

What are the procedures?

The Vendor pays the commissions, the vendor or seller will have an agreement with an agent or agents to pay them a commission upon completion of a sale to a client that agent has introduced, the commission the vendor has to pay will always be reflected in the final negotiated purchase price.

We will help you to find the best developments and help you negotiate advantageous payment terms and conditions, this is especially important if you might want to be allowed to re sell your property before completion.

When you do find that property, ask the agent if the vendor is likely to accept an offer, some vendors price to sell, others price a little high and expect to be knocked down, others will wait until the market reaches the value they have set. It is impossible to generalise as we have so many different nationalities living here all with their own sales - purchase cultures, let your agent be your guide.

The next thing you should do is finding an **abogado [Spanish lawyer]**. We recommend a lawyer who can **speak Swedish** as well as Spanish and English, whom is **recommended by the Swedish embassy or consulate in Spain** and there are a few good once with the Swedish speaking staff. An abogado will charge around 1%. of the purchase price, this is great value, your abogado will look after your financial interests, and give you peace of mind, a very valuable commodity when buying a house!

Reservation deposits and payments may be paid to an agent or reservation deposits for new developments could be made directly to the developer. It is recommended to have everything done under the supervision of an **independent** abogado [Spanish lawyer], in this way your interests and your money will always be protected, and you will be sure that the sales purchase contract is in your name.

It is only when a sales purchase contact has been agreed and signed by both parties and 10% paid that the vendor is legally bound to sell you the property.

With all of the properties we offer for sale 10% of the purchase price transferred to your abogados clients account will be sufficient to take the property off the market while your abogado makes the searches, and you arrange your finances, the 10% will be handed to the vendor by your abogado when everything is checked out and the sales purchase contract terms have been agreed and signed.

If a vendor will not accept this show of good faith to take a property off the market, or an agency asks you for any money you should immediately consult an independent abogado, if the abogado cannot convince the vendor to accept your terms, then walk away, there are other properties, keep your money in safe hands.

Never use the same abogado as the vendor or interests may be compromised.

Use an abogado from a well-known independent company of abogados, we can recommend well-respected independent English/Swedish/Spanish speaking companies in all areas.

The Spanish legal System and land registration process is different to most other countries and is not to be tackled by the do it yourself type. I have heard of unfortunate people having problems buying property in Spain, all of them could have been avoided if the purchasers had used professionals and common sense, as always buyer beware.

Next: Conduct a search:

Nota Simple The next step in conjunction with your lawyer and agent is to do a search on the property at the Registro de la Propiedad, the Registro for a small fee will supply a **Nota simple** for any property. It will give you the details of any Mortgages on the property.

A good agent acting directly for the vendor will probably already have a copy. Buying a property with a mortgage attached is not a problem, as long as you know about it beforehand!

Your lawyer will advise you on the cost of continuing with it, paying it off or re mortgaging.

Make an Offer: Next if all is well, and your lawyer is happy, with your agents help you should make an offer and firm details up in writing, covering all the points to be negotiated, these should include:

- + The Price
- + The declared price, see **declared value** on the escritura [title deeds]
- + Payment Method and Currency
- + Fixtures and fittings
- + Furniture [with inventory]
- + Who pays which taxes [especially the plusvalia]
- + Take nothing for granted, include it in the offer, and presume nothing.
- + This way you only have to negotiate once and there should be no hold ups or surprises.
- + This is where the skill of the agent comes into play carefully bringing the vendor and buyer into a harmonious agreement.
- + Having funds available at this time will convince the vendor you are serious and not just Fishing

Your abogado should also check:

If the property is on an urbanizacion, which the urbanizacion is legal and registered and has, been adopted by the Town Hall. The Plan Partial will show all the plots on the urbanizacion and if it is legal and with the Town Hall to check for proposed new roads and developments.

Make sure the seller has the final Escritura Publica if not exercise extreme caution.

