

## PROCESS OF SALE OF A SPANISH PROPERTY

Being well represented when selling a property is as important as it is when purchasing it.

The process is done in three stages, once a formal offer is received from an interested purchaser and confirmed by the seller: **RESERVATION, EXCHANGE OF PRIVATE CONTRACTS and SIGNING OF THE FINAL PUBLIC DEED OF SALE.**

1.- **RESERVATION:** The acceptance of the offer is done in writing signing a reservation contract. At this reservation contract the selling price and the calendar of payments will be set. An amount will be received (generally 3.000 € ) to secure the deal so in case the purchaser pulls out will lose the payments done until that moment. In the moment that the reservation is signed and the reservation deposit paid, the property is legally out of the market.

2.- **EXCHANGE OF CONTRACTS:** Once the reservation is signed, the Lawyers of the purchaser will carry forward a due diligence process over the property. If a serious legal problem is detected, then the vendor will have to refund the reservation deposit. In a different case the parties must enter into a private purchase and sale contract (or option to purchase contract).

At this contract it will be received the 10% of the asking price, less the reservation deposit already paid. Once private contracts are exchanged in case the purchaser pulls out will lose the 10% paid and the vendor will be free to sell to another person. In case it's the vendor who pulls out, it's common to agree a penalty of double the payment received on exchange of contract, what is to say, 20% of the asking price.

Finally add that at this private contract it will also be set the date for completion (generally speaking on or before and agreed date). The date for completion is set depending on the need of finances of the purchaser. In case of cash buyers it will be allowed a period between 2 – 3 weeks to complete. In case of buyers that require finances a month or month and a half will be allowed to property organize the mortgage. This process could be quite lengthy depending on what bank is chosen to finance the purchase.

### 3.- COMPLETION

In Spain it's the Spanish Lawyer who must coordinate all the parties that participate in the sale: sellers, purchasers, Notaries, mortgagor banks, banks to cancel existing mortgages, real estate agencies, etc. It's a delicate process that involves a very active and diligent management of the case to reach a successful completion.

The Spanish Notary will witness the deal between the parties usually drafted in common agreement between the Lawyers acting for purchaser and vendors.

The vendor will need to prepare for the completion appointment the following documents:

- Certificate of payment of service charges to the complex owners association. This certificate is issued by the Administrator of the Owner's association and signed by the President of the association. It has a cost of 40 – 50 € depending on the Administration Firm.
- Certificate of energetic efficiency.- Vendors are required to provide the purchaser with a certificate stating the property status in relation with the consumption of electricity. This certificate is prepared by engineers. It has an approximate cost of 200 – 400 € depending on the property square meters of extension.
- List of payments.

In case there is a mortgage, the vendor needs to coordinate it with the mortgagor bank. Having a mortgage on a property for sale is nothing unusual. In this case, the amount owed to the bank (plus any banking costs such as the early redemption fee) plus the costs of the mortgage deed (Notary fees and Land Register fees to literally erase the mortgage from the books) will be discounted from the selling price. The purchaser's Lawyer will make sure that all these expenses are withheld and paid to whoever may be necessary so the property is finally purchased free of charges.

## COMMON EXPENSES FOR VENDORS WHEN SELLING PROPERTY

Basically the vendor will not pay the same costs that were paid when purchasing since these will be paid by the buyer. So what are those costs now when selling?

We can say that roughly they are:

- Plusvalia Tax.
- Capital gains tax, if it's the case (this item is connected with the 3% Withholding tax to be explained below).
- Real estate agent commission, which usually is a 5% of the selling price plus VAT.
- Lawyers' fee, which usually is a 1% of the selling price plus VAT.
- Certificate of energetic efficiency, which cost is usually between 200 and 400 € depending on the property's extension.
- Certificate of accounts with the Owners' association, usually between 40-50 €

We would be delighted to make a simulation for you if you let us know selling price, commission agreed with your agent and let us have a copy of your purchase deed as well as a copy of a recent IBI tax bill and an approximate date for the sale (to calculate the Plusvalia Tax).

### The 3% withholding tax (WT) and the Capital Gains Tax (CGT)

Property owners can either have a loss or make a gain when selling the property. In case there is a gain, the Spanish Government has put in place legal measures that prevent the evasion of the CGT.

When a foreigner (UE resident or not) is selling a Spanish property, the purchaser is legally obliged to discount or withhold the 3% of the selling price and cash it at the Inland Revenue (Hacienda o Agencia Tributaria). This 3% is a guarantee for the Spanish government in the case that a profit is made the required tax quote will be paid. The tax over profits is the 20% (19% in 2016) over the NET GAIN. Netting the gain is very important since this is what will really help you pay less taxes and where a good lawyer or tax advisor with experience and knowledge on taxation **can be really helpful**. This is one of the keys to your higher margin of profit.



