

BUYING HOUSE IN SPAIN

Agreements between seller & buyer

Once the purchase price is agreed, it's common that both parties (or their lawyers by a power of attorney) sign the following documents and that the buyer makes the following 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 the signing of this reservation contract 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 important and extended document contains all purchase agreements and the conditions of payment. With the signing this contract usually a 10% down payment is paid to give the seller more security about the sale during the final phase of the lawyer's investigation. If agreed with the vendor, this down payment could be paid to the neutral thirds 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. After this the keys are handed over and the rest of the purchase price is paid by an official bank cheque in the name of the vendor. Please note that if you agree to pay the rest of the purchase price in another currency, the payment needs to be done by a bank transfer a few hours BEFORE completion. This means you need to trust the seller to sign, once he has already received the money in his account.

Legal investigation

As soon as the reservation contract of the real estate agent is signed, lawyer can start the important and extended legal investigation. In this phase lawyer take care of:

- Total juridical check of: registrations at the Land Registry (Registro de la Propiedad) and Catastro, all possible kinds of outstanding debts, building licences, urban planning, juridical correspondence, town hall archives, etc.
- Negotiating on the conditions of the temporal private purchase contract
- Providing the client with individual juridical and fiscal advice
- It's possible to arrange an official survey regarding the architectonic structure of the building (mostly only for more expensive or relatively old houses) or for the measurement of the borders of the land. This last 'survey of the land' is recommended to all clients that wish to buy a rustic property. If you like, we could supply you with a competitive cost estimation from an independent local architect.
- Using the thirds account for the 10% down payment (if agreed with the vendor)
- Providing and checking all information for the title deeds of the notary

N.B. Most urban houses don't have a Licence of First Occupation from the Town Hall (especially older properties) and this is not a legal requirement for completion. However, if you want to rent out your new property as an official holiday home (through the 'Registro de Turismo de Andalucia') this license needs to be applied for and there are certain costs involved for carrying out this procedure.

Lawyers' fees

In general, they come to 1% of the sale price, plus 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.

Power of Attorney Spain

By granting the law firm a power of attorney it's not necessary for you to be present during the purchase process and the after-sales phase, because with this document lawyer can officially act in your name when dealing with all Spanish authorities & service companies and apply for your NIE document. Nevertheless, lawyer will never make important steps without informing you first by email. Signing a power of attorney before a Spanish notary is cheaper, more simple and faster than in other countries.

Application NIE-number

In order to purchase a property in Spain you need a Spanish tax number for foreigners, the NIE number. You can apply this important document at the Police Station or real estate agent or lawyer apply for you by the power of attorney.

Opening of Spanish bank account

By the power of attorney lawyer or real estate agent can open the required Spanish bank account on your behalf with the bank of your choice. This account will be needed to arrange the direct debit for your service contracts during the after-sales process.

Costs notary

These are the costs of the notary for the public title deeds (the 'escritura'). The notary in Spain has a different, much more limited, responsibility than in other European countries. He is mainly responsible for checking the identity of the persons involved and verifying whether the title deeds are signed correctly. He's an official of the Spanish state and only with the notary's public title deeds can the property be officially listed in the Land Registry (Registro de la Propiedad).

Important: We advise to already arrange your house insurance before completion (extra important for rustic real estate)

Transfer tax (ITP or AJD)

Impuestos Transmisiones Patrimoniales: The transfer tax for buying an existing property 'ITP' in Andalusia is 8% of the purchase price up to € 400.000, 9% up to € 700.000 and 10% over any higher amount. Nowadays the Spanish tax authority also checks the fiscal value of the property and if this (in very few cases) were higher than the purchase price, the transfer tax would be calculated over the fiscal value. The lawyer checks this matter for you during our legal investigation.

In case that a part of the purchase price is paid for the furniture, the transfer tax over this part is only 4%.

Impuestos de Actos Juridicos Documentados: The transfer tax for new build properties 'AJD' is 1,5% (next to the 10% IVA/VAT). In some cases the Tax Office doesn't accept the purchase price for calculating this tax and defines a higher fiscal value for the AJD tax.

Costs Land Registry

These are the costs charged by the Land Registry authority (Registro de la Propiedad) as a result of the filing of the new title deeds of the property.

Registering in the Land Registry & Catastro and tax declaration

- Lawyers fees for the correct and complete new registration at the Land Registry (Registro de la Propiedad) and the Catastro. (These two authorities in Spain have different functions. The first one is a registry for ownership that registers official debts like mortgages. The second is part of the Spanish tax department that for example keeps track of the borders using photos and maps) and determines the fiscal value of the property.)
- The lawyer will also take care of the correct declaration and payment of the transfer tax within the required 30 days.
- In case that the seller isn't a fiscal resident in Spain the lawyer also arrange the 3% payment that the buyer is obligated to pay to the tax authorities on behalf of the seller as a down payment for the Capital Gain Tax (Impuestos Ganancias Patromoniales).

Transferring service contracts

Lawyer or real estate agent fee for transferring the existing service contracts of electricity, water, IBI (town hall's yearly property tax), environmental tax, gas and community fees. These recurring expenses in future will be automatically paid from your Spanish bank account through a direct debit.

Will

Once you've become the owner of the property, we advise you to have a will made specifically for your estate in Spain. In most cases this testament is more favourable to foreign clients, partners and heirs.

Source C&D Solicitors