

GUIDE TO BUYING **REAL ESTATE** **IN SPAIN**



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STEPS TO BUY A PROPERTY IN SPAIN

The purchase of a property, whether it is a first home or a holiday home, is one of the most important decisions that you will ever make. Buying a property in Spain is really a standard process, but at the same time complex when buyers come from a different legal culture. It has particularities that make it very different from the purchase processes in other countries.

In any case, the use people intend to make of the

property (own enjoyment, investment, etc.) is a matter that must be kept very clear from the outset, as this will determine, firstly, the features of the property we are looking for and, secondly, it will point out to us the steps to be taken and the documents to be obtained for the purchase.

The Spanish real estate market offers a whole range of opportunities.



When purchasing any real estate, the following premises must be taken into account:

- **The real estate market is not homogeneous in terms of construction quality and investment potential.** The analysis of each property independently can tell us whether or not it is a successful purchase. This analysis can be carried out using comparative techniques with the properties in the area. For example, through the real estate agency or an appraiser. The old saying „location, location, location“ still holds true today.

- **Negotiation capacity in price.** Falling real estate markets, such as the one that emerged from the Covid-19 crisis, mean that the bargaining power of buyers in terms of price and final conditions is on their side. Nowadays, lowering the price of a property and presenting a coherent offer is as simple as using an independent appraiser who previously values the object to be acquired. As a rule, the prices offered usually include a negotiating margin of 10%.

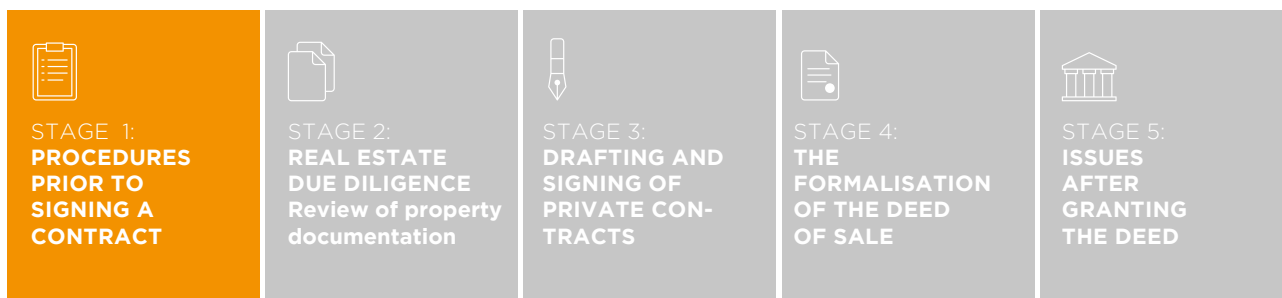
- **Financing possibilities.** If you do not live in Spain and wish to obtain bank financing to purchase a property, bear in mind that there are many banks that offer a wide range of financing options for foreigners. Moreover, several foreign banks also finance the purchase of property in Spain. It is highly recommended to consult several banks, ideally once the property is chosen. The procedures to obtain financing can take several weeks or even months and it is a time factor to be taken into account.

REAL ESTATE
TRANSACTIONS IN
SPAIN ARE COMPLEX

REAL ESTATE TRANSACTION IN 5 PHASES

Once the property to be acquired is chosen and the financial part is clarified, the composition and type of each property mean that each transaction of sale then has its own individual treatment and some factors to consider.

Depending on its circumstances, the process is more or less the same. There are some small differences, however, depending on the type of property you are buying and whether or not you need a mortgage. Regardless of these factors, as a foreign buyer you will need to go through the following 5 stages:



STAGE 1

1. Application for a Foreigners' Identity Number (NIE):

the NIE is a personal, unique, and exclusive number that all foreigners who buy a property in Spain must have for identification purposes. It is obtained in Spain, at the request of the interested party, from the Directorate General of the Police in Spain, provided that the foreigner is not in Spain under unusual circumstances and communicates the reasons why they are requesting the assignment of said number (for example, for the purchase of a property). It can also be obtained from Spanish embassies and consular offices abroad. In order to obtain the NIE, it is necessary to make an appointment in advance. Bear in mind that this procedure may take several weeks, depending on the office.

