

Rental Agreement with an option to buy

In recent times it has become more and more popular in Spain to rent a house or an apartment with an option to buy after a few years, which can be a great opportunity for people who, for whatever reason, do not want or cannot to buy the respective property immediately.

This means that the tenant rents the property for a certain time and is entitled to exercise a purchase option within the option period stipulated in the contract. The price for the option is usually 10 % of the future purchase price, which will be deducted, together with the monthly paid rent, from the total purchase price.

So, in reality, there are **two agreements, (a) the rental agreement** with all its regular rights and obligations for the landlord and tenant, which especially landlords tend to “forget” sometimes and try to pass on their regular landlords’ obligations to the tenant as the “practical new owner”, which is not at all justified, and **(b) the agreement about the option to buy the property**, which has to stipulate at least a complete description of the property, including its details of the corresponding Land Registry, the period in which the option can/must be exercised, the option fee, the purchase price and the amounts to be deducted from the purchase price.

So far, so good; but what is supposed to be a good way to purchase a property, sometimes turns out into a stressful negotiation, when it comes to the end of the option period, as many tenants only then get aware that several aspects regarding the property might remain open at that moment. While it would be quite normal for any “regular” buyer (without previous rental contract in the same property) to have a legal check on the basic aspects of the property before signing a purchase contract, tenants/buyers signing the rental contract with purchase option often think that there would still be time to care about those aspects when it comes to the end of the option period. Such an assumption would be an important misconception, and those stressful situations and *last minute* negotiations with the risk of losing the option fee could easily be avoided, if the tenant and possible future buyer takes into consideration the legal nature of such combined rental and purchase option contract.

In this sense and **before signing the rental contract with the option to buy**, the tenant/buyer should act as if he/she was buying the property right from the beginning. Because, as for any “regular” buyer it would be normal to have a legal check on the basic aspects of the property before signing a purchase contract, also the tenant/buyer or his/her legal consultant should check for example,

- if the landlord is really the legal owner and registered correspondingly in the Land Registry,
- if there is a mortgage pending, or any other rights or encumbrances of third parties,
- if the certificate of habitability and energy efficiency exist, etc.

The above stated aspects are only examples, and of course, their examination should never lead to not check the whole legal situation again before exercising the option to buy and signing the notarial deed.

Furthermore, the tenant/buyer should not accept only the typical standard stipulations about the option to purchase. Taking into consideration the option fee to pay and the risk to lose it if the option is not exercised within the established period of time, the agreement should contain certain safeguard stipulations in order to guarantee the tenant's/buyer's rights in case the value of the property should decrease due to unexpected construction and/or legal problems that might arise or be detected in the course of the option period.

Otherwise, if the tenant detects certain problems during the option period, she/he might not be able to renegotiate the purchase price established and consequently lose the option fee if he/she decides not to buy. No tenant should rely on the landlord/seller to be willing to renegotiate the purchase price or to extend the deadline of the option period. The landlord might be open to do so, but except for unpredictable circumstances that have come up after the signature of the initial contract, the tenant/buyer will not be in the best position to assert her/his interests at that late point.

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Susanne Schulte
Rechtsanwältin & Abogada

(German & Spanish Lawyer)