

# Conveyance in Portugal

## *BUYING IN PORTUGAL - LEGAL GUIDE*

The following guide will help you to understand the process of buying a home in Portugal, explaining terminology you will encounter and giving indications of the obligations related to overseas home ownership.

### **No Permission Needed**

Generally, no special permission is required to buy a property in Portugal.

### **The Importance of a Portuguese Lawyer**

The Portuguese legal system is different to the one in Britain and Ireland. Our law office will verify and enquire on your behalf, since the whole process is just a little more complicated than the buying and conveyance a property in the UK or Ireland. Among other things, we will verify if the vendor has legal title to the property, if the property is free of any burdens and costs or mortgage and if the contractual documentation is just and reasonable and if the real estate agent has a good reputation.

**When prospective buyers decline to use a lawyer, problems can arise and they may find legal complications, affecting their ownership rights. For this reason we encourage you to get legal advice before buying.**

### **Checking it Out**

When instructing our law office to handle the purchase, you have the reassurance that all the important aspects will be covered, namely:

1. That the property title is verified;
2. If the person selling the property actually owns it;
3. Whether there any burdens on the property;
4. Verifying if the building licenses and permits are in order;
5. Checking the terms and conditions stipulated by the seller;
6. A full report on the property and on the tax and legal implications of the business, compiled for you to analyse, before signing the Promissory Contracts.

After the signing of the contracts we shall take care of:

1. Changing the title into your name.
2. Any fees and taxes to be paid.
3. The registration at the Local Land Registry Office to put the title in your name.

### **Fiscal / Tax Representative**

According the Portuguese law, any non Portuguese and non resident purchaser of a property in Portugal, must appoint a Fiscal Representative. The Fiscal Representative will request your Portuguese Tax Number (essential for the purchase) and manage any taxation liabilities that you may have in Portugal on an ongoing basis. This covers things such as Council Tax, Income Tax in the event of rentals and Capital Gains Tax in the event of future sale.

**Our law office will take care of the fiscal representation for you.**

### **Unfamiliar Terms**

ESCRITURA / TÍTULO DE COMPRA E VENDA - The Title Deed conveys ownership as well as describing the property in detail. In case of a plot of land, the "*Escritura / Título de Compra e Venda*" is only signed when you are satisfied with the preliminary enquiries and arrangements before the final payment has been made.

In case of an apartment, townhouse or villa the "*Escritura / Título de Compra e Venda*" is only signed after you have inspected the property and when the Local Authority has issued the Habitation Licence.

You will either attend the signing in person or grant your lawyer a Power of Attorney to attend and sign on your behalf. The "*Escritura / Título de Compra e Venda*" is signed in the presence of a "Notário" (notary) and now, more recently, since 2008, it can be done by the Land Registrar.

NOTÁRIO - The public official is present to officially certify that the title deeds have been exchanged and understood by the concerned parties. After signing, the "notário" witnesses' payment or acknowledges that the payment has been made, this procedure is stated in the title deed. The notary is completely impartial and offers no advice.

## **Registering Your Property**

After signing the “*Escritura / Título de Compra e Venda*”, our office staff will go to the Local Land Registry for registration and payment of registration fees. The registration process can take several weeks.

## **Service called “Casa Pronta”**

The Land Registrar has now the powers of the notary, through the process called “Casa Pronta”. Here, the purchase and sale will happen, the title deed and registry will be done simultaneously.

## **The Name on the Deeds**

You should decide whose name is going to be registered as the final owner of the property before contract are signed as there could be tax implications if you decide to change this between the signing the contract and the “*Escritura / Título de Compra e Venda*”. Inheritance tax and change of ownership taxes and fees may be levied when on future occasion your property changes ownership.

It is therefore advisable to take this into account during the purchase process. Our law Office can advise you with these decisions.

## **Moneys transfer to Portugal**

There are no restrictions in transferring money in or out of Portugal.

We can help you to open a bank account in Portugal. In the meantime, any transfers associated with the purchase can be remitted to the law office Client's Account.

## **Living and Working In Portugal**

Should you decide to live or work in Portugal you must apply for a Residency Permit and various business licences. You may have to consider matters such as importing a car, furniture, or pet, as well as payment of pension, National Insurance and other related matters.

In this respects, it is wise to check all the tax implications and planning the efficient way of moving to Portugal. Please feel free to ask for advice on this field as well.

## Ongoing Commitments and Obligations

When you spend less than 6 months per year in Portugal, you are regarded as non-resident. Therefore, you are obliged to appoint a Fiscal Representative, in Portugal, who will take care of paying your local annual property taxes (Council Tax) and paying any applicable taxes on income resulting from activities in Portugal, including the income resulting from letting your property.

Insure your property and its content. Additional liability insurance needs to be covered if the property is to be let. Pay car taxes and insurance when applicable.

When you spend more than six months, per year in Portugal, you are regarded as a permanent resident and are expected to present tax return declarations, pay taxes and social security contributions. Many of the above points are requirements and income tax will be assessed on your worldwide income.

## In the event of death

Jointly owned property does not automatically pass in full to the surviving spouse or partner, but is dealt with according to the wishes expressed in a will, or according to the rules relating to intestacy. Although not compulsory it is much cheaper, quicker, more straightforward and with fiscal advantages to make a will in Portugal. Please feel free to ask us a quote for that service.

