Information on Spain laws and taxes for British nationals who want to buy property in Mallorca.

Introduction

This guide provides essential information for British nationals who intend to buy property in Mallorca or Spain. This includes advice on laws, buying in certain areas, complaints and more.

The Foreign and Commonwealth Office (FCO) is unable to provide any guidance on individual property purchases apart from the information and links listed below.

Legal advice

Mallorca estate agents

Real estate agents on Mallorca can advise and guide you throughout the process of buying a property on the island. Many will also recommend that you consult a Spanish legal expert to make sure that your interests remain a priority and are protected..

Legal documents and contracts

It is essential that you seek legal advice from independent experts when you are considering buying property in Mallorca or mainland Spain. The specialist, called abogado, has the knowledge and expertise to avoid falling into potential pitfalls, ensuring that any legal document or contract is properly drafted to protect your interests.

Finances

Before signing a contract, it is important to make sure your finances are in order. Remember that the contract will remain binding even if you don't get funding and you risk losing some or all of the deposit money you paid to the seller or developer. If you are using a mortgage, make sure your loan is approved before you make a formal commitment to purchase.

Bank guarantees for stage payments and building insurance

If you are planning to buy a new build or off-plan property the developer is legally required to provide insurance cover or the bank guarantees to protect payments made to the developer before the completion of the property. The developer should also provide proof of appropriate 10 year building insurance coverage on completion to cover any potential damage to the property in the future, damage that can be caused from earthwork, support beams or any other structural issue.

We strictly recommend that you choose an independent lawyer specialising in Mallorcan land law, who works on your behalf only and has interests with an agent or developer.

The system of transfer of a Mallorcan property is different to the laws and systems of other countries, so you must make sure that the people involved in the transaction are qualified and located in Mallorca.

Be extremely careful while proceeding if a real estate agent or lawyer requests to cut corners to save money or time.

Mallorcan notaries

A Mallorcan notary will prepare the sales contract and issue the title deeds.

The buyer has the right to choose which notary to use.

A notary is a public servant whose duty is to provide the free and impartial legal advice regarding all aspects of the contract before purchaser signs.

It's always a good option to seek the advice of a notary beforehand. The buyer has 3 days prior to the day the title deeds are signed to visit the notary and ask questions regarding any aspect of the contract.

List of **English-speaking notaries**

British estate agents and lawyers

If you choose to work with a British estate agent or lawyer in Mallorca, make sure that:

- they are reliable, qualified, well experienced and that they are operating in Mallorca
- they are compliant or registered with the Law Society in the UK as well
- they specialize in international transactions

To check list of local English-speaking lawyers,

Gestors

A gestor, the office is called gestoría, is person who deals with administrative bureaucracy on behalf of a client in Mallorca, a gestor is not required to be a licensed attorney. In Mallorca, gestors are listed in the Páginas Amarillas (yellow pages) as "gestorias" Many Spanish citizens use a 'gestor' to carry out bureaucracy on their behalf. Only gestor administratives, with the GA sign, are qualified professionally and certified to process paperwork directly with the Spanish or Mallorcan administration.

Property disputes: legal aid

If you are involved in a property dispute and do not have enough money to pay the costs of a court case, you can apply for legal aid.

Here it is officially written text from the website European E-Justice Portal.

"The right to legal aid allows those who do not have sufficient financial resources to meet the costs of a court case or legal representation. Legal aid systems exist in all Member States of the European Union (EU) in both civil and criminal proceedings"

A legal aid system exists in all member states of the EU. If you are in dispute with a company, a professional person, an employer or another person in the country of your residence and you do not have sufficient financial resources to meet a court case, you can apply for legal aid under existing national regulations.

You can find other cross-border disputes and legal aid in criminal proceedings as well on the European E-Justice Portal.

Local bar association is also available for local residents of Spain in case of claims and issues.

You may need to find a specific lawyer for a specific category. Such as specialist civil lawyers in Mallorca for claims against private agents, developers or banks, or specialist public body litigants for claims against local, regional or state bodies.

Translators

Keep this in mind that you get all contracts and documents translated by an independent translator.

If you do not understand Spanish well or not at all, you can find a list of trustworthy and quality translators here: **Spanish Ministry for Foreign Affairs website.**

Mortgages

There are a variety of companies and **banks in Mallorca** offering mortgages and loans but you should do your homework and pay special attention to the interest rate and repayment period. Fees for setting up the mortgage as well as early repayment and cancellation fees also vary from bank to bank or company to company offering mortgages and loans.

