

BUYER'S GUIDE FOR

Spain

2013



R&M
RIPOLL & MATEU

SPECIALISTS IN
REAL ESTATE LAW
CONVEYANCING
PLANNING &
INVESTMENTS

These days buying property in a foreign country can be a complicated affair and fraught with formalities and obligations that the purchaser might be completely unaware of until it is possibly too late.

This guide has been set out to outline the stages and requirements involved, in order to make sure the process is clear and transparent, to you the purchaser.

Whether you are a resident of the island of Mallorca, or a non resident, the process of buying Spanish property is the same and this Buyers Guide will talk about the stages involved, from the initial acceptance of your offer through to the final and all important transfer of ownership and registration of the property.

Negotiations with the vendor and the drawing up of contracts.

Of course the first step is for both parties to agree on the price of the property (or plot of land) and what is included in that price. In most cases the future purchaser will view the property and submit an offer via their Estate Agent. If the offer is accepted by the vendor and some possible 'subject to' conditions also agreed upon, a purchase option agreement is drawn up and this cites the parties names, property details, purchase price, deposit amount and estimated date of completion. At this point the parties are legally bound and it is imperative that at this point both parties have an independent solicitor (Abogado) instructed.

■ “Due Diligence”

Just as when purchasing any other goods or items, in the case of sale of property it is important that a number of legalities and material issues are dealt with in order to ensure the avoidance of delays in the purchasing process or any complications in the long term future. Factors to take into consideration right from the outset when deciding on whether to purchase a particular property are not only the property itself, its location and its price, but also that it complies with all Spanish state and local regulations and that the details provided to the purchaser about the property are in accordance with Title Registration.

The initial steps or “due diligence” includes the process of accessing information contained on the Title Registration which is a public record. This Registration will confirm the registered owner of the property and also provide information on any charges on the property, easements, covenants, or historical or current legal proceedings brought against the property or against the owner.

Another important step within the due diligence process is to look at the Cadaster. The Cadaster of the Ministry of



Economy and Finance is the recording of both rustic and urban properties. This gives us a descriptive and graphic representation of the property and an assessment of both the surface area and its boundaries and the structure itself. All of these factors contribute to the property's 'ratable value' which is important to know as this ratable (or cadastral) value is used when calculating certain state and local taxes.

One of the final steps during the Due Diligence process, and one that requires special attention (and in particular for rural land), is the urban location of the property and the recognition of its existence by the planning authority covering the area in which the property lies. This inquiry studies the complete history of property to establish whether the construction of the property proceeded under planning permission, or if instead its fruition occurred through the passage of time. It must be noted that if a property has stood naturally with no disputes, complaints or objections during the first eight years, the law



will allow for official registration of that property despite it not seeking and being granted planning consent in the beginning. (If a property is built without property planning permission the City Council have eight years within which to pursue any enforcement notice against the property and its owner).

■ Form of Contract

Once all due diligence checks have been carried out and the purchase option agreement is in place, it is normal for the purchaser to put down a deposit, or down payment. This is usually 10% of the agreed purchase price. It is still possible for the contract to be modified or renegotiated after this point, subject to the agreement of both parties. The contract is only required to be made public when it comes to the actual completion of the purchase and the transfer of the property has to be recorded by the Public Notary with the Inland Registry.

As stated above, the agreement of transfer of ownership is formalised before a Public Notary in accordance with the terms of the contract. At that time the contract is completed and what follows is what Spanish law calls, the “*traditio*”. This is the transfer or delivery of property to the purchaser whilst simultaneously delivering the remaining purchase funds to the vendor.

It is possible to formalise the “*traditio*” with the Spanish Notary without having first entered into any private contract although in most cases it is advisable to have a fully negotiated and agreed contract of sale in place for the purchase process.

■ Registration of the property with the Local Land Registry

At the time confirmed in the agreement before a notary, the buyer becomes the owner, having the option to register the deed of sale to the Land Registry in the area of the acquired

property. The registration is voluntary; it is not required under Spanish law and contrary to other legislation. The Registrar of the property will qualify the title, check if you have all the formal and material requirements, and if all applicable taxes have been settled. Without proof of such payment the Registrar shall refuse registration.

A brief summary of taxes due upon transfer of ownership of the property and annual taxes and rates due

■ Taxes on the Transfer

Paid by the purchaser:

The transfer of ownership is taxed with ITP (Impuesto Sobre Transmisiones Patrimoniales) or Property Transfer Tax and is paid by the purchaser at a current rate of 8% to 10% of the purchase price, (8% on a value of up to 400K, 9% between 400K and 600K, and 10% for over 600K). ITP is due within one month of completion and payable to the Govern Balear, Balearic Government .

