

DOING BUSINESS AND INVESTING IN SPAIN

ECIJA

PART I

REAL ESTATE TRANSACTIONS

ECIJA

I. GUIDELINES TO PURCHASE REAL ESTATE IN SPAIN

1.1 Reservation Agreement or Letter of Intend (LOI)

- This agreement stops the commercialisation of the property by the vendor or realtors, upon the execution of the Arras Contract or Private Sale-Purchase Agreement by parties.
- The amount paid will be deducted from the amount of the Arras Contract or Private Sale-Purchase Agreement, and the Purchaser can lose it, in case he refuses to sign this contract.

1.2. “Arras” contract or Private sale-purchase Agreement

- **Arras contract:** Document signed to secure the transaction. All conditions and terms of the future purchase are agreed between both parties.
- It is a **down payment**, usually the 10% of the total purchase price, paid to the Vendor (properties under construction 30% of purchase price), and through bank transfer.
- Purchaser binds himself to buy and Vendor to sell within a certain period of time (usually 1 to 3 months after signing).
- The contract can be executed in person or on-line by electronic means (email, Docusign, dropboxsign, etc.).

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1.2. “Arras” contract or Private sale-purchase Agreement

- If the **Purchaser does not go ahead** with the purchase, she/he loses the down payment or deposit paid; it is non-refundable. (Article 621-8,2 Catalan Civil Code).
- If the **Vendor does not formalizes the Deed** of sale-Purchase, she/he has to return the double of the amount that was paid by the Purchaser as deposit (arras).
- The rest of the **agreed price** of the purchase is paid on completion, through a Bank Cheque or a bank transfer ordered from a Spanish Bank Account, when Vendors and Purchasers meet together with the Notary Public and sign a Deed of sale-purchase.
- Parties may also terminate the contract if they notice some legal cause that may harm their rights, such as the appearance of seizure or charges in the property for purchasers, or the non justification of the origins of funds to purchase for vendors.

Alternatively: parties can sign/execute a private contract of Sale-Purchase or a private “option to purchase” contract.

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1.3. Investigation of the Property

Check several legal details and conditions before completion:

- Revision of built and registered surfaces through the Catastro (Tax Agency Registry) and Land Registry, and study of charges and encumbrances.
- Revising of Title Deed (former owners).
- Verification of debt balance of the local taxes, and the minimum tax value of the property.
- Revision of Administrative/Urban matters (through the certificates provided by the different Spanish Administrations: City Council, Coastline Department, etc.), urban charges or encumbrances, allowed administrative uses, restrictions to built, etc.

All properties being sold in Spain need to have:

- Energy Performance Certificate and Energy label.
- The *Cédula de Habitabilidad* (Certificate of minimum housing standards) is also compulsory in Catalonia. In some other areas of Spain it can be substituted by the First Occupation License.
- Technical Inspection of the Buildings Certificate (ITE), for flats located in buildings which construction is, at least 45 years old.
- For single-family dwellings which date of construction is equal or less than ten years, an insurance to cover structural and construction damages in the property.

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1.4. Title Deed of ownership

Most Spanish properties have freehold title, which means that an owner is entitled to absolute possession and full property rights of the real estate for an indefinite time.

The title to seek on the property is a **Deed of ownership**, which will be granted by the Notary Public in front of whom the transaction of the property must be completed. Even if Real Estates used to be transferred through a Sale and Purchase, it could be also done by other legal transaction legal means, as: Inheritance, Donation, Non-Monetary Contribution to the Incorporation of a Company, Compensation of credits, etc.

The intervention of the Notary is a compulsory requirement to formalize the acquisition of the property in all cases (Escritura publica de compraventa; Escritura pública de aceptación, partición y adjudicación de herencia; Escritura pública de donación, Escritura Pública de Constitución de Sociedad, etc.), and being able to register it at the Land Registry of the area where it is located. The Registration provides the purchaser with a full legal protection of his ownership rights on the property against third parties, until he decides to transfer it or if he losses it (death, public auction, etc).

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- **Essential: vehicle of investment;** acquisition of the property through a mercantile company or through private individuals,

This would depend on the use and destination of the asset: if the purpose is to have a main dwelling, a secondary holidays residency or to obtain an Investor's Visa in Spain, the acquisition should be done as an individual, but if it is to rent it, or to develop some kind of economic activity on the property, it may be convenient to purchase it through an Spanish or Foreign Company previously incorporated.

The election of one way or another will affect tax issues.