This is important because if you are somehow unable to repay the mortgage, then the Spanish bank will repossess your property in Spain and if its value is less than the total debt, then the bank will pursue your UK assets as well to recover the mortgage shortfall under the European Enforcement Act Order.

So make sure that you fully understand the mortgage agreement before signing and if you have any doubts or queries make sure to check with the branch within the 10 working-days period after the binding offer is being provided.

Discuss the options available in case of failing the mortgage repayments.x

Here is the mortgage pdf, guide and further information: Spanish Mortgage Association.

Visa/residence requirements

British nationals who plan on living in Mallorca, Spain for more than 3 months must **register as a resident** at their local town hall.

As an European citizen you must register as a resident if you plan on living in Mallorca, Spain for more than 3 months. You should register in person at the Oficina de Extranjeros (immigration office) or designated police station in the province where you live.

Before going to your local Oficina de Extranjeros or designated police station, you must make an appointment online, which can be done on the Spanish public administration website.

Once on the online appointment booking system, you should select the province where you live and then the option “Certificados UE” and follow the instructions to select and confirm your appointment time.

When you go to your appointment, you will be required to provide documents to support your application - see an **summary of the documents you will need to bring**

English language

The Mallorcan authorities will issue a credit-card-sized residence certificate which will contain your:

- name
- address
- nationality
- NIE number (Número de Identificación Extranjero)
- date of registration

After you have been registered as a resident for five years, you can apply for a certificate of permanent residence in Mallorca. You will be issued with a similar sized Residence Certificate, but it will also state that you are a permanent resident (residente permanente).

A family members of EU citizens who are not EU citizens can r egister to l ive with them.

They must register in person at the Oficina de Extranjeros or designated police station within 3 months of entering Spain. They will be issued with a Tarjeta de Residencia de Familiar de Cuidadano de la Union (residency card for family members of EU citizens). Additional documents will be required.

Purchaser's checklist

Before you complete the property purchase of your Mallorca Property, you must ensure that:

- you have received and checked the land registry extract (nota simple), available from the Colegio de Registradores (translations into English for an additional fee), and checked the following details as well:
- the property and the land for sale correspond to the registered details and the sellers are the registered owners
- there are no debts or charges, such as a mortgage on the property
- no legal action has been taken against the property for breach of the Planning Law

You must verify that the planning authorizations are in order and that the property is a legal construction. This will be important when buying off- plan or directly from a developer.

The town hall can tell you if the building has all the licenses and authorizations and what type of land it is. If the property is built on rural land or land not classified for construction, you must ask the regional government to confirm that construction is authorised.

If you buy an off-plan property, confirm that the property has been certified as completed by a licensed architect and registered as new construction in the property register. The registration must also provide details of the developer's insurance against structural and other construction faults. In the case of a private construction (the former owner built his own house and decided to sell before the deadline of expiration which is 10 years), you will need to request these details separately.

You should check the latest city map to see if the land you wish to purchase has building restrictions, is in a green area, or includes a public or similar road. You can do it at the planning department of the local town hall.

You should have the property inspected. This is not mandatory, but it is wise to ask a licensed expert to check the property.

You must know the cadastral value of the property and the amount of the purchase tax that will be due. A tax is levied on the property's assessment by the council, as opposed to the amount of the sale. You can check it on the website of the regional government's online tax agency using the cadastral reference number

Make sure you check the following documents:

- a paid receipt from the previous owner's annual property tax (IBI). Get a certificate from the town hall as well proving that there are no unpaid rates left from previous years
- the cadastral certificate will indicate the exact boundaries and square metres of your land - Check that the property and land descriptions contained in both records match
- the license of first occupancy certificate issued by the town hall. Forward this to electricity and water companies. Developers cannot force you to complete without obtaining this license
- receipts to prove all utility bills have been paid by the previous owner
- if applicable, a certificate signed by the President of the Community of Property Owners stating that there are no outstanding debts. You should be aware that if you find out later that there are still outstanding debts, as the new owner you assume the debts for the current and previous year (2 years in total)
- As from 1 June 2013, all homes for sale or to let in Mallorca are required by law to have an energy efficiency certificate. If you are considering buying a property, the seller is obliged to show you this certificate

When completed, the public deed should contain an accurate description of the property. The buyer should register the property in his own name with the Land Registry as soon as possible to ensure full protection of rights. The notary can even send advance notification to the Land Registry electronically once the public deed is signed.