Normally the seller already has a NIE, as he or she already owns a property and was required to do so previously, but the buyer must apply for it if he or she does not have one. The NIE is **absolutely necessary** to fulfil the tax obligations arising from having a property and to ensure that the future purchase is registered in the Land Registry.

The necessary documents for the application are: the delivery of the corresponding form completed, a valid passport (copy and original), and the payment of an administrative fee of approximately €10.00.

Once the NIE has been obtained, it is necessary to register it at the Tax Office, presenting Form 030.

This registration gives the NIE the status of NIF (Tax Identification Number), a unique identification number for a person in their dealings with the Spanish tax authorities. This procedure can be carried out electronically by your tax advisor, to avoid unnecessary travel.

In urgent cases, a provisional NIF can be obtained, a procedure that Spanish tax advisers can also carry out electronically.

In the case that a legal entity acquires the property, a NIF must also be obtained for it after processing the NIE of its representative(s).

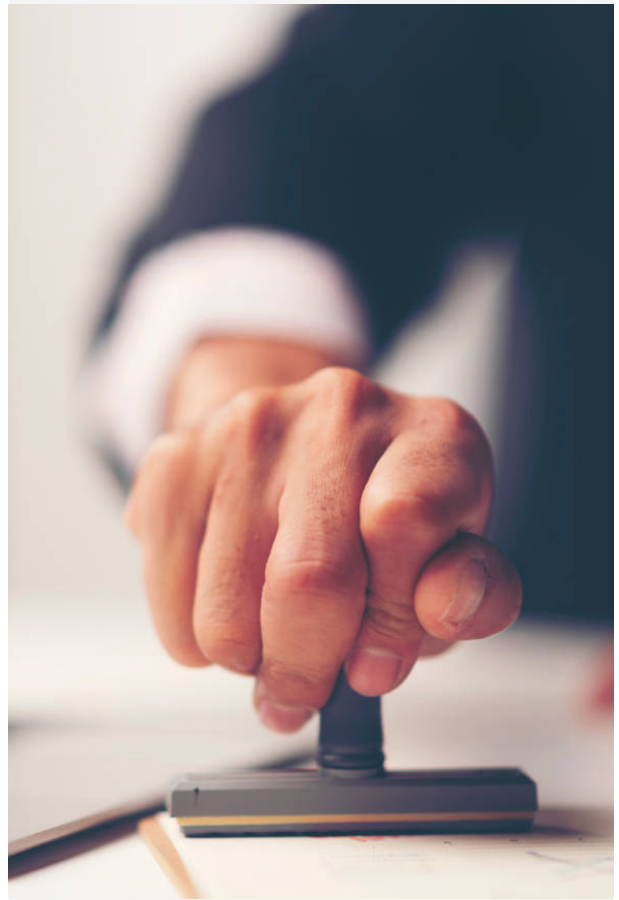
If you live abroad and do not have a NIE, or are about to purchase a property in Spain, but do not have a Spanish embassy or consulate near your home, the simplest and most convenient way is to grant a power of attorney to your representative in Spain (whether it be your estate agent, lawyer, or tax advisor) so that they can apply for it on your behalf in good time.

FROM THE N.I.E. UNTIL AUTHORIZATION, VARIOUS FORMALITIES MUST BE OBSERVED

2. Opening a bank account in Spain:

owning a bank account in Spain is essential not only to make the payment of the property price and other expenses that may arise during the purchase process easier, but also to set up a direct debit for the current expenses related to the property to this account: electricity, water, gas, or local taxes, which as a general rule cannot be charged to foreign accounts.

The opening of a bank account can be done in person at any Spanish bank branch. The requirements and conditions for opening a bank account vary greatly depending on the bank concerned. It is not essential, but recommended, to have a NIE. Some Spanish banks allow the opening of an account by means of a power of attorney, so if you have granted a power of attorney to obtain your NIE, it may also be advisable to include a bank power clause. In this way, without having to travel to Spain, you may have obtained both the NIE and a bank account in Spain through your representative. In these cases, it is recommended that you apply for online banking access so that you can conveniently manage the account from your home.



