The Complete Guide to Buying & Owning Property in Spain
About Us

At E&G Solicitors in Spain we have been advising our clients in relation to all aspects of purchasing, owning and selling Spanish property since 2004.

We specialise in Spanish property purchases and sales, planning applications, probate applications and the succession of Spanish assets, Spanish wills and estate planning, and all aspects of Spanish tax, as well as commercial and contentious matters.

We go the extra mile to help our clients avoid the unexpected and unwelcome pitfalls often associated with dealing with an unfamiliar language, legal system and business culture.

With offices strategically based in London, UK, and Tarragona, Spain, working throughout mainland Spain, the Balearic Islands and the Canary Islands, our dedicated team has extensive experience and expertise in helping you to achieve your objectives with minimal stress and expense.

You can rely on our knowledge and experience of legal systems and business practices in the UK and Spain, so that whatever your goal you are not hindered by cultural, linguistic or bureaucratic complexities.

CONTACT US

London
20 Little Britain
London
EC1A 7DH
Tel: +44 (0)20 3478 1420
Fax +44 (0)20 3070 0020
Email: info@solicitorsinspain.com

Tarragona
Rambla Nova, 127
43001 Tarragona
Spain
Tel: +34 977 249 960
Fax: +34 977 240 977
Email: info@solicitorsinspain.com

Online
www.solicitorsinspain.com
Twitter: @EshkeriGrau
Facebook: www.facebook.com/SolicitorsinSpain

Other information:
E&G, E&G Solicitors and E&G Solicitors in Spain are trading names of Eshkeri & Grau Ltd, a limited company registered in England and Wales with company number 07437515, authorised and regulated by the Solicitors Regulation Authority, SRA number 557474. The Directors are Jonathan Eshkeri (Solicitor in England and Wales; Abogado in Spain) and Josep Grau (Abogado in Spain).

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Dear Reader

When in February 2004 we first conceived of a law firm exclusively servicing the needs of non-Spanish nationals in Spain, particularly in respect of Spanish property purchases, our principal concern was offering an excellent service the like of which was very difficult if not impossible to find at an affordable price.

Our clients tell us that we have achieved our goal many times over, but in order to continue achieving our goal we spend a great deal of time and thought improving the service that we offer and tailoring it to meet the changing needs of our clients in a marketplace which, over the past 12 years, has become almost unrecognisable from its former self in many respects, for economic reasons that will be apparent to you.

A key tenet of our philosophy is to provide comprehensive information about the work that we are able to undertake, well before we are engaged to handle a particular matter. Our view is that our clients engage us to carry out tasks on their behalf, not for our knowledge per se, but because of our profound understanding of Spanish law and business culture, as well as our extensive experience of achieving their goals expertly, expeditiously and at a realistic price. It is for that reason that we publish material such as this guide and the information to be found on www.solicitorsinspain.com, as well as the many articles that we publish on an on-going basis about various aspects of our work, much of which may well be directly relevant to you, either now or in the future.

We welcome you to read the content of this guide and trust that you will find it useful. We look forward to answering any queries that it may raise, so that you can proceed with your plans in the knowledge that you have an informed view of the steps to be taken.

We will be delighted if you decide to engage us to advise and assist you in respect of your activity in Spain, but whatever you decide, we hope that you will be certain to seek independent expert advice from a suitably qualified, knowledgeable and experienced Spanish lawyer who understands your requirements and with whom you can communicate effectively.

Yours sincerely

Jonathan Eshkeri
Director

Josep Grau
Director
Everything you need to know about buying and selling property in Spain

Buying a property in Spain can be a very straightforward transaction, but if left to chance you could find yourself caught in either legal or financial difficulty, or both.

Just as if you were buying property in the UK, you need to seek independent Spanish legal advice to ensure your conveyance runs smoothly and that the Spanish property you are purchasing has been built lawfully. E&G Solicitors in Spain can help guide you through the necessary pre-purchase enquiries in respect of ownership of the property, charges registered against it, compliance with planning rules, and your future liabilities in respect of the property, to help you avoid fines, forced demolition, and in extreme cases the eventual loss of your property to the Spanish authorities.

Relying too heavily on assurances given by sellers and estate agents, whose own interests are not always aligned with your own, can lead to legal difficulties later on in your property transaction. For example, the legality of your development could be in question and you may not be informed of your on-going liabilities for taxes and service charges as a property owner in Spain.

E&G Solicitors in Spain can help guide you through the necessary pre-purchase enquiries in respect of ownership of the property, charges registered against it, compliance with planning rules, and your future liabilities in respect of the property, to help you avoid fines, forced demolition, and in extreme cases the eventual loss of your property to the Spanish authorities.

It is very important not to make any deposit payment until you have received expert advice from an independent legal adviser.

Timeline of buying a property in Spain

Aside from the legality of your purchase, one of your key concerns may relate to the time that the buying process may take to conclude. As with any process involving a number of actors with diverse interests, its duration will depend on a number of variable factors. Nevertheless, the following is a guide to the elements of the process and the time that you can expect each phase to last.