IVA (Impuesto Sobre el Valor Añadido) or VAT is due only when purchasing a new build property (and usually) directly from the developer or builder. This being the first sale, the purchaser is subject to pay VAT currently at 10% of the purchase price. VAT must be paid to Govern Balear within one month after completion. (In some cases, 21% VAT is to be applied when parties, buyer and seller are professionals or companies engaged in the sale and / or construction of buildings). (Purchases of other goods such as furniture accrues 4% ITP tax equally to be paid within one month of completion).

A purchaser will only ever pay either IVA or ITP, not both. As a general rule of thumb ITP is payable when the purchase is between individuals and VAT is where at least one of parties, particularly the vendor, is a company or professional organization. However, legislation surrounding the accrual and payment of tax is complex and can vary greatly depending on the specific circumstances surrounding the sale.

AJD (or Stamp Duty) which can be up to 1.2% of the purchase price.

Solicitors (Abogado) fees, normally 1% of the purchase price

Paid by the Vendor:

Capital Gains Tax - upon completion, 3% of the purchase price is withheld by the purchasers solicitor and this is considered a down payment towards any capital gains tax that the vendor might owe. Capital Gains tax is calculated at 21% (for private individual vendors or non resident companies) or 25% (for resident companies - as it is encompassed in their annual corporation tax) of any increase of value from the vendors initial purchase, to the current sale price agreed upon.

Plusvalia (not be confused with Capital Gains Tax) is a local tax on the calculated increase of the value of the property from the time the vendor bought it to the present sale.

Notary fees - The amount is mainly based upon the value of the property but other factors are also taken into consideration.

Land Registry Fee - this fee varies and is based upon the type, value and location of the property.

Estate Agents Fee

Normally the fee is either around 5% of the purchase price, a percentage fee on a sliding scale or it could simply be a fixed amount. This is agreed between the vendor and their Estate Agent at the time of the agent listing the property and before any marketing of the property.

■ **Annual Taxes** (that fall upon the owner after completion)

Impuesto Sobre la Renta de No Residentes (IRNR) or Income Tax for Non-Residents

This tax is levied on the ownership of a property in Spain by a non-resident, defined by spending less than 183 days in Spain. If the property is rented out the tax is 24.75% on the rental income, net of certain allowable expenses for EU members, is received. If the property is solely for the owners use and is therefore not attracting a rental income, the rate of 24.75% is applied to 2% of the cadastral value of the property.

Impuesto Sobre el Patrimonio (IP) or Wealth Tax

A resident of Spain has a permanent dwelling allowance of 300,000 euros on their own home as well as a further 'general' tax free allowance of 700,000 euros. So therefore tax could potentially be applied to any net profit exceeding 300,000 euros which has been deemed made on the property. The value of the property is taken from either the IBI receipt (see below), the value on the Title Deed or the value applied by the Tax Authorities during an individuals independent tax assessment. Non Residents who own property in Spain do

not benefit from a permanent dwelling allowance (by the very nature of them being Non Residents), so only have the general allowance of 700,000 euros and will be taxed on any profit deemed made on properties they own in Spain.

Impuesto sobre Bienes Inmuebles (IBI) or Property Tax

This tax is normally between 0.5% and 1.1% of the cadastral value of the property. For certain properties in rural areas the tax is called Contribucion Territorial Rustica (Farmland Real Estate Tax).

Rubbish Rates & other TASAS Y CARGAS (fees and charges)

The amount payable is again set by the Municipal Town Hall and is based on the cadastral value of the property. In some cases it is charged alongside water use and disposal. Some municipals will also charge community fees such as communal cleaning or for upkeep of the local area and beach.

Financing

If the purchaser does not have enough capital to purchase the property outright, they might instead apply to the bank and secure funds that way. If there is a mortgage in place this must also be recorded with the Public Notary at the time of registering the property with the Local Land Registry. If the mortgage is not declared at this time the registration will be invalid.

Stamp Duty is at 1.2% on the total mortgage plus costs, fees and interest and must be paid within one month of signing the deed of loan and mortgage.

Please contact us to discuss your personal requirements and we will endeavor to make sure the buying process is as straightforward as possible.

This information has been provided by Ripoll & Mateu legal services ©2013. Whilst every effort is made to ensure the content of this article and all others contained within this site is accurate, it is not to be relied upon or used as a substitute for any formal kind of legal advice and is intended as a guide only. For full legal advice in all such matters please contact Ripoll & Mateu directly.



R&M
RIPOLL & MATEU

SPECIALISTS IN
REAL ESTATE LAW
CONVEYANCING
PLANNING &
INVESTMENTS

Reina Maria Cristina, 24-1°C
07460 Pollença, Mallorca

Tel. 0034 971 533 251 – 0034 971 532 109
F. 0034 971 531 573

email: info@ripollmateu.com
www.ripollmateu.com