



LEGAL GUIDE TO BUY PROPERTIES IN SPAIN – 2011

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Welcome to TLACORP. Our team of specialists has prepared a legal guide with all the necessary steps and information to complete the acquisition of a Spanish property.

If you are reading this report is because, maybe, you are thinking in Spain as your “Place in the Sun”. Our company is delighted to help to form your decision from a professional an independent point of view.

In this guide you will find detailed information from how to buy a new property, or to buy a resale, passing by all the steps of the process, main points to check, and parts involved in the process.

We really do hope you are satisfied with it.

Thank you for trust in our company.

“Prior information is the key of success” – Winston Churchill

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INDEX.-

I.- Buying a new property (off plan) – Page 3

- 1.- Check your promoter/developer**
 - 2.- Points to check**
 - 3.- Documents involved**
 - 4.- Expenses for the buyer**

II.- Buying a Spanish resale – Page 9

- I.A) Points to check**
- I.B) steps to buy a resale in Spain**

III.- Selling properties in Spain – Page 15

- 1.- Documents before the sale**
- 2.- Taxes involved in the sale**

IV.- Concepts – Page 22

- Rustic land**
- Urban land**
- Catastro and Registro de la Propiedad**
- Cédula de habitabilidad**
- What is NIE?**

I.- Buying a new property (off plan)

Our team of Spanish Lawyers experts in Spanish properties will guide you in the process to buy a Spanish property either in Alicante, Costa Blanca, Almería, Murcia, Cosat del Sol, Málaga, or Catalonia.

The process of buying **new** Spanish properties is very similar that to buy **resales**, but there are important differences to consider. Our team of Spanish lawyers have prepared a practical guide with the main aspects involved in the acquisition of Spanish properties, in the conyenace process.

For example:

- **Buying off-plan:** In the majority of the cases, the first agreement for the purchase of the Spanish properties is done when the construction is projected, and the works are not started yet.

It creates insecurity in the investor, especially when they have to deposit some money and to assume obligations towards a property which is only a “**project**”, and they do not know in a high number of cases the Builder’s reputation and the economic situation of the Construction company, and the most important who gives guaranties and payment protections to the required payments?

- **Legal and Administrative construction documents:** When buying a new property, there are several documents which must be studied and properly checked in order to control the legal situation and the proper development of the construction.

This is a task which must be done by the Spanish solicitors, in every step of the evolution of the construction till the end. So, any time that the buildings advance, there are documents which must be studied by the purchasers, or by their lawyers, in order to guarantee that all the legal and administrative requirements are fulfilled properly.

- **Expenses, taxes and other costs:** Although in general, the process is nearly the same than a Resale, there are determinate costs, taxes and expenses which have a different concept and treatment.

ASPECTS TO CONSIDER WHEN YOU ARE BUYING A SPANISH PROPERTY:

1.- CHECK YOUR PROMOTER/DEVELOPER

One of the most important decisions when someone buys *off plan* is to pay the initial deposit and the following payments of the purchase over a property which is not built *yet*.

In the majority of the cases, the first agreement for the purchase of the property is done when the construction is projected, and the works are almost not started yet.

It creates insecurity in the investor, since they are invited to deposit some money, and to assume obligations towards a property which is only a “project”, and they do not know in a high number of cases, who is the builder, what is the reputation and the economic situation of the construction company, and, the most important, how many guarantees the investor has to protect the payments required.

We will check that the developer is a legal company, duly inscribed in the Companies Legal Registry, and that they own the land in the right conditions.

2.- POINTS TO CHECK

If you are buying from a Developer, it is even more important to carry out the relevant pre-contract checks in particular you need to instruct your Spanish lawyer to:

1. **Prove that the Developers own the land:** you need to see his *escritura de compra*.
2. **Check that there are no loans outstanding:** you need to obtain a *nota simple* from the LAND REGISTRY.
3. **Ensure that the Developer has paid his *Impuesto sobre Bienes Inmuebles (IBI)*:** If it is unpaid, this tax is attached to the property so the new owner will become liable. You should ask to see the receipt for the last year, the period for which liability for unpaid taxes can be transferred to the new owner. If the current vendor cannot obtain this, you must ensure your lawyer gets confirmation from *Recaudación Provincial* (the Provincial Rates Office).
4. **Obtain a *certificación catastral* and check the *plan parcial*** to ensure that the *urbanización* itself is registered and to check that the property is as described to you.
5. Check with the *urbanismo*, the Town Planning Department to ensure that the development is in an area zoned for building and that planning permission has been granted and there are no other developments planned nearby that could affect your new property.
6. Check that the builder has obtained a *Licencia de Obra* (Building Permit)

If every point indicated above is right then you can proceed to the *contrato de compraventa*, you should ensure with your Spanish Solicitors that this contains the following points:

1. **The total price of the building**, completed and ready for occupation, including obtaining the *Licencia de Obra* (Building Certificate), *Garantía o Aval Bancario* (Bank Guarantee), *Declaración de Obra Nueva y Division Horizontal* (Declaration of new work and Horizontal Division) *Seguro Decenal* (Ten Years Insurance), *Certificado final de Obra* (Construction Completion Certificate), *Licencia de Primera Ocupación* (Licence for First Occupation). These documents are essential, as without them you will not be able to obtain and *escritura* or register for utilities. The Builder or Developer should be responsible for obtaining these and for paying for them.
2. **Arrangements to pay an initial deposit and payment schedule:** The contract should provide the payment specifications with the correspondent V.A.T.
3. The **Bank Guarantee** (Aval Bancario – Certificado de garantía) Any stage payments made are covered by an equivalent bank guarantee or insurance bond in the event of non- completion. The buyers are entitled to the return of all moneies paid during construction + legal Interest.
4. **Completion date for the building:** Completion should be specified as when the whole building and infrastructure has been completed, and all the necessary certificates obtained. A penalty should be provided for late completion. Equally, there will be a penalty clause to protect the Builder or Developer that if you fail to make the payments specified, the contract becomes null and void, and any rights or obligations provided by the contract will lapse.
5. **A detailed plan of the property** must contain dimensions and specifications of the fixtures and fittings: this is often annexed to the contract and it is called *memoria de calidades = quality specifications*.
6. **The Builder or Developer is responsible for the installation of gas, electricity and water and sewage:** The buyer should be responsible only for payments of the installation of any meters and for the current gas cylinders, if mains gas supply is not available.
7. **The “cuota de participación” (share of the total costs) in the comunidad de propietarios (Community of Owners):** Even if this has not been formed yet and no subscription has been calculated yet your share will be determined by the size and facilities of your property and this will be known. If the *comunidad* has already been formed, the contract should specify either the current fees or the generally expected level of fees for next year.
8. **The Builder or Developer** is responsible to pay off all debts of the land, specially the *IBI*, until the *escritura* is signed.
9. **The Buyer** will only be responsible for the payment of the costs of the *escritura de compraventa*, **not** for the *segregación* or *division horizontal* and the *declaración de obra nueva*. Both of these documents must also be done in a public Notary in order to make them legal and before signing the *escritura de compraventa*, you should ask for proof of evidence that these have been registered. The fees should be paid from the Builder or Developer.

