

# HOW TO BUY PROPERTY IN SPAIN

## 1. AREA

There are five major reasons why people buy a home in Spain: as an Investment, as a holiday home, to buy to rent, as a permanent Move or as a place to retire. Sometimes, of course, it is for a combination of one or more of these reasons.

Spain offers infinite variety with something for everyone, including magnificent beaches for sun worshippers and spectacular unspoiled countryside for magnificent views and peaceful strolling lovers. There are also an abundance of mountains and seas for sports fans and a vibrant night-life for the jet set. For those who are comfortable living in cities, there are bustling sophisticated metropolises. For those with gourmet tastes, there are superb wines and fabulous cuisine. There is a wealth of art, culture and serious music for art lovers and numerous festivals and fiestas for inveterate party-goers. And, there is tranquillity for the stressed.

If you're looking for investment property for example, it's important to choose a property of the type and location that will give you a maximum return. As a general rule, properties by the coast attract higher rental incomes. If you want a property to retire to, consider buying somewhere further inland to get more for your money and think about how far you're prepared to travel for shops and other amenities. If you plan to make a permanent move and take up employment in Spain you may be more interested in properties that are close to the major population centres. When buying a home in Spain you aren't simply buying a home but a lifestyle, and as a location for a holiday, retirement or permanent home, Spain has few equals, particularly if you're seeking year-round sunshine.

**Some of the reasons why Spain is the most attractive option in the EU are:**

- The 4th best healthcare system in the world (Financial Times, July 2000)
- Highest annual economic growth rate in Europe
- 3rd lowest cost of living in Europe (behind Portugal and Greece)
- Fantastic weather, beaches, and culture
- Easy (and cheap) travel to other European countries and Africa

## 2. REAL ESTATE

The Spanish equivalent to a Real Estate Agency is "Agencia Inmobiliaria" which comes from the latin term "inmobile" which refers to the property that does not move (land, houses).

The Spanish regulations requires the Estate Agency to be register as member of GIPE (Asociación Profesional de Gestores Intermediarios en Promociones de Edificaciones) or API (Agente de la Propiedad Inmobiliaria).

There are many property agencies in Costa del Sol that will offer you a selection of properties from a central data base and their connecting partners that will match your requirements.

Once you have decided on the kind of property you want to buy the best option is to approach one of the "Inmobiliarias" and let them show you what they have. There is no need to see different agencies as they all have access to more or less the same sources with the same prices and you will be viewing the same properties over again.

It is important that you get certain information from Estate Agency with relation to the property you wish to buy such as property fact sheet of the area with plans, photos and details, a "nota simple" (copy of the Land Registry listing of the property), a copy of the "escritura" (registered title deed).

Property Auctions are another way of acquiring resale property and there are some genuine bargains to be had among such repossessed property but be very careful. Legal implications

and financial issues can sometimes be difficult to resolve.

### **3. PROPERTY**

When buying a property one can choose between an already built property or something under construction or that will be built in the future, off plan

#### **Property Off Plan**

This refers to new developments which are currently being built or even those that are still open fields (Off Plan - Sobre Plano). Normally buyers see a typical show home or just a development plan and select their property from that.

In up-coming areas, such buys can be a real bargain and often once the property is complete it has already increased sharply in price from what you originally agreed to pay for it. Many people even buy "off-plan" from developers always intending to resell the contract at a profit once the property is complete. Impressive gains can be made in this way - if your timing is just right.

It has the advantage that there is some flexibility in design, style and finish of your own home. Many such developments are also in prime locations and you have the added bonus of a statutory 10-year building guarantee, ensuring high-quality construction and materials.

The downside of this type of property is that you may have to wait anything up to 18 months from the time you make your choice to when the building is complete. You should also check the plans for the rest of the site carefully or what you thought was a great sea view from your balcony could turn into a picturesque block of flats.

