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Guide to Buying a property in Marbella.

Navigating the property market in Marbella can be daunting, especially when faced with the absence of a unified property database and distinct regulatory standards compared to other countries.

Drawing from our personal experience in property acquisition, we understand the significance of partnering with a trustworthy real estate agent. Such a partnership ensures a seamless buying process, granting you access to a vast array of properties that align with your preferences.

Our firm boasts an extensive portfolio of both resale and new properties. Moreover, our collaboration with multiple shared MLS systems allows us to sift through the listings of numerous Marbella real estate agents. As a founding member of the Leading Property Agents, we adhere to a shared code of ethics and conduct, and we enjoy exclusive access to properties listed by our fellow members.

Our sales team, equipped with profound knowledge of the Marbella real estate landscape, is committed to providing you with top-tier advice on your property investments and relocation to the region.

Our combined expertise and resources position us uniquely to offer unmatched guidance and access to the most sought-after properties in Marbella, Benahavis, and Estepona. We are dedicated to serving our clients, assisting them throughout the purchase journey, and ensuring a smooth transition to their new Marbella residence, whether temporary or permanent.

In this guide, we'll walk you through essential steps and considerations, from making an offer to understanding the associated taxes when purchasing a property in Marbella.

1

Making an Offer



If you are considering a property in a new building or development, you will be provided with the price list as well as the payment terms. It is customary that payment is spread during the construction period with the final payment to be made on completion of the building and possession of your property. Here there may be differences and some developers may ask for a larger down payment or more stage payments than others. Some will also be prepared to alter these stage payments to accommodate your finances. Again, here is where your agent can help and negotiate the best terms if possible.

However, when making an offer to buy a property from a private owner the process may be different. Once you have found the property you like you must secure it through an agreement that is legally binding between buyer and seller.

The first step is that you give an offer of purchase in writing through your agent. It is advisable that this offer is backed by a deposit of around €6,000 to €20,000 to show the owner that you are a serious client. This deposit will be held by the agent in a special client account during the next days, generally a couple of weeks, until the private purchase contract is signed. Should the offer not be accepted and negotiations end, the deposit will be returned to you.

The letter of offer should include:

- The offered price.
- The duration of the offer with a time limit.
- The proposed payment terms and time for completion.
- What is to be included in the sale and whether it is subject to some contingency. A contingency is an offer with a condition or requirement attached to it and the agreement will only take place if the contingency is met. Sometimes there are contingencies with the offer, the counter offer or both. Some of these contingencies may be that you will purchase the property subject to some repairs being done or to the approval of your mortgage application for example, or the inclusion of some furniture, etc.

The seller may decide to accept your offer, give you a counteroffer or reject it. Once the offer is accepted then the next step is that a private purchase contract is drawn up and upon signing it a minimum of 10% of the price is paid, minus the amount paid with the offer. It is customary that the completion of the sale will take place within 30-45 days.

AS A BUYER USE THE FOLLOWING GUIDELINES:

Make a reasonable offer, it is likely that the seller will not respond if the offer is too low. Also they may not take you seriously and will be reluctant to give a counter offer. Find out what the real value is and if the seller has turned down other offers. Do not give a rock bottom bid unless you are aware that the seller is open to them. If the seller is present during your visits to the property avoid giving your personal opinion about it.

Make sure that you understand all the items included in the sale, for example furniture and fixtures. Although it is customary that items that are permanent attachments are included, make sure that they are part of the sale.

However, if there are some special items such as a statue, lamp or chandelier, pictures and personal items, these will be normally excluded. Avoid discussions over a piece of furniture, which may have no real value to you, but it is valuable to the seller because there is an emotional value attached to it. We have often seen sales failing because of this. Let your agent do the negotiating.

It is also advisable to use a lawyer who speaks your language. The lawyer will check the Land Registry to make sure the property is properly registered and there are no liens or encumbrances and will prepare the private contract and also the public deeds of conveyance. If there is a mortgage it is customary that this is paid off and cancelled before or on completion when signing the public deeds in front of the notary.