10. **Seguro decenal:** Spanish's building law called the L.O.E. Ley de Ordenación de Edificación makes Builders legally responsible for 10 years for any damage resulting from the foundations, load-bearing walls and other structural elements. The builder must have insurance cover for this. The policy details must be given to the notary as must be included in the *escritura*. Without this the sale transaction cannot be Notarised. Furthermore the Builder is responsible for 3 years for damages causes by construction material defects and for 1 year for the state of finishing elements=snagging list. In the last two cases insurance cover is not required, but obviously if the Builder can offer this as an additional guarantee, it will be better.

Once you have bought the property and had the *escritura* (Title Deed) notarized, you need the *copia simple* in order to register the property at the *Recaudación Provincial* for the payment of the IBI, in order to be able to register for water and electricity supplies.

Do not forget to bring with you, your original Passport, Residency Card and original NIE at the Notary, under no respect you will not be able to sign the *escritura*.

3.- DOCUMENTS INVOLVED

* **Licencia de Obra (Building Permit):** It is an administrative certificate in order to guarantee the construction defined in the work project totally adapts to the effective city-planning norm.

* **Garantía o Aval Bancario (Bank Guarantee):** The purpose of a B. Guarantee is to secure the full amount of deposits paid by off-plan purchasers. The aforementioned guarantee is issued against the Developer's bank account, which means that all payments made on account of the purchase price remain blocked in the account until completion. In case that the Developer fails to finish the construction for whatever reason , the Bank will reimburse all amounts paid on account plus a 6% annual interest as compensation or the legal interests on the amounts secured.

* **Declaración de Obra Nueva y Division Horizontal:** Declaration of new work and Horizontal Division. This is the certification which confirms that in the Land Registry the construction is duly inscribed with the different units which will form part of the construction, independently of the initial plot in which the building is projected.

When you go to make your declaration of new work and register the house, you will need :

- The Certificado Final de Obra (issued by the Architect).
- The Licencia de Obra – Building permit (issued by the Town Hall).
- The licencia de primera ocupacion-Licence for First Occupation (issued by the Town Hall).
- The 10 year insurance policy.

* **Seguro Decenal (Ten Years Insurance):** The building law called L.O.E. Ley de Ordenación de Edificación makes Builders legally responsible for 10 years for any damage resulting from the foundations, load-bearing walls and other structural elements. Furthermore the Builder is responsible for 3 years for damages caused by construction material defects and for 1 year for the state of finishing elements. In the last two cases insurance cover is not required, but obviously if the Builder can offer this as an additional guarantee.

- Without this the sale transaction cannot be Notarized.

***Certificado o Acta Final de Obra (Construction completion Certificate):** It is the document issued by the Builder's Architect he declares that the development is finished and it adapts to the work project, by virtue of which they obtained the Building Certificate.

***Licencia de Primera Ocupación (Licence for first occupation):** This is a certification that the Town Hall issues after an inspection of the finished work. They check that the CONSTRUCTION is made according to the building project and that the property has all the necessary security and health items to be occupied.

NIE :** Non-residents in Spain need to apply the foreigner's tax identification number NIE, which allows you to pay taxes and is used to track your activities in Spain. When you are in the process of buying a property the application for this number must be done previous to the signing of the title deeds. ***ON COMPLETION YOU HAVE TO BRING YOUR ORIGINAL N.I.E. TOGETHER WITH YOUR ORIGINAL PASSPORT.

***Contrato de Compraventa (Purchase Contract)** Is a legal agreement between two or more parties with legal capacity to purchase / sale a property .It is based on legal consideration which has all the general and specific conditions which regulates de purchase/sale.

***Escritura:** Is the *Contrato de Compraventa* formalized by the Notary in a legal document, which become the Title Deeds of one property. Once this document is signed, the Land Registry is able to authorize the change of the owners name over the property.

4.- EXPENSES FOR THE BUYER

- **Notary Fees:** For the formalization of the title deeds.
- **Land Registry Fees:** For the inscription of the deeds, making the change of owner's from the property.
- **V.A.T. (I.V.A. in Spanish):** Currently, this is the 7% over the total price of the property.
- **Stamp Duty:** Usually is the 1 % over the total price of the building, in Murcia, Valencia Region, and Andalucía. This tax can be reduced substantially if the

purchasers are buying with the intention to use the property *AS MAIN RESIDENCE*.

- **Others:** Spanish Solicitor's Fee, mortgage expenses, contracts of water, electric, and gas, Plusvalía, etc

As you can see, there are innumerable points to control and to consider at time to buy an off plan Spanish properties. These are matters that can be out of your acknowledge, and that, in the majority of the cases, cannot be understood by you. So, we strongly recommend you to use the services of **serious and reputable Spanish lawyers**, who can guaranty you the success of the conveyance process, assuring and protecting your investment.

