

Buying, owning / using, & selling property overseas

BUYING

A dream?

Owning a property abroad has long been the dream of millions of Britons, a dream which has already been realised by very many, although it is a sad truth that the dream has become a nightmare for some.

This is partly as a result of the current world wide economic crisis and also due to problems of a local nature, such as illegal building licences, corruption, poor build quality, late delivery and, sad to say, a great many rogues in the businesses of developing and marketing property.



Why buy?

There are several reasons why people buy an overseas property.

A holiday home in the sun is, perhaps, the most obvious and many buyers are attracted by the possibility of getting to their apartment or villa in Southern Spain within four hours of closing their front door in the UK. This has meant that a weekend in the sunshine was a realistic part of life aided, as it was, by the increasing number of budget airlines whose competitiveness has driven the cost of flights ever downwards.

Others will buy with a view to combining occasional personal use **with generating an income by renting the property out**. However, all too often, they would be seduced by the totally unrealistic assurances of the thousands of slick 'commission-earning' sales people operating along the Spanish Costas, who would over-sell the potential rental income.

These were the same people who would convince the unwary that their property would appreciate in value by about 40% during the eighteen months or so that it would take to build their apartment complex. "That being the case" they would say, "why not buy three or four off plan units? Then you can sell all except one just before completion and the profit you would make on those would virtually pay for the one you keep".

That was a dangerous game to play even when the market was booming and, sadly, thousands of people have been ruined financially as a result. The only consolation is that the collapse of the property market in Southern Spain, which preceded the collapse everywhere else for a variety of reasons, has driven almost all of those smart operators out of business.

Then, there are those who I would call the **professional investors**. They are usually looking for a combination of capital appreciation and a good rental return. In their case, capital growth is based on normal market forces rather than the speculative nature of buying on an early off plan phase with a view to "flipping" before completion, as

described above. Usually, these investors will have done their home-work and, in many cases, they will make their decisions based on the facts and figures rather than visiting the site first. Indeed, some may never even see the investments they have bought.

Finally, there are those who buy abroad to **relocate**. This type of buyer can be subdivided into those moving abroad with their families in order to work overseas and those who have decided that retirement in the sun is a better option than retirement in the UK. Sadly, many of them are now suffering severe financial hardship due to the collapse of the pound against the euro.

First decide the category

Having identified the different reasons for buying an overseas property, my first piece of advice is to decide which category you fall into! Now that may sound like stating the obvious but the fact is that, all too often, buyers tend to confuse what it is they are trying to achieve. For instance, they want a holiday home but they expect the property to deliver a high rental return as well. Such a combination is unlikely to happen and it is far better to think of the property as just a holiday home. If you can arrange a few weeks rental to friends and family or through a reputable local letting agency, that's fine but don't look for an income which will do any more than cover the overheads of your property. Anything more than this should be regarded as a bonus.

Buying 'Off-Plan'

If it's short-term capital growth you are after, be careful! Buying off plan to make a profit during construction is far too speculative and could lead to a financial nightmare. Buying a completed property for capital gain may well work, but you need to carry out detailed research first. It's no use buying because someone has said that values are bound to go up. That may (still?) be so, but you need to see properly substantiated facts to support the argument. You also need to accept that it may take years to realise a worthwhile profit.

The same applies to income. Beware of guaranteed rental returns! Any developer offering a guarantee of 5% for each of two years has probably just loaded the purchase price by 10% or even more! If you are thinking of buying for a rental guarantee, find out what is supporting the offer. If it is under-written by a contract between the developer and a reputable tour operator, that should be fine and the same applies if you can establish that the tourist demands on your preferred location exceed hotel and other accommodation by a considerable amount. Otherwise, be wary for, even if the price was not loaded, the developer may decide that he cannot afford to honour the commitment and there may nothing you can do about it without incurring considerable expense and a great deal of time.

