

The purchase of a house or an apartment in Spain



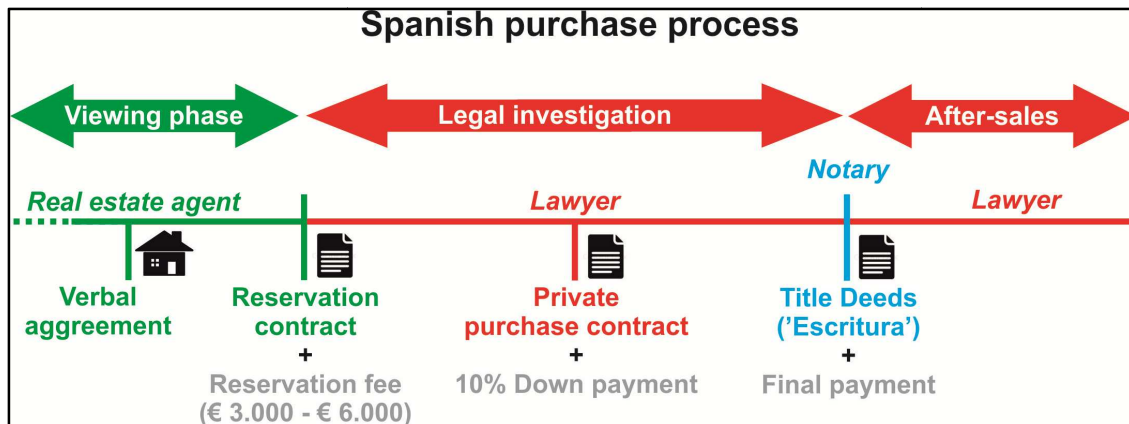
The purchase of a house or an apartment in Spain

Although the European community is trying to standardize regulation, the buying of a house abroad remains a complex matter. Because for the most of us, though, investing in a property is one of the most important financial decisions in our lives, it's very important to be aware of the **differences between the Spanish purchase process** and the process in most other European countries. Of course, nobody would like to be confronted with **legal or fiscal problems** having got the keys of their dream property.

These differences have a great influence on all aspects of the purchase. The first difference is the **role of the various professionals**, because in Spain -besides the real estate agent and the notary- a **lawyer/solicitor** also has an important job during the conveyancing process. The lawyer does most of the work that in other countries is done by the notary. The second main difference is that in Spain you don't just have one but **two official authorities** for the registration of your property: the Land Registry (Registro de la Propiedad) and the Catastro.

Below we give you an example of a **correct and safe purchase transaction**. It always up to the buyer and seller to define the exact steps of the process according to the situation. In the following scheme you see the four phases with the **three moments of signing and payment**.

Spanish purchase process



1. Viewing phase



Real Estate Agent

- Reservation contract
- Reservation fee of € 3.000 - € 6.000

2. Investigation phase



Lawyer

- Private purchase contract
- 10% Down Payment

3. Title Deeds



Notary

- Title Deeds (Escritura publica)
- Final payment

4. After-sale



Lawyer / Advisor

1. Viewing phase (real estate agent)

1.1 The search

In this first phase most of you will select one or possibly several real estate agents that know the local market well. The real estate agent has the very important task to find you the house or apartment that optimally suits your wishes and needs. A good agent does so based on his **market knowledge and experience** and in most cases he can give you much more background information about the property, the sellers and the surroundings, then you can just read on in the internet add. Besides of this your agent negotiates the **purchase price and the first buying conditions**. It's not his job, though, to provide you with legal or fiscal advice. For this you can best contact a lawyer/solicitor of your choice, as he is a **specialist** in this area and **specifically experienced** for this work.

Just like in a lot of other European countries, being a real estate agent in Spain is an unregulated profession, so we advise you to choose a firm with a good reputation. The **sales commissions** can vary -mostly between 3% and 5%- but this commission is always paid by the SELLER. It's possible that the agent doesn't have a house or apartment in his database that meets all your wishes. In this case he can look at the offers of others agencies and in case of a sale, the commission is then spilt by both parties. Some agents use exclusivity contracts, but most of them work on basis of no-sell-no-fee.

1.2 The reservation contract and reservation fee

Once you've come to a verbal agreement on the purchase price through the real estate agent, it's common to sign a short **reservation contract** and to pay between 3.000 and 6.000 Euros as a **reservation fee**. With this reservation you temporarily take the property off the market until all **sale conditions** for the private purchase contract have been negotiated. The reservation fee can be paid to a thirds-account of the real estate agent and if the vendor withdraws from the sale, you'll get your money back. On the other hand you will lose this money if you wouldn't want to pursuit the purchase yourself.