- In the case of acquisition of the real estate by **married couples**, they have to indicate before the notary who shall authorizes the transaction, the economic regime of the spouses (community or separation of assets, etc.) which shall be determined by an specific agreement (pre or post marriage), or failing that, by the legal one of the place of residence, or their common nationality at the time of marriage.

This marital status would affect the type of ownership under the Spanish law.

- 100 % ownership together
- 50 % each member of couple

- Most countries: assets commonly owned.
Exception : separation of assets.

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1.5. Mortgages and other charges

New Act 5/2019 on Real Estate credit contracts, 15th of March, which enforces EU Regulation 2014/17.

- If there is an existent mortgage: **loan cancellation** will take place before completion through the execution of a Notary deed. The Mortgage entry of the Land Registry must be erased after the loan cancellation and its expenses must be paid by the Vendor.
- If financing is required (**mortgage loan**): a Deed of Mortgage Loan shall be granted by your bank on completion before Notary. Prior to the signature of the mortgage loan, the borrower will be informed of the loan contract main conditions by the Notary and will sign a transparency act: more protection to consumers (15 days information period).
- **Catalan Civil Code**: foresees that whether the Vendor has knowledge the Purchaser has requested to finance the acquisition, if mortgage is rejected by the bank, Purchaser can withdraw from the transaction without penalty (621-49). Arras contract needs to include a specific clause in this regards.
- The property has also to be up to date for City Hall's annual payments (IBI) and supply of services such as electricity, water, gas.

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1.6. Completion and Post completion: Registration of the purchase and ownership of the property in the Land Registry

At completion:

- a) The Transfer Deed must be executed in the presence of the **Notary Public**, by all parties personally or by their legal representatives, who must act through a power of attorney which includes enough faculties to execute all the transaction conditions (mortgage loan if financing is needed). This POA has to be authorised by a Spanish or a Foreigner Notary Public.
- b) If one of the parties does not speak Spanish, translation is required.
- c) The Purchaser will: (i) Be identified by his passport in force and his NIE. The NIE is a Tax Identification Number provided by police stations to foreigners, that allows them to sign any legal documentation and liquidate the corresponding taxes; (ii) Hands over the balance of the **price** and the Vendor releases the **keys, the legal documentation of the property** and gives its vacant possession.

After completion:

- e) The appropriate taxes need to be filed before the Tax Office competent according to the area in which the real estate is located (in Catalonia, Agència Tributària de Catalunya), and submitted along with the Sale and Purchase Deed to the Land Registry, in order to register the property onto the purchaser's name. An original copy will be delivered by the Land Registry to the purchaser once the process will be completed.

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1.7 Taxes

1.7.1 Payable by Purchaser (1 month deadline after Purchase).

- 1) Transfer Tax: Up to 1 million is 10%, in Catalunya more than 1 million is 11% (1 month after completion).
- 2) VAT (10% applicable): on newly built properties and/or land (at the time of completion).
- 3) AJD or Stamp Duty (1, 5%) in case of newly built properties and land (1 month after completion).

1.7.2 Taxes Payable by Vendor:

- 1) Increase on Value of Urban Land Tax (1 month deadline after Purchase).
- 2) Capital Gains Tax (3 months for Non-Residents and following year after for Residents).

I. GUIDELINES TO PURCHASE REAL ESTATE IN SPAIN

1.7 On going-Annual Taxes

1.7.3 Tax on Real Estate:

- 1) IBI (+ Rubbish tax, vehicle entry tax).
- 2) Wealth Tax .
- 3) Solidarity Tax on Large Fortunes.
- 4) Non- Residents Income Tax.

II. GUIDELINES TO SELL REAL ESTATE IN SPAIN

Vendor will:

- Usually assumes fees for Real Estate intermediary agent, which uses to raise to 5% of the purchase price of the property. Agreements could be on exclusive or non-exclusive basis.
 - Deliver to the Purchaser the keys and documentation of the property at time of completion.
 - If he is non-resident in Spain, the Purchaser withhold from the sale price, the 3% as Non Resident Income Tax (IRNR), and the value of the Increase of Value of Urban Land (IIVTNU or Plusvalía Municipal). The Purchaser will liquidate both taxes on behalf the Vendor.
 - After completion he will needs to pay the **Capital Gains Tax** which rate varies for Residents(19%, 21%, 23%), and Non- Residents (19%),and will be calculated deducting the cost of acquisition from the cost of sale.
- The cost of the acquisition is intended to be the value of the property when purchased, i.e.: price plus tax, Notary's fees, land registry's fees, lawyer's fees, architects fees if renovations made considered as investment, and value of the rehabilitation Works considered as investment.
- The cost of the sale value is: the price of sale, plus local tax on Increase of value of urban land, lawyers fees, intermediary (realtor) fees. If the Vendor is non resident, the 3% withhold by the Vendor can be added to calculate this value.