Matching your objectives

So, having decided your objective, consider where it is best achieved, particularly if it is personal use you are after. For instance, a holiday home in the sun is not much use if you can realistically use it for only three or four months of the year. A few years ago, people were snapping up holiday homes along the Black Sea coast of Bulgaria simply because they were cheap and, at that time, Bulgaria was "all the rage"! Well, of course they were cheap, for a time at least, because it was a new market. But ... that coast has about a third of the sunshine of Southern Spain, the infrastructure ranges from poor to non-existent, most of the relatively few facilities and amenities are closed out of season, budget flights are few and far between, flights are twice the time of Western Europe and much of the new building was decidedly shoddy!

Beware

This illustrates two points – first, that there are always reasons why properties in a particular location appears cheap when compared with other locations and second, that when buying overseas, you should not allow your heart to rule your head. It is a sad but true fact that numerous owners of foreign property allowed themselves to be seduced by the media, high pressure sales people and seemingly cheap prices. They fail to carry out any proper research and end up bitterly regretting their irrational decisions.

See the last section: **Building Licences – when are they legal?**

Moving abroad to work requires a great deal of consideration, especially if a young family is involved and especially during the present economic crisis. You need to be very sure of your immediate employment and confident that it will last. Bear in mind that employers having to make redundancies will not only work on the “last in, first out” rule but will almost certainly discriminate against foreigners as well, whether or not that may be illegal. Even for a single person to move and hope to find work speculatively is far too risky these days.

Critical factors

Other factors to consider are knowledge of the language if not an English speaking country, work prospects for the spouse or partner, the education system and location of schools if children are involved, the cost of living, leisure amenities and the transport infrastructure. Also, expert advice should be taken at the outset, not as a last minute emergency measure. This is especially true of countries such as the USA, Canada, Australia and New Zealand for all have highly complex and, in some cases, restrictive immigration laws which may make the whole process hard, even without the language barrier. There are companies in the UK specialising in emigration to all four of these countries, as well as expert advice at the embassies.

It can take time!

Many people who consider themselves to be professional investors are often remarkably naive! Again, they are frequently taken in by the media and the sales pitch. For example, buying in a new or emerging market is fine if done for the right reasons – and that includes Bulgaria! However, most of these markets are highly unlikely to deliver a worthwhile rental income for some years as a reliable rental market depends on an established or rapidly increasing tourist trade and easily obtainable and affordable flights. These, in turn, require a complete infrastructure, including access to international airports, good transport links and a whole range of commercial and leisure facilities.

Buying through a SIPP

How to buy is another factor to be considered. Many investors are now attracted by the increasing number of property developments which have been approved by pensions administrators for purchase through a Self Invested Personal Pension Scheme, or SIPP. It must be remembered, however, that if buying in this way, no personal use will be allowed at all, unless the owner pays the same market rental as anyone else. There are also some excellent financing packages available and, indeed, these are becoming increasingly prevalent as developers recognise the need to find new ways to attract buyers during these difficult times. Mortgages of 90% can now be found, as can cash back schemes, deposits funded by the developer to enable a buyer to pay no more than £1000 until completion and many more.

Read the small print

With any of these financing schemes it is essential to read the small print several times and, if still satisfied, then take independent advice from an expert. Make sure you also look for the down-side, for example, how a major movement in currency exchange rates may affect a finance arrangement. Just as important is to ensure that you have an exit strategy, an essential aspect of property investment. Finally – and this applies to any buyer of any property for any reason, remember the old maxim – “If it looks too good to be true, it almost certainly is too good to be true”!

Who do you buy through & get advice from?

Now we come to the really important part for buyers. The above questions are inter-linked and the first is the more difficult to answer. Whilst the recession has drastically reduced the numbers, there are still thousands of property developers, agents and marketing companies out there, all hoping to relieve you of your hard earned money! A high proportion of them are totally honest and professional and do a good job.

