

SELLING YOUR PROPERTY IN SPAIN

Agreements between seller & buyer

Once the purchase price is agreed, usually both parties or their lawyers (by a power of attorney) sign the following documents. The buyer makes a number of payments:

1. Reservation contract & reservation fee

The reservation contract from the real estate agent is a short document, which contains the final price and the deadline for completion by signing the public title deeds at the notary. With this signing normally a reservation fee is paid (between € 3.000 and € 6.000) to temporarily take the property off the market during the lawyer's investigation.

2. Private purchase contract & 10% down payment

This very important and extensive document contains all purchase agreements and the means of payment. Usually, when signing this document, a 10% down payment is paid to the sellers in order to secure the sale. If desired, this down payment can be paid to a neutral third party account of the law firm or real estate agent.

3. Title deeds and final payment

The completion of the sale takes place by signing the public title deeds at the Spanish notary (which has a completely different responsibility than in other European countries). After this, the keys are handed over to the new owner and the remainder of the purchase price is paid through an official bank draft (cheque).

(The amount will be placed on a special deposit account in the bank from which the buyer cannot keep any money. It can be expensive to have this money transferred to your Spanish bank account and afterwards to your foreign account. Some lawyer's offices have special bank conditions we -as a service to our clients- offer the possibility to have this money transferred through the client's bank account to your foreign account without any extra costs.)

Legal investigation (normally done by lawyer's office)

- Total legal check of: registrations at the Land Registry (Registro de la Propiedad) and the Catastro, all possible kinds of outstanding debts (the vendor has the legal obligation to sell the property free of any debts and charges), building licences, urban planning, legal correspondence, town hall archives, etc.
- Negotiating the conditions of the temporal private purchase contract which the lawyer will draft together with the other party (with which usually a 10% down payment is made)
- Providing you with individual juridical and financial advice
- Providing and checking all information for the title deeds of the notary

Lawyers' fees

In general, they total 1% of the sale price, excluding current VAT. These fees must be agreed at the start of the contractual relationship and not increase throughout that relationship, except where the initial assignment undergoes considerable modifications at the client's express request. The lawyer's professional fees are an expense that can be deducted when calculating the Capital Gain Tax associated with the sale.

Plusvalía tax

The Plusvalía is a local tax which is calculated by the Town Hall when selling a property over the increased value of the land. Normally the buyer and the seller agree that a certain amount of the purchase price is deducted to make sure this tax is paid. The lawyer arranges for you that the tax indeed gets paid and that any possible surplus will be refunded.

Capital Gains Tax (Impuestos Ganancias Patromoniales)

The Impuestos Ganancias Patromoniales is the national Capital Gain Tax of 21% which is calculated over the increased value (the profit) of the total property according to the purchase price in the Title Deeds. Certain costs can be deducted, such as transaction costs (legal fees, notary fees, land registry fees, Plusvalía tax, etc.) and costs for reform or extension works (like costs for the builder, materials and the architects' fee). For these deductions the Spanish tax authorities require the original invoices and proof of payment. The Capital Gain Tax needs to be paid within 4 months after signing the Deeds.

- Seller non-fiscal resident in Spain

In case you are not a fiscal resident in Spain (or cannot officially prove this to the notary), the buyer has the legal obligation to deduct 3% of the purchase price. This money will be paid to the tax authorities on your behalf as a down payment for the Capital Gain Tax. If there is no profit, you can apply to get this 3% back within 4 months after signing the title deeds. Each year, the Spanish Tax Authorities will check if you have submitted the obligatory yearly Income Tax Declaration for Non Tax Resident (IRNR). If you have never paid this tax, you first have to correct this situation before receiving the Capital Gains tax money back. The lawyer assess your fiscal situation regarding both taxes and arrange all the paperwork on your behalf.

- Seller fiscal resident in Spain

If you do not hold a Spanish nationality, but you are a tax resident in Spain, you need to be able to prove this to the notary. In this case a lawyer will apply for the required official document on your behalf. If you are tax resident in Spain, you have to declare the profit you made with the sale in the next year's Tax Income Return and the lawyer will look over any possible deductions regarding your personal situation. (In some cases, you as a fiscal resident can be completely exempt from paying Capital Gain Tax and we review these requirements with you).

Power of Attorney Spain

If you grant your lawyer a power of attorney you do not need to be present during the purchase process and the after sales phase, because with this document the lawyer can officially act in your name whilst dealing with all Spanish authorities and service companies. Nevertheless, the lawyer will never make important steps without informing you first in writing. Signing a power of attorney before a Spanish notary is cheaper and faster than in other countries.

Mortgage cancellation

In case of a mortgage cancellation the vendor needs to pay the costs for the official deeds of a mortgage cancellation, which is signed at the notary by an authorized representative of your bank. In addition, the seller has to pay for the cancellation of the mortgage in the Land Registry (Registro de la Propiedad). In most cases the buyer deducts a certain amount of money from the purchase price to have these changes carried out. The signing of the mortgage cancellation takes place on the same day of signing the public Title Deeds and your lawyer takes care of all the preparations plus of all communications with the bank.

Source C&D Solicitors