Making a Private Contract:

Hopefully now both parties are in agreement so a private contract for the sale can be drawn up. When your lawyer has drawn up or approved this Private Contract, you would normally be expected to put down a 10% deposit.

Your lawyer should pay the 10% to the vendors lawyer. This contract is then legally binding, **your 10% deposit is non returnable**, and **the vendor is legally bound to sell the property to you at the agreed price**, the rights of both the buyer and seller are protected, it is a very fair system.

The contract will usually specify a completion within one month, [but other periods can be agreed to suite both parties] and the penalty for not doing so [usually loss of your deposit]. Normally a property will not be withdrawn from the market until the 10% deposit is paid **The private contract** should include all the points covered in the negotiations and it should also state that the property is sold free of all mortgages, liens and embargos, that all bills are paid up to date and all the household equipment [listed] will be in working order.

Your lawyer should also check:

That the **IBI** receipts are all up to date, the certificate of Referencia Catastral, the number should be on IBI receipts, make sure any community fees are paid up to date, and likewise electricity, water and telephone bills are paid.

Rubbish collect charges [basura] be a nasty surprise as bills can have built up and are subject to additional fines and surcharges.

Important Notes:

Only the persons [or a company] named on the escritura [title deed] of a property can own that property, only those persons [or the company administrator in the case of a company] or persons empowered by a power of attorney [Poder] can sell the property.

Your lawyer should always deal directly with the vendors lawyer, and you should always know who the vendor is.

Only documents and contracts in Spanish are fully legally binding in Spain, never sign anything until your abogado has approved it.

Declared Value: It used to be common practise to grossly under declare the sale price in order to reduce the 7% transfer tax **ITP** on resale properties or the 7% **IVA** on new properties and capital gains taxes of up to 35%.

Tax inspectors now make their own assessment based on market values. There are penalties for both the seller and especially the buyer that will be swiftly applied if it is considered the declared price is not the market value. Your abogado will advise you on what you should declare and if it is in your interest.

Under declaring a sale price will usually benefit the seller more than the purchaser, saving the seller up to 35% tax capital gains or corporation tax on the undeclared amount, where as the purchaser may save 7% now [or possibly 16% on newly divided land] , BUT, may end up paying 35% tax on the amount later! so bear this in mind when agreeing the value to be declared. It is you, the buyer who will when you sell will have to pay Capital gains tax on he difference between the declared value when you purchased, and the declared value when you sell, of up to 35% if you are non resident or up to 20% if you are resident.

The amount of capital gains tax payable on the sale of a property purchased now, and since 1995 reduces annually inline with inflation.

Good news if you are a resident and sell a property which is your principal residence in Spain, as long as you have owned it for at least 3 years, and all the capital is reinvested into a more expensive property, and the new property is also your principle residence in Spain, then any capital gained from the sale will not be taxed. [this is effectively a tax on property speculation]
Good news for resident pensioners is that from 2000 resident persons over 65 years old, who have owned a property for at least 3 years, which is their principle residence in Spain, will not have to pay any tax on the capital they gain from the sale of the property.

To make sure a non resident pays this tax when selling a property the tax man Hacienda requires the buyer to pay 5% of the purchase price to them, the seller can later claim back this money minus any taxes due. Both parties can agree with the Notario to waive this payment, If you agree to such a waiver, you as the new owner will be responsible for any taxes due, if these taxes are not paid, Hacienda will place an Embargo on your new property, the taxes due can also exceed 5%. Furniture, carpets etc. can of course be sold separately reducing the value on the Escritura.

Declared value when purchasing a property under construction from an investor. [Not directly from the developer]

Investors who purchase early on in the history of a development [often before construction starts] are rewarded by very good prices, as their 30% or 40% payment [depending on the terms negotiated] allows the developer to keep borrowing to a minimum.

The purchase price is written into the sales purchase contract and that is the price that will be declared on completion, when the balance of the money is paid and the escritura is drawn up into the name of the owner.

Over the construction period [2-3 years] a property will increase considerably and an investor may decide to sell the property for a profit [this is usually just before or just after completion].