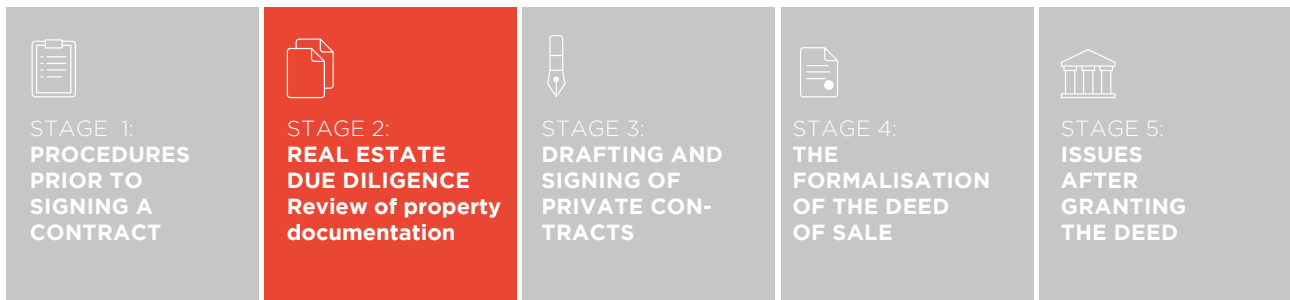
3. Representation:

You will also have to decide if you will actively participate in the purchase in person or if you prefer to have a representative do it for you. In the case of acting through a proxy, the power of attorney must be notarised and in effect at the time of the granting of the deed. If it is a foreign public deed, it must be duly apostilled or legalised (if it comes from a country that has not signed the Hague Convention of 5 October 1961: The **Hague apostille** is a simplified method of legalising documents for the purpose of verifying their authenticity in the field of private international law), and must be accompanied by a sworn translation into Spanish. It is also possible to grant such powers of attorney at Spanish embassies and consular offices.

The power of attorney must be authorised as a public deed, a mere authentication of signatures is not sufficient, and a legible photocopy of the identity card or passport of all principals must be attached to the power of attorney.

When the person who is going to buy the property is a company or other entity with legal personality, the representation must be accredited to the notary, that is to say, in what capacity the representative is acting: attorney-in-fact, sole administrator, joint and several administrator, managing director, etc. In addition, the deed must be accompanied by proof of the existence of the entity and the rule of representation, ideally in the form of a legalised note from the relevant mercantile register.

The deeds of power of attorney must be looked after carefully, as they will be necessary for the granting of the corresponding public deed of sale, as well as for carrying out the formalities prior to or after signing it.



STAGE 2

The review of the property documentation by an expert lawyer in real estate law (technically called due diligence) is essential to ensure the successful completion of the transaction. This is a process of obtaining and checking a whole series of documents

The main documents that must be obtained and checked are:

- 1. Simple note from the Land Registry:** in the note we can check who the owner of the property is, the charges that may limit the use of the property, as well as any possible tax implications. This is the core document for any review prior to the acquisition of a property, without which the purchase and even the signing of any commitment prior to the acquisition is not recommended in any case.
- 2. Previous public deeds:** although the seller is sometimes not in favour of providing these documents, the review of the public deeds by which the seller acquired the property is very convenient to check, among other things, the exact description of the property, its boundaries, the limit of any easement, the declaration of a work, etc.
- 3. Land registry:** the land registry information and, in particular, the registered surface area and the boundaries of the property, must always be checked against the Land Registry, as in Spain it is common for these not to coincide because they are independent databases that have only been coordinated in recent years.
- 4. Minutes of the community of owners:** when the property is part of a community of owners (a building, urbanisation, or property complex), where there are elements of common enjoyment for all members of the community (swimming pool, garden, lift, patio, etc.), it is highly advisable to check the last minutes

relating to the property to be acquired (the target, in business jargon), aimed at ascertaining its characteristics in as much detail as possible and, where appropriate, supporting the negotiation with the seller.

of the community of owners. The minutes reflect the agreements and decisions taken by the community throughout its life. In the last minutes we can find out if there are important debts to face, debtors, open legal proceedings and other issues, which can tell us a lot about the current situation of the community.