II.- Buying a Spanish Resale

Our team of Spanish Lawyers experts in Spanish properties will guide you in the process to buy a Spanish property either in Alicante, Costa Blanca, Almería, Murcia, Cosat del Sol, Málaga, or Catalonia.

The Spanish Legal system of purchasing a Spanish properties is not difficult it is just different from other countries. This means that it is important that you have a rough idea and understanding of what to expect, and that you always deposit your trust in conveyance Spanish Lawyers, who will take good care from the whole conveyance process .

Our team of Spanish solicitors have created some important aspects to consider, in the process to buy a Spanish property resale :

1.- Legal and Administrative situation of the construction:

The future Buyers have to check that the property is already finished and how was built. The legal and administrative conditions of the construction, future developments in the area ,to make sure that the property is legal and registered, environment, etc.

2.- Electricity, Water, Gas and other installations:

One more time, the Buyer must check how were the installations of the utilities in the property, what is the current position of the supply with the companies. Ask also to see the latest paid-up receipts included the *Community of Property Owners*.

3.- Legal possession from the Vendor:

Sometimes the Vendor is selling a Spanish property without all the legal conditions to do it, this is because the property cannot be on his own name, maybe there is a process of inheritance that has not been completed yet, a mortgage debt an embargo, etc..

4.- Negotiations and conditions with the vendor:

For instance to check if the furniture , white goods are included in the sale price and therefore prepare an inventory list if the case, etc.

5.- Expenses, taxes, and other costs :

Although in general, the process is almost the same, there are determinate costs, taxes and expenses which have a different concept and treatment.

IF YOU ARE IN THE PROCESS OF BUYING A RE-SALE, WE RECOMMEND YOU THE FOLLOWING:

I.A).- POINTS TO CHECK:

Be particular alert to the terms, buying from a particular it is even more important to carry out with a relevant pre-contract checks in particular you need to:

1. Prove that the vendor does own the land: you need to see his *escritura*, and consult the land registry.
2. Check that there are no loans outstanding: you need to obtain the proper report from the land registry over the property.
3. Ensure that the property is paying yearly the *Impuesto sobre Bienes Inmuebles* (IBI): If it is unpaid, this tax is connected to the property so the **new owner** will become liable. You should ask to see the receipt for the last year, the period for which liability for unpaid taxes can be transferred to the new owner. If the current vendor does not have this, then you must ensure your lawyer obtains confirmation from *Recaudación Provincial* (the Provincial Rates Office).
4. Obtain a *certificación catastral* to ensure that the property is duly registered and check that the size and conditions are the same ones as described on to you.
5. Check with the *urbanismo*, the town planning office, to ensure that the property is in an area zoned for building and that planning permission has been granted, and that there are no other developments planned nearby that could affect your new property.
6. Check that there is not any fine or limitation affecting the property due to its construction.

If every point indicated above is right, you can proceed to the *Contrato de Compraventa*, you should ensure that this states with the **following provisions**:

1. The total selling price of the property, completed and ready for occupation, including an inventory list for furniture and white goods in the case that you arrange.

2. Arrangement for payments of the initial deposit and following payments. The contract should provide the advance payments, with the exact time to make them.
3. Time of signing the deeds = completion date: The time in which the property must be handed over to you should be specified. If the vendor does not put the property at your disposal in the *time agreed* in the contract it becomes null and void, and any rights or obligations provided by the contract will lapse.
4. A detailed description of the property with dimensions, specifications, plans and so forth..
5. Checking of the installation of gas, electricity, water , tv and sewage: The buyer should be responsible only for payments of the installation of any meters and for the current gas cylinders, if main gas supply is not available.
6. The *cuota de participación* (share of the total costs) in the *comunidad de propietarios* (Community of Owners): Your share will be determined by the size and facilities of your property and this will be known.
7. The Vendor is responsible for the payment of all debts on the land, especially the IBI, until the *escritura* is signed.
8. The Buyer will only be responsible for the payment of the cost of the escritura de compraventa = title deed, and not for the segregación or division horizontal and the declaracion de obra nueva or any additional other expenses which could be eventually needed to update the description of the property in the legal registries.

Once you have bought the property and had the escritura (Title Deed) notarised, you need the copia simple in order to register the property at the Recaudación Provincial for the payment of the IBI, in order the to be able to register for water and electricity supplies.

I.B).- STEPS TO BUY A RE-SALE IN SPAIN

The buying process in Spain is a bit different of any country. It is always a good point to ensure that you are fully aware of the terms and conditions of the contract before you sign. Once the contract is signed is legal and be aware that any deposit paid will be lost if you change your mind later on. Always deal with a reputable Property Agency working in Spain and the service-advice of a *local Spanish Solicitor*.

The normal procedure after finding a property you want to purchase is to determine the full price and payment conditions. At this point terms of the contract can be agreed and the amount of deposit can be decided upon, this will depend on whether you are buying a new property directly from the developer or a resale. Normally at this stage a visit to a Solicitor is highly recommended, they will be able to vet the contract and take up

contact with the seller. Once the contract is signed and the deposit paid, all terms & conditions and the price would be fixed.

Always be sure that you are aware of your payment schedule, When and How the amounts have to be paid. You should also make provisions for these payments and make sure that you give plenty of time to transfer the funds as normally it takes between 4 to 5 working days.

Opening a bank account is necessary when you purchase a property in Spain and to maintenance all the expenses related to your property once you have purchased.

1.- DEPOSIT

Once you have taken the decision of buying your desired property, the first you will be asked for is to pay a initial deposit to hold the property booked for you for a determinate time to ensure the price and conditions of the contract. This deposit will be an amount that you pay to have the property at your disposal. Between the seller and the buyer there has to be a contract in place until the public deed of purchase is ready.

The aim of the deposit is to take out of the market and booked exclusively for you while you are studying the legal situation of the property and other matters, like mortgages, financial status, etc.

