

A BIG STEP: BUYING A PROPERTY IN SPAIN

HOW CAN A LAWYER HELP?



PELLICER  HEREDIA
INTERNATIONAL LAWYERS

Buying a property in the safest way



If you've decided to buy a property in Spain, it is completely normal that doubts and questions arise. This is why, before paying a deposit or signing any documents, we advise you to find a lawyer with expertise in real estate law and one who specialises in buying and selling properties. The lawyer will inform you about each and every step you must take to purchase a property with the maximum guarantees and no risks, will guide you from beginning to end and will clear any doubts that may arise during the process.

The steps to be followed in the purchase of a property are divided into phases.

- 1. WHAT YOU SHOULD KNOW BEFORE BUYING A PROPERTY IN SPAIN**
- 2. PRIVATE PURCHASE AGREEMENT.**
- 3. PUBLIC DEED OF PURCHASE.**
- 4. TAKE OUT A MORTGAGE.**
- 5. SUBSEQUENT FORMALITIES.**

1. WHAT YOU SHOULD KNOW BEFORE BUYING A PROPERTY IN SPAIN

The first decision is of course the choice of property, a property that best suits your needs and budget. Therefore, it is a decision that should be made with peace of mind and evaluating the multiple aspects connected. Our recommendation is to always choose a reliable real estate agency for the purchase of a property.

The reservation document or contract.

The reservation contract of a property is preliminary to a purchase, where the buyer pays a certain amount (usually small) to the real estate agency to cover two objectives:

The reservation contract is widely used by many real estate agencies to try to reach an agreement without the parties being present. The reservation is an amount, which is paid as a deposit to the real estate agency to reserve the right to buy the property chosen. The amount that is usually paid is between 3,000 and 5,000 euros depending on the value of the property.

The reservation can be made for the price offered, in which case the property is reserved exclusively until the signing of the private purchase agreement, together with a deposit.

The reservation goes towards the forward's final price, and **in the event that the future purchaser was to back out, he would lose the amount paid - unless otherwise agreed -** by way of compensation for damages.

The reservation can also be made with a price offer or challenge the conditions, and in this case the real estate agency negotiates during the agreed period, in such a way that if an agreement is reached, the reservation becomes firm and on account of the final price, otherwise, the amount will be returned in full to the buying party, without having anything else to claim from either parties.

Once you have chosen the property, the purchase process can begin. The first step is to sign a document called the reservation agreement, this is a regular process when there is a real estate agency acting as an intermediary.

- 1) *To reserve the right to buy the property for the future buyer*
- 2) *Establish the basis and agreement without the parties being present.*

This is beneficial for all parties, since the buyer ensures the exclusive reservation of the chosen property until the end of the negotiations, and the seller knows that they are negotiating with someone who is committed and has a real interest.

It is important that these conditions are very clear in the reservation document that you sign with the real estate agency, and if you have the slightest of doubts, ask for all the necessary clarifications and get help from your lawyer.

Do you want to buy but revoke the purchase agreement in the case that your mortgage isn't approved?

We advise for you to sign a reservation document subject to a resolutive condition in the event of not obtaining the required financing for the purchase of the property, agreeing or not to compensation in favour of the seller or agency.

2. PRIVATE PURCHASE AGREEMENT

Prior to formalising the sale before a Notary by means of a public deed, it is normal to conclude a **private purchase agreement** between the parties. This private document commits the contracting parties to comply with their obligations. It is important to properly assess the draft contract where the obligations are set, and clauses

requested by either of the parties are included.

It is common to have previously signed a reservation agreement or even a deposit agreement, which already contains some of the conditions under which the purchase will take place.

However, prior to signing the private purchase agreement, it is advisable to find out in advance the following information:

1. Who signs on behalf of the seller. If it is a new property, the administrator or the representative of the company promoting the property will be signing; if it is a second hand property, the owners must sign. If the property is a community, both partners have to sign.

