

# Maria de Castro's Top 100

## Spain Legal Tips

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**Written by Maria de Castro**

Lawyer, Costaluz Lawyers

[www.costaluzlawyers.es](http://www.costaluzlawyers.es)



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## :: About Maria



Maria Luisa de Castro is the director of the Costaluz Lawyers

([www.costaluzlawyers.es](http://www.costaluzlawyers.es)) team: Maria was born in 1973, is married and has two children: Teresa (2) and Jacobo (4 months). She went to Law School at the University of Seville (from 1990 to 1995) and started her doctoral programme in Constitutional Law (1995-1997), then started to work as a Lawyer.

In 2000 she visited the United States for the first time, to work with David Coolidge in an interdisciplinary programme in Family Law in Washington DC, (she still belongs to two professional fellowships there: The Witherspoon Fellowship and The Blackstone Fellowship). She stayed in Washington till August 2001 when, about to be hired and start working under this wonderful mentor, David was diagnosed of a brain cancer and died in 9 months.

After this painful loss (he was a mentor, a colleague and a friend) and back in Spain, she restarted her activity as a Lawyer in the Law Firm founded by her father (Jaime Castro), where he, her two brothers (Jaime and Ignacio de Castro) and associated lawyers work at the present moment. [www.decastro.es](http://www.decastro.es). This law firm, which has an extended experience in litigation since its founding in 1988, is hired by her as her litigation team (they do civil, commercial, company, administrative, family and criminal work law and litigation). This allows her to devote 100% of her time to an individualized clients' legal information and service and to legal writing for English speaking people in Spain.

She did her MA at the University of Navarre from 2002 to 2004. In September of the year 2004, she got married in Grazaalema.

Her husband, Luis is a video editor and right now is 100% involved in the raising and education of the children. Although starting in the Family Law field she is rapidly becoming a specialist in legal assistance to English speaking people in Spain, where she has found a challenging emptiness to be filled. She is passionate about filling that gap.

For the past couple of years Maria has been actively helping people day in day out on the Eye on Spain website. She has built up a phenomenal reputation for herself and her team and is highly respected by the Eye on Spain community.

Maria is a real asset to Eye on Spain in terms of the help and advice that she gives to everyone on the forum and via her blog. Her assistance has helped hundreds of our members in the toughest of situations and we cannot thank her enough for her valuable contributions.

The “top tips” in the ebook are taken directly from her blog on Eye on Spain which you can read at <http://www.eyeonspain.com/blogs/costaluz.aspx>

You can contact Maria and her wonderful team at:

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## **:: Legal Tip 1. How to reduce your mortgage instalments**

Banks are not interested in houses and prefer them to be paid by their clients with its corresponding interests... that is just out of common sense. Therefore before handing the keys back to the bank you can pay a visit and see if they are open to renegotiate the conditions of the mortgage loan. A good negotiation will result for sure.

In April 2008 it has been passed a Decree by which mortgage time extensions are free of charge, therefore, by extending the timeframe of mortgage repayments you can have reduced monthly mortgage instalments.

Also, it is interesting to know that there are new insurance policies which cover mortgage payments during a certain period if the payer becomes unemployed. There are similar policies for other events such as incapacity or death.

## **:: Legal Tip 2. The legal use of other people's stuff on the Internet. Creative Commons**

Ours vs. mine

Every text, song, picture or video...maker has ownership's rights. If an author does not explicitly say anything on the contrary, ownership's rights are his during all his life and for 70 years after his death.

This means that just the author or his heirs can copy, reproduce, interpret, make by-works or exhibit it publicly. If someone wants to use them, needs to ask for permission. The only exception is the right to quote.

A creator can also renounce his copyrights and transmit them to public domain.

Another possibility is the “copy left” or the “creative commons” (named under abbreviations: CC). They can be copy and distributed by other users with the marginal notes decided by the author.

These are the possible limits to copy and distribution of those works:

- 'Attribution': It requires quoting the author of the work.
- 'Non-commercial': It requires the copier to not obtain any financial benefit with it.
- 'No Derivative Works': It cannot be used in a derivative version.
- 'Share Alike': All derived Works needs to be distributed with same license as original.

These can be mixed among them.

For more information, you can enter the site Creative Commons,

<http://creativecommons.org/>

For instance [Flickr.com](http://www.flickr.com/) has an image finder who will obtain just those ones with CC licence.

[Stock.xchng](http://www.stock.xchng.com/) also allows the storage of open-use licensed pictures.

Social Nets like [MySpace](http://www.myspace.com/) has lots of music with CC license.

For the searching of these CC works you can use [Firefox](http://www.mozilla.com/) or [Chrome](http://www.google.com/) under "predetermined search". Always paying attention to the limits established by the author and specified under the icons of Creative Commons.

### **:: Legal Tip 3. For landlords**

If you rent your property out, use a product to submit the contract to arbitration (no courts) and take out insurance for unpaid rents.

