

BUYING REAL ESTATE IN SPAIN

and by the way ...

... what is a "contrato de arras"

A short overview for foreign investors

Many foreign citizens, whether permanent residents in Spain or not, buy or have the intention to buy property in Spain, and it is probably human to think that "things will work more or less like at home", but precisely that is often not the case.

In order to be on the safe side when buying real estate in Spain, it is highly recommended to examine a series of facts and documents related to the real estate before signing any document.

In many countries contracts about real estate are not legally effective and completed unless done in a notarial deed and recorded at the Land Register. However, in Spain, any private sales contract – and strictly speaking also the so-called "contrato de arras", which is executed in most of the real estate sales before the notarial deed, - is already a legally binding sales contract; the notarial deed and inscription in the Land Register is only of declarative character.

So, what exactly is the "contrato de arras" ?

The "contrato de arras" is a private contract by which seller and potential buyer commit to sell and purchase the real estate pursuant to the terms and conditions to be established by the parties, including the consequences or penalties in case one of them withdraws from the sale.

At the moment of signing the "contrato de arras", the potential buyer is expected to make a down-payment of at least 10 % of the total purchase price to the seller, and must be aware that such down-payment will not be paid to a lawyer's or notary's escrow account, but directly to the seller. At least in theory, this implicates certain legal and financial risks, especially when the notarial deed will not be signed between one and three months later.

In this sense, the potential buyer should ensure before signing such contract, that the **seller is the legal owner recorded at the Land Register** and the **property does not have any legal or economic problems, the purchaser as new owner might be liable for**, like

- encumbrances and third-party rights,
- mortgages,
- spouses' rights due to the seller's matrimonial property regime,

- potential preemption rights of a tenant,
- tax debts,
- outstanding maintenance costs of the Condominium or other commitments of the seller related to the community of owners,
- valid certificate of habitability, etc.

Whatever problem might be detected during such review could be taken into consideration during the negotiation of the "*contrato de arras*" and the purchase price. The buyer should not rely on being able to regulate in the notarial deed what was not established in the "*contrato de arras*".

An **extract from the Land Register**, the so-called "*nota simple*", is always the first and most important document in order to verify some of the most important legal aspects of the real estate.

What is the "NIE" in the context of the purchase of property in Spain?

It is absolutely **imperative for the foreign buyer to be holder of a foreigner identification number ("NIE")**, in order to be able to sign the notarial deed in Spain. This means that those foreigners not (yet) resident in Spain must file an application for that number latest when the negotiations advance towards a successful conclusion.

And what about the main taxes related to a property transfer ?

Within 30 days after signing the notarial deed, the buyer is obligated to pay either the **property transfer tax ("*impuesto de transmisiones patrimoniales*")**, or the **VAT ("*IVA*")** in case the property is new and had never been sold before.

Currently, the VAT amounts to 10 % of the purchase price all over the country, except for the Canary Islands, where it is reduced to 7 %.

The transfer tax rate depends on each Autonomous Region in Spain and varies between 4 % in the Basque Country and an average of 8 % - 10 % in the rest of the country.

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And what is the “3 % *retención*” in some sales operations ?

In case the **seller is a non-resident citizen** in Spain, the Spanish law provides that the purchaser has to **withhold 3 % of the purchase price**, and instead of paying that amount to the seller, it has to be forwarded directly to the tax administration as an advanced payment on the seller’s tax obligations resulting from the sale of the property. In this sense, the mere qualification of a seller as foreigner is not as relevant as being or not being an unlimited tax resident in Spain.

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