Buying property in certain areas

If you are thinking of purchasing a coastal property you should contact the Coastal Demarcation office in that particular region to get a certificate that the property is not affected by the Coastal Law from 1988.

Keep that in mind that while it is possible to view the coastal boundaries of the public maritime areas online on the Environment Ministry's website, this may not provide sufficiently accurate information on which to base a property purchase.

Check carefully if the Land Registry record shows that the property you wish to buy is built on rural land. Normally, the government reserves this type of land for agricultural use, so you need to check with the municipal and regional authorities to ensure that full planning permission has been obtained for residential use.

Buying property off-plan in Mallorca

Buying an off-plan property involves a higher risk than buying a re-sale property. Keep certain points in mind while buying off-plan properties

Before you pay

- Make sure you have a bank guarantee (aval bancario) to cover your stage payments.

Off-plan property developers are legally required to guarantee all deposits with a bank guarantee. However, keep in mind that this obligation only comes into effect once the developer has permission to plan, so you should ask to see it before making any payments. You can also check this in the Land Register, because if the description of the future building is registered, the registrar will have seen proof that the permit exists and work has started according to the approved design.

- You must ensure that the bank guarantee is individual and not a collective guarantee covering the entire development, which does not offer the same protection.

You must also request proof that your payments are deposited in a special escrow account, which can only be used for building the specified development.

- Make sure the developer is registered with the Mercantile Registry and the person who is going to sign on the developer's behalf has the legal power to do so.

Visit any Mercantile Registry office or use the L and Registry website for this purpose.

- Check out the Land Registry https://sede.registradores.org/contenido/buyingahouse/ to make sure the land which is going to be built on is registered in the developer's name you are doing business with.
- Obtain a copy of the cadastral certificate giving the exact boundaries of your land as well as the square meters of the land.
- Make sure that the developer has an insurance covering damage caused by structural defects to the building. This insurance should be included in the property manual that the developer will provide you with.
- Additionally, you must also get a planning certificate for the plot that you wish to buy from the town planning office (Urbanismo). This will include information that stating if the plot has any building restrictions, if it is in a green zone, if it includes a public footpath or if there are any current plans to build a motorway etc.

Before signing the title deeds

Once construction is completed, and before you sign the title deeds, ask for proof from the seller that the construction has been finished in accordance with the description given in the plans. This is issued as a certificate (certificado final de obra). You can also check this at the Land Registry.

Make sure you have the license of first occupancy (licencia de primera occupación) which will be issued by the town hall for new buildings and certifies that the property is habitable and occupied by you only. Forward this to electricity and water companies. Developers cannot force you to complete without acquiring this license.

Consider asking a **Mallorca chartered surveyor** to check the property. This is not compulsory but it is wise to obtain a professional opinion about the property before completion.

The Royal Institute of Chartered Surveyors (RICS) can provide a good chartered surveyor. Members of the RICS are qualified and experienced professionals offering independent and impartial advice.

The Spanish College of Architects in each province also provides a list of independent specialist surveyors.

Cancelation of the contract

If the developer does not complete the property by the deadline in the contract, or services and utilities are not completed and connected to standard, or the habitation certificate cannot be issued, you are legally entitled to:

- cancel the contract and have the deposits returned plus interest
- extend the deadline, to allow the developer to complete the property

If you wish to cancel the contract, you should obtain independent legal advice. Once you have consulted a lawyer, the first step is to write to the developer explaining that due to non-compliance with the contract, you wish to terminate the contract and request that the deposits paid so far be returned, as well as the charges to pay interest.

You must include all relevant documents (for example, a copy of the contract, copies of payments made, a copy of the bank guarantee) and indicate the date on which you want the amount to be refunded. You must write to the developer using Burofax, in order to be able to prove that you sent the documents and that the developer received them.

If the developer does not respond to you within the specified time, you must contact the claims department of the bank or savings bank responsible for the warranty to request reimbursement of payments made. Again, it is wise to contact by Burofax and attach copies of all relevant documents, including a copy of the bank guarantee, a copy of the complaint submitted to the developer, a copy of the developer's response (if available) and copies of all documents indicating that the developer has breached the contract.

If the bank does not comply, the only remaining possibility is to instruct a lawyer to commence with civil action against the bank.

If you believe you have been defrauded and you have neither a bank guarantee nor the developer's insurance policy, you should seek independent legal advice regarding criminal proceedings in court and register a statement with the police.

Renting out your Mallorca property

From the 1 June 2013, all homes for sale or to rent in Mallorca, Spain are required by law to have an energy efficiency certificate. So in order to rent out or sell your home, you will need to have an energy certificate first.