However, at the outset, it can be very difficult to distinguish these from the rogue element, at least until it is too late. There is also another factor to consider, this being a direct result of the financial problems faced by many companies. These may have operated for years with an unblemished ethical record, only to start cutting corners when their cash flow dries up. That can involve developers down-grading the specification and quality, agents failing to pass on deposits and a whole host of other things. Caveat Emptor – Buyer Beware!

The deposit!

One thing to check at an early stage, even before choosing a property, is the process used for the payment of the deposit. Buying a new property involves the payment of a deposit at the time the contract is signed. Normally, this will be between 20% and 40% of the purchase price and a buyer (or lawyer) should establish who receives the deposit, when, and what sort of account it is paid into.

If it is paid into an escrow account (similar to a client account) and will only be released from that account at the correct time, that is fine. Beware of paying into a lawyer's escrow account, only for the lawyer to pass it straight on to his developer client. If a developer is dependent on deposits to finance construction, that immediately spells danger!

Deposits in respect of new and resale properties may be received by agents and that may be acceptable but first, establish what safeguards are in place and at what stage the money is to be passed on, then, make sure that it has been! There is a current situation where it is alleged that an agent retained deposits for ten months after they should have been paid to the developer and the agent is now in liquidation. In that situation, there is every chance of the buyers concerned losing their deposits.

Professional support

What is of paramount importance with any overseas property purchase is to have the advice and services of a good independent lawyer and with no disrespect to the UK legal profession, Not your local high street solicitor who deals with the conveyances of local properties! Ideally, go to a UK based law firm which either employs its own team of lawyers, each of whom specialises in one or more specific countries, or which has associates and reciprocal arrangements with leading law firms in other countries.

Make sure you find first class legal advice and services based on an intimate knowledge of the laws and customs of the country concerned and, more than likely, knowledge of individual developers if you are buying a new property.

These days, some developers are packaging the legalities of the purchase and including the legal fees in the overall purchase price. This may be tempting and there may be no reason not to take advantage of such an arrangement. However, it is difficult to see how the lawyers concerned can be independent of the developer and complete independence is the only way to ensure that your interests will be fully protected. At the very least, you should obtain a letter (not email) on the lawyer's letterhead confirming that they are independent of the developer.

The same applies if buying a resale property. You need to know that a lawyer you are introduced to by the owner is not acting for both parties! France may be an exception to this as the notaire is duty bound to protect the interests of both parties, but bear in mind that a notaire may be slightly influenced by the fact that he plays golf twice a week with the French vendor of the property!

The complete costs!

Another essential aspect of your purchase is to obtain details of all the one-off purchase costs and realistic projections of the outgoings. Needless to say, this information should

be obtained before you commit yourself! In most countries, the equivalent of stamp duty is payable and with other incidental expenses, the total purchase costs may exceed

10% of the purchase price although, in some countries, they are much less than this. If you are buying in any kind of residential complex, there will be a community charge to pay and you also need to know about any local, regional or national taxes for which you will be liable and any other outgoings, including those relating to utilities.

You should also make sure that you have full details of the other relevant taxes in the country of your purchase and these will vary considerably. The ones to consider especially are tax on rental income, capital gains tax and inheritance tax. Others will apply if working abroad whilst, if retiring, you need to know of any benefits which cannot be transferred abroad. Succession laws vary and can be very complex and it is likely that your lawyer will advise you to make a will in the country of your purchase to cover that asset. Most people forget that such a will needs to be linked in with your UK will!

Tax

If you are buying for investment or holidays, you will continue to be registered in the UK for tax purposes. In this case, don't be fooled into thinking that, because tax on rental income or capital gains is less than in the UK – it may even be zero – you will save yourself a large tax bill! If you pay a lower rate of tax in the overseas country, you will still be required to pay the difference in the UK. There are double taxation agreements between the UK and most countries now, but check that as well for if you are buying in a country without one, you will pay the full rate of tax in both countries! You also need to know of any restrictions on taking currency out of the overseas country – in effect repatriating your profits. To find out later that there are restrictions could be disastrous!