That will take all the stress out regarding rentals in Spain. I can give to you my Lawyer's word.

#### **:: Legal Tip 4. European Diploma Supplement**

European Diploma Supplement.... is a document which facilitates the international academic mobility of University diploma holders and their integration in the European Work arena.

It provides information on the University diploma which has been obtained in a very comprehensible and easily country-to-country comparable way. This makes it easier to access a job or to do complementary studies abroad.

For more official information:

[http://ec.europa.eu/education/policies/rec\\_qual/recognition/diploma\\_en.html](http://ec.europa.eu/education/policies/rec_qual/recognition/diploma_en.html)

#### **:: Legal Tip 5. Spanish Data Protection Agency**

There is some information in English on the Spanish Data Protection Agency web, more to come, you can make your contribution there:

[https://www.agpd.es/portalweb/english\\_resources/index-iden-idphp.php](https://www.agpd.es/portalweb/english_resources/index-iden-idphp.php)

[https://www.agpd.es/portalweb/canaldocumentacion/publicaciones/common/pdfs/AE\\_PD\\_en.pdf](https://www.agpd.es/portalweb/canaldocumentacion/publicaciones/common/pdfs/AE_PD_en.pdf)

## **:: Legal Tip 6. SPECIAL TIP. The Spanish Constitutional text**

Spain has a written constitution dated 1978.

[http://en.wikisource.org/wiki/Spanish\\_Constitution\\_of\\_1978](http://en.wikisource.org/wiki/Spanish_Constitution_of_1978)

For those of you who enjoy legal reading and thinking.

Or to use it if you want to fall asleep on it during a night of insomnia.... even though I can offer tougher legal texts for that purpose! Please feel free to ask and I will provide electronic versions

## **:: Legal Tip 7. Maternity benefits in English**

Related and explained at the Spanish Migrations and Work National Department's website. You can find full official information in ENGLISH there.

[http://www.seg-social.es/Internet\\_6/Trabajadores/PrestacionesPension10935/Maternidad/index.htm?sUserText=](http://www.seg-social.es/Internet_6/Trabajadores/PrestacionesPension10935/Maternidad/index.htm?sUserText=)

So good the Spanish government has more and more info available in other languages too.

Let's keep moving ahead!

## **:: Legal Tip 8. Spanish Nationality new possibilities**

I know that you all are very proud of your current nationality.... and I think that is the way to be... within a civilized frame...but just in case you have any friend who was their son/ daughter or grandson/granddaughter of a Spanish National....

Next December 28th (Innocent Day... kind of April fools day in the UK in the secular celebration) begins a 2 years period for these people to apply for Spanish nationality according to Additional Provision number 7 of Law 52/2007.

It is not a joke or a prank!

### **:: Legal Tip 9. Am I an Autonomo?**

A self-employed or autonomous worker is one who habitually, personally and directly performs a profit-driven activity, without an employment contract and may use the paid service of other people, whether or not the owner of an individual or family company.

Among others: Foreign self-employed workers who reside and legally conduct their activity in Spanish territory.

More official information in English here:

[http://www.seg-social.es/Internet\\_6/Trabajadores/Afiliacion/RegimenesQuieneslos10548/RegimenEspecialdeTr32825/index.htm](http://www.seg-social.es/Internet_6/Trabajadores/Afiliacion/RegimenesQuieneslos10548/RegimenEspecialdeTr32825/index.htm)

### **:: Legal Tip 10. Rental assistance programme for young people**

Young people aged 22 to 30 can get:

- €210 a month to pay their house rent for as long as four years.

You can save €2,520 a year on your rent, and a total €10,080 in four years.

- A €600 loan for your rent deposit.

This money must be returned when your rental contract ends or when you stop getting the assistance money.

- If you need a rental guarantee, €120 for bank charges.

This covers most of your initial rental costs. Altogether, you can save €930 in the first month, with the loan's €600, the €120 for the guarantee, and the €210 of the first monthly payment.

Information from the official web of the Housing department [alquilerjoven.es](http://www.alquilerjoven.es):

[http://www.alquilerjoven.es/04\\_INGLES/consiste.htm](http://www.alquilerjoven.es/04_INGLES/consiste.htm)

### **:: Legal Tip 11. Dependence Act: Elderly and Disabled**

Dependence Act, which was backed by businessmen, Trade Unions, associations for elderly and disabled people and by a big majority of policy parties, has created a new citizenship right in Spain: The right of dependent people (elderly and disabled) to receive state support. This Law establishes the system for autonomy and dependency care as the fourth pillar of the Welfare Estate in our country, together with Health, Education and pensions system, which were developed back in the 80's.

There are 1.125.000 dependent persons in Spain, this number will grow considerably during the next few years, according to demographic previsions.

So far, attention to dependent people was carried out by families and especially by women.

This new State system guarantees elderly and disabled people the access to the following social services:

- Prevention of dependency situations.
- Home care service.
- Remote care.
- Day and Night services
- Nursing homes.
- Other technical help.