The location, infrastructure, the history of the developer, the builder, financing and bank guarantees are all very important, as are the terms and conditions of the sales purchase contract, and the payment terms, all which can and should be negotiated, especially if you wish to resell on or before completion.

Payments for new builds tend to be in instalments with developers normally asking for a sizeable chunk as a deposit (up to 40 per cent) with further instalments and a final payment when the building is complete.

Other important things to check are the annual maintenance charges (particularly in urbanización and apartment developments), landscaping charges and other costs which may have been omitted from the contract.

#### **Resale**

Becoming a more popular option for property investment in some areas, resale properties refer to older buildings (even if they are being finish or you buy from someone who bought off plan) that are on the market. The plus is that you can normally move in immediately and in many cases they come with furniture included in the asking price.

You also get to see the property before you make your decision, which will give you a better feel for the place than you can get just from seeing a site-plan. Another up-side is that you would be moving into an "established" area - it will have trees, grass, flowers, pool, nearby shops etc whereas you may need to wait for a year or so before your New Build stops looking a bit like a building site.

The downside here is that, if they are old, more often than not some building work will be needed to bring the house up to the standard you want unless it's a fairly new property. You should try to get quotes on any remedial work needed before buying a resale property so that you have a better idea of the total cost of your investment.

As for the type of property, here are some indications of what you can find in the market:

## **Urbanización**

Refers to a housing estate or property development normally consisting of various types of apartments blocks, terraced houses, semi-detached or detached villas all together as one enclosed or gated community development.

Some are built on the outskirts of existing towns and villages while others stand alone a few miles from the coast with all the facilities and amenities to make it a self-sufficient community. All will have, as part of the build plan, a good shopping area, and some “urbanizaciones” are legally required to build a school.

They tend to be a good option in terms of value for money, offering plenty of space and good facilities. The downside is that during low season they can be very quiet and deserted, which may not suit you. Also maintenance charges can be high.

You will need to investigate all these factors before investing in this type of development. Though not for everybody, they offer an accessible route into the Spanish property market and some can be quite exceptional.

## **Villa**

Detached and purpose-built holiday home situated on the coast or near the coast or around golf courses. Prices are high for these near the coast and in the popular regions of Spain but they tend to be slightly more affordable when located on an “urbanización”. They are also among the easier properties to rent out.

## **Town House**

Town and Village Houses are typically located in traditional Spanish towns and villages. They can put you right into the heart of Spanish life and are often deceptively large properties offering good value and access to all the local amenities.

These properties tend to be much older and thus it's very important to have a thorough building survey done - there can be a lot of modernisation work required in such a building, such as wiring, plumbing and up-to-date decoration.

Town houses are also becoming part of the new build market and you will find these in many of the developers' and agents' brochures.

## **Plot**

A plot of land (parcela) or finca (a plot that may have some kind of construction on it) or an estate lying on the outskirts of a town or between towns and villages. This covers many types of property, from farmhouses and villas to derelict buildings with olive groves, outbuildings and substantial land.

Normally a good deal of modernisation and development is needed for this type of property which may involve applying to local councils and agencies for planning permission. The name “finca” is also now used to describe a big plot of land with a new villa.

Make sure you have checked out all the legal issues tied in with the finca so that you know what you can and can't do. Make especially sure that you check any land issues to ensure that it cannot be sold-on without your agreement as sometimes happens.

It's also important to realise that plumbing, electricity and telephone installation may be more difficult in some more remote areas. A finca is not a choice to be made lightly, but if you like a challenge, it can be rewarding and can be a very good investment.

Spanish legislation classifies land as one of three types: suelo urbano. Suelo urbanizable and suelo rústico. This classification is listed in the PGOU, Plan General de Ordenación Urbanística of each town. The possibilities of construction on each is very different.

**Suelo Urbano** Land of this type has connections to the public networks of drinking water, sewage, electricity, etc. The specifications regarding what type of construction can be done on this type of land depends on the regulations for each sector of the city.