5. Town planning certificate: these certificates, issued by the town planning departments of the municipal administrations, inform us about the town planning characteristics of the properties and, in particular, about the urban qualification of the land (urban, rustic, etc.) and about the buildability.

6. Certificate of being up to date with debts to the community of owners: when the property is part of a community of owners (building, urbanisation, or real estate complex), the president or the secretary/administrator of the owners meeting must be asked for a certificate stating that the seller is up to date with the payment of the general expenses of the community in which the property is located, as the seller will be responsible for the debts of the previous owner(s) with a limit that extends to part of the year in which the property is acquired and the previous three years.

7. Certificate of being up to date with tax debts: in particular, it is important to check that the seller is up to date with the payment of the Property Tax (IBI), as the property itself is liable for these debts.

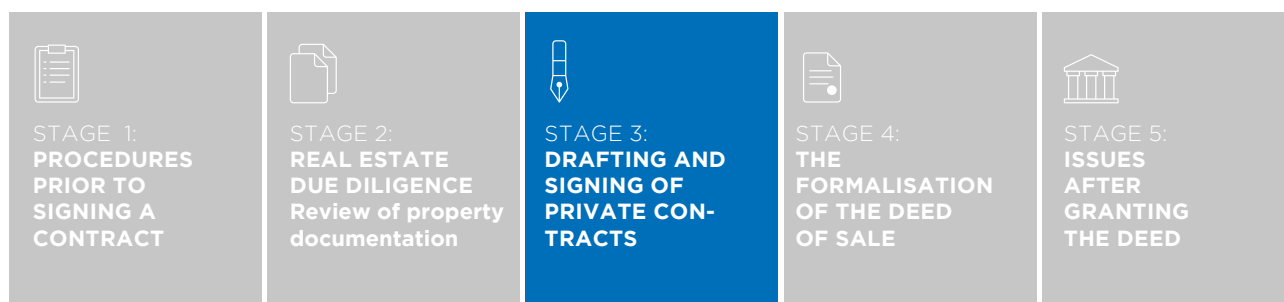
8. Tourist rental licence: in the event that the property has a tourist licence and the buyer intends to continue this activity, it will be necessary to review whether the ownership of the existing licence can be changed to the new owner. The administrative regulations regarding the tourist licence may vary in each town and Autonomous Community.

If the dwelling does not have a tourist licence and it is intended to obtain one, it is advisable to carry out a prior urban analysis to check whether the property in question is suitable for use as a tourist accommodation in accordance with municipal planning.

9. Activity licence: in the case of premises intended for a specific economic activity and when it is the intention of the buyer to acquire the existing activity licence for the premises, the local regulations must be reviewed in order to ascertain the feasibility of transferring the licence.

10. Building licence: when the intention is to acquire a property for which the urban development actions carried out to restore the legality of the buildings (main, or accessory, e.g. a swimming pool) have not expired.

11. Building record: for recent buildings subject to the Technical Building Code (CTE). The record contains, among other data, the description of the building and its components, rules of use, conservation, and maintenance, as well as the rules of action in case of loss or emergency situation. In addition, it contains the correct list of the guarantees that the owners have over the quality of the work of the building agents who intervened and the materials they used.



STAGE 3

The first thing a buyer should know is that contracts are not always what their title indicates. The contract will be what results from all of its clauses. This means that, although from a legal and academic point of

view there are types of contracts that are theoretically well defined, in practice it is very common to find contracts of a mixed nature, which share characteristics with each other.

The most frequent contracts are the following:

1. Reservation contract:

It is possible that the buyer has visited the property and it apparently meets their expectations, but he or she still wants to review the property documentation and perhaps negotiate the price before taking the step of buying it. In these cases, it is common for the real estate agency to offer the buyer the opportunity to sign a reservation contract of the property, to „take it off the market“ for a certain time.

The content of this contract may vary substantially in each operation, but it is usually aimed at showing that the buyer has an interest in the property and that the

property will be reserved for the buyer until a deadline when the corresponding deposit contract must be signed or the private purchase contract must be signed directly.