<table>
<thead>
<tr>
<th>Stages of the buying process</th>
<th>Likely duration of each stage</th>
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<tbody>
<tr>
<td>1. Once you have viewed the property that you want to purchase, but before you make any payment to the seller or the seller’s agent (i.e. before you make either a reserve or deposit payment), enquiries must be carried out to determine who owns the property, whether there are any debts or other charges registered against it, whether they will be removable upon completion of the transaction, whether the property was built lawfully, and what the on-going liabilities will be.</td>
<td>This stage may take a day or two to complete, or may take longer depending upon the cooperation of the seller, the seller’s agent, or the seller’s legal representative, because if you or your lawyer are not provided with information straightaway, or at all, the process of obtaining that information from scratch may take longer. Also, the speed at which the planning department at the local town hall provides information may vary considerably.</td>
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<tr>
<td>2. Once you have received a report on title, considered the risks and decided to proceed with the purchase, you will enter into a private agreement with the seller and make a deposit payment on account of the total purchase price. The terms of the private agreement may be affected by issues arising from the enquiries.</td>
<td>Depending upon any issues to be resolved further to enquiries, yet prior to signature of the private agreement, this stage may take anything from a few days to a number of weeks.</td>
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<td>3. The final date for completion will be established in the private agreement. Completion documentation will be prepared and signed before a Notary, usually in Spain. Either the buyer and the seller, or their respective representatives, will attend the completion meeting, where the funds will be paid to the seller and the buyer will receive the keys to the property.</td>
<td>Completion of the purchase is usually between one and two months from the date of signing the private agreement and paying the deposit. However, if you are buying a property off plan, this period may be considerably longer, usually a minimum of one year, but be prepared for delays.</td>
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<tr>
<td>4. Once the transaction is complete, any purchase tax then payable will be paid on your behalf and the property will be registered in your name.</td>
<td>This stage can take a few weeks to complete, but it need not affect your enjoyment of your new property, as the steps to be taken are purely administrative.</td>
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So, the shortest time that the buying process can take is approximately a week to two weeks if everything is going in your favour, although in reality a purchase is likely to take from four to six weeks from finding the property and agreeing a purchase price to completing the transaction, not including the time it will then take to register your interest in the property.

In addition, if your lawyer is to apply for your NIE number (Spanish tax number) and complete the purchase on your behalf, you will need to grant a power of attorney authorising your lawyer to do so. Again, this takes time, so while the application for your NIE number can be carried out simultaneously with other initial tasks, such as making enquiries and reporting to you, be certain to take into consideration the time that these necessary administrative tasks will add to the purchase process.
Buying Resale Property

When buying a resale property in Spain there are a few key questions you and your lawyer should ask.

1. Does the person offering the property for sale actually own it?

This might sound obvious, but the individual selling the property must be the registered owner. This can be checked on the local property register. If the property is owned jointly, all owners need to sign the documentation to sell it. If one or more of the owners has passed away, it ought to be confirmed that the estate has been administered prior to you starting negotiations.

2. Are there any debts associated with the property?

While checking the credentials of the person selling, it is also important to check for any charges registered against the property. Unpaid IBI (similar to council tax) can result in a registered charge (similar to a County Court Judgment) if it is unpaid for long enough, as can outstanding community fees. In addition the Spanish tax agency can register charges in respect of unpaid personal tax, or inheritance tax. If there is a registered mortgage (a type of charge), you need to be certain that the purchase price will clear the debt and, if not, it should be determined how the seller will pay the balance owed to lender.

Check that any charges will be paid prior to the transfer of ownership, or by the day of completion of the sale and purchase at the very latest. Failure to do so could result in the charges remaining on the register, so that your ownership of the property will be subject to whatever debt the charge is securing. Also, be certain that you will be able to remove the charge itself from the register, even once the debt has been repaid to the lender. You don’t want to be left with the seller’s mortgage as well as your own!

It is also important to make sure that all utilities and community fees have been paid by the date of completion, or at least that sufficient funds are retained to pay them after completion. For instance, if there is an outstanding electricity bill, you can insist on deducting the amount of the bill from the purchase price. That way the seller still pays his or her debts.

3. Was the property built with planning permission?

This question is vital. Enquiries must be made at the local town hall as to whether there are any important issues outstanding, such as fines, relating to the original build, or subsequent building works.

If there is anything outstanding, your lawyer ought to establish what needs to be done to settle the matter. Make this the responsibility of the current owner to resolve, including any monies owed.

Your lawyer should also make sure that any works carried out after the initial build have been registered, e.g. an extension, or a swimming pool. If something has not been registered, ensure that the seller signs what is called a ‘declaración de obra nueva’ and complete the registration retrospectively. However, beware, the fact that an extension or a pool has been registered, does not mean that it was built lawfully.

Check that planning permission was granted for everything you are buying.

4. Does the property hold all necessary certifications?

Your lawyer should make sure that the seller has all the documentation required to sell the property. This includes the Energy Performance Certificate that gives a property an energy efficiency rating from A (most efficient) to G (least efficient). The other main document is a ‘cédula de habitabilidad’, or a ‘licencia de primera ocupación’. This provides evidence that the property is recognized as a dwelling and, in many cases, will be evidence that planning permission was granted for the dwelling. Once again, check that any add-ons have received planning permission, such as pools and extensions.

5. Do you know what the purchase costs will be?

Different areas of Spain have different purchase tax and value added tax rates. New properties attract value added tax as well as stamp duty. If you are borrowing money then two documents will need to be notarised and registered, not just one. Tax is payable on the amount secured by a mortgage. Be certain that you are clear as to your total liability to tax and the other purchase expenses, including the likely fees of your independent legal adviser, before you agree on a purchase price. Try not to rely on rough guides based on a percentage of the price of the property, as these may be inaccurate. Ask your independent legal adviser to work it out, which is a very simple calculation for someone specialising in Spanish property work.

6. Should I arrange for a survey?

Yes, particularly if you are purchasing a single family home! Whilst it is not a legal requirement to have a survey carried out on a Spanish property before you purchase it, we strongly recommend that you do so. A professional’s opinion will put your mind at ease and make you aware of any issues. Anything highlighted needn’t stop you from buying; it will just allow you to go into the process with your eyes open.

> You will find more information on buying property in Spain, including video guides, on our website at www.solicitorsinspain.com/buying-property-spain.
Buying Property Off-Plan

When buying off-plan you will generally follow the process below:

1. As a potential purchaser you are shown the proposed development, either by viewing a show home, or by seeing presentations and architect’s designs. You agree a price with the developer and then the developer provides a contract proposal setting out the structure of the deal, the payment schedule and what rights and obligations both parties have.

2. Make sure you agree with the seller everything that will be included in the build before signing, including things such as air conditioning units, electrical points, appliances etc.

