



It is both difficult and exciting to choose a property in Spain. However, choosing the perfect place is not the end: you have to fulfill some formalities until title of your new home is obtained.

Lawyer

Always look for the guidance of a Lawyer qualified in Spanish Law. Using a lawyer is the biggest guarantee to avoid unexpected surprises. Your lawyer will complete a "search" of the property to be purchased and will also get you the most advantageous deal possible when dealing with developers or any other vendors. He will keep you updated on the progress of the purchase and will provide you with full details on all the financial transactions and the legal side. In Murcia, for example, mid priced property generally attracts a 1,200 Euro solicitors fee.

Contract and deposit

Once you have found a property (either through your lawyer or an estate agency), the first step is to make an offer on the house through your lawyer or estate agent. If accepted, you will have to pay a reservation fee to take it off the market and to secure the property whilst negotiations between the parties' legal advisors are held. If your offer is accepted, a private agreement will be drawn up between your lawyer and the seller. In this, the terms and conditions of the sale are stated, such as a completion date and the conditions of the transactions, which should usually contain an assurance by the sellers that the property is sold free of charges, tenants and mortgages. Please note that properties in Spain are freehold, not leasehold as in the UK.

There is no gazumping in Spain, as after accepting your deposit, the seller is legally obliged to sell you the house at the agreed price. Normally, 3% of the contract price will have to be paid by you to the tax office in case the seller forgets to pay his capital gains tax (if the seller is a non-resident only). This is NOT an extra 3%; it merely means that you pay only 97% of the contract price to the seller, and he has to fill out the forms with the tax office to get the other 3% less his capital gains tax. If this sounds complicated then don't worry: your solicitor will look after all this for you.

Purchasing new property from a builder/developer

For new construction projects, then your contract will be with the company who is building the property. Having dealt with many builders most of them have slightly different contractual terms regarding when they would like to receive their staged payments. These terms can be varied a little to suit the individual circumstances of the purchaser if these changes are agreed when the contract is drawn up. All the builders will, however, be expecting to receive payments along the following guidelines.

The initial deposit payment required to hold a property whilst contracts are drawn up is between 3,000 and 5,000 Euros. This non-returnable deposit will mean that the builder will: -
a) Withdraw the property from sale to anyone else for a period of up to two weeks, and
b) The price of the property will be frozen and will not rise should the builder increase his prices. The value of this deposit will be deducted from the next or final payment.

As a general guide, within four weeks the builder will expect a payment of 25% of the total cost with a further 25% to be paid within the two months. The balance is payable on completion; however, as mentioned, these terms will vary depending upon the constructor.

Freezing future payments to avoid adverse currency variations

One possible problem that could occur with a contract requiring large amounts of money to be paid at dates far into the future, is that whilst the UK remains outside the Euro, there could be a change

in the currency rate that means those future payments will be more expensive in pounds sterling than you currently expect (they could also, of course, be cheaper). There are ways to prevent this problem. One way would be an early transfer of funds into a Euro account (either in Spain or in the UK) thereby making your money immune to currency fluctuations. Another method would be to book your £/euro transfer at today's exchange rate with a currency transfer specialist.

We will be happy to arrange a completely free consultation for you with an expert from an International Foreign Exchange Company, who will be able to advise you of the options you have and explain the procedures involved.

Completing the purchase

If you do not want to make a journey to Spain especially to sign the contracts on the day of completion, then you may wish to give Power Of Attorney so that your solicitor can sign the necessary documents and make the necessary payments from your bank account. This will incur an extra fee but you will probably save more than this on flights and hotel bills.

There is the Notary who will check that the documents are in order, that the parties to the contract are who they say they are and who will witness the signing of the contract. The fee for this will be about 1% (which will include the 0.5% Stamp Duty). This will be higher if there is a new mortgage to be registered at the same time. The Notary cannot give you and is not allowed to give you advice; any questions you may have should be directed towards your solicitor who is there for that purpose.

Your chosen law firm will prepare the documentation required for the transfer of ownership. On the appointed day, buyer and seller and/or their legal representatives, meet at the notary's office to sign the official transfer of Title Deed from the Seller to the Buyer.

The witnessing of the accompanying documentation by the notary acts as your legal safeguard. The change of ownership will be recorded in the official registry and completes the process, leaving you safe in the knowledge that your property purchase is official and free of encumbrances.

All properties in Spain should be registered with the land registry where you can obtain the exact details of the owner, the size of the property and details of any mortgages, debts or judgments against the property. Only the people or company named on the title deed have the right to sell the property.

For anything that involves paying tax, like owning a property or a car or to work in Spain, you need an NIE number. This number is necessary for all non-residents. Your lawyer will be very pleased to assist you with this matter and solve any other query that you may have regarding purchasing in Spain.

Spanish wills

We recommend that you make a Spanish Will to dispose of your assets in Spain to avoid expensive and complex legal procedures. Spanish laws protect family heirs in that they restrict the testators freedom to dispose of their estate to anybody they choose.

Cost of purchase

The first thing, of which you should be aware, is that you have to pay VAT of 7% on all new property, or transfer tax (known as ITP) of 7% on resale property. Either way, new or resale, the 'transfer tax' is 7%.

Generally speaking, you have to budget for costs of approximately 10% (including whichever of these taxes apply) on top of your Spanish property purchase price. This will cover solicitor's costs, notary public fee, land registry, stamp duty and VAT.

Property Tax

Which of these two taxes is levied will depend on the type of property you are purchasing; the property transfer tax is levied on resale properties and is charged at 7% of the new title deeds value. But if you purchase a newly built property from developer you will pay a different tax called IVA (VAT), which is charged at 7% of the selling price - plus 1% stamp duty.

Who Pays What?

The buyer is responsible for: Transfer Tax (or IVA plus stamp duty when buying from a developer) Property Registration Fees Notary Charges Lawyer's Fees

The seller is responsible for: His own Capital Gains Tax on any increase in title deeds value Plusvalia Tax Selling Agent Fees

The normal custom is for the seller to pay the 'Plusvalia'. If, however, the buyer agrees to pay this tax, please remember that it is registered against the land and you will have to pay if the vendor fails to do so. This tax is often not demanded until some time after completion.

Provided by:

Robert Collins

Costa Calida Direct

Property specialist for Costa Calida, Murcia and Costa Blanca

June 2008

Specialist advice should be obtained before taking, or refraining from taking, action based upon the comments in this document, which is only intended as a brief note. It is not a substitute for specific legal advice upon specific facts. The London Office accepts no liability in so far as is permitted by law for losses resulting from any person acting or refraining from acting in reliance upon this material.



For all enquiries contact:

Paul Baxter

Tel: +44 (0)207 839 0888

E-mail: paul@tlo.co.uk