



**ROSE**  
Financial Planning

## **SPANISH PROPERTY - MUST DO'S AND DON'TS WHEN BUYING AND LIVING IN SPAIN**

It never ceases to amaze me! Some people really do leave their brains at home when they come searching for a property and a new life in Spain! And believe me when I say that we are well placed at Rose FS to see the reality!

This is a serious, serious subject and not something that I can cover in a single issue, so this particular article is in 2 parts. So make sure you catch the 2<sup>nd</sup> part in the next issue.

### **Part 1**

Let me give you some examples.

Let's assume that you want to buy in the UK and it's a new build. You have researched the area you want to buy, you have found a reputable developer (which is likely to be a national company such as Barratt's or Wimpey and not Joe the Builder) and you have decided what you want. Who is the first person you would look up at that stage before you do anything else. Would it be a conveyancing solicitor by any chance? And you wouldn't put a bean on the table unless the solicitor said otherwise, right? Or for a 2<sup>nd</sup> hand property, which is the norm of course, again the solicitor is instructed at the outset. And in the UK you do not pay a penny until certain checks have been run and a full legal contract has been drawn up and then, and only then, is a deposit paid. You would not do a thing unless the solicitor said it was okay for you to do so.

But here, because it's Spain, buyers get sucked into a process which, putting it very politely, is flawed to say the very least. They buy on emotion and with little mental application and, frankly, most of the horror stories start right there! Blame others for the mistakes if you wish, but nowhere else does the phrase 'caveat emptor' or 'buyer beware' apply more so than in Spain.

And, at the risk of sounding anti Spanish, let me take that one step further. So, so many issues rotate around sloppy legal processes and attention to detail by those that really should know better, the solicitors or conveyancers in the main, that I always question their own mentality and abilities. Experience and reputation is critical when choosing but, above all else, make sure they are independent of any other party in the purchase. So, when you find a good one, hang onto them. Let me give you an example of that.

At Rose FS, we try to do as much for our clients as we can at an earlier stage as possible, and often step outside of our normal remit to check and cross check other people's actions. We are broad based tax and financial advisors and should not have to involve ourselves in assessing the quality of the property ownership, but that is what we are forced to do for the consequence of not doing so compromises all that we attempt to do for our clients. And it often adds hidden costs which are unnecessary.

Take this recent case. Our client was purchasing a resale property in the Albox area. That raised an immediate concern for Albox and the surround has a terrible reputation for inaccurate legal paperwork and the lack of deeds (escrituras). I insisted on seeing the deed before, repeat before, the client paid over the initial deposit of Euros 3,000 and the full 10% deposit. That implied all was well but we were not fast enough in producing the Land Registry Search (Nota Simple). There was a technical hitch and, anyway, that was the solicitor's job. This document confirms the registration of the property, the current owner, a description and so on. The equivalent in the UK would be the first thing a conveyancing solicitor would obtain.

So, several weeks later, with everything seemingly being on track and a deposit having been paid, guess what? The acting solicitor advised the client that the subject property, some 30 years old, had NEVER been registered. In other words they had obtained the Land Registry Search AFTER the client had committed to a contract and paid money over. And, needless to say, that the entire purchase then ground to a halt to the effect that today, some 4 months into the process, we are (apparently) still some 2 months away from being able to complete the transaction. And, frankly, I will believe that when I see it!

The fault? You have to ask, do you not, what the acting solicitor was thinking of in allowing their client to put any money into the deal without knowing that title was good. And, of course, from our perspective in arranging for the finance for the purchase, we can do nothing until the title is sound. Certainly, a lender will not advance the mortgage until their charge can be made and that cannot happen with a 'history' compromising that.

Then we have a more recent case where pressure at the point of sale from an agent was again contrary to the client's interest. When I say pressure, I mean that the initial deposit was paid on the understanding that the property would then be withdrawn from the market (remember it is a buyer's market now so what chance another buyer would suddenly appear in the next week or so) and, perhaps as importantly, a 6 week timetable was requested for the purchaser to complete. If I say that the purchase was made on emotion and then tell you that the client was concerned because no serious checks had been made at that point, you will understand. The client was a typical purchaser with absolutely no understanding of the process or pitfalls.

And you know what happened don't you? When I called in the legal paperwork to check for myself, the paperwork was incomplete. There should have been 2 deeds, 1 for the property and 1 for the land, and the latter has

not been prepared. How the agent thought we will complete in 6 weeks beats me!

And the fault? Well, the agent, on taking the instruction from the vendor, in knowing how so much can go wrong, should have asked for the deeds and the Land Registry Search from the seller. They didn't! The vendor should have known that you cannot sell the property with no deeds and should have had the matter rectified. That is, of course, if they understood that simple fact. Then there is the vendor's solicitor who would have been acting for the vendor's from the original purchase. They should have followed the legal documents right the way through to ensure good title for their client. They obviously didn't. Then there is the client (and this brings me back to the very beginning). Where were their brains? Left home in the UK obviously! At that point, they had signed a commitment to purchase a property, paid over Euros 3,000 and hadn't even contacted a solicitor or Rose FS, as an independent mortgage and financial advisor, to arrange financing (which they needed) let alone having instigated instructions for professionals to act on their behalf!

Remember this article is in 2 parts so catch the next issue to see how these things SHOULD be done to avoid unnecessary financial risks and losses.

