



What should you know
before buying a property?

The notary gives you some advice

This leaflet attempts to give you useful information on the **initial steps** usually required before buying a property and on the benefits of doing so before a notary and through a public document. You will also find some information on **mortgage loans**.

www.notariado.org



GENERAL COUNCIL
OF NOTARIES

The purchase of a home is the most important investment in the life of most European citizens. If you are thinking of acquiring a property, the notaries will be able to explain to you the steps you should take. Do not hesitate to consult us. Above all, don't sign any documents without getting some good advice, especially before handing over money, even if it is only a token deposit. Here we summarise some issues of which you should be aware:

Preliminary steps

Before drafting an authentic notarial instrument of sale, it is common practice to sign a private contract between buyer and seller. The private document is not binding and it cannot be recorded in a public registry. The law considers valid this contract however. Thus, all its provisions have to be complied with.

This is why if you intend to buy a property, you should get proper advice before you sign any commitments. Even where the notary does not intervene directly, he or she can help you in solving your legal queries.

Some important issues should be taken into account in a private document:

- **Who signs for the selling party.** When an owner or a real estate developer sells a property, the company manager or his agent should sign the deed. If the sale takes place between private persons, all owners have to sign the deed. In case of a matrimonial or family property, **both spouses** must sign the deed.
- **Charges borne by the property.** It is crucial to check whether the property is unencumbered, whether it has a mortgage on it, is under threat of repossession or there are any limitations in the charter of the community of owners. You can apply directly to the office of the land registrar asking for an unofficial record extract or request a notary's office to obtain such document for you. Occasionally you may have to apply to the city hall for a certificate stating the conformity with city rules in order to verify that the property is not affected by any liens not recorded in the land registry.
- **Owners' association dues.** Before the purchase, make sure that the property is up to date on payments and disbursements, as in certain cases the law requires the buyer to take charge of such costs.
- **Price.** Precise information on the price and form of payment should be obtained in due time. Do not accept the recording in the deed of a price below its real value and do not pay any amounts that are not supported by documentary evidence. That is illegal and may ultimately be used against you.
- **Deposit.** When a private contract is signed, a small amount is usually paid as part of the payment of the total price or as a "token" payment, known as the "deposit", with legal effects for both parties. The most common payments are in the form of cash deposits with the possibility for the prospective buyer to dissociate himself from the contract before signing an authentic notarial instrument. If the buyer cancels the agreement, he or she will lose the amount deposited. If the seller cancels the sale, he or she will have to reimburse the double of the amount paid.

In case the property is under construction, the buyer has the right to demand a surety for the deposited amount so that in case the agreed date of delivery of the property is not met, the deposit should be returned with the accruing interests.

- **Sale costs.** If there is no agreement between the parties or the contract states that the sale costs should be met “according to law”, the law of the self-governing region where the property is located will be applicable.
 - However, it is usual that it is agreed in a private document that a party assumes the costs, including the possibility that all costs should be borne by the buyer, with the exception of the capital gain tax which the law imposes upon the seller. If a real estate developer is selling a property, the law forbids that the buyer bears the costs that the seller is bound to pay by law.

Authentic notarial instrument of sale

An authentic notarial instrument for the sale of a property is not required, unless a mortgage loan is taken out in order to acquire it. However, the vast majority of citizens choose to go to a notary to do this because it gives the document **legal validity** and **legal security**.

- **The authentic notarial instrument is binding.** The parties in a sale transaction before a notary must state their willingness to buy and sell and their agreement on the conditions for the sale. The notary, as a public official, attests to the veracity of those statements in the authentic notarial instrument in such a way that neither party may deny their commitments to the other party. **An authentic notarial instrument is endowed with the value of prima facie evidence before the courts of justice.**
- **The authentic notarial instrument provides legal security.** The notary’s task is not limited to attesting the veracity of the statements. His or her professional action provides legal security through the assumption that what is recorded in the private document complies with the legal requirements.
- **At the moment of signing the authentic instrument, the notary:**
 - Checks the identity, legal capacity and legitimacy of the seller and the buyer.
 - Discloses any charges borne by the property.
 - Confirms the payment of the dues to the community of owners.
 - Informs on the submission of the property’s energy efficiency certificate.
 - Checks that the payment of the Property Tax (IBI) as well as the property’s land registry number of the property in the land registry are up to date in order to make sure that they match the seller’s deed, warning the parties about any inconsistencies and changing the ownership in relation to the upcoming IBI receipts.
 - Verifies and controls the means of payment used in the operation.
 - Notifies the parties of their legal obligations and particularly of any tax duties arising from the transaction and the deadline for meeting them.
 - Explains the method of sharing out the costs between the parties.
 - Electronically submits the deed to the Property Register.
 - If the parties do so request, details the payment of the different expenses that the public document entails.