It is highly advisable that a lawyer carefully draws up the reservation contract, as it can easily be considered in practice a pre-contract or even a deposit contract with economic consequences for the signatories, since, if no final agreement is reached on the conditions of the purchase, the buyer could lose the amount given as a reservation.

2. Deposit contracts (arras):

When the buyer decides on a specific property, there is already an agreement on the price, and decides to pay an amount in advance as a deposit, then this type of contract is signed.

1) Confirmation or down payment contract (arras confirmatorias):

The confirmation deposit contract reflects the amount that the buyer pays as a deposit, as well as their commitment to pay the rest in certain periods or at certain times. The main feature of this type of contract is that it cannot be terminated. The person who delivers the deposit and the person who receives it can demand compliance with the contract (completion of the sale), which has already begun to be executed because part of the price has already been paid.

It is important that this contract be clearly drafted, as it can easily be confused with other contracts. It is an interesting agreement to use when one party does not wish the other party to be able to withdraw from the transaction. In Spain, these deposits are usually between 5 and 10% of the purchase price. The remaining terms are usually fixed according to the time required by the parties to prepare all the documentation necessary for the signing of the deed of sale before a notary, including, if applicable, the mortgage financing.

2) Double-rate deposit (arras penitenciales):

This is a contract by which the buyer, who has already seen the property and has decided to buy it at a certain price, gives the seller a sum of money, but either party is given the opportunity to withdraw from the transaction, i.e. not to sell or not to buy, without any cause.

If the one who desists is the buyer, they lose the deposit, and if it is the seller, they must return it in duplicate. This consequence is expressly regulated in the Spanish Civil Code, in its article 1454. Because of its functionality, it is the most commonly used type of contract, since it allows, on the one hand, the purchase not to proceed if it is rejected for any reason, and on the other hand, it implies a limitation of the risk, since it is limited to the amount delivered as a deposit.

The fact that the contract states that it is a double-rate deposit does not mean that it really is, so we must therefore always be aware of the exact content of the clauses of the agreement.

3) Penalty down payment (arras penales):

These are contracts with a penalty clause in which the parties agree to deliver an amount as compensation for damages when a breach of contract occurs. Therefore, if one of the parties breaches the contract in any of its terms, the penalty clause will be activated and the breaching party must compensate the other party.

It is very important that the contract clearly explains that this is a penalty clause, otherwise it can easily be confused with the double-rate deposit explained in the previous point. Thus, the parties can agree in the contract, for example, that if the seller does not agree to sign the deed of sale before a notary on a certain date, the contract will be deemed to have been breached and the penalty clause will come into play immediately, forcing the seller to compensate the buyer. However, the parties may continue to demand compliance with the contract, as this is not a clause that allows for unilateral withdrawal from the agreement.

3. Purchase option contract

The purchase option contract is a pre-contract by virtue of which the seller (optionor) grants the buyer (optionee) the exclusive power to decide whether or not to conclude the main purchase contract, which must be performed within a certain period of time fixed in the contract and under certain conditions.

Given that the contract itself stipulates a deadline for exercising the purchase right, the important thing is that the optionee notifies the optionor in writing that he or she wishes to exercise that right. This communication must, in any case, be made preferably in writing and always before the expiry date stipulated in the contract. If the deed of sale is executed before a notary public after this date, this does not imply the expiry of the right. The expression of the will of the buyer within the limitation period is sufficient for the contract of sale to become firm. Among other information, the purchase option contract will specify the property concerned, the price, the right to purchase, the period for its exercise (which may be months or even years), and the payment of a call option premium.

It is very common for the right of purchase option to be integrated into a real estate lease contract. In such a case, the call option is a kind of plus in the subjective right that the lessor grants to the lessee, which consists of the power to acquire the ownership of the leased property. This legal instrument can be very interesting for lessees, since they will thus have the purchase assured on a real estate property they already know, which they will be able to acquire within a certain period, even discounting the rental incomes paid to date from the price.



It is highly advisable to sign the purchase option contract before a notary so that the right of option can be registered in the Property Registry and thus guarantee its effectiveness against third parties who intend to acquire the property.