Together with financial help (for helpers hiring, family care services, and individual assistance)

The system is also building a number of centres for elderly people care. Currently, the National Department for Work and Social Services is building centres for physically disabled in San Andres del Rabanedo (León), Alzheimer in Salamanca, Rare illness in Burgos and Strong Mental disorders in Valencia, among others.

Basic covers are financed by the National Government. The full financing of these programmes is shared between National and Regional Governments.

Beneficiaries will enjoy the covers according to their economic situation, within a balance and fair scheme and always present that no beneficiary will be excluded due to lack of finances.

Foreigners enjoy same rights as Spanish nationals if they have got five years of legal residency in Spain of which two of them need to be immediately preceding the application.

**Provision 14 of Law for rights and freedom of foreigners in Spain and for their social integration:**

Artículo 14. Right to Social Security and social services.

1. Foreign residents have all the rights to access benefits and services of the Social Security under same conditions as Spanish nationals.
2. Foreign residents have rights to social services and benefits, both general and basic and specific, under same conditions as Spanish nationals.
3. Foreigners, regardless of their administrative situation (residency), have rights to basic social services and benefits.

Information telephone is: 900 40 60 80

### **:: Legal Tip 12. Fundamental rights of foreigners in Spain**

I am starting a new series of legal tips so you can know and enjoy the broad field of rights and freedoms legally recognised to foreigners in Spain.

I am going through the provisions of the Immigration Act (2000).

Any questions or doubts...please let us know.

#### **Provision 3. Rights of foreigners and interpretation of Law.**

1. Foreigners have in Spain all the rights and freedoms exposed in Title I of the Spanish Constitution ([http://en.wikisource.org/wiki/Spanish\\_Constitution\\_of\\_1978](http://en.wikisource.org/wiki/Spanish_Constitution_of_1978)), according to the terms established in International treaties, in this Law and in those laws which regulate every of these rights. As a general interpretative criterion, it will be understood that foreigners exercise rights recognised in this Law in equal conditions to Spanish nationals.
2. Law rules regarding fundamental rights of foreigners will be interpreted according to the Universal Declaration of Human Rights (<http://www.un.org/Overview/rights.html>) and to International Treaties and Agreements on same matters enforceable in Spain. Different religious, cultural or ideological beliefs or practises cannot justify any act against these rules.

## **:: Legal Tip 13. Right of foreigners to documentation in Spain**

### **Provision 4. Right to documentation**

1. Foreigners in Spanish territory have a right and an obligation to keep their national identification documents issued by their country's authorities, together with the Spanish documentation that proves their situation in Spain.
2. Every foreigner with a resident visa for a period longer than six months will obtain the foreigner identification number, which they will have to apply for within one month from the entrance in Spain or since the authorisation is granted.
3. Foreigners won't be deprived of their personal documentation but in those cases and under the requisites established in this Act and in the Citizenship Protection Act of 1992.

## **:: Legal Tip 14. Right of foreigners to free movement in Spain**

Well.. it is not easy to do translations of legal texts... but I keep trying for your information.

### **Provision 5. Right to freedom of movement**

1. Foreigners in Spain have, according to Title II of this Act, the right to free movement within the Spanish territory and to choose their residency with no further limitations than those generally established by Treaties and Laws or those taken by the judicial authorities as a protective measure in a criminal or an extradition procedure which may have the foreigner as an accused party, a victim or a witness, or as a consequence of a final judicial decision.
2. Nevertheless, specific limitative measures can be taken in such situations as: state of exception or siege according to the Constitution or due to public safety reasons and in an exceptional, proportionate, justifiable and individual

basis by order of the Home secretary and according to the legal guarantees of the penalty system. These limitative measures, which can not last for more than the indispensable and proportionate time according to the circumstances that justify them, can consist of periodic appearance before the relevant authority or orders to walk away from borders or specific population centres.

What about this?

### **:: Legal Tip 15. Right of foreigners to vote in Spain**

#### **Provision 6. Public Participation**

1. Resident foreigners in Spain have right to vote in municipal elections reciprocally to rights of Spanish nationals in their home countries and according to what is established in Law and Treaties.
2. Resident foreigners, registered as inhabitants of a municipality, have all the rights of local nationals according to Municipal regulations. They can be heard in all the matters affecting them according to the pertinent regulations.
3. Local Councils will have an updated registration of foreigners inhabiting the municipality.
4. Public powers will facilitate foreigners the right to vote in their home countries.

### **:: Legal Tip 16. Freedoms of assembly, demonstration and association of foreigners in Spain**

#### **Provision 7. Freedom of foreigners to assembly and demonstrate in Spain.**

1. Foreigners will have the right to assembly under same Law requirements than Spanish nationals and they will be allowed to exercise it once they have authorisation for stays and residency in Spain.

2. Promoters of assembly or demonstration to be held in public transited areas will communicate it in advance to the relevant authorities, according to what is established in Assembly rights Act. This authority won't prohibit or modify it but in those cases established in the just mentioned Act.