3. The developer must provide your lawyer with a copy of the proposed bank guarantee prior to you signing the agreement - make sure this is done.

4. Once you are happy with all the terms, both buyer and seller sign a written agreement and you pay your deposit. Make sure any deposit is covered by the bank guarantee. You ought to make a payment only in exchange for the bank guarantee, simultaneously. At the completion meeting any balance owed by you will be paid and you become the owner of the property! Don’t forget that you will need to pay purchase tax shortly after completion.

5. Between payment of the deposit and completion of the purchase you will normally be required to make payments as per the payment schedule in the agreement and then, a few weeks before completion, you should be invited to visit the property, or view photos of it, in order to provide a snagging list of issues that need rectifying. Make sure all these snags are carried out prior to completion. Your lawyer should include reference to snagging in the written agreement between you and the developer.

6. At the completion meeting any balance owed by you will be paid and you become the owner of the property! After completion there will be stamp duty to pay, as well as Notary’s fees and property registry fees.

Some tips to help when buying off-plan

- A developer will often seek to include a clause in the purchase agreement allowing him the right to mortgage the property. This is often so that the developer can raise funds for the development and, as owner of the property at this point, they have this right. Just make sure the mortgage is cleared by the developer either prior to completion, or simultaneously upon completion of the transaction.

- Another common clause in the agreement is to be able to extend the completion date by a set period - usually three to six months - to provide the developer with flexibility should anything go wrong. Try to negotiate this time down as much as possible to reduce the overall time the project is likely to take to finish.

- Do engage an independent specialist Spanish property lawyer to advise you in relation to the transaction.

- Make certain before you sign the agreement that you know from your lawyer how to enforce the bank guarantee should you need to do so.

- Make sure that all works are carried out prior to completion - it will become very hard to get them finished once the completion documentation is signed and the moneys paid.

And finally, don’t pay anything to the developer before you have sought independent legal advice.

> E&G Solicitors in Spain has extensive experience assisting individuals in relation to the purchase of property, both resale and off-plan. For more information, or if you have any questions, please contact us via our website at www.solicitorsinspain.com/contact.

Selling your Spanish property

Whenever you decide to sell your property, the most important issue will be the price that you are able to achieve. It is vitally important to be certain that the estate agent you choose is able to advise you accurately as to the best price at which to market the property in order to attract a purchaser within a reasonable period of time.

Provided you have found an effective estate agent, be prepared to pay estate agent’s fees of 5%, plus IVA (Spanish VAT at 21%), or in some cases slightly more. Property in much of Spain, particularly the type of property typically purchased by non-Spanish nationals on the coast, tends to sell far more slowly than property say in the cities of Barcelona or Madrid. It follows that each estate agent sells fewer properties each year, so the commercial reality is that if they do not charge relatively high fees, their business will not be viable. Moreover, estate agents tend to share with each other the property that is on their books, so that they also share the fees that they earn. If the fee paid by the seller is not sufficiently high, then it is difficult for estate agents to encourage one another to introduce their applicants to each other.

Once you have identified an estate agent you can trust to find a purchaser for you, it is important that you ensure that either your estate agent, or your independent lawyer, obtain all documentation that a purchaser will request in order to proceed with the purchase. Your independent lawyer can advise you as to this. It is important to have all documentation in place as you begin to market the property for sale, in case there is something that you need to do or to apply for in good time. Remember that once you find a purchaser you will want to complete the transaction as soon as possible. A significant delay may mean losing the sale.

Finally, bear in mind that the Spanish property market can be a challenging environment to work in, even if you have an estate agent marketing the property for sale on your behalf. It makes good sense to engage an independent specialist Spanish property lawyer to represent your interests and ensure that you receive every cent of the price paid that you have a right to.

> For more information on selling your Spanish property please see our website at www.solicitorsinspain.com/selling-property-spain.
Buying Rural Property

If you are considering buying a rural property, in addition to the questions identified overleaf, there are a few extra questions for your lawyer to ask.

- Is the property in a protected area?
  If so, it could limit what renovation/development you can do, if any at all.
- Is the building registered as a dwelling on the land you are buying?
  If not, you may need to have it registered, along with any outbuildings or pools.
- How is electricity supplied?
  e.g. is it solar powered, generator powered, or connected to the mains?
- How is water supplied and sewage dealt with?
  Is the property connected to the sewer system, or does it rely on a well? If there is a septic tank, where is it and how often does it need to be emptied? Have the necessary permissions been obtained from the local authority, or does it comply with current rules?
- Are there any rights of way that cross the property?
  Consider how this might impact upon your plans for the property. Rights of way may affect your quiet enjoyment of the property.
- Is the local authority responsible for maintaining any access roads?
  If not, you may find that you are required to maintain these at considerable cost.

> For a comprehensive video guide to buying rural property in Spain please see our website at www.solicitorsinspain.com/buying-property-spain

Planning and Development

If you are interested in buying a plot of land in Spain with the intention of designing and building your own home, or you are interested in extending your existing Spanish property, it is advisable to seek independent legal advice before you embark on any work.

Depending upon the Spanish autonomous community and municipality in which you are hoping to build, planning rules may vary. This is especially prevalent in the Spanish countryside, where planning rules can vary from village to village.

If you have plans to develop property in Spain, such as to build a pool, or to extend, or to fence the grounds, it is very important to ensure at an early stage, so before you pay any money to an estate agent or a seller, whether and to what extent your plans will be realisable. If you can achieve what you are hoping to achieve then you ought to have a fairly good idea of the cost of those improvements. That means taking a builder to the property and asking for an estimate. In Spain, any work that requires planning permission will require plans to be drawn up by an architect licensed to practise in Spain. The architect will have to be involved in the project until its conclusion and will need to sign off on the build when it is complete. That means that anyone working on the build will have to be registered to work in Spain, paying tax and social security. Otherwise they will not be insured and the architect may not be prepared to allow them to work on the build.