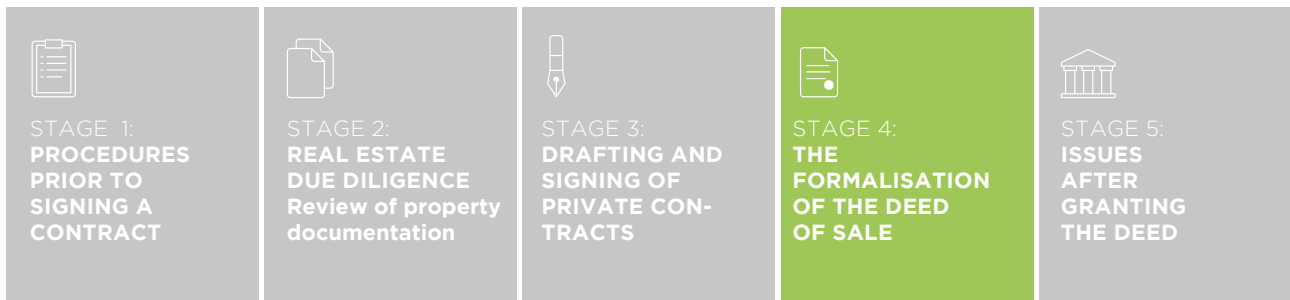
4. Private purchase contract:

It is also possible for the parties to enter into a private purchase contract, in which all the conditions of the transaction are directly agreed upon and a time limit is set for the granting of the public deed of sale, at which time the transfer of ownership usually takes place. In this case, the contract must be drawn up with particular care to precisely and completely describe the object of the purchase, and the process of reviewing the property's documentation must also be completed before signing. In Spain, ownership of a property can be transferred by means of a private contract (title), if this is followed by the handing over of possession (mode), this being the case with the signing of the deed of sale.

Recommendation and indications on the formalisation of private contracts

Depending on the circumstances, the interests of the buyer, the property in question, and the preferences of the seller, the lawyer will recommend the formalisation of one type of contract or another. Your lawyer will channel the communication with the seller and send it to you for signature (even by e-mail), directing the negotiations regarding specific clauses. Although it is usual for the seller or the real estate agency to draft the contract, caution is advised: firstly, because these are usually very unbalanced texts in which the interests of the seller (and even those of the agency) take precedence, and secondly because the texts generally suffer from poor legal technique, unless the agency is prestigious.

**YOUR LAWYER
WILL RECOMMEND
THE RIGHT TYPE
OF CONTRACT**



STAGE 4

Once the corresponding private contract has been signed, how does the signing of the deed of sale take place before the notary? The signing of the deed of sale takes place in the notary's office agreed by the parties. Unless expressly agreed by the parties (for example, in the private contract of sale), it is common practice for the purchasing party to choose the notary's office where the granting will take place. At the notary's office, the parties and/or their legal representatives will meet. By this time, all doubts related to the documentation of the property, its charges, the form of payment, and other questions should have been clarified. The Notary will read aloud the deed or its essential content (it is not obligatory to read all of it), so that the parties can give their consent by signing it.

If any of the parties who come to sign the public deed do not understand Spanish sufficiently, and the notary cannot speak the language of the parties involved, an **interpreter** is required. This is a person, not necessarily qualified as a sworn translator, who is appointed by the party who does not understand the language to make the necessary translations, declaring under his or her responsibility the concordance

of the original with the translation and also signing the public instrument. The function of the interpreter is regularly assumed by the lawyers of one of the parties or employees of the notary's office.

When buying or selling real estate, the seller is obliged to pay tax on the capital gain he or she has earned as a result of the transfer. In the case of a seller who is not a resident in Spain, as a tax insurance measure, the law states that the **buyer must withhold 3%** of the purchase price and make the payment on account of this amount to the State Tax Administration Agency. To do so, the buyer has one month from the date of signing, and must make the payment on Form 211, which is usually filled out by a tax advisor. This deduction must be stated in the deed of sale. For practical purposes, this means that the buyer will pay the corresponding amount of the purchase price, subtracting 3% from the total price. Subsequently, the seller must declare and pay the final tax, presenting Form 210. The tax authorities will return, if necessary, the remaining part of the amount withheld and paid by the buyer, or they will demand the difference between what was paid and the amount they consider to have been accrued.



