties are ready to complete the transaction, they and their lawyers will attend the office of the Notary Public. Who will undertake his own search of the Land Register (Registro de la Propiedad) and if there are any undisclosed charges on the property. He will then prepare the conveyance of the title deed or La Escritura de Compraventa, from the information supplied by the vendor and check compliance with Spanish Law.

The notary will then read the whole document in Spanish to both parties, then both parties sign and the purchaser must pay the balance or in situations of alternative payment methods , the notary witnesses that the vendors confirmation that he has been paid.

The Escritura is then passed to the Tax office to be assessed for duty and then to the Land Registry for entry to the property register (Registro de la Propiedad) and your lawyer will then be contact once the Escritura Publica with its official stamp from the registry (the registered deeds that legally state that you are the owner of the property) is ready for collection (usually 2 to 3 months). Until this official registration is complete your application is open to fraudulent selling, first to register denotes ownership under Spanish law. The chance of this happening is tiny but just incase you have bought from a potential con man you can avoid this problem of the vendor selling on the property to a second purchaser by simply asking your lawyer to get the notary’s office to send an official fax to the Land Registry.

Paying for your property

When paying for you property, there are considerations to take into account if you are buying your property from a developer, Spanish company holding the property, offshore company holding the property, Spanish resident or a non resident. These will be discussed in other articles.

Generally you can pay for your property in euros using a banker’s draft, prepared by your Spanish bank, along with a bank certificate that you have imported foreign currency for this purpose. You can also pay by cheque in foreign currency, or direct bank transfer from your foreign account to the seller’s foreign account so that no money enters Spain.

Costs and fees of buying Spanish property

Prior to registration all fees and taxes costs resulting from the transaction will need to be paid. Final registration of the deed may take up to two months. Your lawyer will arrange for the transfer of accounts with the local suppliers of utility services such as water and electricity and organise their payment through a local bank.

Costs of purchasing a property in Spain are different to those in the UK; you will pay VAT (IVA) on a purchase at 7% on a new build property and 16% on plots. If you are buying a

resale Property Transfer Tax is charged at 7%, and then there are other taxes such as Plus Valia, Land registry etc. All in all for purchasing Spanish property you should budget on a 10 to 12% of sales price for the costs and taxes incurred.

The taxes and fees are as follows:

New Build properties

IVA or VAT

Payable for the purchase of new build properties where the vendor is a developer. IVA is 7% for new build property and 16% for commercial premises and land.

I.A.J.D. Impuesto Sobre Actos Juridicos Documentados or Stamp Duty

Payable only for properties that have been newly constructed, at 0.5%

Resale Properties

I.T.P. Impuesto Sobre Transmisiones or Transfer tax

Payable for the purchase of any real estate where the vendor is not a Developer. Rates vary regionally between 6 – 7%.

Plus Valia or Municipal Add Tax

This is a local tax on the increase of the value of the property since it was last sold. Legal obligation falls on the vendor, but it is an accepted practice that the vendor will try and pass the costs on to the purchaser via the purchase contract so keep an eye for this. As the tax relates to increases in land value only, it will vary from location to location; in practice this tax is quite small. However, if you are purchasing an older property ask your lawyer to check with the town hall to get an accurate estimate of cost.

Legal fees: minimum 1,200-1,800€ or 1% of the purchase value.

Notary fees: the scale is fixed by law and may range from 300€ for lower priced properties to 840€ for higher priced properties.

Property Registry fees: as a rule of thumb, 60% of what the notary charges.

Connection charges: for electricity water, gas and drainage: usually between 250 to 500€

Summary

1. Use a bonded accounts or escrow accounts for holding all deposit monies.
2. Use a Spanish lawyer to help you fulfill the full background check on the property and ensure all the paper work is in place as the property carries the penalty not the previous owner.
3. Ensure that you understand the private purchase contract you are about to sign and have your lawyer explain all of the clauses and their potential implications and ensure that there is a dual copy translated into English.
4. Decide on your payment method and ensure that you have all the necessary monies ready and if necessary the powers of attorney in place on the required dates.
5. Sign the Escritura de Compraventa before a public notary and ask them to fax your title transfer to the Land registry.
6. Payment of fees and taxes, ensure that you have enough money to cover all extra expenses. Again your lawyer will help you with this.
7. An idea of when you will receive your copy of the Escritura Publica.