**Suelo Urbanizable** This land has the possibility of being reclassified as suelo urbano. For that to happen, a Plan Parcial must first be approved, followed by the approval and execution of a Proyecto de Urbanización.

**Suelo Rústico** Land of this type may not be reclassified as suelo urbano. Construction is very restricted; normally only buildings relating to agriculture and livestock are permitted. A subclass called "Suelo Especialmente Protegido", such as Natural Parks, has even more restrictive conditions.

## 4. DECISIÓN

### **The steps to buying a house in Spain**

Once you have decided on the property that you want to buy, the process is this:

## 5. LAWYER

Before you make an offer or place a bid on a property or development you should have a lawyer in place for dealing with the legal side of the property purchase. Your lawyer (abogado) will perform all the necessary checks on the property and ensure that the terms of the contract are in your best interest. He or she will also arrange for the signing of the deeds in the presence of a Public Notary (notario).

As in all property purchases, ensure your lawyer goes through the documentation thoroughly and make sure that all hidden costs are accounted for. For example, in Spain debt is tied to a property so you may find yourself with a new home that has some large outstanding debts attached - and they are legally your responsibility to settle. As always, make sure that you have a very good Spanish lawyer to check the details.

### **Process**

1. You should appoint a lawyer (abogado) to represent you during the property purchase process. He/She will perform necessary checks on the property and ensure that the terms of the deal are in your best interests.
2. Once you are ready to make an offer on a property, your lawyer, working with the agent or developer will draft a private contract which ties both parties conditionally to the sale.
3. Your lawyer performs numerous checks on the property (debts, title deeds, tenants etc) and when satisfied that all terms of the contract have been met arranges for the deeds to be signed in the presence of a Notario, a state appointed representative who is needed to officiate and witness the contract and deed signing.
4. Taxes, land registry fees and legal fees are paid and the deeds to the property come to the new owner after around 3 months.
5. Your lawyer can also arrange for the transfer to your name of utilities and services such as water and electricity and organise their payment through a local bank

### **Legal Terminology**

#### **Nota simple informativa**

With this document from the Property Registry (*Registro de la Propiedad*), you'll find out if the

property is free of debt, if it really belongs to the seller, and if the description of the property matches what the buyer has been told (to avoid surprises about missing square meters).

**Referencia Catastral** - Land registry document relating to the property location. This offers from the Land Registry document which relates to title and ownership. Your lawyer will check both and advise as to any differences.

**Contrato de Compraventa** – this document is signed by the Notario and shows that you are purchasing the property.

**Escritura Publica** – Title Deed - This is the official document which shows that you are the legal owner, taking a few months after the contract signing to be sent to you. You'll need a suitable fiscal status in Spain, banking facilities and professional representation (lawyer) to ensure a clean completion on the property, and to advise you on the best fiscal format to effect the property purchase and oversee de entire purchasing process under Power of Attorney.

## 6. PURCHASING PROCEDURES / PAYMENT FORM:

### A. Resale:

#### 1. Place a bid :

Before you can place an offer on a property you will need to consult with your lawyer and estate agent and establish all the details of the bid in writing, covering the following issues -

- Price of the property (what you are offering - contract value)
- Payment method and currency
- Fixtures and fittings that are included
- Furniture and other items
- Tax issues (covering who pays what)

By covering all of these issues in your bid it means that the negotiation process will be a one-off event and normally resolved at the very beginning of the transaction.

#### 2. Reservation fee to take the property off the market :

This is an agreement between a potential buyer and the vendor / estate agent. Once signed, the property is taken off the market for an agreed period of time, for a set fee which will count towards the cost of the property if a full contract is signed within the agreed period. Be sure to check the wording and detail of this type of contract very carefully, with the assistance of your solicitor.