During the time established in the deposit contract if the *Vendor* does not fulfill his obligation and he backs out of the contract he will refund you *the double* of the mounts received as a penalty for breaching of contract but If the *Buyer* fails to complete the sale, he loses the amount of his deposit . If the *Vendor* finds another *Buyer* in the meantime, willing to pay more , and sells the property to him, *the first* Buyer can claim twice the amount of the deposit back.

2.- THE PURCHASE CONTRACT (“Contrato de Compraventa”).

Once the deposit is paid, and you have made the searches over the property, in the majority of the cases it is established to sign the definitive purchase contract in which another partial payment is required.

This contract is now a definitive one in which the obligations of the vendors are higher than to have simply the property out of the market. With this contract the vendor cannot sale to a third party without legal responsibilities, higher than to refund the double of the quantities received form the buyers.

In the purchase/sale contract is included all the terms and conditions for the purchase, and the sale of the property, fixing the price, and considering the circumstances obtained after the searches over the property. For example, it can be agreed that the

vendor has to fulfill determinate obligations, like to update the size of the property in the land registry or to pay determinate bills which were unpaid so far; etc.

Also, in this contract the expenses to pay by each parts are defined, like who pays the notary and land registry fees, etc.

3.- THE PURCHASE DEEDS-TITLE DEEDS (“Escritura de Compra venta”).

In Spain Title Deeds are known as “Escritura de Compraventa” and it is a private contract effecting a valid sale of the property to the Buyer, which is valid between the parties to it, and obliges them to fulfill the terms contained in it. However a private contract cannot be inscribed in the Property Register and will not be accepted by third parties as proof of ownership of the property.

To become legally binding in Spain, it must be notarised and inscribed in the Property Register, when it becomes an “escritura publica”. As well as protecting the new owner against the registration of prior charges, an inscription in the Register is advisable to prove ownership and conformity with the rules (such as payment of the transaction taxes), and for example, without a Nota Simple (an extract of the Register entry) it is not possible to obtain a mortgage.

All parties involved in the contract must be present to sign the escritura at the Notary’s office, including a Bank’s representative if the purchase had arranged with a mortgage. You can make a “poder” (power of attorney USUALLY to your Solicitor) allowing another person to sing for you if you cannot be present.

The “Copia Simple” is, as its name suggests, is a simple copy of the escritura. It is the document that the Buyer needs in order to pay the **PLUSVALIA** and to transfer or register for contribuciones (these are payments towards the local rates, the IBI), electricity, water, telephone or other services, change the address on his bank account etc. The notary will give you a copia simple once the escritura has been signed.

Your Solicitor, your bank, or the notary will send the primera copia (first copy) of the escritura to the Registro, together with the receipts for the taxes paid. Make sure that your lawyer insists that this is done by accelerated procedure. The Registro will then enter it immediately into the daily journal in order to prevent any other charges being registered ahead of yours. Once the primera copia has been fully registered it will be allocated its registration number, stamped and returned to the notary. The notary will retain the original, and give the owner a stamped copy. This process usually takes a couple of months.

It is most important that the notary files the new inscription at the Property Register immediately, as any unpaid debts for which a court has imposed an embargo (seizure order) can be registered against the property at any time. If the embargo is registered before your purchase is registered, the creditor will have a claim to your property which

ranks ahead of yours and which will enable him to force the sale of your property to repay the debt.

THE VENDORS ARE ALL THE PEOPLE REGISTERED AS OWNERS IN THE REGISTRO BUT IF THERE HAVE BEEN ANY CHANGES TO THE OWNERSHIP, SUCH AS A RECENT DEATH OF ONE OF THE OWNERS, THIS CHANGE MUST BE NOTARISED AND REGISTERED FIRST BEFORE THE PROPERTY CAN BE SOLD TO ANYONE.

4.- HOW TO MAKE THE PAYMENTS

The best way to get the money ready for the different payments is by SWIFT transfer direct to his clients account from your bank in the UK.

To go ahead with this option is that you have to open a Spanish bank account while you are in Spain (if not, ask your Solicitor how to do it from UK), it will serves you to make any kind of payments if necessary.

Although in UK all the payments are done through the Lawyer's bank account, in Spain you have to do it directly to the vendor's account (If your Lawyer accepts) or directly to your Spanish b/account. *Bank commissions and charges in Spain are higher than in UK.*

For these purposes, you will need the details of the SWIFT code, IBAN account number , Beneficiary name in order to make the transfers.

It is common, and the most secure and practical way of payment to pay the final balance of the price through Bankers Draft issued in the name of the vendor. So, make sure that you, or your Solicitor, have enough provision of funds in the Spanish bank account to attend this payment at least one week before the day agreed in the Notary.

The other expenses, such as the Transfer Tax, Notary and Land Registry fees, etc., can be agreed separately with your Lawyer, or with the mortgage bank, if is the case.

Please bear in mind that if the *Vendor* is non-resident, you have to deduct the 3% from the purchase price, and deposit this with Hacienda on account of the vendor's 18% capital gains tax liability. This is done using Form 211. It will usually be arranged by the Solicitor, or the mortgage's Bank.

5. COSTS OF THE PURCHASE AND TRANSACTION TAXES:

You need to reckon that in total your costs of buying the property will be around 10% of the purchase price – this can only be a rough guide as some of the costs – such as the *plusvalía* (see below) – are not related to the value of the property and so could vary widely. If you are obtaining a mortgage, you can of course include these costs in the mortgage amount you request, providing this remains within the maximum percentage available against the property value and on your income. This estimate of 10% includes:

The transfer tax, Impuesto sobre Transmisiones Patrimoniales (ITP) is 7% of the purchase price. In some communities, the Impuesto de Transmisiones Patrimoniales has been increased from 6% to 7%.

If you purchase a new property from a Developer will pay VAT (IVA) at 7% (instead of the ITP) because the sale is a business operation, not a private sale between two individuals. In addition where VAT is involved, there is an Impuesto sobre Actos Jurídicos Documentados (AJD – stamp duty) of 1%. In Murcia and the Balearic Isles this rate is still (in March 2003) 0.5%, and in Cataluña it is on a sliding scale between 0.5% and 1%. If you buy a garage separately from the house, subject to a separate escritura, this will be regarded as a completely commercial transaction, and will be subject to VAT at the full rate of 16%. This rate also applies if you buy a business premise.