III. GOLDEN VISA: Requirements and process

Act 14/2013 Support for entrepreneurs and internationalization, 27th September.

A.- General considerations:

- There is no obligation of minimum residency period per year.
- It is an administrative residency being a RIGHT, not an obligation.
- Staying in a country more than 183 days per year means to become TAX RESIDENT.
- Acquisition of Spanish nationality (citizenship) is after 10 years residency, being the last 5 years a Tax payer in Spain.
- Residency for Applicant and family (children only minor of 18 or if they have legal age, you must proof his economic dependency from the main applicant).

B.- Application options:

There are **2 options** to apply for an AUTHORIZATION FOR RESIDENCY in Spain:

III. GOLDEN VISA: Requirements and process

1- GOLDEN VISA

The application can be submitted in the Consulate of Spain in the country of his legal residency or nationality:

- If the investor **has not carried out the investment yet**, and has deposited in a Spanish Bank Account, the amount of the price of the purchase (this amount cannot be used for different purposes), the applicant may request a residency visa for 6 months.
- If the investor **has carried out the investment**, the applicant may request a residency visa for 1 year.

*Subsequently, and if the investment is completed and the property registered at the Land Registry, the visa could be converted into an Authorization for Residency (3 years residency renewable for 5 years).

2- AUTHORIZATION FOR RESIDENCY; If the Investment is made already, and the applicant has a valid Tourist Visa, he can submit the application in Spain, which will be granted within 20 days upon reception of all documents (3 years residency renewable for 5 years).

TYPE OF INVESTMENT TO BE ELEGIBLE FOR RESIDENCY:

- 1.-** Investment of 1 M.- € in: (i) Shares of a Spanish Company; (ii) Investment Funds; (iii) Deposit in Spanish Bank Accounts.
- 2.-** Investment of 2 M.- € in public debt.
- 3.-** Investment in real estate (500.000.-€) without charges or encumbrances as an individual or through a company (Applicant shall have the majority of voting rights).

III. GOLDEN VISA: Requirements and process

LIST OF DOCUMENTS NEEDED TO REQUEST THE AUTHORISATION OF RESIDENCY

- 1.- **Private health insurance** in Spain.
- 2.- **Payment of fee.**
- 3.- If investment is made through a company: **Certificate and Favourable Report from the Ministry of Economy.**
- 4.- **NIE** document.
- 5.- **Authorization** to file the application (it is filed electronically).
- 6.- **Proof of investment:** if it is through a real estate, **the Certificate of Ownership and Charges** from the Land Registry where the property is registered.
- 7.- **Proof of Sufficient Economic Means:** Certificate of Ownership of a Spanish Bank Account and balance with a minimum of 28.800.- € (+ 7.200 for each family member).
- 8.- **Private Health Insurance in force** that covers all health treatments in Spain without co-payments.
- 9.- **Others:** Certificate of Marriage, Birth Certificate.

Public Documents need sworn translation and Hague Apostille.

IV. DIGITAL NOMADS:

1.Regulation: Law 28/2022 of the 21st of December 2022 (in force from the 23/12/2022).

2.Concept: Non-EU nationals providing services as employee or self-employee (freelancers) for a foreign company located outside of Spain territory, remotely, i.e, through the exclusive use o computer or telecommunication means and systems.

3.Visa Residence: Eligible applicants can request a 1 year visa at the Spanish Consulate in their country of residence.

4.Residence and Work Authorisation: If Eligible applicants are legally in Spain (through a tourist/Schengen Visa, or with a Digital Nomads Visa) they can request a residence and work authorisation for a 3 years duration period, that can be renewed for an additional 2 years period.

5. Family members of applicants are eligible on the same terms.

6.Requirements:

- Working exclusively for a Non-EU Company (or several ones if he is a freelancer) which has had a continuous activity for at least 1 year. In the case of self-employees (freelancers), the applicant could also work for resident companies, but these revenues cannot represent more than 20% of his total turnover.
- An employment relationship or mercantile contract in existence with the Company for at least 3 months.
- Work can be carried out remotely.
- They must be graduates from a university, vocational training or a business school or recognized standing or have had at least three years of professional experience.
- Not to have Criminal Records in the countries of residence the last five years.
- To have sufficient financial means (28.800.-€ for the applicant and 7.200.-€ for each family member).
- To have hired a private health insurance in force which covers any kind of health treatments in Spain, with no restrictions.

Thank you for your attention

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