

INDEPENDENT LEGAL ADVICE

It is interesting to see that in most of the publications currently circulating in the main tourist resorts in Spain, especially in those directed to the foreign investors in Spanish property, there is certainly no shortage of legal advice and professionals being offered.

This legal advice, albeit occasionally overwhelming (i.e. Sur in English special property section), serves as a reminder to the investor of the need of engaging a solicitor prior to embarking on the purchase of property, and is not superfluous. However, on reading the magazines edited by real estate companies, we see that they normally publicise lawyers (our colleagues) which then appear to be the ones who are recommended to buyers and can more often than not be seen flying abroad with the sales team on property exhibition trips, to help sales people close as many deals as possible by providing legal assurances.

These 'company' or 'corporate' lawyers, which occasionally are also seen onboard some real estate companies' sail boats as part of the trained crew, come short of what should be regarded as independent legal advice when dealing with those clients who have been recommended by the real estate company with whom they sail, race and fly.

I would like to stress that this article is no crusade against some of my respected colleagues of the legal profession. But it is important to call apples to apples and pears to pears, in order to avoid confusion and misunderstandings.

In my opinion, legal advice given by lawyers regularly recommended cannot be considered as truly independent, for the following reasons:

- The buyer, the seller and the agent have relationships of different nature amongst them. The buyer, although he does not normally sign any legally binding agreement with the agent, the latter acting on his own behalf, does commit to the purchase a deposit which is lodged with the agent until the vendor accepts the offer. The regularly recommended lawyer is obviously not going to conduct any search on the soundness of the real estate agent with whom they fly, sail and race.
- The lawyer, given his regular recommendation by the agent, is somewhat inclined to assist the agent in the obtention of the commission in addition to providing a service to his client. This is a logical conclusion, when is known to us that some of these lawyers take on personnel to deal exclusively with the clients provided by the agent and needs the client influx to cover the costs: it is therefore vital to please the business provider.
- A lawyer regularly recommended by the agent, out of dire logic, in the event of a foreseeable problematic conclusion of the sale, will not advise his client-buyer on pulling out from the purchase where the vendor does not comply with his obligations. For some agents, a commission on a sale can represent many months of work and any legal advice not directed to satisfactorily concluding the sale is not acceptable.

This is often made clear in heated telephone conversations where the regularly recommended lawyer fruitlessly tries to explain the agent what is the most favourable legal move for his client (but seemingly not for the agent). This puts the regularly recommended lawyer under enormous pressure.

- Very rarely (I hope), legal representatives of some kind regularly recommended by some real estate agents are instructed to deal with their clients in a particular manner: the vendor of the property who sells through the agent is offered a net price which the agent says he can obtain. When a buyer comes along, the asking price he is given is way above what the vendor is getting, and far more than a normal intermediation commission. The buyer does not know where his money is going, and the vendor is similarly oblivious of the real offered purchase price.

But how does the agent manage to avoid both parties from meeting and discovering this gross malpractice? Simple: they recommend the purchaser a legal representative of some kind who will complete the deal on his behalf either with a power of attorney or preferably with a mandate, verbal or written, (in Spanish notarial practice it is considered to be verbal), concealing from the vendor the real price the buyer is paying and diverting a good portion of it to the agent. A few days later, the buyer arrives in Spain to ratify the acts of his legal representative of some kind, with the result that he never meets the vendor and never gets to know the moneys that have been sucked by the agent.

True independence is not achieved in these cases, although this by no means signifies that all deals are doomed when the agents recommends his lawyer friend. Most of them will almost certainly act honourably with their clients, and most of the introductions will create solid client-lawyer relationships to endure the test of time. But from the agent's point of view it would be honest to advise the client-purchaser that the designation of a regularly recommended legal representative is intended to serve the agent's purpose more than the purchaser's.

I would like to finish this article mentioning a particularly immoral and almost illegal form of recommended legal representation. It refers to big UK companies operating in the Alicante area who organise inspection flights for prospective purchasers to view pre-designated new developments. Within the package inclusive of accommodation, flights, scheduled viewings and other services, these big companies have a special discounted offer on a legal representation service. Within the legal package one cannot detect a trace of 'independent' advice.

Not only does this lawyer accept that large percentages of the purchase price are paid to the UK company, sometimes through UK accounts, rather than to the Spain-based developer but is also unconcerned on whether the developer guarantees the downpayments. If the client insists on having all payments guaranteed, as the law provides, they will try to charge the buyer for arranging the guarantees which by law are totally free from cost for the buyer and on account of the developer. The supplement charge will be of 1% of the guaranteed amount, totally outrageous.

Paying for such a legal representative is not advisable, and the consequences of using one definitely counterproductive.

All of the above is based on experiences of first time property purchasers in different areas in Spain.