In such cases it is not the property that is sold, but the contract allowing the person named to buy at the price stated from the developer or owner stated.

The contract can only be transferred with the cooperation of both parties, which is why it is necessary to have a clause written into the contract allowing the transfer, otherwise the purchaser is at the mercy of the seller who may not want to cooperate.

The person selling the contract has never been the owner and so capital gains tax normally payable by property owners who sell does not apply. [The investor should of course declare his profit]
Usually 2 payments are made:

- [1] The amount needed to cover the value of the instalments paid so far by the investor
 - [2] The price for purchasing the sales purchase contract [the profit for the investor]
- The purchaser of the contract then takes the place of the original purchaser and on payment of the final instalment becomes the owner of the property when his / her name is written onto the escritura. The above can apply to any sales purchase contract.

Completing the purchase:

Escritura de Compraventa: The Final document for the sale is the Escritura de Compraventa and it must be signed by the buyer and the seller in the presence of a Spanish Notario in order to make it legally binding. The seller or the buyer can make a Poder [power of attorney] allowing another person to sign instead.

The Notario: The Notario is a public official whose job it is certify that the contract has been signed, the declared money transferred and to advise both parties of their tax liabilities for the purchase. Any other payments should be made in the presence of your lawyer outside the Notarios office. The Notario is not responsible for the accuracy of statements in the contract, that is your lawyer's job.

Registering the Escritura de Compraventa: Finally your Escritura de Compraventa must be registered with the Spanish property registry to make it Escritura Publica and fully install your title to the property. You should receive this from your lawyer within 5 - 6 weeks of the purchase, if not pursue it with your lawyer [you have been charged 0.2% for this registration] Until you have the Escritura Publica you do not have full title to your property and you are not the registered owner.

Taxes and fees payable when buying a property: If you allow an additional 9% - 10 % of the purchase price it should cover everything except the **Plus Valia** which is normally paid by the vendor.

Break down:

New property on the first transmission attracts **IVA** [VAT] + **AJD** [stamp duty]
Resale Property on it's second and subsequent transmission attracts transfer tax called **Impuesto de Transmisiones Patrimoniales** [ITP]

Plus Valia: Plus Valia is based on the increase in value of the property, since the last time the ownership changed, this tax is applied to the increase in value that the vendor has enjoyed and should be paid by the vendor.

Normally the vendor pays this tax but as always everything is up for negotiation, some vendors do ask that the purchaser pays the Plus Valia as part of the deal.

So make sure that the vendor is going to pay the Plus Valia, or if not find out exactly how much you will have to pay on his behalf before you make your offer.

Your abogado will be able to find out from the Ayuntamiento [Town hall] the amount payable.

IVA: [VAT] On new property on the first transmission of the escritura [title deed] the buyer has to pay IVA, which is 7% on apartments, houses and any garages purchased with the property [usually garage space below apartment], and 16% on land, locales [shop units] and garages purchased separately.

ITP: [Impuesto de Transmisiones Patrimoniales] [Transfer tax]

On second and subsequent transmissions of a property the buyer has to pay ITP at 7%

Stamp duty: Impuesto de Actos Juridicos Documentado [**AJD**]

When a property is purchased from a developer, promoter or habitual trader and **IVA** is charged the purchaser will also have to pay 1% **AJD** [stamp duty]

Abogado, Notario and registry fees:

Abogado [lawyer] fee: around 1%.

Notario fee: Depending on land and size of house, allow 0.2 - 0.3%

Registry of property ownership approx. 0.2%

Additional notes for companies: The good news is that now in Andalucia, when a property is transferred from one Spanish company to another, the companies involved can elect to pay 16% **IVA** instead of 7% **ITP** but in this case the company would pay a higher rate of **AJD** [stamp duty] at 2%

ITP or **IVA** tax is not payable on a property owned by a Spanish company when the ownership of the company changes.

