



Matthias Jahnel, LL.M.
(Abogado)

LexJahnel is a team of specialized conveyancing lawyers. No matter if you are buying off plan, new built, a second hand home or just a plot to develop; we are able to help you to acquire your future home in Spain without hassle and headaches.

Please find below short description of how to purchase property and an explanation of the steps to be taken. In case you have further queries, please do not hesitate to contact us.

Step 1 - Contacting the Vendor etc.

First of all LexJahnel will be contacting the property agent, the vendor and all lawyers involved in order to receive the information we need to pre-examine the property.

Step 2 - The Power of Attorney

The Spanish legal system is strict when it comes to sign contracts. In case you do not wish to travel from and to your country of residence to sign all documents necessary to acquire the real estate you may sign a power of attorney. This document needs to be signed at a notary public of your convenience and will enable us to execute legally binding contracts on your

Purchase of property in Spain

Author: Matthias Jahnel, LL.M. (*)

behalf. Such contracts may be the option contract, a private purchase contract, or the public deed of purchase (*Escritura*).

Please note that a power of attorney is ONLY necessary in case you DO NOT WISH to travel to Spain to sign any deeds of purchase personally.

Step 3 - The Contract of Option

Once LexJahnel has examined the vendor and the property we will prepare a binding contract that secures your rights to purchase to property for a certain period of time. Within this time limit the vendor will be bound by his promise to sell his property to you. Should he default on his promise you will be entitled to compensation.

Upon signing of this contract of option the seller asks for a deposit of about 10% of the purchase price. You should prepare for this sum, which may be paid in cash, by bank transfer or cheque.

However, should you default on the contract and not purchase the property within the set time, for personal reasons, you will lose the consideration paid.

During this period, the purchase may prepare the purchase price or his move to Spain. The vendor will organize, for example, the removal of his personal belongings from the property as possession is to be granted upon signing the purchase contract.

Step 4 - The Due Diligence

In order to secure you from surprises after you acquired your new home LexJahnel will undertake searches into the state of the property. In the course of this investigation, we will be looking into questions of the ownership of the real estate, possible debts or mortgages against the property. If there are any third party rights affecting the estate, steps will be taken to cancel those rights.

LexJahnel will also make sure that on the signing of the contract both, electricity and water will be available in the property (if applicable).

Step 5 - The Public Deed

There are various ways to convey ownership of real estate in Spain. Some of them are secure, others not, as they cannot protect the purchaser effectively from later surprises.

LexJahnel will prepare that the ownership of your future home is conveyed by signing a public deed of sale-purchase, called *Escritura*. It is the signing of the *Escritura*, which is the most secure way to acquire ownership. Only the *Escritura* can be registered in the Land Register, which in turn protects your title in the property effectively.

The public official in front of whom the *Escritura* will be signed is called *Notario*. The transfer of legal ownership of the property on completion of the purchase must take place in a public notary in Spain.

Before preparing the *Escritura* the *Notario* will need to see that the purchaser receives the right property and that the purchase price has been paid to the vendor.

The purchase money must be deposited in your account in Spain before completion of the *Escritura*. Upon signing the payment has to be effected either via bank transfer, cheque or cash. A normal way of payment is by banker's draft. We will inform you as soon as possible about the preferences of the vendor, so that you can coordinate the payment in advance.

When the vendor is a foreign non - resident the purchaser must retain 3% of the purchase price. This retention is to be paid 30 days after the signing of the deed to the Spanish Tax Office. The non-resident vendor receives, therefore, only a total of 97% of the purchase price on the day of purchase.

As we have already pointed out above, your attendance will not be required when signing the public deed, as long as we are authorised to sign those papers for you by a power of attorney (see Step 2).

The property is now yours!

Step 6 - The Property Register

It is important to remember that the notary will only witness the signing of the *Escritura*. He will not take care of the registration of the title nor any tax payments due. Later on LexJahnel will ar-



range for it to be registered in the Local Property Register in your name. Upon registration you will be listed as the new owner of the real estate, securing your rights against any interests from third parties.

Step 7 – Payment & Taxes

After the signing the notary collects his own fees, which are charged in accordance with the Schedule of Notary fees set by law.

Next to the purchase, taxes will be due.

Taxes that will be born by the purchaser are first of all the so-called ITP tax (stamp duty). This tax is levied on the purchase of the property (for second hand homes) at a rate of 7% of the price declared in the *Escritura*. It applies to the majority of property transactions.

Only in case of a purchase of a building plot the purchase tax will amount to 18% VAT plus 1% Stamp duty. If you purchase a new built or a flat off plan, than purchase taxes of 8% VAT and 1% stamp duty will apply.

Next to the ITP tax a further tax known, as *Plusvalia* is due. This tax is a local tax charged by the town hall. It is based on the increase between the official value (*valor catastral*) on the day of purchase and the present official value of the land on the day of sale as recorded in the Town Hall's index. *Plusvalia* tax applies to the seller. The tax is due 30 days after the sale took place.

To have a rough idea on the additional purchase costs one should calculate about 10% external costs over the price of purchase to pay for all expenses of the purchase. This amount may increase in case you need to finance your

by taking out a Spanish mortgage

All taxes are due within 30 days of purchase. Taxes which are not paid will cause the property to be charged. Upon default of payment, the property may be sold in a public auction.

LexJahnel will make sure that all taxes are paid on time.

Some words to under declaration. There is a widespread opinion that taxes may be "saved" by under declaring the real purchase price in the deed of purchase.

LexJahnel does not support this kind of tax evasion. Apart from the fact that this praxis is illegal and may cause you to be prosecuted and to be put in prison, we have to advice you that in case you are caught a hefty fine and late payment interest of up to 25% will be levied.

Furthermore, the Spanish authorities reserve the right to review the selling price. Should they understand that the consideration has been under-declared by more than 20%, the difference between the official tax valuation and the declared price will be considered a gift. The vendor will be assessed additional capital gains tax of 19% on the difference and the purchaser will be liable to gift tax. If the price is by 50% under declared the Spanish authorities have the right to expropriate the new owner returning only the declared price to him.

After the Purchase

After you have taken possession of your new home you should remember that you are liable for taxes on your property in Spain. Those taxes can be split in local and central government taxes, of which the so-called IBI –

yearly municipal real estate tax– as well as waste charges are the most important liabilities.

Further, you will also be requested to pay income tax. The rates depend on your income (i.e. rental), which includes yearly deemed income on your Spanish property, and whether or not you are resident in Spain.

Annual returns have to be handed to the authorities in June of every year.

Wealth tax that had been charged is now abolished.

Please be aware that in Spain all taxes are "self-declared", hence no reminder or payment request will be made by the tax office. However, in case a tax payment due is missed, a hefty fine will apply.

We at LexJahnel will support you in our after care program. Hence no matter what question or need you will have, we shall be in easy reach, putting you at ease no matter what the problem may be.

(*) **Matthias Jahnel, LL.M.**
Rechtsanwalt & Abogado

C/Can Arboç, n° 1 - bajos
E - 07002 Palma de Mallorca

Tel.: +34.971.105.511
Fax: +34.971.495.390
WWW: www.lexjahnel.com
E-Mail: info@lexjahnel.com