Subsequent procedures

Once the authentic notarial instrument of sale has been signed, the following steps must be taken:

- **Payment of taxes and registration in the Land Register.** If it is intended that these arrangements be made in person, the notary’s office should be consulted on the dates they have to be paid in order to avoid any sanctions or loss of rights. The notary may also be

asked to make these arrangements himself. Once a provision of funds has been made, he or she will then proceed to the settlement and payment of the taxes and will register the deed in the Property Register. Once the process has been completed, he or she will give you a certified copy of the deed on official paper with all paid receipts and invoices.

- **Supply of utilities.** Do not forget to put the utility services in the name of the new owner.
- **Documentation and invoices.** Keep all original documents, receipts, guarantees and invoices relating to your acquisition.

Do not accept global receipts; demand the original invoices from the notary, agent and land registry, together with the tax payments certificate.

Expenses derived from buying a property

Notary's fees: This is the notary's invoice for his or her fees, set by Government tariffs. The tariffs are the same for all notaries.

Registration fees: This is the land registrar's invoice for registering the authentic notarial instrument; they are also set by Government tariffs and are the same for all registrars.

Agency fees: This is the agent's invoice for procedures undertaken. The buyer has the right to undertake these procedures by himself or to ask and agent to do this work for him.

City Tax on Added Value of Urban Land, also known as Municipal Added Value Tax. By law it is paid by the seller, who may ascertain the amount due by applying to the city government where the property is located.

Other taxes: By law the following taxes should be paid by the buyer.

VAT: For a newly built property the buyer will have to pay a 10 per cent VAT on the sale price. For any another type of property, the VAT rate is at 21 per cent.

CLD: In case of a newly built property, the owner will have to pay the tax for Certified Legal Documents (CLD), the rate for which varies between 1 % and 2 % depending on the self-governing region where the property is located.

PTT: If the property is second-hand, the owner will have to pay the Property Transfer Tax (PTT), the rate for which varies between 6% and 10% depending on the autonomous region where the property is located.

PIT: Finally, the seller will have to take into account the capital gains obtained when filing his or her personal income tax return, which can be as high as 20 %.

And remember...

- The buyer has the right to choose any notary he or she wishes for the drafting and legitimizing of the authentic notarial instrument.
- The notary will give impartial advice while he safeguards the interests of the weaker party at all time, and that is usually the buyer.
- Do not sign anything you don't understand or about which which you don't have absolute certainty. Once the authentic notarial instrument is signed you cannot renege on it. In case you have any doubts do not hesitate to consult the notary.

Mortgage loans

Many buyers may have to apply for a mortgage loan. Remember that the buyer has the right to choose the notary.

Before applying for a mortgage loan, you should:

- 1 Decide the amount you want to apply for.** In addition to the purchase price, you must take into account the expenses listed in the above box and the mortgage expenses, such as, for example, the valuation survey, the arrangement fee (if any), agency fees, taxes, etc.
We recommend that the monthly instalments do not exceed 35% of the income of the person applying for the mortgage, as it must be taken into account that personal income may change over the years and the instalments of variable-interest loans could be increased.
- 2 Compare offers from different financial institutions** by examining the generic information on their information pamphlets (Pre-Contractual Information Sheets), which are handed out free of charge to anyone who requests them. It is important to look at the APR, which is the actual annual rate of interest paid in a year and includes the commissions charged by the financial institution and the payments' schedule.
- 3 Analyse the Personalised Information Sheet.** Once you have chosen a financial institution, and before committing yourself to the loan, the institution will give you free of charge the Personalised Information Sheet listing the financial conditions of the loan they are offering to you. It will allow you to carefully study beforehand the conditions being offered and to compare them with those of other institutions.
- 4 Request a binding offer.** Once you have applied for the loan and the survey has been conducted, it is advisable to ask the financial institution for a binding offer including all the financial conditions of the contract. The binding offer will have a validity period of not less than fourteen calendar days from the date it is handed to you. If done at the same time as the Personalised Information Sheet and their contents match, both can be handed over in a single document.