The documentation usually required by the Notary for the deed of sale is:

- Identification document for all parties involved (identity card or passport, as well as NIE or residence card in the case of foreigners).
- Deed of acquisition of the property by the seller
- Certificate of occupancy or licence for first or second occupation, although its presentation is not obligatory in most territories of Spain.
- Energy efficiency certificate.
- Ten-year insurance, in the event of acquiring a property from a self-promoter before 10 years have elapsed since the completion of construction.
- If applicable, certificate of non-existence of debts from the community of owners.
- Last receipt of the Property Tax (IBI).
- Certificate of being up to date with municipal tax debts.
- Proof of transfer of the deposit or of the price of the purchase option, if this is deducted from the purchase price.
- Means of payment for the rest of the price, e.g. bank cheques or transfers.

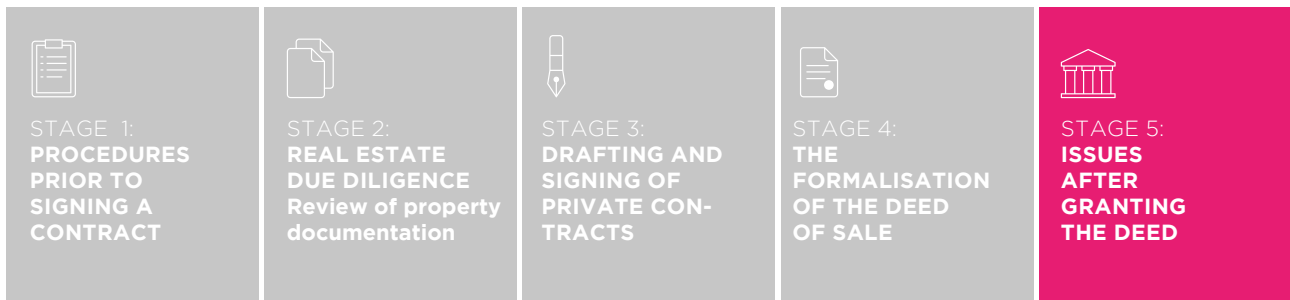
In the event that one of the parties is a **legal entity**, it will also be necessary to provide information about its actual owners, i.e. the natural person or persons who, where appropriate, own more than 25% of the shares in the entity.

In Spain, it is common for the **means of payment** to be a nominative bank cheque issued by a Spanish financial entity, which issues it against a bank account of the buyer and guarantees its payment. This is because the payment and its receipt are instantaneous at the moment of the granting of the deed, and the seller gives an unconditional payment letter in the same public deed. It makes sense that this should be the case because with the signing of the deed, the property is transferred to the buyer, since in Spain the registration in the Property Registry has merely declaratory, not constitutive, effects. In these cases, the number of the current account against which the cheque has been written must be provided.

On other occasions, to avoid the costs and formalities that issuing cheques can entail, the parties choose a bank transfer. In these cases, the seller will not normally be able to ascertain receipt of the transfer at the time of the granting, so it is recommended that a payment letter be provided, subject to the successful completion of the transfer, i.e. its correct receipt.

In these cases, it is also possible to use wire transfers, urgent transfers that can be deposited in the bank account of the recipient on the same day they are ordered.

The notary fees to be paid depend on the value of the property and the number of parties to the deed. An indication is about €600 for a property of €250,000 purchased by two people, and €750 if the value is €500,000.