Your lawyer's fees, which are likely to be around 1% of the purchase price, plus VAT, plus the fees he has had to pay out, for example, for the Nota Simple and the Certificación Catastral, and others..

The notary, registration and handling (gestoría) fees, which should together amount to up to around 0.5% of the purchase price. The notary charges according to a complex scale depending on the size of the property, its price and the number of pages in the documents. The fee for the registration will be around half of the notary's fee, and the handling fees are around €100. On a property valued at €144,928 (around £100,000) the notary's fee would be around €300, the registration fee around €150, and the handling fee around €100 – in this case the three together amount to 0.35% of the property value.

If you were obtaining a mortgage, there would also be notary and registry fees to pay for registering the mortgage deed, although the amount will be less, as the mortgage will be less than the value of the property. In addition to Stamp Duty is charged on mortgage deeds of around 1.8% (this is actually a very complex calculation – the current rate is 1.0% which is charged on the concept of “mortgage responsibility”, which in simple terms is the total amount that could become due under the contract if no repayments were made at all). There would also be a valuation fee, which is usually around 0.1% of the purchase price, and there is usually a 1% application fee charged by the lender.

6.- EXPENSES FOR THE BUYER

- Notary Fees: For the formalization of the title deeds
- Land Registry Fees: For the inscription of the property deeds in your name in the official Registro de la Propiedad.
- Transfer Tax: (ITP) Currently, this is the 7% over the total price of the property.
- Others: Solicitor Fees, Mortgage expenses, contracts of water, electric, and gas, etc.

ORIGINAL NIE NUMBER

Please, pay attention that it is absolutely essential to obtain the Spanish NIE number for the acquisition of a property in Spain.

Also Non-residents in Spain need to apply for an NIE number. This is necessary for the payment of the taxes and the proper legal identification of buyers and parts involved in the sale.

So, on completion buyers must bring to the notary:

- **ORIGINAL NIE NUMBERS.**

- **ORIGINAL PASSPORTS.**

III.- Selling properties in Spain – Taxes, expenses, and process

If you have decided to sell your property, please pay attention to the following information:

1.- DOCUMENTS TO PRESENT BEFORE THE SALE:

- **Title deeds from the property (*Escritura*)**

- **Water and electric bills.**- the most recent ones.

- **Council Tax Bill (IBI – SUMA) .-** It is absolutely necessary to present the latest receipt but it would be a good idea to have the receipts for the last five years , to show good faith. If the property is not in the SUMA it must be inscribed it in the SUMA office *before* completion.

For this inscription, an architect must go to your property to make the plans and measurements and together with a copy of the rest of the documents (deeds, padron, plan of location of the plot, photos, etc.), must be presented in the SUMA offices.

Once the process of the inscription is finished, the Town Hall will withdraw **the bills for the last 4-5 years**. Usually the bills will be delivered to the property one or two years after completion, and must be paid by you although you were not the owners then. So, in these cases, is common to calculate the amount of bills before the sale, and provide the new owners with enough provision of funds to pay them this coming from the present owners when the new owners receive them in the future.

The IBI receipt also confirms that the house exists and is registered for taxes. Finally the IBI must be presented when you sign the contract at the Notary because it also

displays the number of the referencia catastral, which since 1997 is a required part of the documentation in property transfers.

- **Certification of No Infraction** .- This is called “*Certificado de No Infracción Urbanística*”. This is a certification made by the Town Hall, establishing that the property is free (or not), from any fines or penalties established by the Town Hall over any constructions added to the property, or in fact any charges or fine on the current property itself.

Why this Certification is necessary to sell my property?.

Because it will help your sale to go smoothly if you have all your documents in order such free of any debts and fines for the main building of the house or construction extensions over the property. It builds confidence in the possible buyer and his own Solicitor.

In the past, to obtain these certifications were free, and public. Right now to obtain them are restricted to owners, or to professionals with written authorization from you.

From now on ,this certification is ESSENTIAL to sale the property, and must be obtained from the owner *before* completion.

How do you get the Certificado de No Infracción Urbanística?: The way to obtain it is to go in person, or through your lawyer (with an authorization signed by you) to the Construction Dept. from the Town Hall (“Departamento de Urbanismo”), and asking for it.

To proceed with this you will need the following:

- Copy of the escritura (deeds of the property)
- Copy of the SUMA (Council Tax)
- Water and Electricity bills sometimes can help
- Authorization signed (as we said if you have instructed a lawyer).

Please, make sure that you or your entitled person, bring these documents with you when you make the application of this certification in the Town Hall. Or you may have to return with them.

- **Original NIE numbers:** In the past, you could buy the property without NIE numbers, or with a copy of them. Right now you need the ORIGINAL ones to sell the property, otherwise the Notary and the Land Registry could refuse it.

If you do not have the NIE numbers or if they are lost or you only have a copy, you must apply for the original ones in the NIE offices in the nearest area. The process will be exactly the same that to apply for a new one. If your original one is lost they will give you a copy with the same number.

- **CERTIFICATE OF HABITATION**, also called “**LICENCIA DE PRIMERA O SEGUNDA OCUPACIÓN**”: This is a document which resumes the confirmation from the Town Hall that the property is ready for habitation, and it is applied once the property is finished with the Construction Completion Certificate (Certificado Final de Obra) and inscribed in the land registry with the Declaration of New Building – DON (Declaración de Obra Nueva).

You need this document to obtain the permission of the Town Hall to live in the house. Before you get it, what you have is a construction, but not a “house”.

This document will be necessary to obtain the individual supply of the utilities on your name, and with “house” use.

This document is then extremely important to get the electric and water contracts on individuals name. Before the Builder obtains the certificate of habitation, there could be water and electric supply in the construction, because, is normal that the builder obtains this supply to make the works (for the tolls, machinery, etc.). But the supply obtained from the builder is a supply for “works”, but not for “house”.

