

Guide for selling a property



Once there is a buyer and their offer has been accepted, the vendor's solicitor will begin the legal process. This involves providing the buyer and their legal agent with all the information and documents they require, as well as the assurance provided by a solicitor's expertise in the matter in order to proceed with the purchase as quickly and efficiently as possible.

At Bufete Megías Abogados we specialise in property law, and we have over 45 years' experience in one of the areas with the highest turnover and complexity in the Spanish property market. We see to all the paperwork needed to ensure the sale process goes smoothly, providing our clients with the peace of mind of knowing that everything is in the hands of veritable experts.

The following pages describe the sale process for a property in Spain, with each and every one of the points we will see to for you.

The first decision a vendor makes when deciding to sell their property normally involves contracting the services of an estate agency. Please remember that you will need to provide the following documents:

- **Deeds of Ownership.**
- **Latest receipts for council tax [Impuesto de Bienes Inmuebles – IBI] and waste collection.**
- **Information on the owners’/housing association [Comunidad de Propietarios].**
- **Photos of the property.**
- **Certificate of Energy Efficiency [Certificado de Eficiencia Energética].**

The agency will ask you to set a price and sign a commission agreement. This agreement obliges you to pay the agency a commission, which is a percentage of the sale price following completion by the purchaser it has found. You should note that commissions usually range between 3% and 5% of the purchase price, not including VAT. You will also need to give the agency a set of keys for viewings of the property with potential buyers.

When a buyer is interested in the property, they will make an offer and pay a deposit of between €3,000 and €6,000. This is required to take the property off the market. Once the offer has been accepted, the vendor will sign the deposit agreement. Some deposits may be refundable or subject to special conditions (such as the approval of a mortgage loan), while others are not refundable.



Sale process

Prior to the arrangement of the sale, there are several documents that the vendor needs to provide, such as the **Certificate of Energy Efficiency [Certificado de Eficiencia Energética]** and a **certificate from the owners’/housing association** confirming that the property has made all the payments due. Your solicitor will check these documents to ensure they have been properly drawn up and comply with all legal requirements.

- **Exchange of contracts:** with a view to securing the sale when the buyer cannot complete immediately (e.g., when applying for a mortgage), our advice at Bufete Megías Abogados is to sign a private sale agreement whereby the vendor or their agent is paid a sum of approximately 10% of the agreed sale price. This will ensure that your solicitor will be in a better position to negotiate on your behalf, protecting your rights and interests.
- **Mortgaged properties:** If the property is mortgaged, remember that you have to cancel the mortgage before you can complete the sale. Your solicitor will arrange for the mortgage lender or bank to be present at the Notary’s office when you simultaneously sign the contract of sale and the Deeds for Cancelling the Mortgage [Escritura de Cancelación de Préstamo Hipotecario]. Part of the money proceeding from the sale will be used to pay the bank and cancel the mortgage. Remember that the fees for the Notary and cancelling the mortgage loan are paid by the vendor.
- **Change of contract holder:** when selling a property, there are several aspects that need to be taken into account, such as the following: cancelling all existing contracts, as well as informing the owners’/housing association, the tax authorities, and utilities companies.





Taxes

When you decide to sell a property, there are several other aspects you need to consider. The sale will probably mean you have to pay a percentage of any profit you make, as well as a council capital gains tax [plusvalía municipal].

The current rate set by Spain's tax authorities [Agencia Tributaria] is **19%**.

How does this work in practice? If you are not resident in Spain, the buyer is required to withhold 3% of the purchase price and deposit it with the treasury [Hacienda]. That 3% is an advance payment on the tax incurred by any possible profit from the sale. If there is no profit and after including the deduction of any costs incurred from the price of the sale, you are entitled to ask for the tax to be returned to you.

To ensure the request is made in a due and proper manner, and given the complexity involved in calculating the amount to be returned, we advise you to seek expert legal advice. At Bufete Megías Abogados we will be delighted to help you in this matter.

Capital gains

In addition to the above tax, you are also required to pay the capital gains tax [Impuesto Municipal de Plusvalía], which tends to be confused with the tax on profit we explained in the previous section, although it is a completely different tax. Capital Gains [Plusvalía] is a local tax that is applied to the increase in value of the land, and it is always paid by the vendor.

There has recently been a change in the law that allows **for the return of this municipal tax if the sale has not generated a profit**, and at Bufete Megías Abogados we have successfully filed numerous claims on this matter.

