

BUYING PROPERTY IN SPAIN: AN OVERVIEW

1. First contact: Real Estate Agents

The majority of property purchasers in Spain do so through a Real Estate Agent. A buyer ought to be extremely cautious when appointing one. Regardless of whether they have a large or small portfolio, it is important that they are serious when handling monies. A small real estate agent may have a few excellent properties available for sale and follow the few legalities imposed, directly or indirectly, by the laws and regulations of the trade. A large real estate agent can claim to have thousands of properties in their books and be totally unaware of the minimum requirements for the protection of a prospective purchaser.

Real estate agents are not lawyers, nor they intend to be, but it has to be said that some tend to offer buckets of legal assurance, and also free legal advice, to buyers, in the hope the monies are quickly lodged with them. Because real estate agents are not lawyers, they should refrain from giving qualified legal advice inasmuch as lawyers do not sell properties.

However, registered real estate agents are obliged by the regulations of the trade to check the situation of the properties they sell. But does this really happen? Very rarely. The answer to this can be found in the following:

- Real estate agents activity has weak and confusing regulations and laws. Licensed operators do adhere to a set of professional standards.
- No licence or authorisation is required. Anyone can sell properties in Spain. Much to the bitterness of registered real estate agents, most of the highest rated agencies in the Costa del Sol are not registered and are not subject to any rule or regulation.
- Real estate agents are more worried in looking for buyers and matching them with the available properties than performing the relevant searches on the legal status of the properties.
- Even if they had the time, language barrier to some real estate agents is a problem. The understanding of legal terminology is in this case rather poor.
- A real estate agent does not get paid for representing the interests of either buyer or seller. They have made possible a deal and do not earn fees if the deal stalls.
- A small percentage of operators can be regarded as unscrupulous and self-seeking. What happens to the buyer, or the seller, is not a concern as long as they get their fee.

These factors are compelling evidence and should make buyers realise one thing: buying property is serious enough to merit the intervention of a qualified professional other than a REA with basic knowledge of the laws. There are excellent real estate agents, licensed and not licensed, in Spain, who do what they know best: sell properties with professionalism. But a real estate agents undertaking the burden of the conveyancing procedure can result in disaster. For all these reasons, **Lawyers Of Spain** strongly recommends buyers to employ the services of a lawyer.

A lawyer will provide the legal guarantees for the purchase of the property ensuring that Spanish legal requirements are met and

that the property is bought free of encumbrances, charges, liens or debts and up to date in all its payments of local contributions and community charges.

2. Formalising an offer

It is recommended that a lawyer is engaged before an offer is made. The fact that an offer accepted by the seller is binding as any other contract makes the intervention of the lawyer appropriate at that time in order that the terms and conditions of the offer are correct and favourable to the buyer. The lawyer will also help the buyer find out what the ongoing taxes are on the property if the real estate agent fails to do so.

Once the terms of the purchase-sale have been discussed, and offer is submitted to the real estate agent who in turn will inform the seller of the details of the offer. If the seller accepts the offer, a binding agreement is born. It is normal practice in Spain to include with the offer a sum of money to reserve the property prior to the exchange of private purchase contracts, in order to show the seller that there is a real intention to purchase.

3. Exchange of private purchase contracts

If the legal representation of both parties deem necessary the exchange of private purchase contracts, this is verified against payment of normally a 10% of the purchase price. This documents sets out the agreed terms and conditions of the transaction and sets out the date for final completion before the Notary Public.

After the reservation deposit has been lodged with the real estate agent and prior to the signing of the private purchase contract, the appointed lawyer will have completed the legal searches and investigations of the property.

Any debt or charge attached to the property will be reflected in the private purchase document. These will have to be cancelled prior to completion. If not, the buyer will be entitled to either withdraw from the proposed deal and claim damages or deduct the amount of the debt together with the cancellation costs, if any.

4. Completion

The purchase is formally completed when the public title deeds of purchase-sale are signed before a Notary Public, the agreed payment of the price paid and the possession given to the buyer. Unless agreed otherwise, the public deed always stipulates that the property is sold free from charges and encumbrances, up to date in all the different payments and free from tenants and occupants.

Four or five days after completion, the deed is collected from the Notary's office. With the original deed, all the relevant transfer taxes are paid in the different tax offices and eventually the deed is taken to the Land Registry in order to procure formal registration of the title to the property. Registration is not mandatory, although highly recommendable.

Similarly, the lawyer will arrange for the transfer of accounts with the local suppliers of utility services and organise a direct debit on a current account of a local bank.

Depending on the Land Registry of the area, registration may take from 15 days to 3 months. The Land Registry will then give notice to the lawyer that the registration has been completed and the deeds are available for collection. Land Registry fees are paid then.

During the interval the purchaser can have a copy of the records by requesting from the Notary Public a 'copia simple'. The lawyer will need a couple of copies in order to complete all the legal formalities.

Purchase costs

- **Taxes**

Before a title deed can be registered into a new owner's name, or a deed issued for a newly constructed building, transfer tax has to be paid by the buyer. It can come in two variants: **Transfer Tax (ITP)** at 6% , or **Value Added Tax (IVA)** at 7% plus **Stamp duty (AJD)** at 0.5% when buying from a developer or promoter. These two taxes are calculated on the declared purchase price on the title deeds.

Also, the local municipalities charge a tax on the increase of the value of the land since the previous sale. It is not based on the seller's capital gains tax but on a number of calculations and values set by the Town Halls. This tax is called '**Plusvalia**', and according to the law it is the seller's responsibility, although it is commonly stipulated in the contract that the buyer pays it. It is a point which will be negotiated between buyer and seller.

- **Fees**

- **Notary Fees:** The scale is fixed by law and is lower for lower priced properties and higher for higher priced properties.
- **Land Registry Fees:** The scale is also fixed by law and are between 30% lower than the Notary fees.
- **Legal Fees:** Normally charged at 1% of the purchase value increased by VAT currently charged for legal services at 16%.