Sometimes, Buyers or Promoters are left in their properties with electric and water supply for works use for years, because the builder did not obtain the proper CH (Certificate of Habitation). They have water and electricity but in a very poor conditions, and expensive than the normal supply for a house.

In order to guarantee you, as buyer or promoter, that the builder will obtain the proper CH, it will be highly advice to leave a part of the payment of the price when the CH is obtained. It will force the builder to work right and to do his best to get this document asap.

CONCERN : “I have a property in Spain and I don’t have the Certificate of Habitation, How I could get it?”.

In order to answer to this question, you have to clarify if the property is in Urban or Rustic Land:

A) Urban Land Properties: The Town Hall should give the CH always that the property, when built, fulfilled with the legalities of construction, mainly the Ten Years Guarantee and the Final Works License.

B) Rustic Land Properties: It depends on the area, region and each Town Hall. Our experience on this is that each Municipality has different criteria to give or not the CH.

Usually if both, the land and the house, fulfill with the general rules for construction, the Town Hall should give the CH.

But if the land or the house do not fulfill with the general rules for construction (less than the 10.000 or 20.000 sqm, or in a protected area, or not license, etc.), then the Town Hall will approve the CH or not studying every individual case. You should get a proper legal advice in these cases.

- **ELECTRICITY.**- Sometimes happens that In rustic land the property is built in a land of less than 10.000 sqm. So in these cases, Certification of Habitation (Certificado de Habitabilidad) will never be obtained.

How this affects the electric connections?- Your property could be in one of the following situations:

A) If your property already has electricity connection, with the proper contract of supply. In this case usually the contract will not be for House Supply (Vivienda), will be just for Agricultural Warehouse (Almacén Agrícola).

It means that, for the supplying company, your house is not a house, is an agricultural warehouse. This is very common, but consequently the supply given to your house will be for farm purposes, because in theory in less than 10.000 sqm., in rustic land only farm sheds must be built but not houses.

Also, it seems that if for any reason, the supplying company inspects the connection in your property, and they detect that you are using it for domestic use and habitation purposes they can fine the property (although this is rare) is common that if your property is over 6 years old it is accepted without too many problems.

If it is used for a different use than the one authorized (for farming), for your peace of mind, our companies have not detected this kind of inspections in the area yet, but the buyer must be informed, in the initial steps of the transaction, about the current situation of electric contract, in order to avoid problems in further steps of process.

On completion, you must sign a formal authorization to transfer the contract to the new owner.

B) Your property has electricity connection with a “Construction Contract”.

This means that the Builders, when they were building your property, they contracted to build your house. Once they completed the building, as the electric company only supplies power when the certification of habitation is supplied, then the electric company would take over the contract from the builder. If in your case, this certification is not supplied (less than 10.000 sqm.), the builders, simply, left the house with construction supply in order to provide you with enough power for living.

In these cases, the problem is bigger than in the previous one, because, legally, the electric company (Iberdrola) is not allowed to supply connection for construction

purposes for more than 2 years. Passed this time through, they can cut the supply at any time and fine the owners who are using the supply in this way.

If your property is in this condition, please ask a specialist. Usually these type of contracts are in the Builders name.

C) If your property has electricity but you have not any contract and you have not paid, nor received any bills during your stay in the house. In this case, please consult your solicitor urgently.

D) If your property has supply for habitation purposes. It occurs in old houses with less than 10.000 sqm or in houses with more than this surface. In these cases, there are not any problems.

E) If your property has supply for habitation purposes, but the contract is older than 20 years. Normally it happens in old houses. In these cases, to transfer the contracts to the new buyers, you as the vendor must to provide a certification from an official electrician in order to guarantee that the old installation is in a perfect condition. This document is called "*Boletín Eléctrico*".

F) Whatever the type of contract is and bills are coming on the previous owners name, but you are paying them.- It happens when the electricity company did not authorized to make the changing of the names in the supplying contracts. In these cases, a specialist must be consulted to clarify what was the problem.

2.- TAXES INVOLVED IN THE SALE:

A) IF THE VENDORS ARE NON-RESIDENTS:

When you, as vendor, bought your property in Spain, you paid the taxes involved in the same transaction of the purchase as normal buyer. These expenses were, mainly, the notary and land registry fees, legal and solicitor fees, the 7% for the Transfer Tax.

After 2007, the retention was reduced from 5% to 3%. So now the Capital Gains retention for Vendors when NON SPANISH RESIDENTS IS THE **3 % of the price of the sale.**

When you bought the property, as owner of Spanish property, you had to make the following declaration of taxes, EVERY YEAR, DURING THE TIME IN WHICH YOU WERE THE OWNER OF THE PROPERTY:

- **Income Tax:** After completion, the Spanish government considers that you, just for the reason to own a property in Spain, have to pay the **0.25 %** of the official price of the property. This tax is a part of the General Income Tax.

- **Wealth Tax:** Mainly, the 0.2-0.4 % from the price of the property.

You had to make the proper declarations of the **Income Tax**, and the **Wealth Tax**, with the famous **214 model**, and after 2008, only exists the **Income Tax** because the **Wealth Tax is cancelled**, now the **Tax New Model is the 210**. These taxes are calculated over the general incomes received, and from the official value of the property.

If you have not made any of these declarations, please, feel free to consult us in order to instruct you how to do it.

I.- From 01-01-2007, the Capital Gains system for non-Resident Vendors is the following modifications:

- Capital Gains is of **18 %**, over the net profit.
- Retention is of **3 %**, instead of the previous 5 %.

II.- In the past, the **control for the Capital Gains** from the part of the government was very weak. It resulted in that, for sure, hundreds and thousands of transactions in the area were made with official prices reduced from the real ones, with the intention to reduce the Capital Gains payments from the vendors, and the Transfer Tax, from the buyers.

In order to control transactions which could result in illegal reductions of prices, between buyers and vendors, the control is extremely higher now than in the past.