2

The Process

From Offer to Completion

Once the property has been chosen, an offer has been made and accepted by the seller and the terms of the sale and purchase are agreed:

1. A reservation deposit is paid to take the property off the market. The reservation is usually 1% of the agreed sale price.
2. A date is set for the signing of the private purchase contract between the parties at which point it is customary to pay 10% of the agreed sales price.
3. The formalisation of the deed of sale (public deed) must be signed by both parties before a Spanish notary public. The task of the notary is to certify this deed of sale as a registered public document.

N.I.E. (Foreigners' Identification Number)

Any buyer who is not of Spanish nationality must obtain a "NIE" from the Local Police. This number is compulsory for any real estate transaction (buying, selling, supplies, insurance, etc.).

RESIDENCE PERMITS

It is not necessary to have a residence permit to buy a property in Spain, unless you plan to live in Spain for more than 183 calendar days per year. In that case, you will need to apply for tax residency in Spain. Non-EU citizens wishing to reside permanently in Spain must obtain a visa from the Spanish Consulate in their home country. With this visa they will be able to apply for a residence permit.

GOLDEN VISA

In order to attract investment into Spain, the government took the decision in 2013 to grant a residence permit valid for 2 years (extended to 5 years in 2015 and including permission to work in the country) and a path to long-term citizenship, to all those willing to invest at least 500,000 euros in Spanish property. Alternatives to property investment include depositing €1 million in a Spanish bank account, investing in shares in Spanish companies with the same amount or €2 million in Spanish public debt or creating a project in the country that generates employment.

It can be renewed indefinitely as long as the investment is maintained. For one year, the investor may live in Spain or not, without jeopardising their residence visa. To maintain and renew this visa, the applicant must enter into Spanish territory at least once a year.



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Purchase costs & Taxes

In general, taxes, legal fees and expenses directly related to the purchase of a finished residential property amount to approximately 10% of the sales price.

NEW PROPERTIES: DIRECT PURCHASES FROM DEVELOPERS

No transfer tax is payable, but a VAT of 10% of the sale value, plus a 1.2% stamp duty. However, on commercial premises and some garages, not attached to a dwelling and plots of land purchased directly from a developer or builder, VAT is 21% plus 1.2% stamp duty.

RESALE HOMES

There is a Transfer Tax which is set at 7% of the reference value* of the property for all property transactions occurring after 28/4/21.

*Reference value for the calculation of the transfer tax: The taxable base is whichever is higher of the following: The declared sale price or the reference value. The reference value is obtained by taking the cadastral value of the property and applying a multiple that depends on each municipality and that the authorities establish on the basis of market values and is updated every year. To consult the reference value of a property, visit the web site of the Cadastre Headquarters (Sede del Catastro) and with the cadastral reference of the property you will be able to obtain it.

However, there are some exceptions or reductions in transfer tax for residents, professionals and companies:

- Transfer of a property intended for the main residence, if the value of the property does not exceed 150,000 euros: 6%.
- Transfer of a property whose value does not exceed 150,000 euros when it is intended for the purchaser's main residence and the purchaser is under 35 years of age, a victim of domestic violence, a victim of terrorism or is acquired in a municipality with a depopulation problem: 3.5%.
- Transfer of a property whose value does not exceed 250,000 euros, when the purchaser is legally considered to be a person with a disability of 33% or more, or a member of a large family: 3.5%.
- Acquisition of a home for resale by an individual or legal entity that carries out a business activity to which the rules for adaptation of the General Plan for the Real Estate Sector are applicable: 2%.

The new owner will have a period of 5 years to sell the property. If the property is not sold within this period, the owner will have to pay the difference to compensate up to the normal applicable rate.

- In the event that both the seller and the buyer are legal entities or self-employed VAT taxable persons, and the VAT exemption is waived, there is a "VAT reverse charge", and consequently there is 0% VAT and 1.2% Stamp Duty (except in the case of new build properties bought directly from the developer). In short, second and subsequent sales of real estate between companies/entrepreneurs are only subject to the payment of 1.2% Stamp Duty.
- Certain transactions in which SGRs or state or Andalusian public sector companies participate, the purpose of which is the provision of guarantees: 2%.

NOTARY AND LAWYERS' FEES

As stipulated by law, 80% of the Notary's fees are payable by the seller, although in practice it is usual for the buyer to be responsible for the whole amount. Fees are applied on the basis of the scale established by law. Notary fees and the registration of title in the Land Registry are stipulated by law on a sliding scale and amount to approximately 0.5% of the purchase price.