E&G Solicitors in Spain has extensive experience of managing the legal formalities associated with building projects. The areas in which our expertise lies include assisting in the purchase of land, applying for planning permission, negotiating and drafting contracts with builders and agreeing the terms of any necessary finance.

We can also assist in registering your new development on the Spanish property register. In that way there will be no delay when you come to sell the property. You will be certain that all the i’s are dotted and the t’s are crossed. If you are about to embark on your own development we would also be happy to recommend and introduce you to trusted architects and project managers, with whom we work regularly.

Alternatively, if you find yourself at the centre of a planning dispute and are not sure what your options are, E&G Solicitors in Spain can assist by minimising the impact of any breach of planning rules or building regulations, whether by a developer or by a local government planning department that has acted without the necessary authority.

For more information on the planning system in Spain please see our website: www.solicitorsinspain.com/spanish-planning-law.

Rentals

If you are looking to invest in Spain then buy-to-let properties can be an attractive option.

If you are thinking about purchasing a Spanish property with a view to renting it out, then you should seek independent legal advice to ensure that you are aware of all the costs and obligations involved in being a landlord in Spain.

In some parts of Spain there are rules governing the rental of property for short term lets that require the owners to register their properties as rental properties and / or to comply with a series of rules. If you intend to let the property on a short-term basis, so for holiday lets, it is essential that you determine prior to making any deposit payment that you will be able to do so.

As well as the usual costs of maintaining your property and making sure it is habitable for your tenants, you will also be expected to pay tax on any rental income that you receive from the property. This will be the case whether you are a resident or non-resident. Your rental agent may insist that the tax is paid before they release funds to you, if they are collecting them on your behalf.

The amount you will be expected to declare will be the entire revenue received from the tenants. However, costs associated with the maintenance of the property can be deducted when calculating the taxable amount, as long as it can be proved that the costs are related to the rental income received.

> For more information on renting out your property in Spain please see our website at www.solicitorsinspain.com/renting-out-your-property-spain.
Spanish Property Purchase Check List

If you are buying any property in Spain, whether a house, an apartment, a piece of land to build on, or a farm, and whether it is a resale property or a purchase off-plan, here you will find a list of the items that ought to be considered in detail. If you have appointed an independent legal representative, or intend to do so, then this is what he or she ought to be considering before advising you.

Who owns the property?
Be certain that the person selling to you owns the property and that it is registered in the name(s) of the seller(s). If not, find out why.

Does the estate agent have authority from the seller to offer the property for sale?
If the estate agent is not authorised to sell the property, then it may not be on the market. Be certain that you are dealing with a reputable estate agent by checking, for example, whether the estate agent is a member of the Association of International Property Professionals at their website: www.aipp.org.uk.

Are you paying the market price for the property?
Do your research well. Try not to buy a property if you have only viewed properties through one estate agent, as that estate agent may have artificially inflated the prices of all of them. Try to view properties through as many estate agents as possible. Do not limit yourself to British or other northern European estate agents. Even if Spanish estate agents do not speak English fluently, their job is to show you the property. Once you have found the property you ought to be handling the matter over to your independent legal adviser.

Do you know what the purchase costs will be?
Different areas of Spain have different purchase tax and value added tax rates. New properties attract value added tax as well as stamp duty. If you are borrowing money then two documents will need to be notarised and registered, not just one. Tax is payable on the amount secured by a mortgage. Be certain that you are clear as to your total liability to tax and the other purchase expenses, including the likely fees of your independent legal adviser, before you agree on a purchase price. Try not to rely on rough guides based on a percentage of the price of the property, as these may be inaccurate. Ask your independent legal adviser to calculate your total outlay, which is a very simple calculation for someone specialising in Spanish property work.

If you are asked to pay a deposit, even a small reserve deposit, have you taken independent advice first?
Be certain that if you pay a deposit but do not complete the purchase, you will lose your deposit, unless there is something fundamentally wrong with the property such that you cannot purchase what was offered to you.

Are you planning on using the services of a legal adviser who may be a close contact of the estate agent, or the seller?
If so, that legal adviser will not be independent. Always use an independent legal adviser whom you have identified yourself, without recommendation from the seller, or the estate agent, or anyone who knows the estate agent or the seller. Arguably, in a small locality everyone will know everyone else. There is absolutely nothing wrong with engaging a lawyer who is not located in the area in which the property is situated.

Lawyers specialising in property law almost never visit the properties that their clients are purchasing. That is true in the UK as well as in Spain and elsewhere. All work is done on the telephone and through written communication. The only reason that a lawyer’s personal presence is necessary is at a Notary’s office at the completion of the transaction. Well-established firms of lawyers have representatives throughout the Spanish mainland and the islands who can attend to matters where a lawyer’s personal presence is required.

Was the property built with planning permission?
You can determine this by asking to see documentation issued by the local authority confirming that the build was signed off after completion. A certificate signed by a private architect is insufficient. That a description of the property appears on the property register is also insufficient.

If you are buying a rural property, that is any property that is not built on a street with pavements and streetlights, you need to be extra vigilant. Depending upon where in Spain you are purchasing and the time that has passed since the property was purchased, the property may or may not be considered a “legal” build.

If there is a Community of Property Owners (“Comunidad de Propietarios“):
• How much is the annual service charge?
• Do many of the members of the Community of Property Owners default on their service charge payments?
• Are there any expenses that are about to be met by the Community of Property Owners that you will have to contribute to once you have purchased, such as a new roof, or a new pool, etc.?

You will be able to understand a great deal about a community by scrutinising the minutes of its last two annual general meetings.
Are there any charges registered against the property? If so:

- How will they be paid?
- Will the seller arrange for the chargee / mortgagee (such as a bank, or other creditor) to attend the completion meeting and receive payment there?
- Or will you have to retain an amount to make payment of the funds owing to a lender?

This is very important. If a secured debt is to be repaid on the day of completion then that is preferable. If you have to retain funds to repay the debt and cancel the charge, that may cost you more money. Your independent legal adviser ought to be able to deal with either situation, but beware.