#### **Provision 8. Freedom of association**

1. Every foreigner will have association rights under same Law requirements than Spanish nationals and they will be allowed to exercise it once they have authorisation for stays and residency in Spain.

### **:: Legal Tip 17. Right to education of foreigners in Spain**

#### **Provision 9. Right to education of foreigners in Spain**

1. Every minor age foreigner has same right and obligation to education as Spanish nationals, these rights comprises: right to free and compulsory basic education, right to obtain the corresponding qualifications and right to access the public system of grants and aids.
2. Public Administration will guarantee enough number of places for those who apply for pre-school education, which is voluntary.
3. Foreigners will have the right to access the non-compulsory education under same conditions as Spanish nationals. In particular, foreigners will have access to every education level, to obtain the corresponding qualifications and the right to access the public system of grants and aids.
4. Public powers will promote the necessary education for the better social integration; will full acknowledgment and respect to their cultural identity, for those resident foreigners who need it.
5. Resident foreigners can access teaching and research positions according to current legislation. Furthermore, they can create and direct education centres according to applicable law.

## **:: Legal Tip 18. Right to work and social security of foreigners in Spain**

### **Provision 10. Right to work and to Social Security**

1. Foreigners meeting legal requirements established in this Act and related regulations will have access to work as self-employed or as an employee. The same will have right to access to the Social Security system according to current legislation.
2. Resident foreigners can access work positions for the Public Administration in Spain in equal conditions as national citizens of European Union countries, according to the legal principles of equality, merit, ability and publicity. They can stand for public employment.

## **:: Legal Tip 19. Labour rights of foreigners in Spain**

### **Artículo 11. Labour rights of foreigners in Spain.**

1. Foreigners in Spain can be members of professional associations under same conditions of Spanish nationals. They just need to have authorisation for stay or residency permit.
2. They can also exercise their right to strike.

## **:: Legal Tip 20. Right to healthcare for foreigners in Spain**

### **Provision 12. Right to health care of foreigners in Spain**

1. Foreigners registered in the local census of the town they usually reside in, have right to healthcare under same conditions as Spanish nationals.

2. Foreigners being in Spain for a stay have right to public urgent health care if they contracted any serious illness or suffered an accident, whatever the cause might be. They will have right to the continuity of that health care till they are discharged.
3. Minor age foreigners being in Spain for a stay have right to healthcare under same conditions as Spanish nationals.
4. Foreigner pregnant women being in Spain for a stay have right to healthcare during the pregnancy, delivery and post partum.

### **:: Legal Tip 21. Am I being overcharged by the Community of owners?**

The share quota fee in the Community of Owners is, according to provision 5 of the Horizontal Property Act, fixed:

- In the Horizontal Division Notary deeds (which must be at your disposal)
- By agreement of all the existing owners.
- By arbitration or Court decision.

The base for calculation of this is composed by several factors as:

- Net usable area of every apartment, in relation to the whole development.
- Interior or exterior location of the apartment within the building.
- Use that presumably and reasonably the owner is expected to make of the communal elements and services.

### **:: Legal Tip 22. Can my landlord increase my rent... suddenly?**

Establishment of rent amounts is on a free basis.

The periodic legal increase of the rent depends on the kind of contract that you have.

For home rentals, there is a maximum during the first five years which is the IPC (Indice de Precios de Consumo: CPI in English) and there is freedom of rent pricing once those years have passed.

No maximums are legally set for non-home rentals or seasonal rentals.

The increase of rent price cannot be sudden and random.

### **:: Legal tip 23. Right to housing benefits for foreigners in Spain**

#### **Provision 13. Right to housing aids for foreigners in Spain**

Resident foreigners have right to access the public system of housing aids under same conditions of Spanish nationals.

### **:: Legal Tip 24. Rights of foreigners to Social Security and social services in Spain**

#### **Article 14. Right to Social Security and social services.**

1. Foreign residents have rights to access the benefits and social security services under the same conditions of Spaniards.
2. Foreign residents have rights to enjoy social services and benefits, of both general and specific kind, under the same conditions of Spaniards.
3. Foreigners, regardless their administrative status, are entitled to basic social services and benefits.

## **:: Legal Tip 25. Subject of foreigners to the same taxes as Spaniards.**

### **Article 15. Subject of foreigners to the same taxes as Spaniards.**

1. Without prejudice to the applicable agreements on double taxation, foreigners are generally subject to the same taxes as Spaniards.
2. Foreigners have the right to transfer their earnings and savings obtained in Spain to their own or any other country, following the procedures established under Spanish law and in accordance with applicable international agreements.  
The Government will take the needed measures to facilitate such transfers.

## **:: Legal Tip 26. Overview of the health system in Spain**

All foreign employees and self employed workers must join the Social Security system in Spain and pay monthly contributions to social security through their employer.

You will receive a social security card, which entitles you to free medical and hospital care. You can also take out private insurance but treatment costs are not refundable except in certain emergency situations. In Spain 40% of medical treatment is private.