- **Third:** If the Spanish customs detect a non declared value, **finances will be double** than in the past, and, in some situations vendors and buyers could be denounced not only for fiscal actions, also for money laundering.

B) IF THE VENDOR IS A SPANISH RESIDENT:

- FOR CAPITAL GAINS:

- They pay **18 %** of the net benefit.
- They do not have to pay the **3 %** Retention on completion.
- If they are selling their main residence, and they invest in another main residence in Spain in less than 2 years, they have 100% exemption of CG tax for the sale of the property.
- If they are aged than 65 years old, they have 100 % exemption for CG tax for the sale of the property.

BEFORE 2010 the “**Spanish fiscal residence**” could be obtained in the Spanish Customs showing the Padron, the escritura, the Passports, water +electric bills, and the NIE number, confirming that he/she was living in Spain for more than 6 months each year.

It means, that, before 2010, a vendor could avoid to pay the 3 % Capital Gains Retention, if he showed a Certification made from the Spanish Customs confirming he was Spanish resident, called “CERTIFICADO DE RESIDENCIA FISCAL”. This confirmed that the vendor was living in Spain for more than 6 months per year.

But, **IN JANUARY 2010**, has entered in force a new requirement from Notaries and the Spanish Customs from which they require a NEW CERTIFICATION from the Spanish Customs, confirming not only that the vendor is Spanish resident (living in Spain for more than 6 months during the year), also, that he/she has paid the taxes in Spain AS SPANISH RESIDENT. Usually, declaring with the Models 100, or 110.

Thus vendors who have been paying their taxes as non residents, with the Model 214, or the new 210, or simply not declaring anything, they will be considered as Non-Residents, and subjected to the payment of the 3 % retention for CG.

It means, that, after January 2010, vendors will be forced to pay the 3 % retention on the sale of their properties, if they do not proof that:

- **First: They are living in Spain for more than 6 months each year. This is proved with the “Certificado de Residencia Fiscal”.**

- **Second: They are declaring and/or paying their taxes in Spain as “Residents”. It means that they have been declared previously as non residents in their countries of origin, and paying the Spanish Income Tax as Spanish residents, with the models 100, 110,etc.**

OTHER TAXES FOR VENDORS-PLUSVALÍA

The PLUSVALÍA: (Arbitrio sobre el Incremento del Valor de los Terrenos) is a tax charged by the Town Hall on the increases in an official set of values for the property. The Plus valia *varies widely*, depending on the amount of time that has passed between sales. Before completion you can find out how much it would be simply by going into the municipal tax office in your Town Hall.

In these cases, a retention from the Buyer to the Seller is enough to cover the payment of this tax.

IV.- CONCEPTS

Rustic land (Suelo Rústico)

Rustic land is a type of “Suelo No Urbanizable”

Non-Urbanizable (Suelo no urbanizable): This is a land considered no-urbanized. It means that the land classified in this way cannot be urbanized. So no urbanizations, cities, or plans can be developed in the area.

There are a lot of type of land included in this classification, like green areas, protected areas, mountains, lakes, public areas, etc.

Inside this classifications there is the “**rustic land**”. This is a land which must be used to grow for farmers. So the only use allowed in this land is to “grow”, or to be used by farmers to develop an agricultural activity.

But, in this land, it is authorized to build new constructions, eventually. These constructions must be in a very low density of construction. So, is very common to find that only when the land has a minimum size (5.000 m2 in Murcia, passing to the 10.000 m2 in the Spanish Land Law (Ley del Suelo), or 20.000 m2 in over protected areas), you can build there an individual farm construction, also called “cortijo”, “villa”, “masía”, chalé”, “chalet”, “hacienda”, etc.

Of course, **there can be houses in rustic land over plots smaller than the minimums required in the different areas.** This is because these buildings were built before the new regulations entered in to force, or simply that they were built “illegal”. In these cases, these houses are respected by the public institutions (unless they were built illegal and the file of the infraction has not been expired) and can be reformed, but not extended.

Urban land (Urban land) Suelo Urbano

This is a land or plot located in an “urban area” in which it is authorized to build, with derteminate specificacions contained in the “Development Plans” of the city or area (Plan General de Ordenación Urbana), or in specific zones of urbanization called “Partial Plans” (Plances Parciales), etc.

This land use to have all the facilities and requirements to live there high density of population, like the proper water and electric supply for the properties and constructions, and public electric and water. And other supply connections, like sewage, gas, telecommunications, etc.

Urban Land or “Suelo Urbano” is the land of cities, village, or urbanizations, and use to have the proper access by roads, with pavement, streets, commercial areas, health assistance, schools, colleges, sports, etc.

Catastro

The “Catastro” is the institution which consider the properties for maps, drawings, plans, and is the source of the *valor catastral*, the assessed value of property for Tax purposes.

Whilst the Registro de la Propiedad and the escritura may well confirm the ownership of a property and the conditions of the same, like in which percentage, if there are limitations or charges (like mortgage, public auctions, Tribunal disputes, etc), the Catastro will give you a better understanding of the boundaries, the exact location of the property (usually in a visual form), size and description of the property.

But, when you complete the building of a house (or an extension like a new room), or other construction like a pool, garage over a land or plot, then you must inform the Catastro about this new buildings. If you do not do so, you can have future problems because the Catastro will never know about the existence of that new constructions.

There are areas in Spain (like *Andalucía and Murcia*) in which the Notary, when declare a new house over a pre-existing land, they send the deeds to the Catastro to inform about the modification. Thus, Notary and Catastro are connected, so once you have the deeds of the D.O.N. in the land registry, the job is finished in this way.

But, in other areas, like *Valencia region*, once you present the deeds of the property with the D.O.N. to the land registry you must bring a copy of the C.F.O. and the Building license to the Catastro, in order to inform them that, over the land, there is now a house. If you do not do so they will contact you in the near future to provide them with these documents.

Once the construction is duly inscribed in the Catastro, the job is finished, and soon (sometimes it takes around 1 or 2 years) you will start receiving the bills from the Council Tax. SUMA BILLS.