Other help and advice

The final piece of advice when buying is to make use of the many other specialist services available. These include foreign currency mortgages, currency exchange and transfer, which may save you thousands of pounds by not using your high street bank, international tax advice, buildings and contents insurance, pensions services and company and trust advice.

OWNING

Now you're the owner

Now that you have bought your property, here is some advice for you as the owner. **First**, pay all taxes and outgoings when they are due. Don't try to get away with anything as, apart from the moral issue, you should know that HMRC is in constant communication with the tax authorities in many other countries and there are also regulations requiring details of overseas bank accounts to be shared.

There are many UK owners of overseas properties who will now be regretting that they did not declare their rental income in the proper way years ago. If you are using the property commercially, it may be worth appointing a Fiscal Representative, who will ensure that all the financial aspects of your ownership are in order and will arrange for the correct payments to be made at the right times. An expatriate retired accountant or bank worker can probably be found and will charge a modest annual fee for this service.

Secondly, do whatever you can to integrate. If you are living in a foreign language country, whether working or retired, make an effort to learn the language. That is what we expect of UK immigrants, so why should it be any different in reverse? Cliques of UK expatriates tend not to be popular, apart from which you will get far more out of living abroad by being able to converse with local people than otherwise.

There are also many practical advantages and I dare say that at least some living in Southern Spain, and complaining about the impact that the exchange rate has had on

their pensions, may have found themselves better off by finding some part time work to supplement their pensions. Had they been able to speak some Spanish!

Integrating also means contributing to the local economy. Nothing infuriates the French, in particular, more than a UK owner importing builders from the UK to carry out building work when they have all the necessary skills in the village. They get annoyed when people use workers from the next village, never mind another country! That apart, local people know the system, the materials and, quite probably, the property itself, so it is stupid, as well as insulting, not to use them.

The same applies if you are using a holiday home and bring over two weeks of supplies from the UK, thus rendering visits to the local supermarket unnecessary. That's hardly the way to ingratiate you with the local community! Think about the bars and restaurants too and use the locally owned and patronised ones. It will be far more fun and you are much more likely to become accepted.

SELLING

Valuing

Now, I come to advice for people wanting to sell, not at all easy in the current climate, I'm afraid. It's human nature that most people want and expect more for their property than is realistic, particularly in a "buyer's market", which it will continue to be in most countries for a year at least. So you need to start with reliable advice as to the value of the property and, ideally, this should not be from someone who may become involved in marketing the property for you.

Such people are likely to tell you what you want to hear, so that you instruct them in the sale, not what you should be hearing! If possible, find a chartered surveyor or the equivalent who carries out local mortgage valuations for banks and other lenders. That way, you will get professional and realistic advice and you need to be prepared to pay a modest fee for it.

Agents

Now you can instruct your agents. Choose the best local agent and by talking to local people, especially professional people, you should be able to identify who that is.

Establish the agent's marketing proposals and terms of business, but make it clear that you are not prepared to grant any form of exclusivity or sole agency arrangement other than locally. This is unless the agent can demonstrate that he or she has an existing working relationship with a reputable UK based international property marketing company.

Assuming that you have been able to obtain an independent valuation of the property, I would expect the agent to accept this and to advise you regarding the asking price, which should be rather higher than the valuation so as to allow room for negotiation. The wording is also important as the words "purchase price" may suggest that you are not prepared to consider offers whereas "guide price" or "offers around" indicate the opposite. In the current market, you need to give prospective buyers every encouragement to enter negotiations!

If the local agent does not have an appropriate overseas connection, make it clear that you will be instructing a suitable company yourself. This is important because you need to ensure that your property receives the widest possible exposure.