Are the utilities connected to the property, or is that something that you will have to deal with after you purchase?

When buying bank repossessions, often the utilities have not been paid for some time and the utility companies have removed the meters. It is far more expensive reconnecting the supplies when meters have been removed. A bank may not be prepared to compensate you for that, but it is important to know so as to be able to budget.

Do you know what your on-going obligations will be?

You will have to pay various taxes, particularly property tax (IBI) and non-residents income tax. Your independent legal adviser ought to be able to assist you with those matters. Upon sale of the property, further taxes will be payable, such as a municipal tax charged by the local town hall, and capital gains tax.

Does the property have all of the necessary documentation in place?

It is essential that an Energy Performance Certificate has been obtained for the property, as well as documentation confirming that the property has been licensed to be used as a dwelling.

Will you have the property surveyed?

If you are buying a single family home, or for that matter any structure that is not part of an apartment block, it is essential to have the property surveyed. You may not consider this to be as important if you are buying a property that has just been built, as it is unlikely that any latent defects will yet be visible. Of course, that is a risk that you may be prepared to take. If you are purchasing an apartment, provided the apartment block has been standing for some time, you will be able to see whether there appear to be any obvious problems with the structure. You will be able to determine from consideration of the minutes of recent annual general meetings of the community of property owners whether there is a structural problem with the building, as this will almost certainly have been discussed. Hence, you will be able to take an informed decision as to whether a survey is necessary. That said, many people take the view that having a property surveyed is as important as using an independent legal adviser to advise them in respect of the purchase.

Plans to develop

As explained in the “Planning and Development” section, if you have plans to develop the property it is very important to ensure at an early stage, so before you pay any money to an estate agent, whether and to what extent your plans will be realisable. It is also prudent to take a builder to the property and ask the builder to estimate the costs of the works. You should also ensure that you have the details of a good architect who can assist you with the project. The architect will have to be involved in the project until its conclusion and will need to sign off on the build when it is complete.

Is it possible to rent out the property?

As we explain in the “Rentals” section, if you intend to let the property on a short-term basis, for holiday lets, it is essential that you determine prior to making any deposit payment that you will be able to do so. In some places, such as the city of Barcelona, it is very difficult to obtain a new rental licence, so that if you intend to let out your new Barcelona apartment on a temporary basis you ought to buy one that already has a rental licence. The same is true of Ibiza, for example. If a rental licence is not necessary, but compliance with rules is a requirement, then be certain that you are aware of the cost of compliance, as well as practical requirements that you may need to negotiate.

Do you have everything in place to complete a purchase in Spain?

In order to complete the purchase you will need to have a Número de Identidad de Extranjero or NIE - a Spanish tax number for non-residents of Spain. If you are buying a property in Spain it is essential that you have your NIE in place in order to complete the purchase.

When you are the owner of a property in Spain you will find that it is very difficult and in some cases impossible to pay for utilities from an overseas bank account, hence it will be important for you to have a Spanish bank account as early as possible.

The above are some of the most important questions to be asking when you are purchasing Spanish property. Of course, if you are engaging an independent lawyer with expertise in Spanish property transactions, he or she ought to raise these points with you at the outset.

> You will find more information about purchasing property in Spain on our website at www.solicitorsinspain.com/buying-property-spain.
Moving to Spain

Whether or not to be a tax resident in Spain

If you are currently resident in the UK then you will be required to declare to Her Majesty’s Revenue and Customs (HMRC) your worldwide income, including dividend income and any capital gains made, and pay tax accordingly.

If you spend more than 183 days in one year in Spain then according to Spanish law you will become a tax resident in Spain. If you are a tax resident in Spain then you will need to declare to the Spanish tax agency your worldwide income, including dividend income and any capital gains made, and pay tax accordingly.

Clearly, you will not want to pay tax in two places. Hence, if you do become a Spanish tax resident you will need to notify HMRC that you are no longer resident in the UK. As a result you will no longer need to pay income tax in the UK, subject to the UK tax rules that will require you to continue paying income tax on certain types of income, such as rental income earned from property situated in the UK, for example.

In order to decide whether to be tax resident in Spain or in the UK, and so in which country to spend most of the year, you will need to seek expert advice in the UK from a qualified and experienced tax adviser in relation to the tax that is currently payable in the UK, as well as in relation to the tax that will continue to be payable in the UK once you are resident in Spain. You will also need to seek the advice of a Spanish tax expert in relation to the tax that will be payable in Spain once you become a tax resident there. You will then be able to compare the two positions, so that you are able to take an informed decision as to the country in which you will spend most of the year, and so the country in which you will be tax resident.

It may be that you will pay more tax by living in Spain, but that may be a cost that you are prepared to bear in order to adopt a new lifestyle, because not everything is about the money that one can save. On the other hand, the difference in tax payable may be so significant that it does not pay you to become a Spanish tax resident, in which case you may opt to spend less time in Spain. The choice is yours to make, based on expert advice, so that you know what you are letting yourself in for.

Accessing healthcare in Spain

Your access to healthcare in Spain depends upon the length of time you spend in Spain and whether or not you decide whether or not to become resident in Spain.

In general you are entitled to rely upon your European Health Insurance Card (EHIC) during short visits to Spain so long as it has not expired.

If you are living in Spain then how you access healthcare depends very much upon your circumstances. The UK government maintains a website with up to date information on accessing healthcare in Spain whether you are resident in Spain or not. You can access the website at: www.healthcareinspain.eu.

Pensions

If you live in Spain but have never worked in Spain and you are eligible to receive your pension, you can claim your UK State Pension by contacting the International Pension Centre in the UK. If you have worked in Spain, however, then the process of claiming your UK State Pension differs.

If you decide to become a resident of Spain then you will no longer be eligible to receive UK pension credit and you will need to declare the income from your UK state pension to the Spanish tax agency. It follows that income from a UK state pension could be liable to tax in Spain.

