



## ***Safely Purchasing a House in Spain***

Together with the Association of Spanish Property and Commercial Registrars, the Ministry of Public Works, Transport and Housing has drawn up a brief, simple guide outlining the different steps and recommendations that a private purchaser should follow when buying a house in Spain.

It contains very useful information, is free of charge and is available to any Spanish or foreign purchaser. It aims to help such purchasers make informed decisions.

Within the Spanish legal system there are a series of documents that certify that a house is completely legal. Make sure that you have all of them before purchasing a property. These are:

- ✓ A construction permit and certificate from a competent expert verifying that the building matches both the licence granted by the town council and the project it approved.
- ✓ A first occupancy licence, a habitability certificate and other administrative authorisations that establish that the dwelling is legally habitable.
- ✓ Documents signed by the utilities supplying the essential services (electricity, water, gas and telephone).
- ✓ The entry of the building in the Property Register (new buildings), together with insurance cover against hidden defects or flaws in the construction, as established by law.
- ✓ A Property Registration Certificate setting forth the legal situation of the building.
- ✓ The Owners Association Statutes (or inscription in the Property Register of the deeds of any new, finished and horizontally-divided building).



We also recommend:

- ✓ In the case of new constructions, for buyers to ask the developer for: a Certificate from the Commercial Registry accrediting the legal existence of the company, details of its registration, the administrators and/or their representatives, the company's registered office, its fiscal identity number, confirmation that bankruptcy proceedings have not been registered, and a declaration that there are no claims, lawsuits or any other contingencies that might affect the development.
- ✓ In the case of housing that is not newly built, ask for last year's property tax receipt, a certificate signed by the president of the Owners Association and endorsed by the building's secretary stating that the property you are buying is up-to-date with all payments, as well as a formal confirmation and a public document stating that the property is not subject to any rental contracts.

When buying your property, there are a series of steps which will enable you to make your purchase with full guarantees:

### **1. Check the legal position of the property by contacting the Property Registry**

The Property Registry is a state body and the Registrars are civil servants who provide you with verbal information free of charge and who have the power to issue certificates concerning the legal position of the property.

⇒ **In the Property Registry you can obtain the following information regarding each dwelling:**

A description of the property, its position, surface area, the amount under common ownership in an apartment property, the administrative system that may affect it (e.g. whether it is subsidised housing); any existing mortgages on the property, when they are due to expire and capital, interest and costs; any embargoes to which the property is subject; any litigation that may affect it, and whether proceedings are under way for urban planning irregularities. You can also obtain information, if you explicitly request it, regarding the statutory system for apartment properties, the mortgage clauses, the price paid in previous ownership transfers and the title deeds.



- ⇒ **The Property Registry can provide you with this information in the form of a simple informative note, or in the form of an ownership and liabilities certificate, which is an official public document. In addition, you can also ask the Registry to issue an explanatory report describing the registration position of the property.**
- ⇒ **In Spain, any Property Registry can provide you with these documents, irrespective of the municipality in which the property is situated. Furthermore, you can request this information by fax, post or email and via the website of the Association of Property Registrars at [www.registradores.org](http://www.registradores.org).**
- ⇒ **To obtain these certificates, you will be asked to identify yourself and to provide some type of document which will make it possible to identify the property for which you are requesting information, such as registration details (the registered property number, the section, the municipality), or details of the owner (name, surnames, corporate name, fiscal identification number/fiscal identification code), or other simple data such as the street and house number.**

## **2. Study the existing mortgage charges**

In addition to the legal requirements, it is important to pay attention to whether the property you are going to acquire has a mortgage (if this is the case, it will appear in the Property Register). If so, we recommend that you:

- ⇒ **Ask the vendor for a bank certificate with the outstanding amount to be paid.**
- ⇒ **Negotiate a better interest rate with the bank. You are not obliged to assume the mortgage loan contracted by the vendor under the same conditions; rather you may demand its cancellation or obtain a new loan with another institution.**

## **3. Go to a notary to carry out the purchase and sale**

Notaries are also independent public officers who have the authority to attest documents and who are obliged to counsel parties at the time of the sale, informing them about the law that applies to them. Furthermore, they are in charge of drawing up the contract in accordance with the parties' wishes and adjusting it to the law. The contract takes the form of a public deed.



- ⇒ **The public deed is essential in order to register the sale in the Property Register and to benefit from the security it gives you, as explained in point 5.**
- ⇒ **Before he or she authorises the sale, the Notary shall request a non-certified extract from the Property Register.** You may therefore review the legal status of the property again at this point.
- ⇒ **If you have any doubts, ask the Notary before you sign,** it is his or her role to advise you.

The sales contract may have been previously formalised by both parties in a private document, but that document shall not contain all the legal guarantees if it is not converted into a public deed.

In Spain, the Notary acts at the time of the sale, but he or she may also advise you in advance, just as lawyers and agents do in your country of origin.

#### **4. Make sure you pay the corresponding sales taxes**

Purchasing and selling property in Spain implies payment of certain taxes:

- ⇒ **When buying a new property, you must pay VAT to the vendor.**
- ⇒ **When buying a used property, you must pay the Tax on Capital Transfers** through one of the banks recognised by the Government.
- ⇒ **In both cases, if you buy via a mortgage you must pay the Tax on Documented Legal Acts** to a Tax Authority account through the collaborating banks.

#### **5. Register as owner of the property in the Property Register**

Once the sale has been carried out and the taxes have been paid, go to the Property Register corresponding to the property's location to register it. Registration is not an obligation, but if a purchaser does so he or she shall be fully protected as the proprietor:



- ⇒ **What appears in the Register is presumed to be true and can only be modified by a judge.**
- ⇒ **Nobody may dispute your right regarding the property that has still not appeared** in the Register at the time of carrying out the sale and if someone wishes to register a document he or she may only do so with your consent or by legal procedure to which he or she has been party.
- ⇒ **You shall be protected against the vendor's creditors** and against any charges that may occur which have not been entered in the Register.
- ⇒ You shall be protected even if a judge were to decide that the contract through which the person who sold you the property originally acquired it is void, for reasons that do not appear in the Register.

**Furthermore, you must understand that according to Spanish law the vendor is responsible for hidden defects at the time the property is sold or which may occur subsequently, even when he or she was unaware of them. This means that:**

- ⇒ **If the property does not comply with the quality objectives in the habitable indoor space as stipulated in current legislation, the purchaser has the right to either waive the sale (paying the vendor the costs he or she has incurred) or to a reduction in the price, duly established by official experts.**
- ⇒ **You may enforce liability on the building's developer and the builder and the technical supervisor** for structural construction defects that may occur during a period of 10 years; for damages that may affect the building's habitability for a period of 3 years; and for damages caused in finishing defects for a period of 1 year.
- ⇒ **Spanish Law requires those persons who may be liable to have insurance coverage which guarantees that you may recover indemnity without any problem, should this be the case.**