



CHARLES RUSSELL

Guide to buying property in Spain

Appointing a solicitor

a. Why use a solicitor?

The conveyancing process is very different in Spain from the system that you may be used to in the United Kingdom.

It is vitally important for any buyer of a property in Spain to obtain independent and professional legal advice. You should ideally instruct your lawyer at as early a stage as possible and before signing a reservation or paying a preliminary deposit.

b. Why use Charles Russell?

➤ **Top firm with an excellent reputation**

Charles Russell is a top 50 UK legal practice, regulated by the Solicitors Regulation Authority.

The practice is long-established with a reputation for quality, backed up by independent research in leading legal directories.

➤ **Making your purchase as straightforward as possible**

Spanish property and tax laws can be complicated but we look after your interests at every stage and keep you fully informed of progress throughout your transaction.

At completion stage we normally instruct a carefully chosen local Spanish lawyer to assist us with the completion arrangements.

➤ **Personal attention**

Charles Russell provides not only the right expertise but also a level of personal service not always available from overseas lawyers.

➤ **No language barriers**

We speak fluent Spanish and English. We will report in English on the documents, in fully comprehensible terms, so that you know exactly what you are signing up to and the costs involved.

➤ **Independent advice**

Since we have no vested interest in your ultimate decision to purchase a particular property, we are able to give you genuinely independent advice concerning the transaction. We shall act in your best interests alone.

➤ **No hidden costs**

Taxes and costs will be fully itemised in advance and the relevant tax implications of the transaction, both in Spain and in the UK, will be explained and set out.

Appointing a solicitor
Steps prior to signing the contract
From exchange of contracts to completion
Fees and taxes
Inheritance issues
About Charles Russell

2. Steps prior to signing the contract

Charles Russell would normally carry out the following:

- Negotiate, amend and finalise the terms of the **Purchase Contract**.
- Make **Land Registry search** against the Property and obtain copies of the register entries. This will confirm ownership, boundaries and whether there are any mortgages or encumbrances which affect the Property.
- **Searches at the Town Hall** (“Ayuntamiento”) in respect of an off-plan property or a new build in order to check it has the necessary planning permissions.
- In cases of new construction, check that the corresponding **declaration of new building** (“Declaracion de Obra Nueva”) has been signed and registered and that the surface area and description of the property in the title deeds is correct.
- Where land is being bought, a search at the “Catastro” (mapping office) to check the **surface area of the property**.
- In the case of a new dwelling, check that the local planning office has issued a **certificate of habitation** or first occupation licence to confirm construction is in accordance with the planning permission and conditions.
- For an apartment or other property which is part of a community, check the **residents’ association rules and outgoings**.
- For **tax planning issues**, advise whether the property should be bought in joint names, as a life tenant, in the name of a company or using a trust with a company structure.

Appointing a solicitor
Steps prior to signing the contract
From exchange of contracts to completion
Fees and taxes
Inheritance issues
About Charles Russell

3. Steps from exchange of contracts to completion

- Purchasers who buy off-plan or unfinished properties from developers are legally entitled, under Spanish consumer protection laws, to receive **bank guarantees or an insurance policy** to secure their deposit and stage payments. We would endeavour to ensure that one of these is provided.
- A **Spanish Power of Attorney** (with English translation) will be prepared if required and then duly executed and legalised.
- Advice and assistance will be given to obtain the obligatory **Foreigner's Identification Number** (N.I.E.). Note that when buying an existing property, the application must be made at the very outset of the transaction as the application process can be lengthy and the number must be to hand by the time of completion at the Notary.
- We shall normally instruct a local Spanish lawyer to liaise with the Notary and prepare for the completion appointment and attend completion for the **signing of the Deed of Transfer** ("Escritura de Compraventa").
- The Notary is independent and checks that the parties have legal capacity to enter into the transaction and that the "Escritura" is correctly drafted and executed. After signing, the taxes have to be paid within 30 working days and the **Deed of Transfer is registered** at the Land Registry.
- Formally **notify the utilities companies** (electricity, water etc.) of the change of ownership and set up payment arrangements with your Spanish bank.

4. Fees and taxes

a. On purchase of the property

The taxes and fees will usually amount to roughly 10% of the purchase price (or a little more when there is also a new mortgage).