You should therefore be sure to take independent advice in respect of your specific circumstances before taking the decision as to whether to become tax resident in Spain.

For more information the UK government maintains a website dedicated to this subject which you can find at www.gov.uk/guidance/living-in-spain.

> For more information on moving to Spain please see our website at www.solicitorsinspain.com/moving-spain.
Doing Business in Spain

Setting up or buying a business in Spain
If you dream of opening that bar on the beach, or of running a secluded bed and breakfast in the Spanish countryside, then Spain is open for business. E&G Solicitors in Spain can provide you with a comprehensive service so that you are able to concentrate on running your business in the knowledge that you are complying with all relevant rules, protecting your assets, and benefitting to the greatest extent possible from Spain’s tax system.

Choosing a business structure
Whether you decide to trade in your own name, or in the name of a company, we can help you to establish your presence in Spain. You can register either as a sole trader, or as a partnership. Alternatively, you may choose to form a Spanish limited liability company, or instead to register in Spain a foreign registered company, if that is appropriate to your requirements. We can advise you as to the best option in all the circumstances, taking into account your exposure to tax and other liabilities.

Compliance
We can ensure that you are registered with all necessary government departments and that you obtain business licences suitable for the activities that you are engaged in, making any necessary applications to local or central government on your behalf.

Accounting and tax advice
We are able to introduce you to accountants who can offer you a complete accounting and payroll service. We can work hand in hand with them so that we can keep a close eye on all of your business affairs, which in turn will help us to advise and assist you more effectively. We can also provide you with comprehensive tax advice, both in respect of your business and your personal affairs.

Contracts
We can advise you in relation to any contracts that you may enter into, such as lease agreements, agreements with your customers or suppliers, and finance agreements. We can draft agreements from scratch, amend agreements you have already prepared, and advise you in relation to agreements that have been prepared by third parties for your signature. Where appropriate we can negotiate on your behalf to achieve the best terms for you.

Purchasing a Business in Spain
Purchasing an established business is often an effective way of entering a particular market sector, particular in a country in which you have limited experience. Due diligence is a fundamental element of the acquisition process, both from a legal and an accounting standpoint. We can conduct a comprehensive due diligence exercise in respect of the business that you would like to purchase. If you have already chosen a firm of accountants that you would like to work with, we can coordinate with them, or we can introduce you to accountants with whom we work regularly and who we trust to do the best job for you.

Purchasing Insolvent Businesses and Distressed Assets
We have particular expertise in relation to the purchase of insolvent businesses and distressed assets. We can negotiate with the current owners or the liquidator on your behalf, depending upon whether the winding up process has commenced or not. You may choose to purchase the assets, take over any lease and continue to trade using some of the current staff, or you may prefer to purchase the company itself. We can advise you as to the best option available taking into consideration the fiscal and other legal implications of each option.

> For more information on doing business in Spain, please see our website at www.solicitorsinspain.com/business-law-spain.
Spanish Tax

If you are not a Spanish national there are a number of issues you need to take into consideration before you decide to move to Spain, whether you intend to work or to retire there. Although the cost of living can be considerably cheaper than, say, the UK, you will be obliged to comply with the tax rules imposed by central and local government.

Failure to meet your liability to tax can have serious consequences for you and your assets. To ensure that you are aware of all your tax liabilities it is essential for you to seek independent expert Spanish tax advice before you make the move. Be certain that you are aware of what tax you have to pay and when it is due. Unfortunately, many non-Spanish nationals ignore their Spanish tax liability and suffer the consequences later.

Income Tax

If you are intending to retire in Spain as a non-Spanish national, you may have to make an annual tax declaration to the Spanish tax agency depending on the amount of pension income you receive and the number of sources from which it is received. It will be necessary for you to seek expert advice in relation to this point.

If you run a business in Spain you will be expected to pay tax on your profits, just as you would in the UK. Spanish corporation tax is known in Spain as “Impuesto de Sociedades”. In addition to corporation tax, companies have to make quarterly or monthly VAT returns.

If you are a non-resident in Spain and you own any real estate there (other than land not zoned for building and on which no dwellings have been built), you will be obliged to pay a non resident income tax based on the value of your property.

If you own property in Spain and earn rental income from it, whether you are resident there or not, you will be liable to tax on that rental income.

At E&G Solicitors in Spain we can help you to understand your liability to income tax in relation to any pension, property, employment, or business income that you may receive, whether you are resident or non-resident in Spain. We work closely with our clients to ensure that they benefit from the relevant income tax exemptions and reliefs and we help them to minimise lawfully their liability to tax.

Capital Gains Tax

If you own any immovable or moveable property in Spain and are intending to sell it, you should be aware that you may be liable to pay capital gains tax on any gain made. Broadly speaking, the amount of the gain is calculated by subtracting the acquisition value from the disposal value of the property. You may also be able to take the expenses of purchase and sale into consideration, as well as any costs you incurred in lawfully extending the property and so increasing its value. In that way you can reduce the amount of capital gains tax you would otherwise be required to pay in Spain.

If you are selling your property and you are not resident in Spain at the time, the purchaser will be expected to withhold a percentage of the property purchase price, currently 3%, and deposit it with the Spanish Tax Agency. This will be considered a payment on account of any capital gains tax or other tax in Spain that you are required to pay as a result of the transfer of title, or in relation to non-residents income tax. If the amount retained is higher than your actual tax liability, you can apply for a refund of the difference.

Income Tax

Failure to meet your liability to tax can have serious consequences for you and your assets. To ensure that you are aware of all your tax liabilities it is essential for you to seek independent expert Spanish tax advice before you make the move. Be certain that you are aware of what tax you have to pay and when it is due. Unfortunately, many non-Spanish nationals ignore their Spanish tax liability and suffer the consequences later.

Inheritance Tax

As in the UK, you may be expected to pay inheritance tax on any asset that you inherit in Spain. The amount that you will be expected to pay depends on your relationship to the deceased, as well as to whether the deceased and/or the beneficiaries of the estate were resident or non-resident in Spain.

