



## Buying in Spain

The following section is intended to provide potential purchasers of properties - or businesses - in Spain with an insight into general buying procedures, together with practical information on property ownership. It should be noted that, whilst every care has been taken with the contents, it is no substitute for professional advice - the benefits of which far outweigh any costs.

### **FIRST - DO YOUR HOMEWORK AT HOME**

Contact some local specialist Estate Agencies, some are well established Companies with long standing contacts in Spain, as those working with Villa Spain. Most of our Estate Collaborator Companies are staffed by ex-Spanish residents, whose local knowledge will be invaluable to an intending purchaser. All these Estate Collaborator Companies will be able to offer a range of properties - coastal and countryside - to suit all budgets.

Business purchasers will need to seek out the specialists - of which there are few. There are numerous publications carrying property advertisements for all the popular Spanish regions.

Now armed with the brochures you have selected and with a knowledgeable point of contact just a phone call away to answer the many questions you will have, you will be in a much better position to survey the Spanish Property scene from the comfort of your own home.

Regular visitors to Spain - especially those who have some knowledge of the Spanish language - may feel comfortable enough to by-pass these initial approaches and visit local Spanish Estate Agencies when in Spain, but don't forget Villa Spain. In either case the level of service available is likely to be much higher than you would expect from Estate Agents selling properties in your home town. Organised inspection visits, one-to-one accompanied viewing, full assistance with re-location, arrangements for gas and electricity contracts, assistance with furnishings, introductions to Lawyers, Architects, banks, local schools, etc. can be expected from both local Spanish Estate agencies and those with associate offices in your country. On-going aftercare is the general rule, rather than the exception. Imagine a service like this from the Estate Agents on your own High Street!

### **VIEWING TRIPS**

By now you will have your finances in place and a good idea of the areas and property types which are of most interest to you. No doubt you will have spoken to your country Agencies whose properties fit your requirements and have gained a good basic understanding of the services they can offer you - both in your country and through their associate Spanish offices. Now it's time to arrange your viewing trip - either an organised affair - through your selected Agent, or perhaps you would prefer to make your own travelling arrangements and meet Villa Spain directly once in Spain.

### **RESALE PROPERTY**

The normal procedure, once you have found a property you want to buy, is that a Contract of Sale and Purchase is drawn up by your lawyer and a deposit is paid - normally 10% of the sale price.

The Contract is signed by both the Seller and the Purchaser. Once this Contract is signed and the deposit paid, this commits both parties to the price and the conditions of the Contract. Incidentally, your country lawyer is almost certainly not qualified to practice in Spain. Your Spanish Lawyer (English speaking - we can introduce several to choose) should check out the following on your behalf, before paying over the deposit to the vendor.

### **A copy of the escritura (TITLE DEEDS)**

This confirms that the people who claim to be the owners are the people named on the Escritura.

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## Nota simple

This is a document from the Land Registry office showing who is the legally registered owner of the property. It also shows if there are any mortgages or other encumbrances registered against the same. The name/s on the Nota Simple should match the name/s on the Escritura (Title Deed).

Once your Lawyer has seen these documents, is satisfied that the property belongs to the person who claims to be the owner, and has confirmed that there are no mortgages or other encumbrances, he will ask you to proceed with the Contract.

However, before signing and paying the deposit he should ensure that the following are included in the Contract:

That the purchase price and conditions of payment are clearly written

All charges on the property, i.e. community fees, electricity, water (which may be included in the community fees), telephone bills and rates, are paid. These items are the responsibility of the vendor up until the day of the signing of the Escritura (Title Deed) by the new purchaser. This is most important, as many debts in Spain are on the property and not the person. The purchaser should only be responsible for any debts on the property from the day of the signing of the Escritura (Title Deed) and the handing over of the keys. It is most important that your Lawyer has proof that any outstanding debts, are up-to-date before signing the Escritura and handing over the final payment.

## The Contract should contain:

A complete description of the property - i.e. lounge, dining room, kitchen, number of bedrooms and bathrooms, terraces, etc. The total square metres of the plot and of the apartment or house.

The full registration details of the property. This information is obtainable from either the Escritura or the Nota Simple.

There should be a section in the Contract headed Cargas (Charges). This should read 'Free of Charges and Encumbrances' - if there is a mortgage on the property this should be stated here. If you do not wish to take over the mortgage but would like it paid off by the seller, this should be stated in the Conditions of Payment section of the Contract. Mortgages in Spain are usually assumable, i.e. if there is an existing mortgage on a property and a purchaser wishes to take it over and carry on the remaining payments, then this is often possible. Under normal circumstances the lender (usually Spanish Bank) requires little or no proof of income from the new purchaser

There should be a clause in the Contract concerning vacant possession on completion. This should read 'Free of Sitting Tenants'.