2. The investigation phase (lawyer)

2.1 The legal investigation

In the Spanish purchase process there's an important role for the lawyer, because this professional takes care of most of the work that in other countries is done by the notary. The lawyer is responsible for the **legal investigation with the official authorities** and he checks any kind of possible **debts** related to the property. He also verifies if the house and the land are **registered** correctly and if the seller is really the official **owner**. Based on his training and professional experience he can make a plan to resolve any kind of problems or irregularities that may appear during his legal investigation. Also your lawyer provides you with independent **legal and fiscal advice** and makes sure you exactly know what you're buying and under which conditions.

As client is well protected as a Spanish lawyer is officially obliged to be member of the **Spanish organization for lawyers**, el Colegio de Abogados. He's also obliged by law to have a **professional liability insurance for lawyers**. These documents guarantee you a qualitative, responsible and independent service. You can find these documents on our website under 'team'.

- Estimation of costs & taxes

Once you've selected a lawyer, the first thing he normally does is give you an estimation of all the costs and taxes involved in the transaction. Usually these costs are about **10% to 12% of the purchase price**. Of this amount 8% (Andalucia) of the purchase price is reserved for the transfer tax. When buying a new build house or apartment you don't pay transfer tax, but 10% IVA, which is the Spanish VAT. In Spain you also pay a yearly local IBI tax, which is based on the fiscal value of your property. C&D Solicitors charges around 1% for the legal investigation (with a minimum of € 1.300) plus IVA. The rest of your money goes to third parties like the notary and to fees for the official authorities and registries.

- Power of attorney

You can grant our office a **power of attorney** so we can officially act in your name during the whole process. This can be very **convenient** when you don't live in Spain (yet) so you don't need to travel up and down all the time. (You can cancel this P.O.A if you wish at any Spanish notary at any time you like.) It's easier, faster and cheaper to sign the power of attorney in Spain, but if necessary a foreign notary could also provide you with this document. The power of attorney can be used for the application of the Spanish fiscal number (NIE), the opening of a bank account, the signing of the private purchase contract or the Title Deeds, the payment of taxes, the transfer of the service contract, etc. But of course we never make important decisions on our clients behalf without informing them first in writing.

- Official authorities

Spain has a strong decentralized organization structure and therefore a lot of bureaucratic procedures aren't able to be done yet through the internet. Because of this situation it's often necessary to **visit the authorities in person** to apply for documents and sorting out paper work. This makes the legal investigation of the lawyer relatively time consuming. With the search at official authorities like the **Land Registry (Registro de la Propiedad)**, **Catastro** and **town hall archives** the lawyer/solicitor checks the legal status of the property and its owner (also see chapter 4: the after-sales).

- Debts & Legal correspondence

The lawyer checks whether any **legal correspondence** exists about the property at the Land Registry (Registro de la Propiedad), the Catastro or the town hall. He also verifies whether there are any debts like **mortgages, attachments of property or unpaid taxes**. This is very important information because in Spain kinds of debts are automatically transferred on to the new owner.

- Inspection of the boundaries (rustic land)

When you buy a house in the Spanish countryside, the **legal investigation** sometimes needs to be a bit more **profound and extended**. During the years C&D Solicitors gained a lot of experience in the area of rustic conveyancing. For example it's often wise to have an architect conduct a technical investigation concerning the measurement of the exact **boundaries of the land**.

Better safe than sorry...

Sometimes people that have an interest in the sale might advise you to skip the legal investigation in order to save money. Or they tell potential buyers that basically anyone can conduct this investigation because it all concerns public information. We advise you to be very careful about this suggestion. Spain is a very decentralized country and there are many different levels of legal regulations that are adjusted on a regular bases. This goes even more if you want to buy a property in the Spanish countryside. We often have clients that need to hire our services because of legal or administrative problems *after* they already bought their property. Trying to fix their problems usually costs more than the 1% they would have been charged for the initial legal investigation. And of course, in this phase we can't guarantee you a good financial investment anymore. A lawyer is trained for this exact kind work and he is basically the only specialist that can oversee all aspects and consequences of the purchase in case of possible irregularities.

2.2 The private purchase contract

The second important job of the lawyer during this investigation phase is to negotiate the exact purchase agreements with the seller (or his lawyer) on behalf of his client. These conditions your lawyer will put in a private purchase contract, which is the most important document of the transaction. It contains all the details of the sale, such as the final **price, the payment plan, tax issues, the deadline for signing the official title deeds at the notary and contingencies** (for example if the bank doesn't grant you a mortgage or if any important problems arise that can't be overcome).