If you have already paid inheritance tax in Spain and you are non-resident in Spain, you could be eligible for a rebate from the Spanish Tax Agency if it is found that you have paid too much. Spain’s inheritance tax rules were brought into line with European law on 1 January 2015. Prior to that, non-Spanish residents were paying inheritance tax at a higher rate than Spanish residents, notwithstanding that the non-Spanish residents were EU or EEA residents at the time. At E&G Solicitors in Spain we can help you to establish whether you are eligible for a rebate of inheritance tax and recover any overpayment on your behalf.

Any non-payment or late payment of inheritance tax can result in penalties being levied against you, so it is vital that you seek independent legal advice to ensure that you have met all your fiscal obligations as a beneficiary.

If you are a beneficiary of an estate because you are named as such in a Will, or believe that you are entitled to a share of the deceased’s estate, then E&G Solicitors in Spain can help you to realise your Spanish inheritance and guide you through what can be a complex and time consuming process, while also advising you on minimising your tax liability within the applicable rules.
Tax payable upon the purchase of property

Tax is payable on a property purchase at varying rates, depending upon where in Spain the property is situated, as well as upon other related factors, including if ownership in the property is being transferred to an end user for the first time since it was built.

Broadly speaking, properties purchased for the first time since they were built attract value added tax, as well as stamp duty, whereas resale properties attract a property transfer tax. As the amounts of the tax payable vary considerably from area to area and from time to time, we prefer to ask you to contact us at info@solicitorsinspain.com to ask for details of the tax payable in the area in which and for the type of property that you are interested in purchasing.

E&G Solicitors in Spain is experienced with handling property transactions throughout Spain. We make certain that our clients are in no doubt as to all of the tax implications associated with being a purchaser, home-owner, or seller in a Spanish property transaction.

Property Tax

If you own any land or buildings in Spain (other than land not zoned for building and on which no dwellings have been built), you will be obliged to pay an annual local property tax. The tax payable can change from time to time. It is essential that you determine the level of property tax payable prior to deciding to purchase.

On occasion, when purchasing certain types of property, particularly country property, the property tax payable can be revised retrospectively, so that a tax payment can become due in addition to amounts already paid. Hence, notwithstanding that property tax is paid up to date upon completion of your purchase, a further tax may become payable later on for a period before you owned the property. The seller continues to remain responsible for that amount, but the practical issue becomes how to recover the funds from the seller, because he or she may be long gone and you will be required to make payment of the increased tax, as the local authority will otherwise pursue you for it. It is for that reason that prior to agreeing to purchase the property you engage an independent specialist Spanish property lawyer to conduct thorough enquiries to determine, to the greatest extent possible, whether any such increase in property tax is likely.

Wealth Tax and the Obligation to Declare Foreign Assets

Spanish residents have an on-going tax liability in respect of their pre-existing wealth. An individual resident in Spain will benefit from a nil rate band, which takes into consideration a family home in Spain and other property, whether in Spain or outside of Spain, up to a maximum value established by each autonomous community. The value of any real property owned by the Spanish resident and situated outside of Spain is based exclusively on its market value. Any other assets are assessed at their real value, such as shares in companies and funds in bank accounts.

New rules that came into force in Spain on 31 October 2012 require all individuals considered to be tax resident in Spain to declare all moveable and immovable assets either owned by them, or within their control, situated either within or outside of Spain. Once assets have been declared, they will attract tax annually, although at a modest rate and taking into consideration the corresponding nil rate band, as set out above.

There are five categories of assets. Those with assets of no more than 50,000 Euros in any one category are not subject to reporting requirements in respect of that category, as neither are those whose assets outside of Spain do not increase by more than 20,000 Euros year on year in any of the five categories.

Non-Spanish nationals resident in Spain often own assets in their home country or elsewhere. If that is the case, then it is essential to take expert advice from a specialist independent adviser. The penalties imposed on Spanish residents by the Spanish tax agency for failure to declare foreign assets are extremely severe, even if there is no tax liability. E&G Solicitors in Spain is very well placed to advise and assist you in that regard.

Wealth tax payable by those not resident in Spain

Someone not resident in Spain, but owning Spanish real estate, will become liable to wealth tax on the value of his or her Spanish assets in excess of the minimum established by the autonomous community in which the assets are situated, whether real estate or moveable assets.

> For more information regarding taxation in Spain please see our website at www.solicitorsinspain.com/taxation-spain.
Wills and Probate in Spain

Do you need a Spanish will?

If you have purchased property in Spain, hold money in a Spanish bank account, have a right to inherit assets in Spain, or have any other assets situated or registered in the country, such as a car or a boat, then it is advisable to make a Spanish Will detailing what you want to happen to your Spanish assets upon your death. By making a Spanish Will you obtain some control over how the beneficiaries of your estate will inherit and gain a clearer understanding of how your assets will be distributed.

The most compelling reason to make a Spanish Will is that it will make it much easier for the beneficiaries of your estate to administer your estate upon your death. By making a Spanish Will to deal with your Spanish assets, as opposed to allowing your English Will to cover everything that you own, you will remove any cross-border uncertainty and unnecessary delays in the administration of your estate.

In order for your Spanish Will to be valid it will need to be signed before a Notary, either a Spanish Notary or, if you are unable to attend the offices of a Spanish Notary, then a Notary Public in the UK or in another country. In either case, your Will must be registered in Madrid at the General Registry of Last Wills, which happens automatically if your will is signed in Spain.

Upon your death, anyone you have mentioned in your Spanish Will is able to obtain a copy of the Will, as well as anyone who can demonstrate a right to inherit all or part of your estate by virtue of the rules of forced heirship. The benefit of making a Spanish Will is that the inheritance procedure is straightforward and less costly than if the beneficiaries of your estate are relying on an English Will, or a Will made according to the law of another country.