The catastral records for many properties are out of date and inaccurate. The Catastral system has been used to formulate the value of properties and therefore to fix the taxable level on each property. For many Spaniards the avoidance of tax is a national past-time and many of them failed to update their Catastral details for fear of paying an increased level of tax.

This **updating of the Catastro was always a voluntary system** so anyone who failed to update their property in the Catastro (and therefore saved on the tax due) was doing nothing wrong. In many cases nowadays, you will find Spanish owners very reluctant to update their property in the Catastro and it is very difficult to persuade them otherwise.

So, as well to consult the land registry records of the property, it is always highly recommendable to consult the catastro to check how the property is inscribed and recorded.

Catastro, Registro de la Propiedad (land registry) and the escritura (title deeds):

The **Catastro** is a secondary system set up within Spain to deal with the ownership, description and boundaries of all property in the country. mainly in the Catastro the information recorded about the property where is located in the maps, which is the size of the construction, which are the boundaries and the coordinates, etc.

The other system which many people have heard of is the **Registro de la Propiedad** which is an extremely important office for the property purchaser and where concentrates on the legal ownership of a property and whether there are any charges and liens on the property. For a small fee the Registro = Land Registry will give you a Nota Simple and you will find the following information:

- Who is the owner of the property: How many people, in which percentage, and the way in which the property is owned.
- A description of the property: Area, region, and zone.
- Where is the property placed.
- What is the “history” of the property: How the land was created, when, who were the previous owners, historically, etc.
- Which elements are considered in the property: How many rooms, toilette, size of the buildings, etc.
- Limitations, Liens and charges: If the property is public auction, or embargo, or seizure, or expropriated, or with a mortgage, or debt, or a right of access by a neighbor, etc.

So the main difference between the English Land Registry system is pretty obvious immediately – there are two separate arms in Spain (which are not linked to any helpful level) so the information on one hand may be correct but the other isn’t.

So, what are the main differences between the two systems? Well, the main one has already been answered because the Registro de la Propiedad confirms the legal ownership of a property as well as (with the production of a Nota Simple) confirming the charges etc.

Many buyers in the past have considered the escritura (title deeds) as the most important document to check before buying a property (and this is certainly one of the documents to see before committing to a purchase) but the Registro de la Propiedad will tell you what is known public about the property – it is fair to say that if a property is not registered at the Registro then there ought to be a lot of caution shown before committing to buy it.

So, in theory both, the Spanish Catastro and the Spanish Land Registry, should be joined and connected, and the information contained in one should be the same as contained in the other. In fact the Spanish system is doing big efforts to connect both organisms, and it is already done in urban areas like cities or big urbanizations.

The problem usually comes from rustic and country areas in which is very difficult to “coordinate” the information recorded in both cases.

Ideally, the system should be perfect if the information contained in both institutions could be condensed in only one, as in other countries.

Cedula de habitabilidad-Certificate of habitation-License of Occupation

Certificate of Habitation – C.H. (Cédula de Habitabilidad or Licencia de Primera o Segunda Ocupación).

This is a document which resumes the confirmation from the Town Hall that the property is ready for habitation, and it is applied once the property is finished with the Final Works License (Certificado Final de Obra) and inscribed in the land registry with the New Buildings Declaration (Declaración de Obra Nueva).D.O.N.

You need this document to obtain the permission of the Town Hall to live in the house. Before you get it, what you have is a construction, but not a “house”.

This document will be necessary to obtain the individual supply of the MAIN utilities on your name and with ”consumption” use.

This document is then extremely important to get the electric and water contracts on individuals name. Before the builder obtains the certificate of habitation, there could be water and electricity supply in the construction, as is normal that the builder obtains this supply to make the works (for the tolls, machinery, etc.). But the supply obtained from the builder is a supply for “works”, but not for “house consumption”.

Sometimes, buyers or promoters are left in their properties with electric and water supply for works use for years, because the builder did not obtain the proper CH (Certificate of Habitation). They have water and electricity but in a very poor condition and expensive than the normal supply for a house.

In order to guarantee you as buyer or promoter, that the builder will obtain the proper CH, it will be highly advice to leave a part of the payment of the price when the CH is obtained. It will force the builder to work right and to do his best to get this document asap.

What is NIE?

Recent Spanish legislation makes it compulsory for anyone selling or buying property in Spain to have a NIE - Numero de Identidad de Extranjeros which, translated, means "*Identity Number for Foreigners*".

Until recently, foreign non-residents in Spain could buy or sell property without a NIE. Then, once it became necessary to have one, their legal representative could get one for them. But recent legislation passed in Spain has made it necessary for anyone paying money to the Spanish Inland Revenue (Hacienda) to have a Spanish identity number, and to **obtain it in person**.

How do I get a NIE?

In theory it's easy. All you have to do is to go to the Extranjeros department of your nearest Policia Nacional station, fill in and sign an application form, and hand it in together with a recent **passport sized photo**. (*N.B. When you get your photo done and if you wear glasses or earrings, take them off beforehand*), a **photocopy of your passport** and your **original passport**.

In practice, and depending on where you live, this should be quite straightforward. However, the Spanish Foreign Office still makes no distinction between EU-member state citizens and other foreigners applying for the all-important NIE, so in certain places you will have to join a very long queue of immigrants in Spain seeking the same paper as you. In Alicante, for example, people are advised to start queuing at 5.00 a.m. to get their NIE, because each morning the office opens at 8.30 a.m. and gives out numbers to the first 70 people in the queue. The rest have to return and queue again the next day.

Special thanks from TLACORP for your patient when reading in our basic English language. We have made our best to try to explain in a brief resume the complicate process of buying-selling a property in Spain.

For more legal information about Spain, or Spanish conveyance system, all our staff will be at your disposal in:

TLACORP

www.tlacorp.es

info@tlacorp.es

Tlf.- +34 965 48 81 68

This guide is, of necessity, both brief and general, and is therefore no substitute for proper professional advice, which we will be happy to provide on request.