STAGE 5

1. Taxes

a. The taxes the buyer must pay because of the transfer of a property in Spain are the following:

- **Newly built homes:** The buyer must pay the Value Added Tax (VAT), which currently amounts to 10% of the agreed price. In addition to VAT, the buyer must pay the Spanish Transfer Tax, in the form of Stamp Duty (known as AJD in Spanish), the amount of which depends on each Autonomous Community, and is around 1.5% of the agreed price.
- **Resale homes:** In this case, the buyer must pay the Spanish Transfer Tax, in its modality of Onerous Property Transfers (TPO in Spanish). The amount will also depend on the Autonomous Community in which the property is located, ranging from 6% to 11%, without taking into account reduced rates for special situations (e.g. when purchasing a property for use as a permanent home for certain groups).

b. On the other hand, the seller must pay the following taxes:

- **Tax on the Increase in Value of Urban Land (IIVTNU in Spanish), better known as a capital gains tax:** this is a tax on the increase in the value experienced by an urban land over a maximum period of 20 years. Since each municipality sets its own rates and coefficients, within limits, it is advisable to check the amount of tax to be paid before each transfer.
- **Capital Gains on Personal Income Tax (IRPF in Spanish) or Non-Resident Income Tax (IRNR in Spanish):** the profit is determined by the difference between the transmission and acquisition values, discounting all expenses incurred in both transfers and the investments made that can be duly proved (investments, by means of a VAT invoice). The current tax rate for Non-Residents is 19%, whereas residents pay between 19 and 23%.

If the seller is a Spanish commercial entity, it will not be taxed for Personal Income Tax but rather Corporate Tax (IS in Spanish).

2. Registration

After signing the public deed of sale and having paid the taxes, the purchase can be registered in the Property Registry, and it is recommended to always do so to obtain the legal protection that it offers. In Spain, this registration, as indicated, is not obligatory, but not doing so would expose the owner to great legal uncertainty, since what is recorded in the Property Registry will take precedence. This is the principle of “public faith” in the registry: in order to protect good faith buyers, the law considers the content of the registry books to be exact, even if the terms of their records do not match the extra-registral legal reality. This could lead, for example, to the registration of a lien note for debts of a former owner that are still registered or, in the worst case, to a double sale.

In order to register the deed in the Property Registry, the following documents must be presented: the original deed itself (an authorised copy, in notarial jargon), the supporting document for the declaration and payment of the corresponding taxes, and the supporting document of having reported the accrual of the capital gains to the city council of the municipality where the property is located (if this has not already been done by the notary).

The fees to be paid depend essentially on the value of the property, and an indication is around €300 for a property of €250,000 purchased by two people, and €500 if the value is €500,000.

3. Utilities

Immediately after acquiring the property, it is necessary to communicate the change of ownership to the companies that supply electricity, water, gas, and other services to the property, as well as the new direct debit bank account, since, if not, the bills will continue to be charged to the seller's bank account, which could be rejected and lead to a cut in the supply.

To make the change of ownership of supply contracts, the owner must have the certificate of occupancy, as many companies usually require it for registrations or modifications.

4. Direct debit of the Property Tax (IBI) and other municipal taxes

In Spain, the ownership of a property is subject to the payment of Property Tax (IBI), a municipal tax that is paid annually (sometimes in several instalments) and which is recommended to be taken by direct debit from the owner's bank account.

As in the case of utilities, it is advisable to notify the city council of the new bank account where the amount must be collected, since, if not, the city council will continue to collect the amount from the seller's bank account, which could be rejected and generate a surcharge to be subsequently paid by the buyer.

Some municipalities require the payment of additional taxes or fees, in particular for rubbish collection. Sewerage and similar fees are usually charged along with the water supply bill.

5. Communication of land registry alteration

The transfer of ownership of a property must be communicated to the Land Registry. Normally, this communication is carried out by the notary who authorises the deed of sale, and this is stated in the deed. However, on some occasions, due to the notary's inability to notify or because a right other than full ownership has been transmitted, the obligation of the new owner to make the communication remains.

6. Communication of change of ownership to the community of owners

The notification of the change of ownership to the community of owners is usually ignored, which entails a serious risk for the former owner of the dwelling or premises sold to a third party. The notification of the change of ownership to the community of owners is mandatory so that the seller is not jointly and severally liable for the payment of future common expenses. Although the communication of said change corresponds to the seller because otherwise they could be liable for the new owner's possible future debts for common expenses, it is advisable to ensure that the communication is actually made or a copy of the deed is directly provided to the community of owners.

AFTER THE PURCHASE PROCESSED, THERE ARE SOME THINGS TO DO





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