Treatment is free if you go to a doctor working in the Public social security system. If your illness requires special treatment, the doctor will send the patient to specialists through a formal report.

The drugs are always prescribed by the doctor in a formal prescription note. Some medicines are not covered by social security.

Treatment in hospitals is free within the social security system, patients are also entitled to certain services, prosthetics, orthopaedics, blood, etc... free of charge when necessary.

You can get private health coverage from one of the many private medical companies in Spain. You can find them listed in the Yellow Pages as "Medical Societies."

Regional Health Services of Autonomous Communities have assumed the powers, functions and financing for these services. You can obtain a list of hospitals and health centres in the local Health system offices.

The State, through the National Health System, is the guarantor of quality and sufficiency of the services anywhere in the country. The network of hospitals associated with social insurance is managed by a state agency called INSALUD.

The Spanish state covers the health needs of all its citizens and residents through the National Health System, funded through taxes and run by the Autonomous Communities.

Over 90% of the population uses this system for their medical needs. This system allows the Spaniards and foreign residents to choose their General Practitioners, through which they gain access to the rest of the system.

Most patients get an appointment with their GP one day or two after the application. This does not entail any extra cost to patients, and the Regional government cover these costs.

Patients must be referred by the GP to see a specialist, except in emergencies. Unfortunately, as in most European countries, waiting lists for visits to specialists or for voluntary or non-emergency interventions are often long. Finally, the Spanish public health system covers only healthcare (with some exceptions), some dental services and optical problems need to be treated by the Private Health system.

In recent years, private health has gained in importance. An estimated 15% of the population has private health insurance, including the majority of civil servants, who are given the option to choose between public and private. Insurance can be used either in addition or as an alternative to public health.

The advantage is that private insurance companies have their own network of hospitals, clinics and laboratories, so policy holders do not have to wait that long to be treated. The only problem is that companies can insist that the patients use only doctors who are members of their group. However, some company offer payment of 80% of Doctor's bills non listed among those of their group. Major Private insurance companies are Adeslas, Asisa and Sanitas.

### **How to get health care?**

As a foreigner you can benefit from both the public health system and private health Spanish.

### **Public health**

Foreign employees working for a Spanish company and own-account workers in Spain have to contribute financially to the Spanish Social Security. These contributions entitle them and their families to a free or subsidized health care under the same conditions as a Spanish citizen. Although under Spanish law everyone has the right to free health care regardless of whether or not listed in the social security system.

You need to approach the Health Centre closest to your home to apply for the Health card with your residency card. You will receive a health card by mail after a few weeks.

If you are a citizen of the European Union, you are automatically entitled to free healthcare in Spain thanks to bilateral agreements between EU countries. Since mid-2004, there is a European Health Insurance Card which simplifies the process of receiving medical care in EU countries. This card substitutes forms E111B and E111, E110, E128 and E119.

### **Private Health**

Anyone can apply for private healthcare. Companies often provide medical and dental care at a discount if you ask for General Policy and Specific dental policy. Prices vary depending on age and sex of the applicant, but they are not too high. The average cost of the premium for a man of 30 years starts with €40 a month, while for women is a little higher, around €50 a month.

If you are not covered by the social security system in your country or for any private insurance policy, you can receive treatment from any doctor, but you will have to pay in full.

### **Where to go in case of emergency?**

In an emergency, go directly to the nearest emergency room if you do not have private insurance, go to a public centre.

Although under Spanish law, any medical facility, whether public or private, has the obligation to treat patients in an emergency, regardless of their life insurance, this only applies in cases where a situation of life or death. The responsibility to decide depends on the doctor or nurse on duty. Use the emergency number 112 if you need an ambulance.

Finally, for a list of doctors who speak other languages, it is best to ask at the embassy or consulate in their country. Often have lists of doctors available to their citizens.

### **Where to go in cases of minor ailments?**

Most people go to the pharmacy for minor ailments. They are easily identifiable by the bright green cross which appears on the outside wall or in the window.

Pharmacies take turns to provide services outside of business hours (night and holidays) and pharmacies on duty. You can see what Pharmacy is on duty in the newspaper or in the window of any pharmacy, where they usually put a list.

Spaniard pharmacists are more educated than in other countries and can advise on treatments for many common diseases and ailments, but they are not a substitute for the doctor if it's a more serious problem.

Spain is not too restrictive in terms of medicines availability. Medications typically cost far less than in other countries because of price limits imposed by the government.

### **Registration for social insurance and obtaining a health card?**

#### **Enrollment in Social Security.**

Legal workers always need a Social Security number. They are registered in the system when they are hired or self-employed.

It is illegal to have workers without their proper registration in the Social Security System.

This number is also of use for health issues of the worker and his/her family.

Once you have your number within the Social Security System, you can apply for Doctor allocation, which is an easy step to be implemented at the health centre closest to your residence.

