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BUYING A PROPERTY IN SPAIN?

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The second home concept never ceases to be popular with us Brits. Many are unlocking some of the equity in their homes or using their hard-earned cash and buying their dream home in the sun. Spain is the most popular destination in Europe for retirement and that second home. If you have decided to buy a property in Spain there are important factors to be considered.

Price. You have probably found a property to meet your needs, within your price range and almost certainly cheaper than a similar property in the UK. As enthusiastic as you may be, do not act hastily. Often buyers get carried away and believe everything the seller says. Before you sign any documents or pay any money, ask for a copy of the Escritura also known as the Land Certificate, which will confirm that the owners do own and can sell the property, and then seek advice.

In some instances the seller will insist that to speed up the transaction the buyer and seller use the same lawyer. However, good advice to all prospective buyers is that independent legal advice should always be sought.

Once you have found a lawyer ask him to explain the procedure for buying/selling in Spain and to provide a breakdown of the costs that you will incur in the purchase. Legal, Notary and land registry charges and transfer taxes can add up to 15% of the cost of the property.

The first thing that a lawyer acting for the buyer will do is carry out a land registry search also known as a nota simple. The search result will reveal who owns the property, if there are any charges on the property and its dimensions. Whereas in the UK a local search will reveal details of planning permissions, adopted roads, etc a 'nota simple' will not and if you are concerned about your views then additional enquiries should be made.

Although you may have agreed the purchase price you then have to agree the amount to declare in the Escritura with the seller. Based on this amount you will be liable to pay transfer tax if the property is already registered or VAT if you are buying a plot of land or new build. The seller will be liable to pay capital gains tax and if they are a non-resident this could be as high as 35%. Therefore it is likely that the seller will ask you to under declare the purchase price in the Escritura. Try to avoid this if possible. Further if you are buying fixtures and fittings consider if part of the purchase price can be apportioned to these.



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With the purchase and declared price agreed the seller will either instruct a lawyer or agent to assist them in preparing a contract of sale. The contract of sale will be followed by the signing of the Escritura in front of the local notary who is an important official in Spain as he collects taxes and authenticates sales and purchases.

Assuming that all is in order and depending on whether or not the property is built the parties will either proceed directly to the signing of the Escritura and completion or agree a contract of sale. The contract is frequently used where the property is yet to be constructed.

Spanish Law does not require a contract however it is recommended as if a deposit is paid it can provide for its return in the event of a breach by the seller. Or where a property is in the early stages of construction, the contract will stipulate when payments are to be made.

Once the contract is agreed, a deposit will be paid with the balance payable at the signing of the Escritura. If the property is being constructed, stage payments will be made over the subsequent months with the final payment being made at the signing of the Escritura.

The Escritura once drafted will state who the new legal owners are. Therefore it is important to consider in whose name the property will be held. This will usually depend on whether or not you intend to hold onto the property long term or you have purchased the property as an investment with a view to selling it in the medium term. Professional advice should be obtained as this could have an effect on your capital gains and inheritance tax liabilities at a later date.

The signing of the Escritura will take place after the signing of the contract although it is not unusual to proceed directly to the signing of the Escritura and forgo the contract. If it is unlikely that you will be present for the signing of the Escritura, a deed can be prepared, also known as a Power of Attorney, authorising someone to sign and act on your behalf.

Unless obtained already it is essential you obtain your NIE numbers. These are your Spanish Fiscal Numbers which can be obtained using a Power of Attorney, so that transmission taxes can be paid on completion. Without these completion or registration of the property in the buyers' names could be delayed.

Once the Escritura is signed before the Notary the lawyer the property is yours!
CONGRATULATIONS!

Your lawyer will then deal with payment of the transfer of ownership taxes and notary fees and arrange registration of the property in the buyers' names.

Two final recommendations: Spanish wills, which you will need to sign in front of a Notary, should be prepared as in the event of death of one of the owners, title does not



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automatically revert to the survivor. If you intend to live in Spain for more than 182 days a year, a foreign national residency permit is required.

Alex Radford is a Partner at De Cotta McKenna y Santafé, a firm of English & Spanish lawyers who can provide a broad range of legal services including the buying and selling of Spanish property.

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