Many UK based companies promote overseas properties through a network of estate agents, financial advisers, accountants, solicitors and others and in some cases, such networks will extend to several countries in Europe, others in the Middle East and the USA, Canada, Australia, New Zealand and South Africa. They will also market direct to their own databases.

It may be appropriate for the UK company and the local agent to work together, in which case some agreement regarding the sharing of commission will need to be reached. Otherwise, they will, in effect, compete with each other and you will pay commission only to whichever introduces the buyer.

Patience

If you have made the correct choice of both local and international agents, I suggest that you look no further, at least for a reasonable period of, say, six months. Instructing several different agents of either category is unlikely to help your cause and can be counter productive, as it can confuse the public, lead to conflicting information, suggest desperation to sell and result in the agents themselves becoming disillusioned. It is better to make it clear to the agents that you expect regular reports on the marketing and results and intend to review the agency arrangements after the six months if there is no genuine interest by then.

You will, of course, be required to sign some form of mandate or agency agreement. Again make sure that you read the small print and understand exactly what you are committing yourself to. If you have any doubts, take advice from your lawyer, who you will need to instruct in any event.

Points to look out for in agreements and mandates include ...

- the rate of commission and when this is payable,
- any withdrawal fee payable if you terminate the arrangements,
- any attempt to impose sole selling rights or agency to which you have not agreed (some unethical UK estate agents will keep you committed to them for a specific period of time even if they have failed to sell the property, leaving the owner having to pay two commissions),
- any costs or expenses for which you will be liable, including details of any agreed marketing budget and
- any references to the agent reserving the right to introduce either you or the buyer to a lawyer, mortgage broker or lender or other intermediary, which may not be in your interests or those of the buyer and which may generate commission for the agent.

With regard to a marketing budget, you are entitled to expect – and, if you have chosen well, will get – a considerable amount of ongoing promotion of your property by your agents without incurring expense. However, you may be asked to consider, for example, a programme of advertising in a particular niche publication deemed to be appropriate to the property or a package of websites that, together, should attract potential buyers from many countries around the world. In the current market, these may well be worthwhile and you can always negotiate with the agent for a reduced commission to compensate or to have all or part of the expenditure deducted from the original commission figure.

Beware of agreeing to an advertising proposal, favoured by some international agencies, to promote the property in the UK national press at a committed cost running into thousands of pounds when the chances of finding your buyer this way are not likely to be at all good!

Buying property overseas is a potential minefield but one which can perfectly safely be negotiated if you follow certain simple basic rules. Rules that bare repeating:

- don't let your heart rule your head or be taken in by well trained sales people;
- don't take facts and figures at face value but always try to get them checked independently,
- don't forget that, if it looks too good to be true, it almost certainly is and, above all,
- always use the services of a reputable lawyer who you know to be independent of all other parties.

BUILDING LICENCES – WHEN ARE THEY LEGAL?

Valid building licences

For several years now, there has been a succession of high profile stories in the UK media about new developments in Spain being built without valid building licences. In many cases, these revelations have only come to light after the new owners, a high percentage of whom are British, have taken possession and had assumed that everything to do with the acquisition of their dream home was completely in order and above board. Then, out of the blue, they hear that they are living on an illegal development which may have to be demolished. In some extreme cases, demolition has taken place.

The highest profile cases have occurred along the Costa del Sol, in particular the area controlled by the Town Hall of Marbella. However, the problem is actually widespread and has manifested itself in numerous town hall areas of all the coasts of South and South East Spain, as well as in the North West, the Balearics and the Canary Islands, especially Tenerife. Indeed, the Madrid central government has estimated that as many as 100,000 new or recently built properties are illegal and could be demolished and some 20,000 of these have demolition orders hanging over them.

Corruption is said to be at the root of virtually all these problems. It is claimed that this has been an integral and, until comparatively recently, acceptable part of the planning process in Spain for as long as most people can remember.