#### **Card issuing and allocation of health.**

To receive a health card (plastic card for Social Security) you need to go to the nearest health centre in the town, and complete the form which is designed for that purpose. In this step, you can also choose among the list of medical professionals of the health centre, which is called “ médico de cabecera o medico de familia” and who governs and monitors all the healthcare services which are needed by the insured . At this time, you receive just a sticker and will be sent by mail the plastic card within 30 days. You need to fill in as many forms as people dependents of the insured wish to register: a template for each child and the spouse.

## **Healthcare for illegal immigrants in Spain?**

Healthcare is the provision of medical services and pharmaceuticals necessary to preserve the health of its beneficiaries. You just need to be registered in the Local census for this healthcare, because otherwise the law is limited to emergency medical treatment for illness or injury until discharge.

All foreigners can register, although they are in Spain illegally. Minors and pregnant women have healthcare rights even if they are not registered in the Census.

### **:: Legal tip 27: Handing the keys back to the Bank: Your right.**

Dación en pago (dation in payment) is not something that you will luckily and graciously obtain by the "wonderful mercy of the Bank" **BUT A RIGHT**, out of provisions 1175 et seq of our Civil Code:

#### **Article 1175**

The debtor is entitled to transfer their assets to creditors in payment of its debts. This dation, unless otherwise agreed, will only release him from liability for the liquid amount of the value of transferred assets. Any agreement on the effect of these dations concluded between the debtor and its creditors will be done according to provisions of Title XVII of this book, and according to what is stated in the Code of Civil Procedure.

The offer of payment and the assignment for collection

#### **Article 1176**

If the creditor to whom the offer was made refuses to admit it with no reason given, the debtor will be free of responsibility by the assignment of the good.

### **Article 1177**

For the assignment of the good to be effective, the debtor must firstly announce it to those people interested in the obligation.

The assignment will be ineffective if it does not strictly conform to the rules governing the payment.

### **Article 1178**

The appropriation will be made by depositing the goods before the judicial authority, to whom the offer will be credited in some cases, and /or the announcement of the assignment in others. Once the assignment is made, it will have to be announced to interested parties.

### **Article 1179**

The costs of the assignment, where appropriate, will be paid by the creditor.

### **Article 1180**

Once the assignment has been duly made, the debtor may request the court to cancel the obligation.

While the creditor has not accepted the assignment or the approval of the Judge has not been made, the debtor may withdraw the assigned good or amount, leaving the obligation remaining.

### **Article 1181**

Once the assignment is made and the creditor allows the debtor to withdraw the good or amount, the debtor will lose any preference on the good. The co-debtors and guarantors will also be free of debt.

## **:: Legal Tip 28. Minor work licenses**

These licenses are intended for works that are characterized by their simplicity and low technical and economic and constructive entity, usually consisting of simple repair works, decoration... which does not require a signed technical project or high budgets.

In no case involving restructuring, distribution or substantial modification of Structural elements, they are minor works such as paving the ground, retiling the roof, bright ads...

### **There are three types of minor works:**

**Informed:** This is not a license. They are works that are not subject to license or payment of fees or taxes on buildings, facilities and works. They include grading work, plot cleaning, interior work that does not involve changes to ceilings, pillars and to the distribution of the building, extraordinary window decorations...

Works subject to licensing and to pay Construction, Equipment and Works tax but not to pay the Local Council's fee : included are: plastering, stuccoing and painting of facades, balconies, projections, repainting of shutters, doors; fences changing of doors and windows, re-roofing not involving the structure, placement of exhaust and ventilation ...

They are minor works, subject to the obtaining of license, payment of Local Council fee and of the tax for Construction, Equipment and Works. Includes front eaves, light box signs, closing of hollows of doors, balconies or balcony-window, window hollows, bumps on the sidewalks to facilitate access of vehicles...

## **:: Legal Tip 29. A suggestion for the Spanish National President of Lawyers**

Carlos Carnicer, President of the Spanish National Council of Lawyers ( CGAE) notes that he is preparing a report on the state of justice in Spain (EFE / CGAE, 19/01/2009)

19/01/2009 The Spanish General Council of Lawyers is preparing a report on the state of Justice in Spain in which, among other things, specific proposals will be raised regarding the largest deficits, as it was explained last Friday by its president, Carlos Carnicer in Teruel , who reiterated his opposition to the strike of the judges.

Carnicer told reporters that for the report, which will include a survey of opinion on how the reality of justice is perceived in Spain, he will include the opinion of Judges, prosecutors, lawyers, procurators, Justice clerks and government, among others.

The president of the lawyers, who did not believe that the strike is a way to solve problems, recalled that judges are a power of the State and can not strike, but invited the judicial organizations , along with other groups as lawyers, to press political parties to solve the problems of the administration of justice.

Spanish lawyers have been claiming for over thirty years regarding the deficiencies in the administration of justice, without any success, because "so far it does not remove or give votes," said Carnicer, who recalled that in 1991, a number of 2500 Judges more were requested and that we need more judges now.