It is advisable to engage a local lawyer to advise the buyer on any aspect of the investment. The lawyer's fee is approximately 1% of the purchase price of the property.

REGISTRATION

It is necessary to register the new ownership by registering the deed of sale (escritura pública) at the Land Registry. This registration is the last step in securing legal title to the property.

OWNERSHIP

A property can be owned by a natural person or a legal entity. Legal entities that own the property can be Spanish companies or foreign companies. For more information read our article on buying property through a company.

In any case we recommend consulting a tax advisor.

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Annual taxes

REAL ESTATE TAX (I.B.I.)

This is a property tax levied by the Town Hall and is currently a percentage of the cadastral value. It can vary depending on the municipality where the property is located. As a reference, the applicable rates range between 0.3% and 1.3% of the cadastral value of the property.

Before formalising the purchase of the property, you must obtain from the seller a copy of the last I.B.I. receipt paid. Here you can check the value and the exact amount of the tax.

GARBAGE TAX

To be paid to the local authorities in the amount stipulated by them.

COMMUNITY CHARGES

These fees will be paid to the Community of Owners for the services and maintenance of the common areas when the property is in an urbanisation or condominium. At the signing of the deed of sale at the notary's office, these fees must be up to date and the owner must provide a certificate issued by the community of owners, stamped and signed by the administrator. The cost of this certificate will be paid by the owner.

ANNUAL PERSONAL TAX

Resident Income Tax.

The taxes applied are different between residents and non-residents. Your employment income, real estate, tax benefits, etc are taken into account. Due to a number of relevant factors which may vary according to the individual's circumstances, we recommend that you obtain further information from a professional advisor.

Non-Resident Income Tax.

This is an annual tax and is payable from the year following the purchase. The Spanish State Tax Agency (Hacienda) estimates that all non-resident owners reap economic benefits from their property and therefore assign to each property an annual attributed income of 1.1% or 2% of the cadastral value of their property.

If the cadastral value of the property has been updated within the last 10 years, the attributed income is 1.1% of the cadastral value, used as the basis for calculating the non-resident tax. If the cadastral value was updated more than 10 years ago, the attributed income becomes 2% of the cadastral value.

Owners resident in non-EU countries pay 24% of the taxable base (either 1.1% or 2% of the cadastral value). Owners resident in another EU Member State, Iceland

and Norway pay 19% of the tax base. This is a reduced rate that has been applied since 2016.

If you rent your property to a third party, residents of the EU, Iceland and Norway pay tax quarterly on a net income (deducting certain expenses) and at a tax rate of 19%. All other non-residents are taxed on gross income (no expenses are deductible) and the tax rate is 24%. In that case, and during the rental period, the attributed income tax rate specified above would not be applicable and only the actual income would be taxed.

WEALTH TAX IN ANDALUSIA

With effect from tax year 2022 and indefinitely, this tax is 100% subsidised in the Autonomous Community of Andalusia.

SOLIDARITY TAX

In December 2022 the "Temporary Solidarity Tax on Great Fortunes" was approved. It is applicable to private individuals with net wealth exceeding 3 million euros. The rate ranges from 1.7% to 3.5% and in principle it will only be in force for two years (2022 and 2023). The autonomous governments of Andalusia and Madrid have filed appeals before the Constitutional Court asking for it to be suspended because they consider this tax to be unconstitutional. The Court accepted the appeals in March 2023 but has denied the immediate suspension of the tax, therefore the situation at present is that it is applicable.

In view of the above, it is recommended to discuss with a professional advisor the potential amounts due to be paid for this tax which, for example, could be as follows:

- Purchase of a €5M property: €34,000 tax
- Purchase of a €8M property: €95,600 tax
- Purchase of a €12M property: €197,860 tax

PROPERTY OWNED BY A NON-RESIDENT COMPANY

Where a property is owned by a corporate structure located in a jurisdiction outside Spain, which is classified as a tax haven or in a territory without a double taxation treaty with Spain, an annual tax of 3% of the cadastral value is payable.

Laws and regulations are subject to change, as are the personal circumstances of each individual. This information has been compiled as a guide for potential purchasers of property in Spain, it is not intended to provide or replace legal advice which should be obtained from a qualified professional, nor does it have any contractual effect.

