

Buying property in Majorca – what buyers need to know

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Buying a property in Spain is very different to buying a property anywhere else in Europe. For instance, there are two kinds of purchase contracts, and several ways for the potential buyer to secure time to think over the purchase beforehand. This guideline aims to give you an initial overview of how property purchase works in Majorca. Please note that it is **not legal advice**, but purely for information purposes. Depending on the individual case, it is recommended that you consult a solicitor in Majorca before buying. Porta Mallorquina Real Estate S.L.U. has been working with reputable solicitors for many years and will be happy to give you suitable recommendations.

Reserving your chosen property: the option contract

As a rule, before a property is sold, the seller and the potential new owner first sign an **option contract**. When they do so, the future buyer makes a deposit – usually 10 % of the purchase price – which is then offset against the purchase price when the sale is effected. If the buyer withdraws from the purchase, he loses his deposit; where the seller withdraws from the purchase, he is required to pay the buyer an amount equal to twice the deposit. In order for a sale to be effected, a deed must be signed in the presence of a notary. To this end, both parties to the contract must be in attendance or be represented by a legally appointed third party.

A firm legal footing with professional support

To ensure a legally binding, secure purchase it is recommended that, depending on the circumstances, in addition to the notary the following natural and legal persons be involved in the purchase process:

- **Estate agent:**

The estate agent advises both the buyer and the seller. He assists the buyer in choosing a suitable property, and can provide him with important information on the condition of the property and whether it represents value for money. The estate agent also informs the buyer about the location of the property and whether this meets the buyer's needs. Although the estate agent is not allowed to give legal recommendations, he should have a sound basic knowledge of the law.

- **Solicitor:**

The solicitor's main duty is to check whether the information provided by the seller about his property is correct, e.g. whether the property is mortgaged. Furthermore, the private and /or notarised Deed of Sale is drafted by the solicitor (covenants and values of individual inventory items may be incorporated here). He also attends the signing of the Deed of Sale at the notary's office.

Some solicitors moreover offer additional services. They may, for example, obtain a Spanish tax number for foreigners (N.I.E.) for clients, inform them on taxes and charges to be paid, or arrange for the Deed of Sale to be recorded at the Land Registry. The solicitor should also check the land certificate. By issuing a Power of Attorney to his solicitor, a buyer is freed from the obligation to attend the signing of the Deed of Sale at the notary's office. If the property is located on a coastal strip, the solicitor should also check whether there are implications under the Coastal Zone Protection Act.

- **Tax advisor:**

Because the tax rules in Spain differ from those in other European countries and are constantly changing, it is recommended that buyers consult a local tax advisor. This individual can inform the buyer on taxes to be paid, and provide information on how to save on taxes. After the purchase, he can advise the new owner on tax charges and assessments that arise later.

- **Notary:**

The notary issues the notarised Deed of Sale. He does not check the content, however. This is done by the solicitor. The notary's main duties are: drawing up and recording the Deed of Sale, checking the identity of the parties to the contract, describing the property in the notarised Deed of Sale, and checking whether there are any encumbrances. As such, the notary takes on a "protective function" for the new owner.

- **Lending institution:**

It is possible to purchase the property with the help of a bank loan. Such a bank loan may be taken out in the buyer's home country (in this case, the buyer should inform himself at his chosen bank) or in Spain. Banks in an individual's home country often refuse to finance property purchases abroad. Before granting a loan, the Spanish bank will evaluate both the property's value and its legality. Interest rates for the loan are influenced by a number of different factors: Is the borrower registered as a resident in Majorca or not? Does the borrower have own capital? What loan repayment period should be agreed?

- **Public authorities:**

Public authorities may be involved in the sale of a property. These may include, for instance, the tax authorities or the Land Registry authorities (*registro de la propiedad* and *catastro*). Since actual plot sizes may sometimes differ from the plot sizes entered in the Land Register, this should be checked by the Land Registry (*catastro*), which is thus responsible for measuring plots. This is also where all plans are kept. Changes to plot sizes may result in adjustments to the amount of property tax payable. The property plans are kept at the respective Town Hall.

- **Architect:**

The architect can, for instance, evaluate the fabric and structural stability of the property, and may thus play an important part in the purchase decision. Ahead of a purchase, the potential buyer may also discuss possible structural modifications with an architect.

- **Currency exchange companies:**

Foreign transfers are effected through currency exchange companies, so that foreigners can pay for a property in Spain. These companies also display the daily exchange rate. Transfers are subject to a special rate and the money transfer is effected without any further fees being charged.

To avoid any unpleasant surprises when buying your property, you should bear the following points in mind and either check them yourself or have them checked for you.

Pre-purchase checklist:

- ✓ Is construction possible and permitted on the plot?
- ✓ Is the building legalised or subject to any right of continuance?
- ✓ Is the seller recorded in the Land Register? Any encumbrances on the property will also be shown there.
- ✓ Are there any restricted rights in rem on the property (right of use, security interest in land)?
- ✓ Request the certificate from the Land Register (*catastro*) so that you have the basic details of the property. Furthermore, the land certificate will indicate how much property tax (*IBI – impuesto sobre bienes inmuebles*) has to be paid.
- ✓ Is there an energy certificate?
- ✓ Are there time restrictions on when the property can be used under the terms of the Coastal Protection Act? This should be checked by a solicitor.
- ✓ The last water and electricity bills or the habitation certificate (*cédula de habitabilidad*) should be provided. Only in this way can it be ensured that there will be no problems with electricity and water supply.