Carnicer presided Friday at the hall of the Museum of Teruel, the inauguration of the new dean of the Bar of Teruel, Manuel Gomez Palmeiro, who replaces Lucia Solanas.

Gomez Palmeiro, who in his speech expressed support for the judges in their demands, said to the media that there is a saturation in the Courts of First Instance and the launching of the Court 3 will alleviate this situation.

In his view, the increase in population and complexity of economic and social reality are factors which have led to the increase of cases in Courts.

Any suggestion for the President?

**:: Legal Tip 30. You do not need to renew your 57/68 Bank Guarantee. They do not expire.**

**Expiration dates of Bank Guarantees. Please read article 4 below.**

The Aval Bancario (Bank Guarantee) or Insurance Contract were both established by a 1968 Law to protect buyers in off plan developments.

**Article 1.** - The developer must guarantee the return of the deposited amounts plus 6% of annual interests rates, through an insurance contract or by bank guarantee, for the cases when the construction doesn't start or doesn't finish in the agreed time. They also need to open a special bank account for your amounts (different from the general one of the developer) and have it expressly written in the contract.

**Article 2.** - In those contracts where the parties agree on anticipated mounts the developer must expressly state:

1. That the developer will give back to the buyer all the advanced amounts plus the 6%, in cases where the construction fails to start or end within the agreed deadline, or the certificate of habitability is not granted.
2. Reference to the bank guarantee or insurance contract, indicating the name of the Bank or the Insurance Company.
3. Specification of the Bank or financial institution and the account number where the buyer's money is deposited.

At the signing of the contract, the developer will give the buyer the document that contains the guarantee (the Aval or the Insurance contract) and the document must have a reference to the amount that is anticipated.

**Article 3.** - If the deadlines for starting or finishing are not met, the buyer can choose between cancelling the contract with the return of advanced amounts plus legal annual interests, or to concede a time extension, which will be stated in an additional clause in the contract, specifying the new deadline with the date for finishing the construction and completion.

The insurance contract or the bank guarantee together with the document that fully proves that the work has not been started or that the completion deadline has not been met nor complied, will have executive power as it is stated in the Title XV of Book II of Civil Procedure Law, to demand from the insurance company or the bank, the amounts that the buyer is entitled to, without prejudice of any other given rights also applicable.

**Article 4.** - Once the Habitation License is issued and the developer proves the delivery of the house to the buyer, the Guarantees granted by Insurance company or guarantor will be cancelled.

The First Additional Provision of the General Building Act (1999) states:

The receipt of amounts of money on account when building is done by promoters or managers will be covered by an insurance that will compensate the breaching of the contract in an analogous way as what is stated in Law 57/1968, of the 27th of July, about the receipt of advanced amounts when building and selling houses. That Law, and its complementary provisions, will be enforced when building houses, with the following modifications:

1. The expressed Law will be enforced for the promotion of every kind of house, even those made under the regime of community of owners or cooperative association.

2. The guarantee which is stated in the aforementioned Law 57/1968 will be extended to any amount handed in cash or by any effects, which payment will be paid by standing order in the special account which is stated in the referred Law.
3. The guaranteed return of payment will include the advanced amounts plus the legal interests of money which are in force till devolution is made.
4. Fines for breaching what is stated in the first paragraph of the provision number 6 of the mentioned Law, will be imposed by the Autonomous Communities, the fine amount will be, for every contravention, of up to the 25% of the amounts which refund must be secured or according to whatever is stated in the own regulations of the Autonomous Communities.

### **:: Legal Tip 31. Consumers Act. Abusive clauses: When business owners over-decide**

#### **Article 85. Abusive clauses because of linking the contract to the will of the business owner.**

Those Clauses that link any aspect of the contract to the business owner will be abusive (therefore illegal: null and void) and, in any case, the following:

1. Those clauses which give to the business owner who contracts with the consumer an excessively long or undetermined period to accept or reject a contract offer or to satisfy the due good.
2. Those clauses providing for an automatic extension of a fixed-term contract if the consumer and user does not oppose setting a deadline, not allowing effectively to consumers and users to express their desire not to extend it.
3. Those clauses which provide the business owner with the powers of interpretation or unilateral modification of the contract, except in the latter case, when there are valid reasons specified in the contract.

For contracts relating to financial services the provider can reserve to himself the right to change without notice the interest rate/other expenses related to financial services paid by the consumer, when they are linked to index, provided that they are legal and it is described how rates change, or other cases of valid reason, provided that the employer is obliged to report it as soon as possible to the consumer and they can immediately cancel the contract without penalty.

Service providers may also unilaterally change the terms of the financial services of indefinite duration due to valid reasons expressed in the contract, provided that the business owner is obliged to inform the consumer with a reasonable advance and the consumer has the power to terminate the contract or, if necessary, withdraw unilaterally, without notice in the event of any valid reason, provided that the business owner report it immediately to the other contractors.