Mortgage loan

- Once the binding offer has been accepted, the financial institution will send the documentation to the notary chosen by the buyer for preparing the authentic notarial instrument of sale and the mortgage loan.
- It is important to remember that the buyer has to allow three working days to the notary's office before the signature of the authentic notarial instrument so that the conditions can be examined thoroughly with the notary's advice and clarifications and to request for changes from the financial institution, if necessary.
- The awarding of the loan takes place usually at the same time the authentic notarial instrument of sale is signed.
- After signing the instruments, the notary sends to the land registry a certified electronic copy of the authentic notarial instrument of sale and of the mortgage loan.
- Once the loan has been repaid, one last step must be taken: the authentic notarial instrument cancelling the mortgage. It must be signed only by the representatives of the financial institution at the request of the debtor, who has the right to choose the notary who authorises it and provides advice on the expenses, which will be borne by the debtor. Once signed, it is recorded in the land registry.

Interest and clauses

Interest

It is the price paid for the loan. It results from applying a percentage to the money owed at any given time. The interest can have fixed or variable rates. The fixed rate may be higher than the variable rate at the start, but has the advantage that the borrower knows at all times what he has to pay as he will not be affected by possible increases or decreases in the reference rates during the lifetime of the loan.

The variable rate shall be subject to regular review (normally on an annual basis) by reference to an index (generally Euribor), to which a differential is added. The result will be the interest that will be applied for the next period.

However, most people choose an indexed variable interest rate (generally linked to Euribor), to which a differential is added, which will be the minimum interest applicable to the loan in the event of the agreed reference index falling to zero.

Clauses

As important as the reference rate and the differential rates are the clauses that some institutions include in their contracts and which limit the variations of the interest rates applicable to the loan. These clauses set a maximum (ceiling) and a minimum (floor). Special attention must be paid to clauses that limit maximum interest ("ceiling") or minimum interest ("floor clauses"), which some institutions include in their variable-interest loans. The latter imply that the applicable interest will not drop below this minimum despite being lower than the reference index plus the differential. Should this "floor" be reached, the decreases in the reference interest rate do not translate into a reduction in payments.

Notaries will:

- Check that limits have been established to the interest rate variations. They will record this circumstance in the public document and will explain their effects expressly and in detail. In some cases the notary will ask you for an expressly handwritten statement that you are aware that your interest rate will never be lower than the agreed "floor".
- Inform the client on any relevant increases that may occur in the payments, and on the effects of the grace periods, if any, in their dues.
- Check that the non-financial clauses included in the authentic notarial instrument do not imply commissions or expenses that should be included in the financial clauses.

Unfair terms

Only judges can declare that the terms of the contract are unfair. When they do so their judgment becomes final if it is registered in the Register of General Contracting Conditions. Notaries have to remove them from their authentic notarial instrument on that occasion.

To assist them in this task, the General Council of Notaries has created the Supervisory Body of Unfair Terms (OCCA). This increases legal security when contracting for the event of judicial challenges.

The General Council of Notaries comprises the deans of the Notaries' Associations of the 17 Autonomous Regions, which in turn assemble the almost 3,000 Spanish notaries. We invite you to learn about our services by directly addressing any Spanish notary's office or the Notaries' Association of your Region. You may also inquire through our website, on our Twitter profile, @notarios.es, and on our YouTube portal, where you will find the video on the sale of property within the series *El notario te asesora*.



GENERAL COUNCIL
OF NOTARIES

www.notariado.org