The company purchasing, would need to have a minimum of 2 shareholders, holding a maximum of 50% of the shares each, **BUT** if the tax authorities suspect that the beneficiary of a property owned by a company has changed [the one living in it], then all the transfer taxes and other costs will be applied!

Warning: This is an area where you should always consult a specialist abogado, it is extremely difficult [some would say impossible] to determine exactly the assets and more importantly the liabilities a company has.

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

IBI: Owned Property is subject IBI. tax Impuesto sobre Bienes Inmuebles. This local tax varies and is based on the Catastral value [ValorCatastral] of the property. this value is often considerably lower than the real value. On a property that has changed hands recently the Valor Catastral could be 75%, on a property which has not changed hands for 15 - 20 years or more, it could be much less. The tax varies depending on the area, but Generally on a property with a Valor Catastral of 120,000 euro you would expect to be taxed approx. 480 euros per year.

Basura: In some areas you will have to pay the Basura [for rubbish disposal] separately, in other areas it is included in the IBI.



Patrimonia: All non residents have to pay wealth tax Patrimonia based on the amount on the Escritura Publica or the Valor Catastral, which ever is the highest value. Roughly speaking This tax starts at 0.2% on the first 156,263 euro, 0.30% for the amount from 156,263 euro to 324,547 euro and so on to a maximum of 2.5%. On a property of 150,253 euro a non resident would pay a tax of 300 euros. A resident pays nothing on the first 102,172 euros. A husband and wife when resident and jointly owning a property have a combined allowance of 204,344 euros. So they would pay nothing in *Patrimonia* tax on a house with a value of up to 204,344 euros, It really is only a wealth tax.

Non residents property owners tax: Only non residents have to pay property owners income tax. They are taxed at 25% of the income from your property whether or not you have a real income. The income is assessed as 1.1% - 2% of the Valor Catastral. The government have an ongoing policy throughout Spain of increasing Catastral values into line with real market values, the percentage applied to the new values is reduced to 1.1%.

This tax is in realty very low, especially if you purchase for rental income.

Owners should of course declare all the money they earn from rental income, and from 2002 there are new allowances to encourage owners to rent their properties.

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

Urbanizacion and Community fees: Properties on an Urbanizacion or in a Community will have to pay quarterly [or monthly] community fees, covering the running and maintenance costs of shared facilities which can include as private roads, drains, lighting, private water supplies, gardens, swimming pools etc. These costs vary considerably depending on the facilities available. The agent will advise you of the Community fees applying to a particular property. If you are not resident in Spain, you are legally required to have a fiscal representative who is, an Asesor fiscal will take care of everything and keep you 100% legal for a small monthly fee.

Other things you should consider before you shop!:

NIE number: You will need an NIE Number [fiscal identity number] Its handy to have one even if you are not a property owner. A number can easily be obtained from the relevant police station but can take a few weeks to process, your abogado will apply for this for you.

Banks: Choose your Bank carefully, the running costs and fees do vary considerably, Most Spanish banks and Cajas [Similar to UK savings banks] are very good, and are very competitive on mortgages, some have excellent online banking in English.

All the utilities can be paid by direct debit from your account.

My Spanish bank offers free transactions, online banking, no maintenance costs and pays interest on the current a/c as long as I maintain a small minimum balance, they have never missed a standing order or payment, which is more than can be said for some!

Transferring Money: The cost and time it takes to transfer money varies considerably, as do the bi currency services, so shop around in your home country and also in Spain.

Buying euros in your home country is not your only option.

Most people do not realise the commissions and fees charged by Banks are negotiable, do not be afraid to haggle!

There are some very good companies who offer much better exchange rates than the high street banks, and some even allow you to pre book currency at a set exchange rate for the future, this is particularly important for off plan purchasers wishing to protect themselves from the falling pound / dollar.

Becoming a Resident: If you wish to spend more than 183 days per year in Spain you will need to apply for a Residencia to become registered as a Resident.

Being a resident does not restrict your movements in any way you will be able to spend as much or as little time in Spain as you wish, there are no restrictions, but there are many advantages.