- ✓ The buyer should also clarify any other costs that may arise – for instance waste charges, community charges, house rules, ordinances, etc.
- ✓ When purchasing apartments or houses that have a share in communal facilities, the buyer should check that all charges/expenses have been fully paid up.
- ✓ At the time of sale, is the property let or leased? If so, it should be borne in mind that the buyer cannot withdraw the tenant or lessee's right of residence. That individual may possess the right to first refusal.

Estate agents, solicitors, architects, etc., can assist you in clarifying these points. Buyers who are not resident in Spain must also be in possession of a Spanish ID number for foreigners, an N.I.E. (*Número de Identificación de Extranjeros*).

Mandatory: Identification Number for Foreigners (N.I.E.)

Anybody who does not have their main residence in Spain but intends to do business there either directly or indirectly must have an N.I.E. (*Número de Identificación de Extranjeros*). The term "business" also applies to the purchase or sale of a property.

An application for an N.I.E. can be made in person in Spain, at the *Comisaría* (the police), or abroad at the Spanish Consulate-General responsible for the area in which the applicant is resident. However, it is now once again possible to make an application through a third party: a buyer or seller living abroad can therefore authorise a third party in Spain – by means of a notarised Power of Attorney with apostille – to apply for the N.I.E. For the application, a certified copy of the applicant's ID document with apostille must also be submitted.

Taxes and charges applicable to the purchase of property in Majorca

The following taxes apply in Spain during and after the purchase of a property:

a) Purchase from a private individual

- **Property transfer tax (ITP):**
On purchasing a property, the buyer is always liable for property transfer tax. This tax has to be paid within one month of the Deed of Sale being signed at the notary's office. At present the tax rate in the Balearics is between 8 % and 10 %. It is calculated on the basis of the purchase price specified in the notarised Deed of Sale which may not be less than the property's going market value.
- **Municipal appreciation tax:**
Although the municipal appreciation tax (*Plusvalía*) is often passed on to the buyer under the terms of the contract, it is actually the seller who is liable to pay it. This tax relates to the increased value of the land on which the property stands, but not to the buildings on the land themselves.

It is only charged on the sale of properties on urban land (“*urbano*”). Properties on rural land (“*rústico*”) are exempted from this tax.

- **Property tax (I.B.I.):**

As in Germany, property tax is an annual, ongoing tax burden. It generally amounts to 0.3 % to 0.4 % of the value of the property as specified in the Land Register (*catastro*).

- **Wealth tax:**

Spanish wealth tax is calculated on a natural person’s net wealth. This naturally includes any property they may own in Spain, although the tax allowance is € 700,000.

- **Income tax:**

The buyer is required to declare any revenue out of land ownership and/or real estate in his tax return and therefore pay tax on it. Of course, this point is only relevant if the owner is also letting his property and earning rental income. For those who are resident in Spain, the top rate of tax is 21 %; for non-residents, the rate is currently 24 %.

b) Purchase from a company or self-employed person

- **Value added tax:**

The paid transfer of plots within Spanish territory by entrepreneurs or self-employed individuals in Spain during the course of their business activities is subject not to property tax but to Spanish value added tax (VAT). This is for example the case when a property is purchased from a developer. Although the general VAT rate is currently 21 %, it is reduced to 10 % with regard to the transfer of properties. Although VAT is charged to the seller, the amount in question is added on to the purchase price and therefore ultimately paid by the buyer.

In special cases, however, the transfer of a plot is exempted from VAT and is instead liable for property tax. Therefore, in case of doubt the advice of a solicitor and/or tax advisor should always be sought.

- **Stamp duty:**

In addition to VAT, stamp duty (*Impuesto de Actos Jurídicos Documentados; AJD* for short) is also payable on a notarised Deed of Sale for a property liable for VAT. As a rule, the rate in the Balearics is 1.2 % of the purchase price, but can be as much as 2 % in individual cases.

c) Purchase of company shares

It is a relatively frequent practice in the Balearics that properties are held by companies whose only corporate assets consist of the property in question. Where a buyer acquires more than 50 % of the shares in a company, at least 50 % of whose assets consist of plots, property tax is payable.

Other possible costs when purchasing property:

- Notary costs (approx. 0.1 – 0.2 % of the purchase price)
- Costs for registering the Deed of Sale in the Land Register (approx. 0.1 – 0.2 % of the purchase price)
- Notary and Land Register costs incurred for the creation and registration of a mortgage, where applicable
- Estate agent costs, if borne by the buyer
- Costs for legal advice/solicitor's fees
- Tax advisor fees
- Legalisation costs

The Porta Mallorquina Real Estate Team is at your disposal if you have any further questions about the purchase of property in Majorca. You can call us seven days a week on +34 971 698 242 or send an e-mail to info@portamallorquina.com. More information about Majorca and about properties in Majorca is available in our blog at <http://www.porta-mallorquina.de/blog/>