

Spanish Mortgages

1. What is a mortgage?

This is the normal way to finance a property in case one does not have the full amount of the purchasing price at the moment of the signature of the sales contract before a Spanish Notary.

The mortgage is a contract between lender and borrower to assure the borrower will repay the debt, otherwise he will lose the property pledged. On mortgaging a property, the loan is secured on the property,

In Spain there are interesting mortgage rates, and banks have special products designed for non-residents borrowers. Others adapt the existing types to the personal circumstances of the buyers. You will normally be requested to proof your income together with your monthly spending. Your Spanish Lawyer should check which mortgage suits you best.

The mortgage will be filed at the Spanish Property Registry (Registro de la Propiedad).

It is suggested that all technical and legal matters pertaining to mortgages be referred to a Spanish Lawyer for advice and guidance.

2. What is it necessary for a mortgage to have full legal effect?

Mortgages must be formalized in a public deed of mortgage before a Public Notary .

The property must be registered at the Property Registry with the name of the owners whom the mortgage is given to.

The mortgage shall also be registered at the Property Registry to evidence that it is a preferential charge in the property. A non-registered mortgage is an ordinary loan and therefore does not constitute a preferential charge on the property.

Although Spanish Law allows the re-mortgage of a property, however, the banks refuse to re-mortgage this because the guarantee corresponding to the first mortgage is preferential over the second one.

3. Special cases. Novation and subrogation

You may find that the property of your dreams, that you are willing to purchase, is already mortgaged. You can do either of two operations: the subrogation and the novation of the mortgage.

- The novation (novación) entitles you to accept the existing mortgage and renegotiate with the lender better conditions.
- The subrogation (subrogación) entitles you to change the actual lender for another, and obtain a new mortgage loan on the property, with better interest rates.

In the last few years, we have witnessed reductions in the interest rates in the Spanish market. Many persons found that their mortgages rates were too high, and decided to modify the terms, either negotiating lower rates with the banks or changing the lending bank.

These operations are not subject to stamp duty (Actos Jurídicos documentados) although the Register and Notary costs shall be paid.

4. The mortgage interest rates

Fixed rate mortgage: the interest rate is fixed at the start of the mortgage. The periodic amount for the payment of principal and interest will not change during the term of the mortgage.

Keep in mind that with this type of interest we are aware of the amounts we will be paying until the mortgage term is finished, however, we don't know whether the interest rate level will be reduced in the market or not.

Variable interest mortgage: The interest rate on your mortgage will be adjusted up or down according to current interest rate levels. The periodic amount for your principal and interest payment will go up or down with these rate changes depending on the index set chosen (such as MIBOR).

The initial interest will be initially lower. The banks normally use this tool to make the mortgage offer more attractive, later on this interest may convert into an excessively high interest

5. Costs and legal fees

If you intend to mortgage a second hand property, be aware that you should face costs as follows:

Valuation of the property.

Request of extract (Nota Simple) issued by the Spanish Property Registry, which shows the latest recorded details of any charges on the property.

Bank mortgage opening fee: it shall be paid when signing the deed. This fee varies depending on the lending bank you deal with. Theoretically this commission serves to cover the costs the bank has incurred for studying the concession of

the loan to the borrower. Some banks do not collect this fee.

Stamp duty, (Impuesto de Actos Jurídicos Documentados) 0.5%: It must be paid when a notarial document is signed.

Notary and Registry: These fees vary depending on the guaranteed capital of the mortgage.

Insurance: The banks normally require the borrower to contract, at least, a fire insurance to protect its interest until the loan is repaid. The bank will try you to contract the insurance to the company they have an agreement with, it is your right to contract the insurance with the company you wish. The insurance fee must be paid at the moment of the deed signature. 6. Management of the loan binding offer

Once you have decided which mortgage better suits you, the lender will analyze your current income and basic credit history situation in order to qualify you for a maximum loan amount.

If the lender decides to give you the loan requested, he will issue an offer which includes the loan conditions. Normally you will be given a term of 10 days to accept or reject this offer. What does this offer must contain? Principal, interests rates, fees, payment term and interest for delayed payment.

If you accept this offer, the mortgage has to be formalized in a public deed before a Public Notary who shall check whether there exist no difference between the financing conditions of the binding offer and the financing clauses of the contract. 7. Formalization of a mortgage

The mortgage shall be formalized on a public deed, which shall be signed before the Notary of your choice, though the bank will probably try that you choose the Notary they are used to work with.

It is your right to examine the deed project with, at least 3 working days, before the final deed is to be titled.

The parties must be present at the moment of the deed signature, and the Notary shall make sure that the borrowers understand everything they are signing. The borrowers should examine the mortgage conditions, especially when the mortgage interest is variable. The bank will keep a true copy of the deed to be filed before the court in case the borrower does not pay the mortgage.

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