

Property I: Buying and Selling

1. What previous information must I obtain in order to make a secure purchase?
2. What information must be obtained before buying a second-hand property?
3. What must you do before signing a purchase/sale contract?
4. Contract completion: private contract or public deed
5. When and how should I pay for the property?
6. Addresses

■ What previous information must I obtain in order to make a secure purchase?

Property developers and estate agents are obliged by law to provide certain legally binding information to buyers, via the adverts they place.

Property developers must make certain information and documents available to the public pertaining to:

- The documentation of the company or property developer in the Trade Register. This covers legal and economic documentation, as well as information about the people registered and the representatives of the company or property developer.
- General property location map.
- Property's floor plan.
- Guarantees of the installations.
- Description of the property, including the floor space area and living space.
- General description of the building, communal areas and additional services.
- Reference to the materials and finishes used in the construction of the properties of the building, communal areas and additional services, including thermal and acoustic insulation.
- Details of the Property Register. This provides a legal description of the company, the owners and any encumbrances.
- The total selling price and payment method.

■ What information must be obtained before buying a second-hand property?

The purchase of second-hand properties is not subject to the regulations and obligations described above. But we must request the following documentation from the seller:

- Registration information of the seller's or conveyor's property, the certification that attests to the content of the Register.
- The receipt confirming that the latest Property Tax annuity has been paid.
- The certificate provided by the secretary of the association of flat owners, which confirms that the seller is up to date with payments of the common maintenance charge.

■ What must you do before signing a purchase/sale contract?

Direct inspection of the physical condition of the property

This is crucial and must be carried out. Furthermore, for second-hand building or property, you should take a professional architect or surveyor with you.

If the property has any “latent defects”, meaning defects that could cause medium to long-term damage, the seller is responsible for any repairs.

Documentary inspection of the legal status of the property

The most important document that can confirm the property’s legal status is the certificate of ownership and Property Register encumbrances.

This certificate must confirm that the property is finished, that there are no encumbrances or limitations and that the seller is the legal owner of the property.

The tax status of the property must also be checked, in order to confirm that the latest Property Tax annuity has been paid.

■ Contract completion: private contract or public deed

In accordance with the principle of freedom as to the form and content of contractual arrangements, a property purchase contract can be drawn up either as a private or a public (authorised by a notary) document. Only public deed purchase contracts that are recorded in the Property Register provides buyers with the legal assurance that they will not be sued in their property, since the buyer is indemnified and held harmless against any claim or action arising from defects or errors in the seller’s ownership status.

■ When and how should I pay for the property?

The price should not be paid in full until you have checked all the documentation.

PAYMENT METHOD. There are several possibilities:

- A down payment or good-faith deposit is the payment of portion of the price, as a way of commitment.

In the event that buyer pulls out of the contract, s/he loses this amount, and if the seller pulls out, s/he is obliged to pay double the down payment or deposit.

- Payment on or after contract completion. There are three possibilities:

1. Cash payments, only if the property is total free from encumbrances in the Register. The price agreed on contract completion must be paid in full.

When part of the price is paid when purchasing a property before it has been built, the property developer is legally obliged to guarantee the buyer the total refund of this amount in the event of contract non-fulfilment.

2. Deferred payment. This is when payment of part of the price is deferred, even if there are no encumbrances, via:

- Resolutory condition, so that if the buyer does not pay in the agreed period, the seller becomes the owner of the property again.
- Mortgage, in the case of the non-payment, the property is auctioned in order to pay the seller.

3. Subrogation of pre-existing encumbrances. Subrogation could be a useful option, especially if the property sold is mortgaged. In these cases, the amount received by the seller will be reduced by the amount of the mortgage loan that is pending repayment, as long as the buyer takes over the existing mortgage. You must bear in mind that if judicial foreclosure proceedings have been initiated on the mortgage, the buyer must be extremely careful, and preferably demand that the property be previously released.

Addresses

Alicante Trade Register

Plz. Deportista Andrés Muñoz, 8 - 03003 Alicante

Tel: 965 92 64 91 / 81 70

Open between 9:00am and 2:00pm / 4:00pm and 6:00pm.

Property Register

C/ Arquitecto Morell, 19 - 03003 Alicante

Tel: 965 22 70 43

Open between 9:00am and 2:00pm / 4:00pm and 6:00pm

Regional Government Social Welfare Department, Land and Property Regional Headquarters

Avda. Aguilera, N° 1 - 03007 Alicante

Tel PROP: 012

Open from Mondays to Fridays, 9:00am to 2:00pm.

Mondays to Thursdays, 5:00pm to 7:00pm.

Valencia Property Institute

C/ Gerona, 4 - 03001 Alicante

Tel: 965 93 45 40

For assistance regarding low-cost state-subsidised housing: 9:00am to 2:00pm.