The Spanish System

The system in Spain is that any building licence issued by a town hall is only valid when it has been endorsed by the regional government or junta. Marbella and the Costa del Sol, for instance, are within the region of Andalucia and are subject to the Junta de Andalucia, which is based in the city of Seville.

It appears that in hundreds of cases town halls issued licences but did not get them endorsed by their respective juntas.

Each junta must have a General Plan of its area and this zones all the land for different purposes. Of the three types of zoning, one prohibits any building altogether, one limits building to agricultural use, although a single home on a plot of 10,000 square metres or more may be accepted and only the third, Suelo Urbano, will allow normal development.

On land zoned for development, there will usually be a maximum permitted density based on a percentage of the land area and a maximum height or number of stories. There may also be other restrictions as a result of the town hall's own local plan, such as land designated for sports fields.

The most common and flagrant breach of planning regulations has occurred along the coasts where, since 1988, it has been illegal to build within 100 metres of the beach. It is alleged that tens of thousands of properties, including numerous hotels, breach this regulation alone.



Avoiding the pain

The sad fact is that the great majority of British buyers who now face the prospect of seeing their homes demolished, or who have already suffered that fate, could probably have avoided such a situation had they had good legal advice from a lawyer who was totally independent of all parties.

The usual story is a three day inspection visit, partly or wholly paid for by the developer or Spanish agent, with prospective clients well looked after from the moment they were met at the airport, this creating a good rapport and element of trust, they chose their plot or apartment and were then introduced to a lawyer ten minutes from the developer's office, having been assured that the lawyer was independent.

The truth is that the lawyer, if not actually related to the developer, certainly recognised "which side his bread was buttered" and, more often than not, would ensure that nothing was done to prevent the sale from going ahead. If this meant turning a blind eye to an invalid licence or illegal development, so be it. The fact is that whilst there are many fine professional Spanish law firms operating along the coasts, they were greatly out-numbered by others which were more interested in maximising their income than looking after their clients' interests. Reference has been made elsewhere to the need for totally independent legal services on all occasions and this is emphasised here again. It is stupid to cut corners and become one of the masses of British buyers who "left their brains behind at the airport" and it is well worth paying a little extra – very little in the context of the investment involved – to have the combination of a first class local independent Spanish lawyer who belongs to a UK based international law firm. That way, accountability remains in the UK and it does not get any better than that.

Support from the EU

The portal "Your Europe" has practical information on your rights and opportunities in the European Union and its Internal Market and advice on how to exercise these rights in practice -

http://ec.europa.eu/youreurope/index_en.html

Information on the transitional measures specific to non-nationals in cases of the acquisition of secondary residences by nationals of Member States not having their main place of residence in that country ... can be found at -

http://ec.europa.eu/youreurope/nav/en/citizens/services/eu-guide/trans-measures/index_en.html

There are links to national authorities (National public administration portals) at - http://europa.eu/abc/european_countries/index_en.htm

... and elsewhere!

Finally, it should not be assumed that problems such as those described only occur in Spain. The headlong rush by land owners and developers in some of the so called emerging markets, some of which have finished emerging and are now rapidly disappearing, to emulate what once seemed to be the unqualified success of the Spanish development industry has led to similar situations elsewhere. Notably, there have been problems in Bulgaria within national parks, at ski resorts and along the Black Sea although it has to be said that the response of the Bulgarian authorities appears to have been considerably more speedy and robust than that of their Spanish counterparts on occasions.

It just goes to show that the old warning **Caveat Emptor – Buyer beware** – should never be ignored and those who do so, and then get themselves into trouble, have only themselves to blame.

A very significant part of this guide, and the advice contained within, was provided by Peter Veitch FRICS FNAEA, who is the Managing Director of Investabroad Properties Limited and can be contacted at Investabroad Properties Ltd, Lonsdale House, 52 Blucher Street, Birmingham B1 1QU. Telephone 0121 616 5108. email pv@investabroadproperties.com.

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