

HOW DO UNPAID BILLS AND TAXES ON A PROPERTY AFFECT THE NEW OWNER

Given the number of enquiries we are receiving regarding the legal implications of unpaid previous bills, invoices or mortgage instalments on the property, we have done a short report showing how would the new buyer be affected in this scenario. Although we may sound repetitive, and certainly biased, take no chances and hire a lawyer: a property purchase is possibly one of the most important decisions in life.

Unpaid Taxes

Unpaid IBI (Council rate): This debt is construed as a preferential charge on the property, and it is known in Spanish as a 'tacit legal mortgage'. An administrative procedure follows a couple of unpaid bills (depending on the municipality) and if no action is taken the property is sold at auction. The new buyer is prevented from paying this tax if previous years have not been paid.

Unpaid 'plusvalía' (Tax on the increase of the value of land over the years): No effect unless the vendor is non-resident in which case the property will remain liable for payment, with the same effects as on the IBI (council rate) non-payment. The Town Hall will initiate a legal procedure against the vendor, obliged to make payment, and once he is declared unable to make payment (either by being declared bankrupt or not answering the administrative claim), they will proceed against the buyer, and ultimately against his assets, namely the property.

Unpaid seller's capital gains tax: No effect on the new buyer.

Unpaid 5% retention of the purchase price to the tax office when the seller is non-resident: The buyer is himself liable to retain the mentioned percentage from the purchase price and lodge it with the Taxman. The property remains liable for non-payment of the tax retention. In fact, the non-payment of these monies could even be construed as criminal misappropriation, although the taxman will simply wait until the time limits expire and will set in motion the administrative procedure to eventually sale at auction. Although may lawyers do not check that this tax has been paid in previous sales of the property, it is highly advisable as your property could have been purchased and sold between non-residents more than once, and therefore there is the possibility that tax is owed.

Unpaid Mortgage Installments

The bank will insist on payment and if it does not take place they will instruct their lawyers to proceed with foreclosure of mortgage and sale of the property at public auction.

Unpaid Community of Owners Charge

The community administration decides to proceed against the new owner and if no action to pay up the outstanding debt is taken, the new owner will face the sale of his property at public auction following a court procedure. In addition to this, the new Horizontal Property Act has given increased powers to community administrators to pursue debtors, and the new Civil Procedural Act has new precepts which allow a quicker execution of debts and therefore, increased facilities for bidders in a judicial public auction scenario.

Unpaid Service Bills

Not paying these bills has no effect on the property. They are debts which go with the person who signed the contract, and therefore the seller will be liable. However, the following can happen if they have not been paid for:

- **Electricity:** Supply will be cut off. (A fee may be charged to re-connect)
- **Water:** Supply will be cut off. (A fee may be charged to re-connect)
- **Telephone:** Line will be interrupted.

In principle, the buyer can sign with the supply company a fresh new contract and remain unaffected by the debts. However, in practice the companies will put forward obstacles to this, and at times, it works out cheaper to pay the bills and ensure supply than litigating with the company, who will no doubt ensure no supply is available meanwhile.

Of course, the lawyer should have the checks done on this.