For assistance regarding social housing: 9:00am to 2:00pm.

Housing II: Duties and rights of the buyer

1. The importance of buying a home
2. Basics rights of the buyer
3. Basics duties of the buyer
4. Taxes related to the purchase-sale of homes
5. Mortgage loan
6. Reference legislation
7. Offices and registers
8. Useful websites



■ The importance of buying a home

-Buying a home is one of the most important investments a person makes during his/her life. It is a complex procedure in which many things have to be taken into account, especially if the purchase is made in a foreign country, with a different language, laws and customs.

-Besides those examined in our previous leaflet, the matters related to buying-selling a home must also include those related to the duties and rights that correspond to the buyer and the vendor on both an economic level (taxes, bank finance, associated expenses, etc.) and an administrative level.

-In any case, we must remember that you can obtain direct advice and information about your case in particular from the various public organisations and offices, as well as the possibility of consulting and commissioning specialised professionals and companies which, in matters as important as the purchase of a home, is particularly recommendable.

■ Basic rights of the buyer

The buyer of a home has the right to the following:

-To the home being delivered under the agreed terms and conditions. If there are any hidden vices, he/she can claim for them later.

-To require the recording of the purchase-sale on public deed. It is highly recommendable to exercise this right, since a deed formalised before a notary public affords greater legal security and enables a better defence of the parties' interests.

-Not to hand over amounts of money that are not laid down in the private contract or in the public deed of sale. Besides being illegal and subject to tax penalties and other kinds of penalties, these amounts, known as "black-market money", are at great risk of not being recovered if the transaction is not closed or if the contract has to be terminated.

-To freely choose the notary public before whom the public deed of sale is to be formalised.

-Not to meet the expenses that correspond to the vendor.

-To freely choose the bank with which he/she wishes to take out a mortgage, where applicable (subrogation to the vendor's mortgage loan is not compulsory).

-Either of the parties may be assisted by an interpreter during the signing of the public deed. The cost of the interpreter shall correspond to the party for whom the services are provided.

■ Basic duties of the buyer

The buyer of a home has the following obligations:

-To pay the price laid down in the private contract or deed of sale. There are many different formulas for paying the price* (see Housing I), but you should always request a written document containing the amounts paid, the concept of the payment, the identities of the person making the payment and the person receiving the payment, the date and the place.

-To pay the corresponding taxes to the various public tax offices. This is dealt with in the following section.

-To pay the corresponding notary expenses: legally, the expenses corresponding to the formalisation of a public deed before a notary public shall be on the account of the vendor and those of the first copy and other notary expenses subsequent to the sale shall be on the account of the buyer, although it is possible to agree otherwise.

-To pay the cost of registering the deed of sale in the Property Register if the decision to register is finally taken. If the sale of the home is formalised on public deed, it is highly recommendable for the said deed to be registered in the Property Register. Among other benefits, this prevents the former owner from using the home as a guarantee of his/her debts. The deed of sale shall be registered in the Property Register corresponding to the town in which the home is located.

-To change cadastral ownership: in a term of 30 business days after the signing of the public deed of sale, the buyer must apply to the Gerencia Territorial del Catastro (Territorial Cadastral Register) for the change of ownership of the acquired property. This application is made on form 901 (urban property) or form 903 (country property). The forms can be obtained electronically or at the cadastral register offices. This procedure can also be carried out in certain town halls.

-To register with or change the name of the subscriber with the utility companies: water, electricity, gas, telecommunications, etc. These companies will provide information as to how the changes can be made and the documentation that is required.

-To notify the Homeowners Association to which the home belongs, where applicable, of the new ownership and of an address for notification purposes.

■ Taxes related to the purchase-sale of homes

During the sale of a home, the following taxes must be paid:

New home. If the home is acquired directly from the developer or the builder, the buyer must pay the following taxes:

1. Value Added Tax (VAT): as in any business transaction, the buyer shall pay the vendor the amount corresponding to VAT, where the vendor shall then be obliged to pay the amount to the tax office.

The percentage of VAT applied to homes is 7% of the sale price, a percentage that is also applied to the purchase of parking spaces and box rooms if they are acquired in conjunction with the home. If they are acquired separately, the rate is 16%.

2. Tax on Documented Legal Acts (IAJD): this tax amounts to 1% of the sale price of the home and must be paid to Generalitat Valenciana within the term of 30 business days after the deed of sale is signed. If the acquired home is to be the buyer's usual home, a discount is possible and the rate is reduced to 0.1%. The parking spaces and box rooms acquired together with the home (up to a maximum of two) can benefit from this discount.

