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## **BUYING A HOME IN SPAIN.**

If you have decided to buy a home in Spain, follows some information regarding the legal aspects of the purchase.

This is a very general outline of the work that goes on behind the scene, so that you have a rough idea of what to expect. You can take part in the fun by being present at the signing or your solicitor can deal with the transaction using a power of attorney. Do not attempt to perform a conveyance in Spain on your own.

Your solicitor will do the following things:

1. He will request a copy of the seller title deed . The registration details entered on the deed will enable the lawyer to do a complete search in the local property register, and therefore make sure that the seller has proper title and ensure there are no hidden charges or encumbrances affecting the property (i.e. mortgages, court cases etc ) .



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2. He will organize a power of attorney document if you do not wish to be in Spain for the completion.

3. He will open a Spanish bank account in your name, as part of the conveyance. Most banks in the area have English speaking staff and some offer correspondence and internet banking in English also.

4. He will request a copy of the rates bill for the property. With the rates bill, your solicitor will be able to calculate the benchmark value of the property and therefore establish if the transfer tax office will accept the sales price of the property for calculating the transfer tax or if instead they will come back for more after you have purchased. (please read our article about benchmarks)

5. Your solicitor will not have physically seen the property you are purchasing so he will describe to you what appears on the paperwork. If a survey is done of the property this will offer a full description of the property which will enable your solicitor to confirm that the full description is provided for on the title deed. If part of the property is not described on the deed (i.e a swimming pool, an important extension etc), then your solicitor will demand that this is addressed by the sellers before the completion takes place.

6. He will make sure there are no outstanding bills.(electricity, water, rubbish, rates, gas, community of owners and entidad de conservacion)



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7. It is normal for a deposit to be handed over to reserve the property until the signing of the Escritura Publica (title deed) can take place. When the deposit is handed over your lawyer will draw up a solid contract to secure both parties until the day of the signing. Normally the deposit will consist of 10% of the purchase price and is non refundable if you pull out of the transaction after the contract is signed. Likewise if the seller pulls out they would have to pay back double the deposit. Most agents will ask for a 3000 euro good will reservation until the full deposit contract can be signed.

8. If you are a non-resident the Spanish Ministry of interior requires you to obtain a certificate of non residency (which in turn determines your fiscal number) so that you can sign the the the title deed. It will also be required later on by the Tax Authorities. This is known as the NIE number and your solicitor will request if for you and register the number with the tax office.

9. If you buy from a non resident you must hold back 3% of the price stipulated on the "escritura" (title deed )which your Abogado will then pay to the Tax Authority on behalf of the sellers capital gains tax. (The abogado will not be able to register your property until he has obtained the receipt from the tax office for this money,). If he is accustomed to dealing with non resident transactions, he will point this out, if he does not, watch out. If you purchase from a non resident ant the funds are not paid into the tax office you will be responsible.

10. When deciding where, when and how you are going to pay for your house in Spain it is very important that you seek advice on your particular case, because the Spanish Law concerning foreign investment does not permit the payment to be made in any old way. If your lawyer is used to performing conveyancing for non resident , he will automatically point out the correct way of handling this. Contrary to popular knowledge it is



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perfectly legal for example for two u.k. citizens to complete on a property purchase in Spain using a Sterling bankers draft photocopied into the deed avoiding the cost of changing the funds to euro and then back to sterling and the transfer costs for both parties which are particularly expensive on the side of the Spanish banks.

11. Your lawyer will prepare a draft (MINUTA) for the notary to prepare the final title deed. (By contrast to England, in Spain each time a transaction takes place a new title deed is drawn up). Your solicitor will receive a last minute search certificate at the notary just before signing which in turn triggers a system by which no other deed can be entered into the property register in advance of the one being signed in your favor. It is an absolutely fool-proof system.

12. The moment the deed is signed and the payment is made the keys are handed over and you become the official owner. After the deed is signed there are taxes and fees to be paid, which your lawyer will do for you, on receiving appropriate funding. Your solicitor will receive a special search certificate at the notary by fax before signing the completion which automatically freezes the corresponding registrar entry for 10 days. In other words that the certificate from the property register has a double function. It informs the solicitor of the exact situation of the property just before signing (i.e. free of mortgages, in the name of the seller etc) and at the same time it confirms that during 10 days from its issue the registrar guarantees the status of the property cannot change allowing your solicitor time to present his new deed. The system offers 100% safety.

13. Finally when the solicitor has cleared the deed with the tax office he will request the property register to register the new ownership. He will



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usually at the end request a search certificate to make sure the deed has been registered correctly.

14. Aprox. one month after the the signing of the title deed you will receive your registered deed (in Spain this is called ESCRITURA )with the registrars stamp on it, and receipts for all the payments made on your behalf. (I recommend you staple them to your title deed, because when you go to sell they are considered deductible expenses in relation to your future capital gains tax.)

15. Your solicitor usually for an extra fee can organize for all the services to be changed into your name and set up direct debits to the account of your choice. Not all solicitors offer this service so it is important you ask in advance as if the conveyancing solicitor that handles your purchase does not do this for you it is difficult to find one that will deal with this matter alone later.

Congratulations, you now have your final title deed.

Now that you have your deed we recommend that you make sure that:

- A. Electricity, water, community of owners if applicable , rubbish collection and rates are set up by direct debit so no further action is required.
- B. That you have made Spanish wills.

After you have completed on your property we recommend that you make a Spanish will. This is extremely important (please read our article "Do I need a Spanish will "). Please note that all solicitors that deal with conveyancing can prepare a Spanish will for you, but it is essential that some thinking



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time is dedicated to how the will need to be written as how this is done can make substantial difference to the level of inheritance tax.

C. That you have discussed the advantages and disadvantages of being a resident or non resident of Spain . If a non resident , make sure that you pay non resident income tax every year using a fiscal representative. (this is a very small tax but it has to be organized.

Two last pieces of advice:

A. Do not become a tax resident of Spain before discussing all the pros and cons with your solicitor . It may or not be in your interest depending on your circumstances and to join the system is a half an hour job while to get out of the system is complex. There are many reasons both in favor and against becoming a tax resident in Spain and they require careful consideration.

B. If you become a resident , before deciding where and in what products to keep your savings (in Spain, in the u.k, in Ireland , in Jersey etc), (deposits, fondos de inversion , Spanish compliant and non compliant bonds , shares etc. ), discuss these matters with a solicitor accustomed to cross/border estates to make sure that your option is the most sensible from the point of view of both tax efficiency and complexity . Over the years we have seen many cases of unnecessarily complicated estates resulting from greedy and or ignorant financial advisors who have sold unnecessarily complex financial products with the excuse of saving inheritance tax that have caused nasty surprises for the heirs.

I want to take the opportunity to say that even though all this sounds complicated, the Spanish legal system in what concerns the buying of property when used properly, gives both the seller and the buyer total safety.



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