

# **The Spanish Legal System**

**With Paraiso Homes**

## The Spanish Legal System

The legal system in Spain has considerable differences from the British system, it is therefore imperative that independent legal advice is sought when doing business in Spain.

It is fair to say that the system is slow and inefficient and frequently in the headlines with stories of abuse and scandal. Judges and lawyers are often accused of taking advantage of their positions and using the system to suit their own personal desires. It is also fair to say that litigation in Spain can be expensive, frustrating and therefore if possible best avoided. It has been reported that as many as 160 legal actions are brought each week to the Spanish Courts that specifically involve property purchase issues, most of which it has to be said will take years to resolve. Throughout Spain the courts have backlogs of many thousands of pending cases many of which will take several years before they are heard. The system is literally jammed to capacity.

A couple of years ago in an attempt to reduce the massive backlog Spain introduced a new system which involved appointing judges from within their own profession. Junior lawyers were invited to become judges but the mediocre salaries which went with the job inevitably meant that those lawyers with successful practices continued in their law firms whilst the less successful, and arguably less competent became judges.

Finding a good lawyer is not easy and needless to say it's better to find one who speaks reasonable English otherwise you will also need to employ a translator, which is not a very satisfactory arrangement. Typically a lawyer will charge around 40€ for a consultation after which it is common practice, if this results in him or her being engaged in litigation work, of a provision of funds amounting to around 2,000 € being requested.

It is true to say that many of the lawyers practicing in the coastal resorts rely heavily on the work given to them by estate agents. This invariably means that whilst they will go through the motions, carry out the routine checks and searches, at the end of the day it will be his very important Agent's interest which will be a priority factor in determining how much real digging is actually done. Ask your agent about any recommendations or try to find one who doesn't work for that particular agent.

Paraiso Homes much to the annoyance of many of the estate agents we have had the pleasure to deal with, represents the buyer exclusively. The prime role of our legal department is to play devils advocate and report our findings "warts and all" and if the sale fails because of the findings then so be it. Only then will we suggest a lawyer and we do not take commissions.

You should be aware that not all legal matters in Spain are handled by a lawyer. A Gestoria is a Spanish Government licensed professional who acts as an intermediary between you and the Spanish bureaucracy. For example, your NIE (fiscal tax number necessary for any legal contract in Spain), vehicle registration, work permits, business registration, residency permits can all be organized by the Gestoria. We can and will give advice on these matters and the other issues you will face either as a non-resident or resident in Spain.

### The Public Notary

Many people in the UK will be unaccustomed to the practice of using a public notary to prepare legal documents and deeds. Here in Spain as is the case in many of the countries of Europe the notary is a well respected professional and forms part of everyday life. Virtually all important deals are finalised in front of a Notary, these include Wills, Property transactions, company formations, mortgage registrations etc. <http://www.notariado.org/english/intro.htm> is a useful website to visit for more information on the role of the Notary.

Whilst the Notary is first and foremost a highly qualified and experienced lawyer his role is not specifically to offer legal advice in the way you might expect your own solicitor to provide. His primary function is to ensure that contracts are prepared correctly and in accordance with the law.

He will read the documents to all parties involved to ensure that all are in agreement and understand the implications of whatever is being signed. Having said that it must be remembered that the document you sign in front of the Notary may well be perfectly legal but cannot be guaranteed to be in your own best interests. In this case their function is solely to witness the signature of the title deeds and to deal with administrative issues. However well intentioned, the Notaries responsibilities in this process do not include ensuring your interests are protected.

### **Power of Attorney**

Flying to and from the UK to Spain is becoming cheaper all the time with carriers like Easy Jet and Ryanair offering seats on flights from as little as 1€ - providing you book early enough. However it is often the case that work and other commitments make regular visits impossible or impractical and in these cases it's often worth giving someone your power of attorney to handle your affairs whilst you are out of the country.

A power of attorney can be arranged very quickly in front of the local Notary and only the person giving the power need attend. If it is inconvenient to be in Spain for the completion of your property purchase, Paraiso Homes can make arrangements for a Power of Attorney to be granted enabling another person to attend and sign on your behalf. It is also possible to arrange through Paraiso Homes for a power of attorney document to be made in the UK but this tends to be more complicated and more expensive, having to be written in both Spanish and English and sealed by the Spanish embassy in London.

### **Inheritance Procedures and taxes**

The subject of inheritance tax and how to minimise its effects is a somewhat complex subject. There are many schemes and ideas presented from time to time by different experts who claim to be able to achieve this however; much depends upon the tax status of the deceased and the circumstances of the inheritors.

