

## GUIDE TO SAFELY BUYING A PROPERTY IN SPAIN

You have decided to buy your ideal home in the sun and after careful consideration are now looking to purchase a property. The legal process in Spain is not very different from the UK one you may be familiar with, but the vocabulary and conventions can sometimes make it appear so. Below is a guide to the process involved in buying a home and the steps Survey Spain suggest you take.

**N.B. There are many points that could be expanded. We are not solicitors, but this a start.**

### 1. FIND YOUR PERFECT HOME AND AGREE A PRICE FOR THE PROPERTY

- There is no substitute for searching yourself to find the character of location and property style that suits you. There is no need for compromise, especially now when there are so many properties on the market.
- Prices of property can vary hugely depending upon, well, everything. We can help you by providing current market valuations relating to what other properties are being offered at. On many occasions our report has assisted in negotiations, but at the end of the day, it ends up as a 'horse trade' between seller and buyer, with cool logic often being absent on either or both sides!
- In parallel, you should also be provisionally arranging finance for a purchase, clarifying the amount that is likely to be available to you according to your circumstances. That of course could be varied according to the value of the property you acquire and which you are putting up as security. Always remember that you are taking out a personal loan and it will have to be repaid somehow in the future.

### 2. APPOINT A LAWYER/SOLICITOR

- It is essential to employ an English speaking solicitor/lawyer who will thoroughly research the paperwork on the property you intend to buy and protect your interests. He/she should explain and ensure the property is free of debts, restrictions and any of the 1001 matters that can affect ownership.
- Survey Spain knows lawyers we have worked with over the years who will represent their clients' best interests.
- If you cannot be present in Spain yourself, you may have to grant 'power of attorney' to the solicitor to sign official papers on your behalf. Make sure that you have full confidence in the solicitor to act in your best interest and that both you and he/she know what that is.

### 3. HAVE THE PROPERTY SURVEYED

- Whilst solicitors can provide you with 100% guaranteed paperwork, they do not always visit the property and are not specialists in comparing its physical nature to the paper description in the title deeds and the tax description.



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- In addition to carrying out a building/structural survey, Survey Spain carry out the comparison and point out any differences, which can be indications of significant lapses of permissions or the like.
- Again, on many occasions, clients have been able to use the knowledge gained from our report to ensure that remedial works are carried out in the property by the seller or suitable discount is given.

#### 4. PAY A DEPOSIT TO RESERVE THE PROPERTY AND TAKE IT OFF THE MARKET

- To reserve the property and take it off the market for a short time while you carry out your background checks, survey, etc. you may be obliged to pay a deposit. Make sure this is returnable and is held by the agent or the seller's solicitor and not passed on to the owner. This amount varies depending on the value of the property, but as a guideline is typically between 3,000 to 6,000 Euros.
- After that date, a full purchase deposit may be required, which is normally 10% of the purchase price. At that time, both you and the seller are obliged to proceed with the purchase/sale. If you pull out without good reason, you lose your deposit. If the seller pulls out without good reason or if there is a significant defect in the title obliging you to withdraw, the seller has the obligation to pay you double your deposit.
- Again, it is best to make sure that the deposit is held by an independent party as obtaining repayment from an individual seller can be difficult. Also, if the owner will accept, you can make the purchase conditional upon you obtaining finance. That way, if you are let down by your expected mortgage provider you can recover your deposit.

#### 5. LEGAL CHECKS ON THE PROPERTY

- You, through your solicitor, want to be satisfied that the apparent owner is the full and only legal owner with the right to sell and that the property will be sold free of unpaid charges, taxes, mortgages, etc. Checks should be made including the following:
  - *Escritura* – the publicly registered title deed.
  - Nota Simple Informativa – This is a certificate from the local property registry and shows ownership details and details of any mortgages or any other charges against the property up to the date of sale.
  - *Impuesto sobre Bienes Inmuebles (IBI)* – This is the receipt of the annual property tax and checks of this will confirm it has been paid for the last 5 years so there are no ongoing liabilities for you, as any debt to them remains with the property after sale.
  - Community Fees – every property should be in a community of neighbours which is a legal entity and pays for common charges and the like. Any debt to them remains with the property after sale. Paperwork relating to planning, use and construction licenses, ensuring that all original and alteration works have the appropriate completed permissions.



- Electricity and water supplies – whilst the debts of these are individual and do not pass with the property, they can cause great inconvenience and delay with connections and are better cleared. If new meters have to be fitted or, as in some rural locations, water rights negotiated, the costs of these should be taken into account when the final price is paid.
- NB you must request that your solicitor confirms the tax value of the property prior to your agreement of the price. Currently, with a falling market and outdated Catastral values, it is not uncommon for the taxes on acquisition to have to be paid on a value higher than the price being paid for the property.

## 6. COMPLETION AND HANDING OVER THE KEYS

- The property sale process is finalised before a Notary, with the buyer and seller signing the Deed of Sale. The Notary is a public official. His or her duty consists in identifying the buyer and the seller, and ensuring that all legal requirements have been met, and that the amount due to be paid has been settled.
- The Notary does not have a duty to advise either party on the accuracy or commercial sense of any of the information put forward as long as the paperwork is legally correct. The property description, etc. is recorded as 'declared' by the seller and there is no need for an official check other than if the property is new and/or amended. As stated in 3. above often there can be 'errors' in the official description and these should be corrected before this point is reached as otherwise the responsibility for them will pass onto the buyer. What appears in the Registry is presumed to be true and can only be modified thereafter by a judge, with appropriate worries, costs and inconvenience.
- The purchaser is then issued with a copy of this public deed of conveyance (Escritura) and the original is passed to the property registry to be registered and converted into an Escritura Public (Public document). A copy is also passed to the tax office along with the appropriate payment of tax and expenses.
- Only at that time does the buyer acquire a real right to the property that can be defended against anyone. Prior to that there is only a private contract with the seller and if, for some reason, it is found that somebody else also has a private contract or right to the property, then the first registered contract will be the one that obtains full title. However, it is understood to be a criminal offence should anybody intentionally carry out such a fraud.
- Immediately after the deeds have been signed and full payment made, the buyer is handed the property keys and can take legal possession of the property.

## WELCOME TO SPAIN!

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