Registering as a resident in Spain, in no way changes your nationality

If you are not to become a Resident you must appoint a fiscal representative who is, your Asesor would be a good choice, This is not a responsibility that should be entrusted to an amateur friend or neighbour.

Good reasons for becoming a resident:

There are many advantages, some of the major ones are:

- + If you are resident and more than 65 years old, and you have lived in your home for at least 3 years, you will not be liable to Spanish capital gains tax when you sell it, no matter how much profit you make [Non residents will be taxed at up to 35%]
- + If you are a resident, the maximum capital gains tax will be 20% or less [non residents pay 35%]
- + If you are a resident and you sell your primary residence in Spain and invest your profit into a more expensive property which will also be your primary residence in Spain, you will not have to pay any capital gains tax at all.
- + If you are resident and you sell your property, you will not be subject to having 5% of the total declared selling price withheld as a guarantee against possible tax liabilities [non residents will have 5% withheld, and if no liabilities are found, your abogado will be able to retrieve it in around 12 months]
- + If you are a resident and will your home to your spouse or child who is also a resident, then Spanish inheritance tax can be avoided on 95% of the valuation, providing that you have owned and lived in the property for at least 3 years, and the inheritor undertakes not to sell the property for 10 years and continue to be a resident. The cut off point for the 95% reduction is 120,200 euro, over that amount you must pay.
- + Residents do not have to pay non residents property owners tax and have an exception to the first 108,200 euro of valuation for the Spanish capital assets tax or wealth tax. If a couple jointly own a property and are both resident it is doubled to 216,400 euro exception
- + If you register as a resident more funds will be allocated from central government to the area in which you live to improve the infrastructure of your area, which will improve the value of your property, you will also be able to vote in local elections.

A Spanish will: I would strongly advise you to make a Spanish will, cost approx 180 euro. Property in Spain is subject to Spanish laws above foreign wills. Talk to your lawyer about the differences between what you can will in your own country as opposed to here

Inheritance Tax: Ask your lawyer or tax consultant about inheritance tax and how to minimize it. Get advise before you decide in whos name or names the property is to be registered in, especially if you are in your Golden Years.

If you are non resident you should also make provision to pay inheritance tax on the property [or 50% of the property] that you inherit as this can be a shock for a poor widow or widower.

Common Sense: As is true anywhere be very careful if you pay any deposits or sign anything without first clearing it with your lawyer, if you do not feel happy, walk away.

- + Do not allow yourself to be pressured, go away think about it and if you are still interested talk to your lawyer.
- + Take your time, there are always alternatives.
- + Never allow yourself to be pressured or rushed.
- + Always consult your lawyer first

Conclusion: Buying a property abroad is an exciting experience, please do not take the impression that you will encounter many problems, in Spain we all enjoy more personal freedoms, which is one of the reasons España is such a great place to live.

Whilst enjoying that personal freedom we have to be more responsible for our own decisions. Using your own abogado, and other qualified professionals will protect your interests, making the purchase of your home here a risk free and stress free experience.

All of the unfortunate property related stories I have heard could have been avoided if buyers followed the above guidelines.

This is not a Do it Yourself Guide! I am not a legal expert, I would never dream of buying any property without the services of an abogado. The above information is current and accurate to the best of my knowledge [and our abogado] It has been gathered from my own experiences of buying and selling properties, living and working in Spain, and the mistakes made by others.

The purpose of this article is to provide some general information for potential buyers, point out the areas where mistakes can be made, encourage buyers to use professionals, and to reassure them that buying a property on the Costa del Sol can be enjoyable and totally stress free.

All Set? I hope that you now have a good general understanding of what is entailed in buying a property on the Costa del Sol, If you have this understanding before you start looking at properties, then your own common sense can be your guide.

If you feel there is any more information that should be included here, please let us know. If you have any questions or require more information please do not hesitate to ask. If you find this guide useful or it helps you avoid a potential problem, please let us know.