Short-term

If you want to rent out your property to tourists on a short-term basis, you must ensure that you are doing so in accordance with the Spanish law. The regulations on renting out properties such as apartments (apartamentos turisticos) and holiday homes (viviendas vacacionales) to tourists will vary depending on the region where the property is located.

If you are planning on making a return by renting out your property on a short-term basis, seek independent legal advice and check the local laws at the town hall or the tourist department of the regional government before you buy. Be aware that renting private residential property to tourists is strictly monitored and regulated in many regions of Spain, including Mallorca.

It is better if you hire a local holiday rental agency to assist you finding tenants, drawing up rental contracts and managing the property on your behalf. In some regions, it is obligatory to use a specialist tourist apartment management company for short-term rentals to tourists.

Long-term

Landlords who rent their property for the long term are free to do so under the conditions set by national rental law. However, it is worth consulting with a professional lawyer to make sure that you comply with Spanish law and that you are using the right rental agreement.

In Spain, there are different types of contracts depending on the duration of the rental. You can get copies of these contracts from the tobacconists.

Letting taxes

You must ensure that you declare your rental income to the Spanish tax authorities (Agencia Tributaria) whether you are resident in Mallorca, Spain or not. Taxation is a complex issue, and it is advisable to seek the advice of an accountant or professional tax adviser with comprehensive and up-to-date knowledge of both the UK and Spanish tax regulations.

Equity release schemes

Equity release schemes are schemes that are designed to allow homeowners to release equity from the value of their property as income. It can be a lump sum or a mixture of both.

A reverse mortgage (hipoteca inversa) is one form of equity release which allows homeowners to borrow money from registered bodies against the value of their home, which is used as collateral. Reverse mortgages are generally offered to retired homeowners who are over 65 years old.

If you are considering an equity release scheme, such as a reverse mortgage or lifetime loan, it is better that you check first that the company offering the mortgage is registered with the financial regulator for the securities markets, the Comision Nacional de Mercado de Valores (CNMV), and that they do not have any warnings issued against them.

A list of financial companies which are not authorised to operate in Mallorca and those subject to an ongoing investigation is available on the CNMVw ebsite.

Seek independent legal advice prior to signing any contracts to make sure the information the company has given you is correct, that there are no abusive clauses in the contract and that you are fully aware of your rights.

If you have any concerns regarding your tax obligations, you may check with the Spanish Tax Office (Agencia Tributaria).

If at any point you feel that you are not happy with the scheme you have been offered or sold, the first step is to submit a complaint to the company responsible for your investment. If after 2 months, you are not satisfied with the response or do not receive a response, you must complain to the C NMV.

CNMV will take actions to resolve the matter.

If you believe you have been a victim of a fraud involving an equity release scheme you can register a statement with the police and seek independent legal advice on taking action through the courts.

Further information for fraud is also available on the f raud page.

Problems with timeshare property

There is no timeshare properties in Mallorca

However, there are many dishonest companies, which claim to provide various incentives including investments in stock markets and discounts on accommodations and airfares etc, when exchanging existing time- share ownership or taking out membership of holiday clubs**. These do not exist in Mallorca**

Other sources of advice

Check out all the key points mentioned above in this article to legally buy a property in Mallorca, and to stay safe from fraud and other suspicious activities. Prepare complete documents so that process may not get slow.

The Spanish Land Registry publishes a G uide to Buying Property in Spain. Spanish Property Insight provides information and advice on buying a property in Mallorca.

Ask your neighbours, local residents can be an excellent source of information. Ask the local residents in the same development or area whether they have experienced any problems with the local or regional authorities, communities of owners, other residents or regular visitors.

The Spanish Ombudsman is responsible for defending the fundamental rights and civil liberties of citizens by monitoring the activity of public authorities. If you have a complaint about a public authority, you can file a complaint with the regional or national ombudsman. If you are having problems with your property in Mallorca, there are many resident associations that may be able to provide support and advice as well as put you in touch with others who have had similar experiences.

Useful links

- Legal Guide about buying property in Mallorca
- Property Price Index in Palma de Mallorca
- Vogue Properties of Mallorca

Disclaimer

This information is provided as a general guide and is based on information provided to the Embassy by the relevant local authorities and is subject to change at any time without notice. Mallorca Uncovered and the British Embassy are not responsible for any inaccuracies in this information. UK nationals seeking further information should contact the relevant local authorities.