If the property is being sold furnished - which is often the case when buying a resale property in Spain - a complete inventory should be drawn up and signed by both parties. This document should be annexed to the Contract.

Under Spanish legislation, the purchaser is obliged to retain 5% of the value declared on the Escritura. This sum will be paid over to the Notary by your Lawyer. It is most important that this is also mentioned in the Contract of Sale and Purchase. The 5% retention only applies if the vendor is non-resident in Spain (in other words, if the vendor does not have residential status in Spain at the time of selling). The 5% retained by the Notary is paid over to the Spanish Hacienda (Inland Revenue), who ascertain if the vendor has any outstanding tax liabilities before returning the 5% to him - usually within 3 months.

The Contract will normally contain a Penalty Clause, which states that if the balance outstanding is not paid by the agreed date (specified in the Contract), the purchaser will lose the amount paid and the vendor is free to offer the property for sale again. A potential purchaser has no call against the property, therefore, before you sign the Contract and pay the deposit you must be absolutely sure that you can pay the balance on the agreed date.



Although it is unlikely that the vendor will back out of the sale at the last minute - after signing the Contract - this is always a possibility. Therefore, it is a good idea to have a further Penalty Clause inserted in the Contract stating that if (for any reason) the vendor does not complete on the Contract and wishes to withdraw, he must pay the purchaser an indemnity of double the amount paid as a deposit for the purchase of the property.

If the property you intend to buy was built within the last 5/6 years your Lawyer should ask to see proof that a Building Licence was obtained and that a certificate of the termination of the building (Certificado de Fin de Obra) and the licence of the first occupation (Licencia de Primer Ocupation) have been issued. Your Lawyer can obtain copies of these documents from the local Town Hall. The vendor is also obliged to present the last receipt of payment of rates (Contribuciones or I.B.I.) at the Notary's Office or to your Lawyer, prior to the signing of the Escritura. It is photocopied onto official Notarial paper and included in the Escritura. Your Lawyer should also obtain a certificate from the local Rates Office (Recaudacion Provincial) stating that there are no outstanding rates to be paid. With regard to the annual Community Fees, it is now necessary for your Lawyer to obtain a certificate from the Administrator of the Community showing that the fees are paid up-to-date on the property you are purchasing. This is for the Notary, your Lawyer should obtain this certificate for you and present it to him, along with the other documentation necessary for Notary to prepare the Escritura. It is an obligation that your Lawyer should check on the day of signing the Escritura that no debts or mortgages have been registered against the property since he made the first search, when the purchaser signed the Contract of Sale.

### **NEW PROPERTY**

For most buyers this will entail purchasing a plot of land on which to construct a new villa. The advice given regarding re-sale property purchase holds good for land purchase and the construction of a new villa. First seek out an Estate Agent in your area of choice like Villa Spain who offers a new build service (not all do!). We are experienced in new construction and be able to introduce you to reputable Promoters and Builders with whom we work.

### **THE BUILDER**

In most cases Villa Spain, once you have found the type of house and the location to build in with a specific builder he will give you a specific quotation based on the chosen house and plot. Your Lawyer will draw up a Contract (or check out the Builder's Contract) which will give a complete specification. The Contract will reflect the cost per square metre for tiles, the models and types of sanitary fittings, taps, doors, windows, etc. and a completion date should be fixed with a Penalty Clause for late completion.

### **THE DESIGN OF THE VILLA**

Most of the builders will have 'drawing board' designs of standard villas. They may be able to show you ready built villas conforming to their standard designs, you can then see in advance what you are going to get. Most purchasers will want to make some changes to the existing design and layout to customise their property. If you have specific ideas on design, you will be able to liaise with the Architect and design a purpose built property.

### **THE PLOT**

Once you have found your plot and agreed on the design your Lawyer has ascertained that the villa of your choice can be built on it, then you will need to complete the purchase. Your Lawyer will draw up a Contract between yourself and the vendor of the land - more or less following the same procedures as detailed in the section concerning purchasing a re-sale property. If you are buying land and building a property, then you will need to make two Escrituras (Title Deeds). At the time of paying the balance of the land price your Lawyer will make the Escritura for the land. You will then return to the Notary's Office to declare the new building on your land - once the property is completed.

Usually you will only be paying 70%-80% of the total cost at this time. The balance is due when the building is finished and the Certificate of the Termination of the Building and the Licence of First

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Occupation of the Property are required. Your Lawyer will need these two documents to be able to make the declaration of the new building at the Notary's Office.