Second-hand home. In the case of a second-hand home or the subsequent transfer of a home, the following taxes must be paid:

1. Tax on patrimonial transfers (ITP): this tax amounts to 7% of the sale price of the home and must be paid to Generalitat Valenciana by the buyer within the term of 30 business days after the deed of sale is signed. In both this case and that of the IAJD, if the Administration considers that the price on the deed does not correspond to the real price of the home, it shall require the buyer to pay the underpaid tax. This is called a "complementary settlement".
2. Tax on the increase in value of urban land (IIVTNU), or municipal capital gains tax: this is a tax collected by the local authorities of the town in which the home is located, applying a percentage to the increase in value of a home from when it was bought to when it is sold. The percentage varies according to the town. In some towns, this tax is not paid if one year has not passed between the acquisition and the subsequent sale of the home. In principle, the party responsible for the payment is the vendor, although it is possible to agree that the payment be made by the buyer. It must be paid within the term of 30 days after the signing of the public deed. If the vendor is not resident in Spain, the party responsible for paying this tax is the buyer.
3. Non-Resident Personal Income Tax (IRNR): when the vendor of the home is not resident in Spain, the buyer must retain 3% of the sale price and pay it to the State tax office by means of form 211 within the term of 30 business days after the signing of the deed of sale.

Mortgage loan

-When you want to buy a home and do not have sufficient money to pay the price, you can apply for the capital you need from a bank. As a guarantee that the money loaned will be returned, the bank will ask you to bind the home bought to the loan. This bond is made by means of a mortgage. This is what is known as a mortgage loan.

-If you need to apply for a mortgage loan, you should visit various banks to compare their offers. You can subrogate to the former owner's loan, in other words, take his/her place.

-When taking out a mortgage loan, you must consider the following:

1. Interest rate. Whether it is variable or fixed and, if it is variable, which is the most common type of interest rate, determine the indicator in accordance with which the modifications will be made (Euribor, Mibor, etc.).
2. Term in which the loan is to be repaid.
3. Commissions and amount of the repayments. There are different types of commissions for a mortgage loan and their percentages, and even their elimination, can be negotiated. These commissions include a commitment fee and commissions for partially or fully paying off the loan.
4. You must also consider that the bank may want to require other types of obligations, such as the following: the payment of salaries into the account, direct debiting of bills, taking out insurance policies, etc.

- You must take into account that the amount finally loaned by the bank will be approximately 80% of the value given to the home. There are also other expenses that must be taken into consideration:

1. Tax on documented legal acts: 1% of the amount guaranteed, not the amount effectively loaned, in other words, it includes the amount applied for, interests and costs.
2. Commitment fee: this normally amounts to 1% of the amount loaned.
3. Valuation of the home and study of lien.
4. Insurance premiums associated with the loan.
5. Notary and register expenses. Mortgage loans must necessarily be constituted on public deeds and must be registered in the Property Register. If the loan is for the acquisition of a home, it is usually signed before a notary public at the same time as the deed of sale.

Reference legislation

- Civil Code.
- Mortgage Act, adopted by Decree of 8 February 1946.
- Notary Regulations, adopted by Decree of 2 June 1944.
- Mortgage Regulations, adopted by Decree of 14 February 1947.

Offices and registers

-**Notaries public and Property Registers of Alicante**, whose addresses can be found on the following websites.

-**Conselleria de Territorio y Vivienda (Department of Land and Housing). Territorial Department of Alicante.**
Avda. Aguilera nº 1, CP 03007. Tel. 012. Fax 965 936 777. Open to the public from Monday to Friday, 09:00 to 14:00, and Tuesdays and Thursdays from 17:00 to 19:00.

-**Conselleria de Economía, Hacienda y Empleo (Department of Economy, Taxes and Employment). Territorial Department of Alicante.**
C/ Churruca nº 25, CP 03003. Tel. 012. Fax 965 126 414. Open to the public from Monday to Friday, 09:00 to 14:00, and Tuesdays and Thursdays from 17:00 to 19:00.

-**Gerencia Territorial del Catastro en Alicante (Territorial Cadastral Register in Alicante).**
C/ Reyes Católicos nº 39, CP 03003. Tel. 965 135 890. Open to the public from Monday to Thursday, 09:00 to 17:30, and Fridays from 09:00 to 14:00. Cadastral Information Line: 902 37 36 35, open from Monday to Friday, 09:00 to 19:00.

-Department of the corresponding local authorities with competencies in the area of taxation.

Useful websites

-Website with information about notary activities and the addresses and telephone numbers of all the notaries public of Spain.
www.notariado.org

-Website with information about the functions of the Property Register and the addresses and telephones of all the Property Registers of Spain.
www.registradores.org

-Department of Land and Housing.
www.cma.gva.es

-Conselleria de Economía, Hacienda y Empleo (Department of Economy, Taxes and Employment).
www.gva.es/c_economia/web/html/home_c.htm

-General Department of the Cadastre
www.catastro.minhac.es

-Spanish Tax Department (Administración Estatal de la Agencia Tributaria) website:
www.aeat.es