

“Legal steps to buying a property in the Algarve”

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- i. Lawyer

If you decide to purchase a property in the Algarve, first of all choose a local Portuguese Lawyer (legally inscribed at the Lawyers Bar Association – www.oa.pt)

Only a lawyer, experienced in working with Portuguese official departments and property documents, has the knowledge and expertise to investigate and certify that the property has clean title.

Your lawyer will need to have full details of the property, any special conditions that you have agreed and also who is the agent involved in the transaction.

Sometimes a deposit is paid over to the lawyer to be held on your behalf as proof of your intent whilst the searches are done and the contracts drawn up.

Clients can give a Power of Attorney to act in their absence, which avoids many unnecessary trips abroad to deal with paperwork (namely, if a bank loan is needed).

ii. Fiscal card

As a future owner of a Portuguese property you will need to have a Portuguese Fiscal Number.

It is also needed in order to open a Portuguese bank account and for setting up utility accounts.

The fiscal cards will have to be obtained by someone who is a Portuguese resident for fiscal purposes.

The person that obtains you the card will be your fiscal representative, which means then will mediate your relation with the Portuguese Treasury (This usually involves a fee that might vary from 250,00 Euros to 350,00 Euros, plus VAT/yearly).

iii. Legal steps

Buying property in Portugal is relatively straight forward. The following are some general guidelines:

a) Mortgage

If clients are taking a mortgage their lawyer must make a provisional registration in the Bank's name. This is why it is important lawyers are told at the start, as they must have a special clause in the Power of Attorney that allows them to do this on clients' behalf. Otherwise the clients' presence is needed.

A valuation of the existing property will be carried out when taking a mortgage.

Only the security of the property in Portugal is taken. No life insurance is needed.

Most lenders require proof of income to service the loan where loans of up to 75%.

Mortgage interest rates are much lower in Portugal than the UK as they are based on the Euribor (Euro InterBank Offered Rate).

We strongly recommend that the client obtains a binding mortgage offer before committing to the purchase of the property, unless you are a genuine 'cash' purchaser.

b) Searches

The lawyer will need to certify that all the documents related to the property are in order and will, namely, check these ones:

a) Certificate of Land Registry - Describes the property and it is a full prove of the ownership. It also shows all the charges and encumbrances that are attached to the property.

b) Certificate of the Tax Department - This document describes the property from a tax point of view. Besides it also shows the ownership and exhibit the rateable value of the

property. A search can then be requested to the tax department to find out if there are any unpaid taxes in relation to the property.

c) Habitation Licence - Licence issued by the Town Hall confirming that the construction is licensed.

d) “Ficha Técnica de Habitação” - It works as an identification of the structure of the building and it is only required if the Habitation Licence was requested after the 30th of March 2004.

e) Plans of the Property- As per approval of the project of construction by the Town Hall.

After the searches your lawyer will ensure, among others, that:

- The property is registered in the vendor's name;
- No charges, mortgages or encumbrances are registered on the property or will be at the conveyance deeds date;
- There are no fiscal debts;
- The property was built in accordance with Portuguese regulations and planning permission granted.

Usually the lawyer draws up a report for you presenting a summary of the property as registered in the various departments.

You should check that the description and size of the property corresponds to the actual property. Sometimes alterations to a property are made during their ownership and lawyers usually do not check out a property physically.

c) Surveyor

If you have any doubts or simply would like an exact report as to the condition of the property, your lawyer or Real Estate agent can recommend a surveyor, who will inspect the property and appoint any eventual defects.

This will save you unpleasant surprises later and, depending on the defects discovered, may result in a reduction in the sale price, obliging the vendor to rectify or require additional guarantees in the contracts.

d) Promissory Contract

After confirming that the documentation is in order is time to prepare the Promissory Contract of Purchase and Sale, which is usually done by the Purchaser's lawyer.

At the moment of the signature of the Promissory Contract of Purchase and Sale the promissory purchaser delivers to the Promissory Vendor a part of the purchase price, usually between 10% and 30% of the total purchase price (deposit).

The promissory contract is a binding document signed by both parties, which states all of the terms and conditions agreed, such as price and completion date.

If you are buying 'off-plan' from a new development under construction, you are normally required to pay the purchase price in stages.

The law requires the Promissory Seller to repay twice the deposit should he withdraw from the sale. Likewise, if the Promissory Purchaser fails to complete he forfeits the total of his deposit.

An English version of the contract should be forwarded to the client for his prior approval.

d) Conveyance deed

The Purchase and Sale will only be complete after the competent deed is done at a notary that will confirm that all the documentation is in order and that the purchase price was already paid in full.