2. Whether the property has any outstanding debts. For example, a mortgage, an attachment order or if the owner is not up to date with payments or taxes, such as the property tax (IBI).

3. That the physical reality of the property is correctly registered in the property registry and registry (catastro).

4. Whether there is a case of urban infraction.

5. The planning regulations in the area where the purchase is to be made and whether everything is in order.

6. If the owner is up to date with the payments (such as: community fees, water bills, electricity bills, etc.) and if there are any future claims approved by the community of owners.

7. How the expenses arising from the purchase will be distributed: Regular procedures, Notary, Property Registry, Lawyers, etc.

The Deposit

A deposit is a sum of money which the buyer pays the seller to hold the property. The most common is the ***“down payment”***: *money paid upon signing the private purchase agreement and which is part of the full price.*

The reservation deposit is also very common, this means that

- 1. if the agreement is broken by the buyer, they will lose the money delivered on account of the price (deposit) and**
- 2. if the agreement is broken by the seller, the seller must return double the agreed amount.**

Essential points of a purchase agreement

Fundamental elements to be included in a private purchase agreement:

1.

It is important to identify and verify the legitimacy and capacity of the buyer and the seller. If it is a new property, the administrator or the representative of the company that is promoting the property will sign the agreement; if it is a second hand property, all owners must sign. If the property is a community, both partners have to sign the agreement.

2.

Correct description and location of the property, as well as its cadastral reference number. It is necessary to check that the physical reality of the property is perfectly described in the property registry. In case there is a difference or a declaration of a new project or old work is pending, it must be mentioned in the contract.

3.

The contract must also include the agreed price for the transfer of the property, as well as the method of payment.

4.

If the property has outstanding debts it will have to be mentioned in the contract. It is important for the buyer to buy the property free of any charges and encumbrances.

5.

It is normal that there can be an existing mortgage on the property, this is not a problem. Normally the cancellation of the mortgage is done on the same day as the signing of the public deed of purchase. It is important to state this information.

3. PUBLIC DEED OF PURCHASE

6.

For the protection of the buyer it is important to include, especially with rural properties or block of flats, that the property does not have an existing urban infraction file and that it is up to date with the municipality's planning regulations.

7.

It is important to mention whether there is an occupation licence or not, and who should be in charge of applying and paying for it if there isn't one in place.

8.

It is important to mention the requirement for the seller to provide the energy performance certificate at the signing of the public deed of purchase.

9.

Although the private document is valid for legal purposes, to be able to register the property at the property registry, the deed of purchase must be granted in front of a notary, as it is usually done even though it is not compulsory. Therefore, it will be important to mention the date foreseen for the signature of the public deed of purchase in the private agreement. The fact of signing the public deed of purchase confers a legal security since the identity, legitimacy and capacity of the buyer and the seller is checked and publicly attested. As well as, the seller's title documents, with third-party effects, and a registry check of ownership and debts is carried out at the time of signing.

10.

It is important to take into account what expenses are derived from a purchase agreement, and the expenses related to the community of owners, water, electricity, etc. must also be included, together with the future contributions approved by the community of neighbours. The costs of the public deed must also be mentioned: notary fees, registration fees, property transfer tax and capital gains tax.

The public deed provides legal certainty to the purchase of a property, in addition to witnessing all the conditions agreed, checking the aspects included in the private purchase agreement.

Before and at the time of signing the public deed of purchase, your lawyer must check the following to inform the notary:

- The identity, capacity and legitimacy of the buyer and seller.
- The seller's title deed. It is recommended that the seller carries the original title deed on them for the notary to record the sale on that same deed.
- Whether or not it is the seller's main residence, since if it is, both spouses and sometimes both parties must be present to sign.
- The payment of the community of owners' fees.
- If the property has a certificate of occupancy.
- Forms of payment: The title deed states how and when the property has been paid, the account numbers from which the money has come from and where it has been deposited in the event of a transfer.
- The notary must make available the information on any debts on the property, to inform the buyer if there are any mortgages, embargoes or other charges outstanding.
- The seller must provide the energy performance certificate.
- The proof of payment of the most recent IBI (property tax), together with the property's cadastral reference number must be provided, to verify its connection with the seller's title deed.
- It must be specified who covers the costs of the public deed: notary fees, registration fees, property transfer tax and capital gains tax.