#### 3. Private contract 10% or pre-agreement:

Between the seller and the buyer there has to be a contract in place until the public deed of purchase is ready. This is a binding contract to purchase a property and will involve paying a negotiable contract of around 10% of the price of the property. The balance is payable upon completion of the signing of the escritura. Again, it's essential that your lawyer inspects this agreement and all related matters thoroughly.

It's usually a simple document in which the seller expresses their intent to transfer the property to the buyer, and the buyer expresses their intent to buy at the price and conditions agreed upon. The typical agreement in Spain (called contrato de arras) is if the buyer backs out of the contract,

they lose the deposit; if the seller backs out, they have to pay double. Of course, the buyer and seller may choose another type of agreement if they prefer.

4. Deeds, Notary, Registro de la Propiedad :

The purchase is formally completed when the public title deeds of purchase (escritura) are signed before a Notary Public, the agreed price of the property paid and the ownership transferred to the buyer. Under normal circumstances the public deed states that the property is sold free from any charges and encumbrances, is up to date in all ongoing bills and payments and is free from tenants.

A few days after this, the deed is collected and all relevant transfer taxes are paid to the relevant tax offices and the deed for the property is taken to the Land Registry in order to register the title in the new owner's name.

Land Registry (Registro de la Propiedad) fees will then be collected when the registration is complete, a process that can take up to 3 months. In the short term a 'copia simple' (copy of the listing) will be issued allowing any other legal formalities to be tied up.

B. New development

1. Reservation fee 3000 to 6000€ :

For off plan properties it is normal for stage payments to be made throughout the construction process, either tied in to development phases of the build or at periodic intervals to suit the purchaser. Either way, it's normal to pay a significant proportion of the costs of the new build before parting with a settling balance at the signing of the escritura. It's always wise to have your lawyer read over any small print tied into this type of contract.

2. Private contract

3. Deeds

## 7. COSTS

There are always hidden and additional costs when you buy property and Spain is no exception. As a general rule, allow 10% - slightly more for new and off-plan properties - on top of your purchase price, to cover various taxes and legal fees. You can get a mortgage in the UK or in Spain and, for the latter, it is normal for banks to advance a loan of up to 80% of the declared value of the property

The property transfer must be certified by a notary. The deed of purchase will be given to the buyer after the notary reads it and the parties present agree to the contents of the deed. The following must then be presented: proof of identity (or power of attorney) of both parties, the seller's title of property (a form that reports the investment to the Central Register), and the buyer's payment. The buyer and seller sign the contract; beneath their signature, the notary signs using his *firma protocolizada* and the deed is ready for taxes.

**Taxes:**

- IVA (VAT) on new constructions - 7% of the contract price (16% on land) is payable if this is the first purchase from a developer (15% for a plot of land or berth); 7% for a dwelling and 0.5% Stamp Duty.

- Transfer Tax (Stamp Duty) on resales - 7% of the declared value

If it is the second or subsequent transfer, transfer tax at 6% or 7% is payable instead of VAT.

- Legal Document Tax - This tax is charged on all documented legal acts. For resales this is normally included in the transfer tax but if you are buying a new property this charge is added to the VAT for the property. (an additional 0.5% on average)

**Notary cost:** These are based on a scale set by the local College of Notaries and range from 300 to 850€ depending on the price of the property. The buyer is liable to pay part of them. Approximately 1% of property price. Preparation of escritura, registering of ownership. The charge for this is dependent upon the value of the property - the higher the value the higher the notary charges will be.

Legal Fees - Approximately 1% of property price. Making searches on registries, preparation of escritura, translation of contracts etc. Payment for legal costs is normally after the handover of the escritura although many legal firms look for a deposit at the start of the process.