The private purchase contract also makes clear what is to happen with the down payment if one of both parties doesn't want to or can't continue the sale (with or without a justified cause). In other words, with this contract your lawyer makes sure that you can buy your property **with all possible guarantees and free of any risks**. Both parties are free to put as many conditions in this contract as they think is necessary, as long as they don't conflict with the Spanish law. Of course, your lawyer will make sure that all legal requirements are met according to the type of property (apartment, villa, urban, rustic, etc.).

With the signing of the private purchase contract usually a 10% **down payment** is paid and, if preferred, this money can remain on the lawyer's '**thirds account**' until the signing of the title deeds at the notary. After the private purchase contract is signed, the lawyer will provide the notary with all the documentation that is needed to set up the new public title deeds.

3. Title Deeds (notary)

3.1 The signing of the title deeds

The Spanish notary only comes into picture on the day of the signing of the final title deeds and the contact normally only proceeds by the lawyer. He's an **official** of the Spanish state and it's his job to check whether the document has been signed correctly and to verify the identity of the persons involved.

On the contrary of other countries, though, in Spain **it's not the notary's duty to check the underlying documentation or the legal content of the agreement**. Neither is it his job to take care of the necessary **registrations** after signing or to carry out any after-sales works. Like we explained before, this is the responsibility of the lawyer.

3.2 Rest payment of the purchase price

During the signing of the title deeds also the rest of the purchase price is paid (purchase price minus reservation and down payment). Mostly this happens through an **official bank check**. This usually is more practical (and more convenient for the seller) than a payment through a bank transfer on the same day. Of course this is also the moment of the key exchange and after this you are the new official owner of the property.

By the way, it's possible that the seller would like you to pay a part of the purchase price in **black money** in order for him to pay less taxes over the increased value of his property. Besides of the fact that it's illegal to do so, we strongly advice our clients to not accept this condition. In case that you would sell the house again in future, you would have to pay these extra taxes yourself. In the moment the rate of this tax for **non-fiscal residents** is 21%.

4. After-sale proceedings (lawyer / advisor)

After the signing of the title deeds there's still some important administrative work to be done. Because of a practical point of view most buyers have their lawyer arrange the after-sale because he already has the dispose of all the data.

4.1 Land Registry & Catastro

In Spain two authorities exist for property registration: the Registro de la Propiedad and the Catastro. This can sometimes lead to confusion among foreign buyers.

The **Land Registry (Registro de la Propiedad)** is a property registry and here you can find official information like mortgages, seizures and tax debts. Like we described earlier; debts in Spain are automatically transferred on to the new owner, so this information is very important. The summary of this registry is called the '**Nota Simple**'. The registration in the Land Registry isn't obligated, by the way, but indeed advisable. (In case of a mortgage this registration is needed anyway.) It's namely possible to be the complete legal owner of a property by just signing a private purchase contract. By signing the title deeds, though, and the registration in the Land Registry you'll avoid any possible kind of legal argumentation.

The **Catastro** is part of the Spanish tax organization (Hacienda / Agencia de la Tributaria) and terminates the **fiscal value (cadastral value)** of your property, for example for the IBI (yearly local property tax). The Catastro also registers the exact **boundaries** of the land, which is extra important for rural houses. In the contrary to the Land registry the registration at the Catastro is obligatory, but in case of conflicting information the Land Registry overrules the Catastro.

Of course it's of mayor importance that both registrations are fulfilled **legally correct**.

4.2 Transfer tax (ITP)

C&D Solicitors on your behalf takes care of the payment of the 8% transfer tax (Impuesto de Transmisiones Patrimoniales) which is based on the purchase price in the new Title Deeds. This needs to be paid **within 30 days** after signing at the notary. If -in very few cases- the fiscal value of the property would be higher than the purchase price, then the transfer tax needs to be paid based on the fiscal value of the house or apartment. If part of the purchase price is paid for furniture, the ITP Transfer tax over this amount is 4%.

4.3 Service / utility contracts

These administrative proceedings need little explanation, but of course it's important that they are carried out **correctly and in time**. Most of these fixed charges (electricity, water, internet, telephone, etc.) can be **automatically debited** from your Spanish bank account.

4.4 Will

Finally, we always advise our clients to have a Spanish will made for their new Spanish property. The Spanish inheritance law -that standard applies- is inflexible and usually has **negative financial consequences for the partners and heirs**.

C&D Solicitors is a Spanish law firm on the Costa del Sol close to Malaga. Gustavo Calero Monereo en Francisco Delgado Montilla are both sworn lawyers and speak Spanish and English. Dutch and German speaking clients are also assisted by a Dutch commercial assistant.

Our law firm is specialized in purchase transactions in both urban and rustic areas. Would you like a further explanation about the Spanish purchase process or information about your personal situation? Please feel free to contact us (info@cdsolicitors.com). On our website you can also find topical English news articles about conveyancing.