### **IN CASE OF COASTAL VILLAS**

First of all you will need to select your plot. Where coastal villas are concerned, this will invariably be on an urbanisation (housing development). The home sites will have been segregated and the development should already have tarmac service roads, street lighting, etc. Such urbanised plots will almost always have water and electricity connections already made to each individual plot. To ensure that you will be able to build on the land you are buying, your Lawyer should obtain a document called an Informe from the local Town Hall. This document gives you - in writing - exactly what the Planning Authorities will allow you to build, the total square metres that can be built and the maximum height of the building.

### **IN CASE OF COUNTRY VILLAS**

In this case you will almost certainly be buying a 'greenfield' site, or possibly a tract of land with an existing building. There are urbanisations (housing developments) in the countryside but they are infrequent. Most of the advice given in the previous section regarding coastal villas holds well, but there are a number of additional points to take into consideration.

#### **Minimum plot sizes**

These can vary from as little as 1,000 m<sup>2</sup> (approx 1/4 acre) if the plot is close to a village - up to 25,000 m<sup>2</sup> (approx 6 acres) if the plot is deep in the countryside. If the plot is below the minimum size required you cannot legally build on it.

#### **The size of the property that can be built on the plot**

In many areas a substantial piece of land is required before anything other than a run of the mill property can be built.

#### **Right of way**

Most countryside plots will be accessed by country tracks (dirt roads) which may also give access to other rural homes or farms. It is obviously essential to have legally recognised access from the nearest tarmac public road to your selected plot.

#### **Water and Electricity**

If the plot is isolated the cost of putting in services may be very expensive.

#### **Existing Building**

If there is already an old farmhouse, or cottage, on the land and it is your intention to refurbish it rather than build a brand new home, there will almost certainly be restrictions on what can be done.

#### **Topographical**

Most country plots will be sub-divided farmland and the borders may not be clearly marked. A topographical survey should clearly delineate borders and state exactly the total square metres of the plot. If the land is not already fenced, then a new purchaser may consider fencing off the plot (according to his survey) to avoid possible future disputes. Your Lawyer will be able to ascertain all of the above before purchase. He should also be able to arrange a Topographic Survey on your behalf.

## **THE FINAL PROCESS**

### **EXTRAS TO THE PURCHASE PRICE**

These will amount to approximately 10% of the total being paid for the property.

Made up as Follows: RESALE PROPERTY - Transfer tax 7%

NEW PROPERTY - IVA (vat) at 7% + 0.5% Stamp Duty

LAND REGISTRY CHARGES

NOTARIAL FEES

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## **LAWYERS FEES**

There may also be a charge for Plus Valia, which is a type of Capital Gains Tax. Your Lawyer will normally ask you for the full 10% when he requests you to provide him with the amount of the purchase price. As the Lawyer is never quite sure exactly what the total of the 'extras' will be, the 10% is an estimate and at a later date, after you have purchased the property, he will provide you with a statement of his disbursements and fees listing everything that has been paid on your behalf. Often there will be a surplus in your favour which he will return to you.

## **DECLARED PRICE**

It was often the case that purchasers under declared the value of a property when registering an Escritura. The obvious benefit was a saving on the 7% transfer tax. However, these days the Spanish Authorities take a sterner attitude and substantial under-declaration is likely to be discovered and fines levied. Take your Lawyer's advice on this 'touchy' subject.

## **N.I.E.**

This is the Numero de Identificacion de Extranjeros (or Foreigners Identification number). Your Lawyer will obtain this for you prior to signing the Escritura, as it is an essential for all non-residents buying property in Spain.

## **CERTIFICADO DE DIVISAS**

This is a certificate provided by the Bank, stating that the funds for purchase were imported from outside of Spain. If you have used your Lawyer's Clients' Account to import the money for the purchase of your new home, he will arrange the certificate from his Bank. The certificate is recorded on the Escritura (Title Deed).

## **MAKING THE FINAL PAYMENT**

If you do not propose to be in Spain to attend the Notary's Office in person, then your Lawyer can take a Power of Attorney from you and act on your behalf. He will need funds transferring from your national bank account to his Clients' Account, to make the final payment. Your Lawyer will sign the Escritura (Title Deed) for you - you can countersign yourself the next time you are in Spain. Once the Escritura has been signed and the purchase price paid over to the vendor, you will be able to obtain a Copia Simple (simple copy) of the Escritura of your new home from the Notary.

The original Escritura is sent - by the Notary - to the Land Registry Office, so that he can register your name as the new owner. Depending on the workload of the Land Registry Office, your original Escritura can usually be collected from the Notary's Office within 2 to 3 months. Normally your Lawyer would collect this for you and advise you that he is holding it on your behalf ready for collection