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Acquisition Process of a Property in Spain

What is called the acquisition process includes all the steps that goes from the choice of a property until the complete registration of the notarised title deed at the Land Registry of the area where the property is located. This process generally starts with a preliminary agreement.

Preliminary Agreement

By this agreement, commonly called "Reservation Contract" or "Deposit Agreement", the seller and the purchaser express reciprocally their intention to draft, in a near future (one or two months) a private purchase contract on a specific property. However the signing of a preliminary agreement is not a compulsory step within the purchase process, in many occasions a private purchase contract is directly signed between both parties. At this stage, the purchaser is normally asked to pay a deposit.

Once the contract as been signed, both parties are entering into a contractual relationship and must fulfil the legal obligations arising from it. In the event that the purchaser decides not to buy the property, the deposit paid is not always refundable.

Private Purchase Contract

Once the parties have agreed on the property and the price, a private purchase contract is drafted. Before signing the contract and make it executable, it is important for the parties to fully understand and agree the nature of the obligations and rights arising from the contract. It is recommended to have the contract checked by a Spanish Lawyer before signing it.

A private purchase contract that complies Spanish law should state among other things; the personal details of both parties, the buyer and the purchaser, the price of the estate and the different stage payments to be made as well as the description of the property, object of the contract.

If a preliminary agreements have not been signed before, the first payment to be made would be the equivalent of a deposit which normally correspond to a percentage of the total purchase price.

Bank Guarantee

The inconvenient of buying property under construction is that it usually takes over a year to be built. Meanwhile many things may happen that may put your investment in a difficult situation: the promoter may go to bankruptcy, face litigation with suppliers or partners or even died. In those circumstances the purchaser is exposed to loose the funds invested if they have not been guaranteed.

That is the reason why, when paying any monies on account for properties under construction, proper bank guarantees or insurance policies should be arranged with the promoter. A Spanish Act enacted in 1968 obliges whoever builds to guarantee thanks to bank guarantees or

insurance policies all payments made by the purchaser before signing the Title Deed. That is to say that if something goes wrong, the total amount of the payments already made should be refunded to the purchaser with a annual interest rate. Your Spanish Lawyer will help you to obtain this document.

Signature of the Public Deed

The Public Notary, who is the only person entitle to grant a Public Deed, issues a deed based on the terms privately negotiated by the parties in the private purchase contract. Contrary to the private contract, the public deed produces effects and is enforceable before third parties, it can as well be registered at the Land Registry of the area where the property is situated. Copies would be issued to accredit ownership.

The Notary will not certify the title deed if the parties does not identify themselves presenting an original passport or identity card of their nationality. The parties can attend the signing in person or appoint someone, usually a lawyer, as Power of Attorney, if they can not attend the signing.

Land Registry

After signature, the notarised deed should be presented and registered at the local Land Registry. However before doing so, taxes such as Stamp Duty Tax, Transfer Tax or V.A.T. have to be paid. Those taxes differ whether the property is a resale or is recently built. Without the tax return stamped by the Tax Authority, the registration will be refused.

According to Spanish law and prior to the signing of the deed, the Notary is obliged to ensure with the Land Registry that there is no undisclosed charges or encumbrances on the property. The Land Registry is in charge of maintaining all the details of the property and record financial charges and other matters that may affect the title. The registration of the deed provides the highest public level of protection.