This is made up as follows:

- **VAT** (in Spain known as IVA) of usually 7% on a first purchase of a new property from a developer plus stamp duty of normally 1%;

OR

Transfer tax of normally 7% on existing properties i.e. resales.

- *Note that IVA at the standard rate (currently 16%) is payable in certain transactions e.g. commercial properties, building plots and parking spaces.*
- *A local capital gains tax on the increase in value of the land only (known as the “Plus Valia” tax) is payable usually by the seller but in certain regions of Spain the buyer may be asked to pay.*
- **Notary fees** and **Land Registry fees.**
- Your **legal fees.**

b. Capital Gains Tax [“CGT”]

- CGT is payable on a sale at a rate **18% of the net gain** (with effect from 1 January 2007) subject to a number of rules based on various factors, e.g. how long the property has been owned, the value of any improvement works and annual indexation rates.
- At completion of a sale there is a **withholding tax of 3%** of the purchase price paid by the buyer to the Spanish tax authorities as a payment on account of the non-resident seller’s CGT liability.
- *The sale is also a chargeable disposal for UK CGT purposes but, because of the double taxation treaty which exists with Spain, a tax credit is given for any Spanish CGT paid and so tax does not have to be paid twice.*

Appointing a solicitor
Steps prior to signing the contract
From exchange of contracts to completion
Fees and taxes
Inheritance issues
About Charles Russell

c. Ongoing taxes and expenses

- Non-resident property owners are deemed to obtain income from their property amounting to 2% or 1.1% (depending on the circumstances) of the property's rateable value ("valor catastral").

This **notional income is taxed at 24%** and an annual income tax return has to be filed.

Any actual **rental income** must also be declared and taxed at 24%.

- **Council tax** (known as "I.B.I.") and a refuse collection tax will both be payable to the Town Hall.
- **Community Association fees** when the property is, for example, an apartment or part of a community of owners.
- **Usual property outgoings**, e.g. electricity, water, telephone.
- N.B **Wealth Tax** ("Patrimonio") was abolished with effect from 2008.

Appointing a solicitor
Steps prior to signing the contract
From exchange of contracts to completion
Fees and taxes
Inheritance issues
About Charles Russell

5. Inheritance issues

As a property owner in Spain, you would be well advised to execute a **Spanish Will** dealing exclusively with your Spanish assets. If you have no Will or simply rely on your UK Will, there is likely to be additional expense and delay in passing on or disposing of your Spanish property.

Charles Russell can advise you and draft you a Spanish Will in the most tax efficient way. The Will can then be signed before a Notary either in the UK or in Spain, before registration with the Central Registry of Last Wills in Madrid.

Spanish Inheritance Tax law differs greatly from the UK system. The tax is **payable by the recipient of the asset** not the deceased's estate (and so it is a genuine inheritance tax rather than an estate duty) and there is **no husband and wife exemption**. The amount of tax is affected by the relationship of the recipient to the deceased (non-family recipients pay more tax) and also by the pre-existing wealth in Spain of the recipient.

If you are buying a property, **Spanish Inheritance Tax** needs to be considered at the outset in order to determine in whose name or names the property should be bought. By the same token, you may want advice about buying in the name of a company or a family trust within a corporate structure.

Appointing a solicitor
Steps prior to signing the contract
From exchange of contracts to completion
Fees and taxes
Inheritance issues
About Charles Russell

6. About Charles Russell

Charles Russell is a top 50 legal practice with offices in London, Guildford, Cheltenham, Cambridge, Oxford, Geneva and Bahrain with specialist private client and property expertise.

Our approach

We are known for our client care, expertise, and cost effectiveness. Our strategy is simple – to help clients achieve their goals through excellent service.

We focus on dealing with matters quickly, cost-effectively and in our clients' best interests.



Julian Watson
English Solicitor and Specialist in Spanish Law
Telephone: +44 (0)20 7203 5375
Email: julian.watson@charlesrussell.co.uk

Julian qualified in 1976 and joined Charles Russell in 2007. A property partner with a firm in Kent for many years, since 2001 he has specialised in overseas property work, in particular Spain where he lived and worked in 2001-2002. He heads Charles Russell's Spanish, Portuguese and Cape Verde Islands' conveyancing service and speaks fluent Spanish.