**For
Example**

4. TAKING OUT A MORTGAGE

WHAT TO DO?

First of all, do your research. Banks and lawyers specialised in banking and consumer law will be able to advise you.

Given the significant economic outlay involved in buying a property, most citizens tend to apply for financing. Let's pretend that you are in this situation.

Which product to choose? Banks offer their clients different products, but it is advisable to differentiate between them in order to decide on the best one for you.

What are mortgages?

Mortgages are the bank's key tool for the purchase of a property. The bank offers you a sum of money at a relatively low interest rate in exchange for you mortgaging the property you buy.

This means that if you are unable to pay, after meeting a number of conditions set by law, the bank may sell the property at public auction. Please bear in mind that unless agreed in the public deed, handing over the property to the bank *will not get you out of the debt if it is bigger than that obtained from the sale; for this reason, the compulsory valuation incorporated in the deed is very important, as it determines the market value of the property.*



INTEREST

This is the price you pay for the loan. It can be fixed or variable. In the latter case, most mortgages tend to have interest linked to Euribor, plus a differential which is added to the interest. The higher it is, the more expensive the loan.



LOAN TERM

This is the period the bank gives you to pay back the money it has loaned to you. Most banks offer a maximum term of 30 years.



FINANCING

Banks are restricted from granting loans that exceed a certain percentage of the appraised value.



COMMISSIONS

You may come across several. The real estate credit law has regulated most of them. These are the ones:



Opening fee.

The real estate credit law does not limit this commission, but it establishes that it will be the only one that the bank is allowed to charge you when you take out a mortgage. This eliminates the possibility of being charged a study commission, as was previously the case.

Early repayment fee.

This is the fee that your bank can charge you if you want to pay off all or part of your mortgage early. The real estate credit law establishes that for fixed rate mortgages, the commission may not exceed the amount of the loss that the lender may suffer with a limit of 2% of the capital paid back during the first ten years, and with a limit of 1,5% from the eleventh year onwards. For variable-rate mortgages, the fee may not exceed the amount of the loss that the lender may suffer, with a limit of 0,25% of the capital paid back during the first three years; or with a limit of 0,15% of the capital paid back during the first five years.



Novation fee.

Provided that a fixed interest rate is applied for the remainder of the loan in place of a variable rate, the fee for early repayment may not exceed the financial loss that the lender may suffer, up to a limit of 0,15% of the advanced capital during the first three years of the loan; after this period, no fee may be charged.

Important:

Analyse the European Standardised Information Sheet (FEIN by Spanish abbreviation). This document, which must be given to you by the bank contains *all the information on the mortgage*. The form is a binding offer for a minimum of **10 days**.

You must also be provided with the **Standardised Warning Sheet (FIAE)** detailing the clauses and expenses of the mortgage.

What information is included in the FEIN?

- Identification of the lender and their commission.
- Amount, duration and currency of the loan, with information on the fluctuations it may have if it is signed in a currency other than the euro.
- Interest rate. Including the repayment chart.
- Total amount to be repaid.
- Value of the property and the percentage of the value granted.
- Periodicity and number of payments: If paid monthly, quarterly... and the total number of instalments.
- Amount of each instalment: How much is paid in each instalment and when and how this amount can change. If it is a variable rate mortgage, it must specify how long it is fixed for and how often the instalments will change.
- Repayment and early repayment table: conditions and fees if the loan is repaid before the end of the term agreed.
- Failure to comply with the commitments tied to the loan, highlighting the borrower's consequences.
- Elements of flexibility: the lender will explain the possibility of transferring the credit to another lender and the conditions under which this can be exercised.
- Borrower's rights. These include the right of withdrawal and the right of portability, including subrogation.
- Claims. The address where this right can be exercised.