See [www.rosefp.com](http://www.rosefp.com) or call 0034 677 874 948

## SPANISH PROPERTY - MUST DO'S AND DON'TS WHEN BUYING AND LIVING IN SPAIN

From the position that we, at Rose FS, have to adopt on behalf of our clients which rotates primarily around risk control, there are so many instances of deliberate and accidental oversights you might be as shocked as often as we are! It would be easy for us to slip into the same shoddy attitude and processes that others, including clients, seem happy to accept, but that is contrary to our professional training and we will never do that that!

In the last issue I gave an outline of some of the things that do go wrong and, unfortunately, far too often. And the primary person that has to take the blame is ... you, the purchaser. For this is YOUR financial life and not that of any 3<sup>rd</sup> party you may interact with at any time. Harsh, maybe, but true! You cannot blame others when it is for you to research and make sure you understand a process before you jump in. Too many people 'assume' that others will cover their back. How naïve!

Now that I have your attention again, and having shown how NOT to effect a purchase, or even to live a life in Spain generally without carrying out certain basic checks on how life works here, let me tell what you should do.

The key to this, like any purchase of any product, is to research a) the product and b) the process in advance. And do NOT let emotion cloud your view or actions. Slow down, take each step deliberately and do not let anyone pressure you. In fact, I would go so far as to hand the matter over to those professionals who represent you and let them take the lead. They will then be charged in doing their jobs which, provided you are comfortable with them, will serve you better than if you try to effect the transaction based upon lack of knowledge, understanding and emotion. The latter is so dangerous here in Spain.

So these are the steps to take and follow to avoid such mistakes.

- 1) Research the areas and the type of property you wish to buy. Understand the differences between buying 'off plan', a new build or a resale. Rose FS have a comprehensive guide that you will find very useful, but the internet site at [www.rosefs.com](http://www.rosefs.com) is loaded with good information.
- 2) Find an agent or 2 that come with strong reputations. Remember always that of all the entities or parties involved in a house sale, they will be paid very well and, for some, the sale is the be all and end all.
- 3) BUT even before you have committed to purchase a property you MUST find a reputable, independent conveyancing solicitor, again based upon reputation and professionalism. Preferably English speaking. Do NOT use the same solicitor as the vendor. Agree terms in advance and ask them to provide their own 'Buyers Guide'.
- 4) Consult a financial advisor so that you understand the requirements and benefits of funding the property in Spain as opposed to back in the UK or using your own capital. Rose FS will assist you in this respect. I

would actually suggest this is probably the first thing that you should be doing whether you are a cash buyer or know you need finance to effect the purchase. You wouldn't buy a car without knowing how much it will cost would you? And there are so many variables with financial planning in Spain; even moreso than the in the UK. Tax planning is a key element to our part of the exercise; please do NOT assume that personal financial planning is the same here; it isn't! In fact you can compare chalk with cheese and get a closer comparison!

- 5) When you find a property do NOT sign anything and do NOT pay a bean until your solicitor agrees that this can be done. That includes the initial 'holding' deposit of normally Euros 3,000. They will want to see the following documents immediately in order to assess and check the legalities for you;
  - Deeds (Escritura). This will only be available for resales or recently completed new builds and NOT for 'off plans'. In other words, you cannot 'own' an off plan until it is completed and you therefore cannot finance it. Be sure you understand that!
  - Land Registry Search (Nota Simple). Again, this really only applies to resales and new builds, but even off plans need to be checked for the accuracy of ownership, planning permissions and licences.
  - Purchase Contract (Compraventa). This is a contract to sell and buy between the vendor and you. It will not be available with the agent, but a draft can be produced by the solicitors and executed very quickly. So, again, why rush? When you buy off plan you are contracting normally to pay stage payments without anything as hard collateral and you have, in return for your investment, nothing more than a private contract to deliver. If anything goes wrong, you can sue but that comes with its own delays and problems. Therefore, be sure you are dealing with a reputable developer or builder.
- 6) After you have completed the purchase it isn't necessarily over! Make sure that you follow up with your solicitor and have them prove to you that ownership is 'clean'. That will involve registering the transaction at the Land Registry, and that normally takes several months post Notary. Do NOT ASSUME that this is ok! Get an up to date Nota Simple to prove that fact. So many issues we see at Rose FS emanate from the simple follow up by the solicitor. Because the process is slow and bureaucracy immense, it is understandable that the more urgent day to day developments of the office cloud such attention to detail. But it is so important to avoid future problems. You will not want to be a vendor that cannot sell their home because of an inaccurate property registration!
- 7) Keep the legal documents, the deeds, yourself with only copies retained by the solicitor. If your bank has the provision of safety deposit boxes, I would suggest that is the better option. The deed is an important document and, if lost, not easy to replace without aggravation. Remember this is Spain and not the UK!

In summary, I would suggest that you bring your brains with you and leave your emotions at home. I am sorry if that sounds harsh but what would you

prefer; a house purchased aggravation free or a dream unfulfilled and potentially costly at that?

**Mark Mountney, the proprietor of Rose Financial Planning, is a specialist mortgage brokerage and Independent Financial Advisor. He is a fully qualified mortgage and financial adviser in the UK with some 10 years experience in managing his own firm. Mark was also a founder of The Association of Mortgage Intermediaries, the trade association for mortgage advisors in the UK with 20,000 members. See [www.rosefp.com](http://www.rosefp.com) or call 0034 677 874 948.**