Few days after completion of the sale the purchaser's Lawyer will pay the 3% to the Spanish I.R. and hand to the vendor's Lawyer the receipt of the payment. This is the form 211. Then the purchaser's Lawyers use the form 210 to activate the refund process attaching the evidence for the 3% payment, the copy of the form 211.

During the process of refund, the Spanish I.R. will open a file for a brief tax inspection where it will be checked:

- Whether the vendor paid every year the yearly taxes for non residents, the IRNR & wealth tax.
- Whether the vendor is having any taxable gain with the sale. Again here is another moment where you really need a good advisor to discuss these topics with the Spanish I.R. (Hacienda) and obtain the most favourable results for you.

## **PLUSVALIA TAX**

*What is the plusvalia tax in Spain?*

The plusvalía is a local (municipal) tax charged by the town hall on properties when sold.

*How much is it?*

It is calculated on the rateable value of property (stated at your IBI tax bill called "valor catastral" in Spain) and the number of years that have passed since the property was last changed hands.

The base for this tax is the "valor catastral" (an administrative value that is usually lower than the market value and that should according to law be a maximum of 50% of the market value) of the property. The amount to pay will depend on the number of years that the seller has owned the property: the longer the period, the higher the amount of tax to pay but with a maximum of 20 years.



*Who pays this tax in Spain?*

Legally it should be paid vendor, though both parties are free to negotiate who pays it.

*What happens if it is not paid?*

In case this tax it is not paid, the local Town hall will go against the new owner **if** the seller wasn't tax resident in Spain. This doesn't happen when the seller is tax resident in Spain. This explains why most Lawyers acting for purchasers deduct from the selling price the amount payable to the local own hall as Plusvalia Tax.

*How is it paid?*

There are 30 days from the date of sale to offer the payment of the plusvalia to the Town Hall. In case this offer of payment is done after those 30 days, delay interests will be added.

The purchaser's Lawyer (in case the plusvalia payment has been deducted from the selling price) is who usually requires the local Town hall to send the tax bill. Sometimes this formal request is done by the Public Notaries who are empowered by the parties into the deed of sale to do it. Only when the payment of this tax is formally offered the doors to the Land Register will open.

Unfortunately Town Halls can take months to send the bill so this basic administrative task can take quite long. The timings vary depending on the Town Halls.

### **SPLITTING SOME COSTS: COMMUNITY, IBI AND GARBAGE COLLECTION. Retentions for utilities**

There are payments that are done once and for the whole year, so what happens if someone purchases a property in the middle of the year? Is it legally required that the vendor to pays for the whole year?

As an example, the IBI is paid once a year, usually in July. It's is a tradition to split the IBI and garbage collection tax between the vendor and the buyer paying each party for the number of days that the house has been owned. However, this is the legal fact, the person legally obliged to pay the IBI tax is the person who owns the property on the first of January of each year so the apportionment of the buyer for the current IBI is more a tradition than any other thing. It does not seem fair that an owner sells in January or February and has to pay for the whole year, hence the flexibility with this matter, in principle.

Same thing happens with the community / service charges. Many times these are paid quarterly, by semesters or even yearly so what happen when at the time of selling



there are payments of this kind done in advance? In practical terms it is dome same as the IBI, the payment will be split between the parties so each one pays in proportion to the number of days that has owned the property.

Finally it's important to mention the utilities bills. In Spain, the utility bill arrives months in arrears so in reality it's very difficult to know how much the next bill will be. The Spanish company for supply of electric energy (usually Endesa though there are others like Iberdrola, Gas Natural Fenosa and several more), does not have offices open to public and only attends by the phone. Sometimes it's possible to find out by telephone how much will the next bill amount what allows making the necessary withholdings / retentions (again from the selling price) to pay the vendor's bill when its finally issued. It's quite frequent to retain an amount of 100 or 200 € per each supply (water, gas, electricity, internet, etc) subject to a further liquidation once the bills arrive. This amount is higher in case of big villas that are supposed to produce higher utility bills.

## **REPATRIACION DE FONDOS – CURRENCIES**

This is another important key to your highest possible profits.

Many citizens of different countries purchase property in Spain. When doing so, they use (or buy) Euro but what happens when the property is sold and it is desired to repatriate the money to the country of origin where there is a different currency? This is the case for British, Russians or Scandinavians citizens. What to do then? A lot of money can be lost on the conversion of the currency.

This is a problem that the local real estate industry has solved very successfully. There are many different companies that will help to buy currency or to repatriate it at a competitive rate, avoiding big losses on the exchange rate. These looses can be sometimes really significant.

As we all know the currencies market has daily fluctuations. This is why you must wait for a favourable moment to convert your euro into your country's currency. These currency companies what they do in essence is to purchase all the different currencies when their price is very low and then they resale it to individuals wishing to repatriate funds with a small profit.

As you see there is no big secret. Specialists accumulate currency that is later sold. You must only be careful with the profit or margin that the currency company will do, so check with several of them prior converting the currency before choosing the final one.

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**SELLING REAL ESTATE IN SPAIN - FLOW CHART**