Usually, a foreigner resident in Spain is allowed to dispose of his Spanish assets according to the law of his home country - given that of course his will is valid under that country's law. If you intend to live in Spain for a long time, it may be required for you to create a legal domicile in your home country for the purpose of making a will.

It's a good idea to have wills in existence for all countries in which you own property as your assets can be dealt with directly under the appropriate local law without having to wait for the granting of probate in another country.

Following is a general outline of the procedures and major considerations regarding Inheritance tax in Spain.

- When someone dies in Spain the law is that the inheritance claim must be made within six months of the death. This involves preparation of a notarial deed by the next of kin accepting the inheritance and the liability of the taxes which will be applied as a result.
- If the death occurs in Spain a death certificate is issued stating the time date and cause of death. If it occurs outside of Spain then the Death Certificate will need to be endorsed with an Apostille (Official Stamp) by the foreign office in the country where the death occurred. Also the Death Certificate will need to be officially translated into Spanish by a certified translator.

- It will also be necessary to determine whether or not a Spanish Will has been made and a document known as a “Certificado de Ultimas Voluntades” can be requested from the Central Office in Madrid to achieve this. Usually this will be organised by the Notary when he receives the original Death Certificate and can take up to about six weeks to process.
- In the event that there is a British Will then this needs to be officially translated and endorsed with a Apostile by the foreign office. Also it will be necessary to request a certificate of probate issued by the High Court in the UK again with the official stamp. If however, a Spanish Will has been made then neither the Apostille nor the Certificate of Probate from the UK is required, the Will should be in Spanish so obviously no translation is necessary.
- Finally proof of ownership left by the deceased needs to be produced, for example the escritura of the property, car documents, bank account details, etc.
- Tax is calculated on the value of the assets declared in the deed (Inheritance Declaration) and is based on the relationship of the inheritors to the deceased. There is a tax free allowance for direct heirs and a lesser allowance for brothers and sisters, and other more distant blood relations. No allowance is given however to non blood relatives.

**It should be noted that Inheritance Tax can be avoided completely if the inheritance is not claimed for whatever reason until four and a half years of the death.**

When contemplating purchasing a property in Spain it may be worth considering the inheritance tax implications. There are a number of ways to purchase the property.

EG. In your own name, in the joint names of you and your partner, in your children’s names, in the name of somebody who will eventually inherit the property from you. Or in the name of a limited company, whether English, Spanish or “off-shore” Each method has its own benefits and drawbacks, and it really depends on your personal circumstances, however, you should pay careful attention to this point because of the possible tax savings and other savings that can be made at a later stage.

Tax savings can happen simply because of the Spanish system of inheritance tax. Gifts on death still attract very high rates of taxation so it is still possible to pay well over 70% tax on inherited wealth. Tax savings can also arise because of the way that each time a property changes hands, certain taxes fees become payable. If therefore, you can prevent the property being inherited, and minimise the number of times it changes hands, you can greatly reduce your tax liabilities.

As always with tax savings schemes there is a danger that the Government can come along and close the loophole that allow the schemes to operate and, as always, there are disadvantages to them as well as advantages. In each individual case, you will have to weigh up the advantages and disadvantages to ensure that your transaction is dealt with in the most efficient manner.

### **Urban Development Act**

Famously known as the Land Grab act it is probably the most contentious of all laws to be introduced in the Valencian community in recent times. Officially it is the Spanish Urban Development Activity Act of 1994 or the UDA. This law, as with so many others before it, was designed as a method of being able to slice through the labyrinth of rules and regulations in the Valencia province which had slowed development dramatically. The idea being was to pass authority to the local town in order to prevent landowners from holding up proposed major developments, similar to a compulsory purchase order in the UK. Unfortunately for those caught up in the act, the developers saw this as a way of enforcing others to finance the infrastructure of their new urbanizations.

There have been several well reported incidents of British people being caught up in the UDA and forced to pay huge sums of money, some, unable to raise the required amount had to forfeit some part of their land or property. Many of these people it has to be said were badly advised initially when they made their original purchase.

The risks of being caught up in UDA can be greatly minimised simply by being aware of the existence of potential problems when purchasing the property. Anyone buying on an established urbanisation generally speaking will have no problems in this regard. However anyone contemplating purchasing a property in the country on a reasonably large plot should take advice as to the future plans for the area by the local Municipality.