**Land Registry:** Fees for the registration of the new "Escritura" (Title Deed) with the name of the new owner.

**Plus Valia** - Capital Gains tax levied by Town Hall on increased value of land since last sold. This is normally paid by the seller of the property as they have gained through the increase in value of the building but in some areas it's common for the purchaser to pay this. On most modern apartments and

**Surveyors Fee** - if you decide to have your new property surveyed by a structural specialist you will have to pay an additional 4-700 Euros (£270 - £470) for the service, dependent upon the how in-depth the survey is.

**Connection Charges** - for all utilities this is around 500 Euros (£340)

**Other:** An additional sum equivalent to 40% of the Notary costs is payable as a Property Registry charge.

Registration with Spanish tax authorities and obtaining a foreigners' id number (NIE) - your solicitor can arrange this for a small fee.

## 8. AFTER SALES / RUNNING COSTS

### **The cost of owning a home on the Costa del Sol:**

**IBI:** Owned Property is subject to IBI tax, Impuesto sobre Bienes Inmuebles. This local tax varies and is based on the Land Registry value (Valor Catastral) of the property, around 0.5% or 1.1%. This value is often considerably lower than the real value (up to 20 times less).

When purchasing a property it is always wise to request to see the latest receipts for the IBI before signing a contract as if there are any back taxes and penalties outstanding the new owner will become liable for it.

Other local taxes: in some areas local authorities may also charge for various services separately such as rubbish collection, water, sewerage and beach cleaning.

**Impuestos sobre el Patrimonio:** All residents have to pay wealth/property tax, Impuesto sobre el Patrimonio which taxes on all your assets, whether in Spain or abroad. Tax treaties may affect the application of this rule

Non residents may have to pay this tax for the properties in Spain according to International Agreements.

Impuesto sobre el Patrimonio affects any property with a market value over 170,000€, with an 0.2% of the value and rises up to 2.5% for a property valued over 10,695,996€

**Personal income tax:** Residents pay only income tax on their declared income and capital gains starting at 20% there are the usual tax allowances, and new ones to encourage owners to rent property.

**Urbanizacion and Community fees:** Properties on an Urbanización or in a Community will have to pay quarterly [or monthly] community fees, covering the running and maintenance costs of shared facilities which can include private roads, drains, lighting, private water supplies, gardens, swimming pools, etc. These costs vary considerably depending on the facilities available. The agent will advise you of the Community fees applying to a particular property.

If you are not resident in Spain, you are legally required to have a fiscal representative who is, an Asesor fiscal will take care of everything and keep you 100% legal for a small monthly fee.

**Utilities:** Electricity, water and gas or fuel bills must be paid promptly or the supplies must be cut off. If you are disconnected there is always a charge for reconnection.

## **ANEXO 1 - Check list to buy a property in Spain**

1. Get qualified, professional legal assistance working solely on your behalf.
2. Check the seller's escritura.
3. Check a recent nota simple
4. Review the plans of the property
5. If buying a plot of land, check that building is a legal possibility and the percentage of land that can be built.
6. Review the IBI receipt or licencia de primera ocupación
7. Ensure the community charges are up to date.
8. Ensure the utilities receipts are up to date.
9. Open a Spanish bank account.
10. Arrange your mortgage finance
11. If the private contract is draw up in Spanish, have it translated into your mother tongue
12. Agree a price, method and currency of payment.
13. Sign the escritura in the presence of the notary personally or with a power of attorney.
14. Pay the required fees and taxes and the 5% tax deposit if you buy from a non-resident.
15. Establish how and when you will receive the escritura making you the legal owner.

## **ANEXO 2 - Glossary of Spanish legal terms**

**Abogado** - Lawyer.

**Acta** - A document prepared by a notary when adding a property to the land register.

**Arras** – Deposit to take the property off the market.

**Arrendamiento de obra** – A contract between a builder and the owner of a property.

**Boletín de enganche** - Certificate for the installation of electrical facilities, which is a precondition for getting access to electrical power.

**Certificado final de obra** - Certificate from the Architect that confirms the construction work has been

completed.