The conveyance of property is held at the Notary office where the balance of the price is paid and the deeds are transferred to the buyer's name. The Notary reads a statement which both parties sign, stating that monies have been received accordingly. This is read out in Portuguese; you do not need to be present, in case your lawyer has a power of attorney, but if you are, the wording will be carefully translated for you.

e) After the deed

After the deed is done the property is legally yours. Congratulations!

The lawyer will then register the change of ownership at the Tax Department and at the Land Registry.

Contracts for water, electricity, telephone, insurance, condominium, etc. are also changed in accordance with new ownership.

f) Offshore companies

A large number of properties in the Algarve are held in company structures.

If the ownership is held by a company and you are keeping the same ownership, then your lawyer will have to do searches on both property and company and subsequently a Share Purchase Agreement is drawn up instead of a promissory contract. In both cases a deposit is paid.

All conditions of sale must be outlined in this document, together with any warranties concerning the company or property. This is extremely important to avoid unpleasant surprises, as you may inherit liabilities.

Completion usually follows soon after, with the monies being transferred between the parties lawyers on exchange of the company shares and documents.

iv. Portuguese Taxes

Once you have acquired a property in Portugal you will be liable to certain taxes.

Portuguese tax residents are liable to Portuguese tax on their worldwide income and capital gains.

A non resident will be liable to taxes on their Portuguese source income and capital gains in both Portugal and their home country, subject to any available double tax relief (e.g. under a double tax treaty).

Below are the taxes involved when purchasing/owning/selling a property in Portugal:

1. "IMT" – Stamp duty

Is the equivalent of UK Stamp Duty and is a one off payment made before the final deed is carried out, up to 6,5% for habitation properties (depending on the respective type and price).

2. Notary and registry costs

Besides the IMT, there are also the costs with the notary and registry that represent all together approximately 1% of the purchase price.

3. Lawyer's, surveyor's and Real Estate agent's fees

These are subject to previous agreement.

4. Mortgage's costs

Besides the above mentioned costs, in case of a loan you will have to considerer the bank expenses plus stamp duty (0.6% of the amount borrowed).

5. "I.M.I." - Rates

An annual municipal tax (similar to UK rates), called IMI, is payable by the owner of the property as at 31st December each year, calculated by reference to the rateable value of the property and the percentage rate set yearly by the Council.

The rates range from 0.2% - 0.8% of the fiscal value of the property, depending on the type, location, age of the property and date of the Tax Department valuation.

If the IMI due is more than €250, it is payable in 2 installments in the following April and September each year, otherwise in one installment in April.

6. Rental income

Non residents are subject to tax at a flat rate of 15% on Portuguese rental income, and where the property is let through a Portuguese agent, they will retain this 15% of the income before paying the balance over to you.

This rate will also apply to non resident companies as well as individuals, although

where a company has a 'permanent establishment' in Portugal tax is payable at 25% on rental income.

Day-to-day maintenance and running costs (but not mortgage interests) can be claimed, regardless of residence status.

If you are resident in the UK, any Portuguese rental income is taxable in the UK. Each country calculates the taxable income according to its own rules, but any tax paid on the income in Portugal can be offset against the UK income tax liability on the same income to avoid double taxation.

7. Capital Tax Gains

This tax relates to the profit made from a property sale.

Residents pay up to 21%. Gains on the disposal of real estate by Portuguese residents are exempt if they arise on the sale of a main home and if the entire proceeds (net of related borrowings) are re-invested in another main home within two years after disposal, or one year before disposal.

Until October 2006, the property in which the funds had to be reinvested had to be located in Portugal, but this has now been held to be against the EU Treaty principle of freedom of movement of capital and persons, and now the funds can be reinvested in a primary residence in any EU Member State where that country has become the country of residence of the individual (if you are not resident there, it cannot be your main home).

For non residents 100% of the gain is taxable. The tax rate is 25% where the gain is made by a non resident individual or non resident company. There is no withholding tax system in Portugal on gains.

In both cases, residents or non residents, inflation relief is given (where the property has been owned for more than two years) and you can deduct suitable invoices for the last five years, plus deductible expenses in acquisition (stamp duty, notary and registry costs).

v. Wills and inheritance

It is advisable for clients owning a house in the Algarve to have a Portuguese will, even if they have one in the UK, as it makes the process easier for whoever will inherit the property.

A lawyer will advise fully on each client's circumstances and can carry out this procedure at the Notary.

The Inheritance Tax has been fully abolished for a spouse, children or parents inheriting property (both for residents and non residents).

Inheritance tax was replaced with Stamp Duty at a fixed rate of 10%.

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