## PROPERTY TRANSFER TAX ("IMT")

IMT is a one-off tax payment which must be made at any local Tax Office prior to the Title Deed at the local Notary. The local Tax Office will issue a receipt as confirmation of the payment to be presented at the Public Notary at time of the Title Deed:

The transfer Tax is calculated as follows:

### a) For a Holiday Home

| PURCHASE PRICE (all amounts in €'s) | % OF TAX | DEDUCTION |
|-------------------------------------|----------|-----------|
| Until 92.407                        | 1        | 0         |
| More than 92.407 until 126.403      | 2%       | 924,07    |
| More than 126.403 until 172.348     | 5%       | 4.716,16  |
| More than 172.348 until 287.213     | 7%       | 8.163,12  |
| More than 287.213 until 550.836     | 8%       | 11.035,25 |
| Superior to 550.836                 | 6%       |           |

The following is an example on how to assets the amount of IMT to be paid on a 100,000€ property:

$$100,000\text{€} \times 2\% = 2.000 - 924,07\text{€} = 1075,93\text{€} \text{ (IMT to be paid)}$$

b) For Permanent Habitation

| PURCHASE PRICE (all amounts in €'s) | % OF TAX | DEDUCTION |
|-------------------------------------|----------|-----------|
| Until 92.407                        | 0        | 0         |
| More than 92.407 until 126.403      | 2%       | 1.848,14  |
| More than 126.403 until 172.348     | 5%       | 5.640,23  |
| More than 172.348 until 287.213     | 7%       | 9.087,19  |
| More than 287.213 until 574.323     | 8%       | 11.959,32 |
| Superior to 574.323                 | 6%       |           |

The following is an example on how to assets the amount of IMT to be paid on a 100,000€ property:

$$100,000\text{€} \times 2\% = 2.000 - 1.848,14 = 151,86\text{€} \text{ (IMT to be paid)}$$

**Further Recommendations You Should Consider:**

- Review your will.
- Give an Enduring Power of Attorney to a member of your family or a lawyer to deal with your affairs should you become incapable.
- Nominate a Fiscal Representative to receive your tax and fiscal correspondence if you are not registered as a permanent resident in Portugal.
- Insure your property, contents and health.
- Have all service charges transferred to your name, open a bank account and register for taxes.

**Law Office Legal Steps on Conveyance**

**Our office provides the following services, regarding the conveyance process in Portugal:**

- 1. Instructions Confirmation;*
- 2. Business Terms Letter;*
- 3. Property enquiries and contract negotiations;*
- 4. Legal & Tax Report - with the legal and tax information regarding the business;*
- 5. Title Deed - Completion;*
- 6. Land Registry;*
- 7. Finance Department Registry;*
- 8. IMI (Municipal Tax) Forms;*
- 9. Utility Bills (water, gas, electricity, telephone, etc);*
- 10. Documentation Delivery (File);*
- 11. Final Report on Completion;*
- 12. Portuguese Wills.*

**LEGAL SALES GUIDE**  
**- PORTUGAL -**

This guide is intended to give just general information of what you can expect, when you decide to sell property you own in Portugal:

**STEP ONE**

Once you have decided the sales price and found a buyer for your property, you will let us have the particulars.

**STEP TWO**

We'll send you our Terms of Business. At the same time, we'll ask you to confirm yours and your property's details.

**STEP THREE**

We'll then gather all the relevant papers and prepare the contract or the promissory contract, which we'll be sent to the buyer/buyer's lawyer. For this purpose we will need you to let us have the following documents:

- Copy of the Title Deed for the Property;
- Copy of the 4 years IMI (local rates) bills;
- Copy of electricity, water, gas and telephone bills;
- Copy of the latest bill for the Owners Community costs (Condominium charges);
- Copy/Original of the Habitation Certificate;
- Originals/Copies of booklet and land registry certificate.

**STEP FOUR**

The buyer's lawyer will check the paperwork and once we have agreed the terms and conditions of the sale and the completion date, we'll send you the promissory contract for your examination.

**STEP FIVE**

We will exchange contracts with the buyer's lawyer, in your behalf, if you ask us to do so. The deposit, in Portugal, can be agreed between 10% and 30% of the purchase price. Others conditions can be agreed between you and the buyer or even between the lawyers of the two parties, with the consent of their clients.

## **STEP SIX**

We will arrange for the signature of the Title Deed in front of the Portuguese authorities, receive the payment of the balance of the purchase price from the buyer and release the keys of the property. We can cancel any electricity, water, telephone or gas contracts.

## **STEP SEVEN**

You will be required to present a Tax return Declaration and pay Capital Gains Tax.

A Capital Gain is a profit obtained from the high difference between the sales price of the property (realization value) and the initial purchase price of the property (acquisition value).

In order to determine the capital gain obtained with the sale of a property, specific information must be taken into account, namely the selling price, purchase price, deductible expenditures and indexation relief.

Non-Resident Individuals are taxed at a flat rate of 28% on the total Capital Gain. Non -resident companies are taxed at a flat rate of 25%.

Resident Individuals will be taxed on 50% of the Capital Gain, at the corresponding IRS tax bracket (which is up to 48%). The resident companies can be taxed in a flat rate between 17% and 23%.

### **► Exception – Urban Properties for habitation:**

- is made to properties acquired by individuals before 1<sup>st</sup> of January of 1989, which are tax exempt;
- and in the situations where there is reinvestment of the sale value in another permanent residence by Portuguese tax residents, in Portugal or in other European country.