**Codigo civil** - Civil law.

**Comunidad de propietarios** - Community of owners in an urbanization.

**Contrato de arrendamiento** - Rental contract.

**Copropietarios** - Co-owners.

**Declaracion de obra nueva** - The declaration by a notary of the construction of new buildings.

**Delegacion de urbanismo** – Surveyor’s office responsible for granting building permits.

**Demarcacion de costas** – The Government department that is responsible for the protection of the coastline.

**Derecho de retencion** - The right of one party to retain monies paid thus far in the event that one or more contractual obligations are not met by the other party.

**Edificabilidad maxima** - The maximum construction area.

**Embargo** - Seizure or retention.

**Escritura** - A certificate of purchase issued by the notary and register at the Land Registry – Title Deed.

**Fianza** - Security payment or deposit, bail, warranty.

**Finca** – Plot of land, either with or without buildings.

**Gestor fiscal** – representative that organise and deal with your tax returns and other official documentation

**Hipoteca** - Mortgage.

**I.B.I (Impuesto Sobre Bienes Inmuebles)** – Local community tax on property.

**Impuesto de actos juridicos documentados** - Stamp duty.

**Impuesto de transmisiones patrimoniales** –Transfer tax, Purchase tax on real estate, expressed as a percentage of the amount detailed in the escritura.

**Impuesto sobre construcciones, instalaciones y obras** - Local tax on new constructions.

**Impuesto sobre el patrimonio** – Assets or wealth tax.

**Impuesto sobre sucesiones y donaciones** - Death duty and inheritance tax.

**Impuestos municipales** - Municipal or local taxes.

**IVA (Impuesto Sobre el Valor Anadido)** - Value added tax

**Ley de arrendamientos urbanos** - Urban rental and tenants law.

**Ley de la propiedad horizontal** - .

**Ley de suelo** – Land / Ground law.

**Licencia de obras** - Building permission.

**Licencia de primera ocupación** – first occupancy licence

**NIE (Numero Personal de Indentificacion de Extranjero)** - Tax identification number for non-residents.

**NIF (Numero de Indentificacion Fiscal)** - Tax identification number for residents.

**Nota simple informativa** - Extract from the land register listing of the property.

**Ocupacion maxima** - The maximum permitted roof area of a property.

**Oficina de Hacienda publica** – Tax office

**Parcela** - Plot of land.

**Perito** - Person who checks the installation of electrical points etc. and advises on architectural safety matters.

**Permiso de obra menor** - Permission for small construction works.

**Plan parcial** - Partial development plan of a community or urbanisation.

**Planta** - Floor (i.e. in an apartment building).

**Plus valia** – Tax levied on the increased in value of a property.

**Precio** - Purchase price.

**Procurador** - Representative of a party at the court, besides the lawyer.

**Propiedad** - Property or possession.

**Propietario** - Owner of property or possession.

**Proyecto de ejecucion de obra** - A proposal for building, held until permission is granted.

**Registro de la propiedad** - Land registrar.

**S.A. (Sociedad Anonima)** - Public limited company.

**S.L. (Sociedad Limitada)** - Company with limited liability.

**Saneamiento** –Sewage, Liability for defects.

**Separacion a linderos** - Minimum distance between neighbouring properties.

**Servidumbre de transito** – Right of way/access rights.

**Solar** – Plot within a town or village.

**Suelo no urbanizable** - Land protected from building.

**Suelo urbanizable** - Land that can be built on.

**Suelo urbano** - Urban or built up land.

**Tasa** - Rates.

**Tasación** – valuation

**Tasador** – valuation officer

**Toma de posesion** - Taking possession.

**Traspaso** - Payment for the transfer of rental or lease contracts - normally for an established business.

**U.T.M.** - The number of a registered plot.

**Urbanizacion privada** - Private community or development.

**Uso de oficinas** - To use as an office.

**Valor catastral** - Official value of property, calculated by the town hall and used to generate the rate of ground tax.