Once you have decided with which **bank** you are going to take out the mortgage that best suits your interests, we enter the so-called pre-contractual phase of the loan as set out in the law regulating real estate credit contracts, which has been in force since 16 June 2019.

CHOOSE YOUR NOTARY

After having chosen the bank and the mortgage most suited to you, you will have a period of ten days, prior to the authorisation and signing of the public deed of your loan, to visit the notary of your choice.

It is important that your lawyer informs you of all the relevant aspects of the loan, and with your authorisation by means of a power of attorney the lawyer get in touch with the notary to verify all the information on the mortgage that you are taking out.

After these ten days, and the notarial act having been drawn up and signed by you and if applicable by your guarantor, the contractual phase begins, with the authorisation of the purchase and the mortgage deed, which are usually signed simultaneously.

This is the last moment to clarify any doubts you may have, as once the deeds have been authorised by the notary, there is no going back.



On the day of the signing, the seller, the representatives of the bank and you as the buyer and the borrower meet at the notary. The authorisation and signing of the public deed of purchase and mortgage usually takes place at the same time.

5.

SUBSEQUENT FORMALITIES

Expenses arising from purchasing a property without a mortgage

- **Notary fees:** As agreed. In places like the Costa Blanca, for example, the norm is that the notary fees are paid in full by the buyer, however this must be specifically agreed upon. In the absence of agreement, the notary fees will be borne by the seller, and the copy fees by the buyer.
- **Property Registry fees.** Invoice from the land registry for registering the title deed.
- **Lawyer fees.** Invoice of the legal advisors if you contract their services (legal advice and representation on your behalf), who will take care of everything from advice on contractual matters, to helping you with all the paperwork for the signature before the Public Notary, and all the necessary after sales services (changes in water and electricity bills, property tax, community of owners, etc.)
- **Taxes.**
 - If the property you are buying is new, you will have to pay VAT, which amounts to 10% of the purchase price, and the stamp duty, which varies between 0,5 and 1,5% depending on the autonomous community.
 - If it is a second hand property, you will have to pay the property transfer tax, which varies between 5% and 10% of the price, depending on the autonomous community. In the Valencian Community it is at currently 10%.
 - Ask your lawyer for information on the verification of values by the administration and how they are applied in your community, in order to comply with your tax obligations.

Expenses arising from formalising the mortgage

The real estate credit law has brought about important changes in the distribution of these costs between you and the bank, meaning from now on, the bank assumes most costs.

The bank pays:

- **Notary Fees**
- **Registry Fees**
- **The Bank's Management Fees**
- **Stamp Duty**

You pay:

Valuation of the property.

This is one of those expenses that you have to face on a compulsory basis, whether or not you are granted the mortgage. This will be carried out independently by an appraisal company or professional that you choose. Some banks may take care of it voluntarily.

Also to be taken into account:

1. Copies of the mortgage deed will be borne by the person that requests them, except for the simple copy that the notary will send to your e-mail.
2. The bank may require you to take out home insurance and/or life or payment protection insurance, although you can take them out with the company of your choice.

Registration of the Title Deed:

Although the registration of the purchase is voluntary, as the bank requires the mortgage deed to be registered in the property registry, the purchase deed will also be registered prior to the mortgage.

The notary, on the same day of the granting, will electronically send a copy of the purchase deed as well as the mortgage deed to the property registry. This ensures that you will not be affected by any subsequent problems from the seller (previous owner), for example an embargo or a claim.

In the following days, it will be necessary to settle the taxes within the legal period.

 PROPERTY

 INTERNATIONAL

 FAMILY

 IMMIGRATION

 BANKING

 COMPANY

 TAXES IN SPAIN

 INVESTMENTS

 COURT REPRESENTATION

*your new life starts **there***



PELLICER  HEREDIA
INTERNATIONAL LAWYERS

+34 965 480 737
www.pellicerheredia.com