At E&G Solicitors in Spain we have extensive experience of drafting Spanish Wills that can operate alongside Wills made according to the laws of other jurisdictions, so that the Wills dovetail with each other.

For more information on Spanish wills please see our website at www.solicitorsinspain.com/spanish-wills.

Spanish Succession and Probate

If you have a family member or a partner who has retired in Spain, or lived in the country for a substantial period of time, they may have a number of assets in the country. On his or her death you could be required to administer his or her estate in Spain, which can, understandably be a very daunting prospect.

Inheriting assets that are located in Spain can be a difficult process if you are unsure of how Spanish probate and succession law operates. Whether you are named in a Will, or you believe that you are entitled to a share of the deceased’s estate, it is important to obtain independent legal advice in order to realise any interest that you may have.

If you have been mentioned in the Will then E&G Solicitors in Spain will ensure that you are able to inherit your share free from stress and delay.

If you have not been named in the deceased’s Will (whether in Spain or any other jurisdiction), but believe that you are entitled to benefit from the estate, then E&G Solicitors in Spain will be able to guide you through the process of how to make a legitimate claim.

In cases where the deceased left no Will relating to assets in Spain, that part of the estate is said to be intestate. This can sometimes lead to uncertainty as to who is entitled to benefit from the deceased’s estate. In such instances, E&G Solicitors in Spain is able to advise you as to whether you will have a legitimate claim against an intestate estate and, if so, proceed with the necessary steps to make a claim on your behalf.

Where you are investigating the Will of a deceased it will be necessary to determine the identities of the Executors or Administrators of the estate in order to proceed with your claim against the estate. E&G Solicitors in Spain will be able to assist you in locating the Executors or Administrators administering the deceased’s estate.

You may find that you have inherited property or other assets located in Spain that you are not able to manage on a practical level. Where an issue like this arises you may find that selling the asset better suits your needs. If you have inherited assets and they are registered in your name, E&G Solicitors in Spain can help in managing the marketing and sale of any assets and handle the legal aspects of the transaction on your behalf.

Inheritance Disputes

In some cases, disputes may arise as to who is benefitarily entitled to the deceased’s estate.

If you believe that you are legally entitled to benefit from an estate, or you are the Executor or Administrator of an estate who is facing legal challenge, then it will be essential for you to seek independent legal advice to determine who has a right to the estate.

E&G Solicitors in Spain has a proven track record of dealing with succession and probate matters both in Spain and the UK. If you are mentioned as a beneficiary in a Will, or believe that you are entitled to a share of the deceased’s estate, then we can also help you to realise your interest and guide you through the Spanish inheritance process.

> For more information on succession and probate in Spain please see our website at www.solicitorsinspain.com/succession-and-probate-spain.
What our clients think

“My family and I were interested in purchasing a property in Spain. So it was essential for us to have solicitors who have offices in Spain and understand the complexities of Spanish property law. Jonathan Eshken and Josep Grau were able to ease us through the bureaucratic property system that exists in Spain. E&G Solicitors in Spain were able to deal with the seller on our behalf and help us with the relevant paperwork which allowed my family and me to purchase the property with confidence. Buying a property is a massive financial investment so being kept in the loop by people you trust is vital. During our matter, E&G Solicitors in Spain offered us a personalised experience and were efficient, thorough and friendly.”

Steve Haddrell, Milton Keynes

“I was looking to buy a property in Spain and wanted to be sure that everything was legally above board before I purchased. Once E&G Solicitors in Spain took on my case they discovered that the official deeds of the property didn’t match what the seller was claiming was theirs to sell. It turned out that we needed to get the official deeds amended, which meant dealing with neighbours, the council and the Spanish land registry. Knowing that Josep Grau could utilise his local contacts and deal with the right people face-to-face was great. E&G Solicitors in Spain were extremely thorough and diligent when dealing with my transaction. They are everything that you could hope for in a legal team.”

Dan Ashton, London

E&G Solicitors in Spain is one of the most efficient and professional legal firms that my wife and I have dealt with - anywhere. Their intimate knowledge of the entire property transaction process in Spain was very reassuring. Their rates are also very reasonable for the excellent service provided. We look forward to working with them again in future and wholeheartedly recommend their services.

Justin Hyland and Margot Winer, Cape Town

“I had been considering buying property in Spain for some time. All the advice I had come across mentioned to use a solicitor in the buying process. I knew nothing about the Spanish legal process for purchasing a property so needed to engage with experts to help with the transaction. E&G Solicitors in Spain looked after all the legal aspects of my purchase and also confirmed they could assist me with other matters such as drafting a Spanish Will, connecting me to utilities and organising my Spanish tax return. Buying property can be a stressful experience especially when buying in a foreign country but I felt E&G Solicitors in Spain were looking after my interests the whole time.”

David, Jersey

“My family and I had a property in Spain that had been on the market for several years. It got to the point where we could no longer afford the mortgage payments. The Spanish legal system was a minefield for us as we spoke no Spanish. When I called Jonathan Eshken he gave me a clear understanding of how I should proceed, which eased a lot of stress for me and my family. We were able to transfer our unwanted property to the bank and write off any outstanding debt, which was a tremendous relief. E&G Solicitors in Spain were very reassuring and with their help we could start looking forward to the future.”

Ian, Kent

“My family and I had purchased a property in Fuerteventura just before the market crashed. We bought it with a view to renting it. Due to the recession people weren’t going on holiday as much, so we weren’t getting the rental income to support the mortgage repayments. We were trying to find money to keep the property afloat but it left us in a very tight position financially. When we considered selling the property its value had halved. E&G Solicitors in Spain took on my case and were able to negotiate successfully with the bank to allow a voluntary repossession to go through. With all things considered it’s worked out very well for me and my family. E&G Solicitors in Spain could not have done more to put my mind at ease. The fact that they have solicitors in Spain and the UK who are multilingual and have knowledge of the legal system over there is great. I couldn’t recommend them highly enough.”

Tony, Derbyshire