

**D**oes it feel safe to purchase a property in Spain? This is the first question put to those people, normally non-Spanish or who do not live in Spain, who wish to purchase, or sell at a later stage, an apartment, villa or any other property in our country. Answering this question is easy and difficult at the same time.- Please allow me to explain.

Each country has a different legal system, and it is the lack of knowledge of the relevant legal system that creates most insecurity in the person who intends to carry out one such transaction.- Also, this lack of knowledge of a country's legal system is greater where said country has a different juridical culture. As an example, let us mention the Spanish legal system, which belongs in what we may call "continental" systems and, among those, is one of the most influenced by Roman Law.- Legal systems based on or influenced by the Anglo-Saxon culture, on the other hand, have very different juridical institutions, although there is an increasing number of legal institutions common to all countries which are part of the European Union.

Which legal system is best? It could be said that each country has the legal system which best works in its territory and best suits its people's ways. This question, however, is pointless, as when it comes to apartments, villas, plots, etc., we are dealing with the so-called real estate properties and it is the law of the place where the same are located that must be complied with in transferring, transforming, etc, such properties.

The Spanish legal system is similar to those of nearby countries and differs considerably from the legal systems of more distant European countries.- But the fact remains that the Spanish legal system with regard to real estate properties, although not perfect (none is), has proved very efficient in protecting those who intend to purchase or sell a real estate property in Spain. Obviously, no place is free from swindlers and, while their methods can be very clumsy, they do nonetheless succeed and use highly sophisticated techniques some other times. These swindlers' success will mainly depend on the correct use of the legal protective regulations provided for under the law of the country where you are going to purchase or sell a property. Such swindlers, particularly in tourist areas, will obviously offer to help you, sometimes selflessly, sometimes by offering to provide advice without being actually qualified to do so.- On top of that, the chances are they will be quite nice, they will talk about their influence and knowledge of the Spanish way of doing things, they will speak your language (sometimes they will be the same nationality as you) and they will advise you not to trust anybody else and will try to keep you away from lawyers who can properly advise you or advisors other than those recommended by them.

Therefore, the first and most efficient measure to be taken in purchasing or selling a property is to hire the services of a real estate agent to mediate in the transaction and a lawyer who will ensure that the country's legal system is duly complied

with.- It does not matter whether they are Spanish or foreign, but they must be established in the area and should have a good reputation, as well as the required qualifications.

When I was asked to write this article for the Miraflores Magazine, it was my intention to steer clear of the typical recommendations for the purchase or sale of a property in Spain as offered in many a handbook published for such purpose. This short space would not be sufficient to cover many of the aspects to be taken into account for a conveyance.

May I just give you some basic advice, though.

- Choose a real estate agent of good repute.
- Hire a lawyer with residence in the area.
- When purchasing a property under construction, you need to check up on:
  - The developer's reliability, and that the building site is owned by the developer and all the required construction permits have been obtained.
  - The surface area to be built, quality specifications, etc.,

are clearly set forth in the contract.

- Deadline for termination of the works and handover of the property under construction.
- The developer is to provide you (because it is an unavoidable legal obligation) with a bank guarantee or insurance taken out with a legally-recognised company whereby all monies handed over during construction – plus legal interest thereon – will be refunded if the property fails to be completed by the agreed deadline.
- Although it is possible to purchase a property in Spain by execution of a private contract and subsequent handover of the property, it is

advisable that the contract be included in a public deed (such documents are normally authorised by public notaries) so that the same can be registered at the Land Registry.

Registration of real estate properties at the Land Registry is not an obligation or a requirement to purchase the property, but it certainly is a highly efficient way of protecting your property.

- Make payments through a bank and try to avoid cash payments. Make sure no payments are made, whatever the sum, if the same is not reflected in a legal invoice or document.
- Pay your taxes. It is cheaper in the long run than not doing it.

I will finish with the same piece of advice mentioned at the beginning: The Spanish legal system is good and efficient, but it must be used properly with the help of the right people.

**Editor's Note:**

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