



# ACCESS TO HOUSING IN SPAIN

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In this guide we are going to address several of the issues that most frequently arise in the transactions for the purchase and rental of dwellings in our geographical area.

### 1. HOME PURCHASE

#### How is the purchase of the main residence taxed?

In this case, we must distinguish whether the purchase is of a new or second-hand home. It should also be borne in mind that the taxation will not be the same if you are in one region or another, Spanish Autonomous Community or another. We stick in this case to the Valencian Community.

In the event that **the property is a new construction**, as a general rule, the following must be paid:

- The **Value Added Tax (IVA/VAT)**, at the tax rate of 10%, on the purchase value of the property
- The **Tax on Documented Legal Acts or Stamp Duty (IAJD)** which, in the case of the Valencian Community, has a tax rate of 1.5%, and is applied to the value of the property as stated in the public deed

In the event that **the property is second-hand**, as a general rule, the following must be paid:

- The **Tax on Transfer of Assets (ITPO)**, at the tax rate of 10%, on the real value of the property, with several exceptions, in which this percentage may be reduced, as in the following cases:

- **8 per cent in the following cases, among others:**

- 1) *In the acquisition of general regime public subsidised housing (VPO), provided that such housing constitutes or is to constitute the purchaser's main residence.*

2) *In the acquisition of housing that is to be the first main residence of young people under 35 years of age.*

- **4 per cent in the following cases, among others:**

1) *In the acquisition of housing that is to constitute the main residence of women who are victims of gender violence (with the income limits that are legally determined).*

2) *In the acquisition of housing that is to be the main residence of a large or single-parent family (within the legally determined income limits).*

3) *In the acquisition of housing that will constitute the main residence of a person with a physical or sensory disability, with a degree of disability equal to or greater than 65 per cent, or a mental disability, with a degree of disability equal to or greater than 33 per cent, for the share of the property that he/she acquires.*

- The aforementioned general tax rate, in the same way as it can be reduced, as explained above, it can also be increased, as in the case of the acquisition of a property whose value exceeds one million euros, in which case the applicable rate will be 11%.

### **Who assumes the costs of the purchase/sale formalised by public deed?**

In accordance with the Civil Code, "the costs of granting deeds shall be borne by the seller, and those of the first copy and any others subsequent to the sale shall be borne by the buyer, unless otherwise agreed".

In other words, the principle of the autonomy of the will of the parties applies in this aspect, and it may be agreed that the costs of the transaction be borne entirely by the seller, the buyer, or both in equal parts.

### **In the event that the transaction is financed by means of a mortgage loan, who would assume the costs of establishing the mortgage?**

When the purchase is financed by means of a mortgage loan, the law provides that the costs of formalising the mortgage deed will be distributed between the lender (who lends the money) and the borrower (who receives the money), as set out below:

*"i. The costs of appraisal of the property shall be borne by the borrower and the costs of agency shall be borne by the lender.*

*ii. The lender shall bear the cost of the notary fees for the mortgage loan deed and those of the copies shall be borne by the requesting party.*

*iii. The costs of entering the collateral in the Land Registry shall be borne by the lender.*

*iv. The payment of the transfer tax and stamp duty shall be made in accordance with the provisions of the applicable tax regulations".*

### **Can I buy or sell by means of a power of attorney granted before a notary or do I need to attend the signing in person?**

A purchase-sale may be carried out by means of a power of attorney, granted in a public instrument (before a notary), and not only this, but also the mortgage loan deed, so that both the buyer and the seller may use this instrument to formalise the transaction in the event of not being able to attend in person to sign it.

### **What documentation is needed to carry out the purchase/sale?**

In the case of the **seller**, the following documentation must be presented at the signing:

- Valid identity document.
- Deed of purchase of the property to be transferred.
- "Nota simple" (Land Registry certificate) of the property to be transferred.
- Last receipt of IBI (Property Ownership Tax).
- Statement of debts issued by the "comunidad de propietarios" (community of owners).
- Energy Efficiency Certificate.

On the other hand, the **purchaser** must bring the following documentation:

- Valid identity document.
- Means of payment (bank transfer, cheque, mortgage, etc.).

### **If the property I am transferring is part of a community of owners, do I have any obligation to the Community?**

The law establishes that it is the obligation of each owner to notify the secretary of the community about the change of ownership of the property or premises. This communication can be made by any means that allows proof of receipt.

Failure on the part of the seller to notify the community of owners that the property has been transferred entails important financial consequences, such as the liability for the community fees that may continue to accrue after the transfer of the property.

## 2. HOUSING RENT

### If instead of buying, we decide to rent, what legal regime will apply to our contract?

In this case, a distinction must be made between renting a main residence and renting for use other than as a dwelling (which includes seasonal renting).

In the event that the property is **our main residence**, Law 29/1994, of 24 November, on Urban Leases (LAU) will apply.

On the other hand, in the case of a rental for a use other than housing, one of the most common being the so-called **seasonal rental**, the contract is governed by the will of the parties, by the LAU and, in supplementary form, by the provisions of the Civil Code.

### When the landlord of the property in which I am a tenant decides to sell the property, do we enjoy any protection?

In the event that the lessor of the property in which we are residing decides to put it up for sale, the buyer of the property will become the new lessor, and the lease contract will be governed by exactly the same conditions that have applied up to that moment, remaining unaltered as if nothing had changed and, from then on, the relations between the lessee and the lessor will start to take place with the buyer, as the new owner of the property.

### When the landlord of the property in which I am living as a tenant decides to sell the property, can I buy it?

In this case, the rental contract must expressly establish this possibility of the tenant reserving the right of preferential acquisition over the rest of the interested third parties, since, if he does not do so, he would not be able to choose to acquire the property on a preferential basis, but as a mere third party.

### What happens if I am living with my spouse in a property, of whom I am not the tenant, and I divorce or legally separate from him/her, can I continue to live there?

The non-tenant spouse may continue to reside in the property as long as the use of the rented property is judicially attributed to him/her, and from then on he/she becomes the holder of the contract.

### **As a tenant of a housing rental contract, can I withdraw from the contract at any time?**

In order to withdraw from the rental contract, at least six months must have elapsed, provided that the landlord is notified at least 30 days in advance.

### **If I can withdraw from the rental contract, do I have to pay compensation to the landlord?**

The landlord cannot demand compensation in this case if this has not been previously agreed in the rental contract.

## **3. REFERENCE LEGISLATION**

Law 8/2004, of 20 October 2004, of the Valencian Government, on Housing in the Autonomous Community of Valencia.

Law 13/1997, of 23 December 1997, of the Valencian Government, which regulates the regional tranche of personal income tax and other transferred taxes.

Law 5/2019, of 15 March, regulating real estate credit contracts.

Law 49/1960 of 21 July 1960 on Horizontal Property.

Law 29/1994, of 24 November 1994, on Urban Leases (LAU).

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