4. The clauses that allow the business owner to anticipate terminate a fixed-term contract, if the consumer and user do not get the same right, or those clauses which permit the business owner to terminate the contracts of indefinite duration in a disproportionately short term or without reasonable prior notice.

All the abovementioned do not affect to those clauses which allow the contract cancellation due to non-compliance or to important reasons, unrelated to the will of the parties, which alter the circumstances that led to the conclusion of the contract.

5. Those clauses which link the consumer to the contract in an unconditional way even if the employer had not fulfilled its obligations.
6. Those clauses involving the imposition of a disproportionately high penalty clause if the consumer does not meet its obligations.
7. Those clauses involving the subject of the contract obligations to a condition whose realization depends only on the willingness of the business owner, when the consumer is fixed to a firm commitment.

8. Those clauses which indicate just mere indicative delivery dates just subject to the will of the business owner.
9. Those clauses which exclude or limit the obligations of the business owner to respect the agreements and commitments made by his agents or representatives, or make commitments to the satisfaction of certain formalities.
10. Those clauses which set the pricing for the moment of delivery of the goods or services or those clauses which grant the employer the power to increase the final price agreed on, without objective reasons and without giving the consumer the right to terminate the contract if the price is much higher than the originally stipulated.

### **:: Legal Tip 32. On Consumers Act I. Preliminary contract information**

#### **Article 60. Preliminary contract information**

1. Before the contract is signed, the business owner must make available to consumers in a way which must be clear, understandable and appropriate to the circumstances, the relevant, truthful and sufficient information about the essential characteristics of the contract, in particular on its legal and economic conditions and on the goods or services concerned.
2. To this effect, those obligations of information on the goods or services provided in this article and other applicable rules will be obligatory and in addition:
  - Name, company name and address of the person responsible of the contract supply and, where applicable, the name, business name and address of the trader on whose behalf the first one acts.
  - Full price, including taxes, or budget. In any consumer information on the price of goods or services, including advertising, the consumer will be informed of the full price, detailing in its case, the amount of

increases or discounts that may be applicable, the costs being passed on to consumer and the additional costs for ancillary services, financing or other similar payment terms.

- Delivery date and the contract duration.
- Procedure available to the consumer to terminate the contract.
- Guarantees.
- The language or languages in which the contract may be made when it is not the language in which the pre-contract information was exposed.
- The right of cancellation of the contract which may correspond to the consumer, the term and how to exercise it.

3. Prior contract information should be provided to consumers free of charge.

**:: Legal Tip 33. Consumers Act II. Publicity is part of the contract.**

**Article 61. Integration of offer, promotion and advertising in the contract.**

1. The offer, promotion and advertising of goods or services will be tailored to their nature, characteristics, value or purpose and to the legal or economic conditions of the contract.
2. The contents of the offer, promotion or advertising, the benefits of each good or service, legal or economic conditions and guarantees provided are required by consumers, even if not expressly mentioned in the contract document or in the received document or proof and should be considered in determining the principle in accordance with the contract.
3. Notwithstanding the previous paragraph, if the contract contains more beneficial clauses, these will prevail over the contents of the offer, promotion or advertising.

## **:: Legal Tip 34. Mortgage holidays for property buyers and official credits for companies in Spain**

### **Mortgage holidays and financing programmes for companies in Spain**

ICO. (Official Credit Institute) Aids for Mortgage holders and small companies in Spain.

At least 35 financial institutions have already signed a contract with the ICO to provide a moratorium on mortgage payments, a measure included in the financial support measures for unemployed families, who can defer payment of half the fee for two years, as announced today by the president of ICO, Aurelio Martinez. Martinez pointed out that out of the 60 financial institutions that have joined the line, promoted by ICO, he has already signed contracts with at least 35 banks and savings banks.

### **At least 35 bodies provide a moratorium on mortgage payments**

Santander, BBVA, Caja Madrid, La Caixa, Sabadell y Pastor are among the 60 entities that have joined the partnership agreement of the ICO, which publishes a list on its website which is updated daily. Banca March, Banco Guipuzcoano, Cajasol, Ibercaja, Caja Vital and BBK have also joined.

### **Postponement of the mortgage**

Specifically, the line, equipped with 6,000 million euros, will allow the temporary postponement of partial payment obligation of 50% of the mortgage share of the years 2009 and 2010, with a maximum of 500 euros per month.

The line is aimed for groups in especially difficult circumstances which are holders of a mortgage on their habitual home of no more than 170,000 euros, which had been formalized before September 1 and who are not in arrears.

To qualify for this line, the applicant must demonstrate by 2010 one of the following conditions: being unemployed and being paid the subsidy during the three months

before the application, being a self-employed with cessation of activity during that period, being a widow pensioner of someone who has died after the signing of the mortgage, or having incomes below three times the monthly indicator of Public Income Multiple Effects (Iprem).

The term of payment of the deferred shares will begin in January 2011 and the repayment period may be of three, five, seven or ten years, but in no case it will exceed the term of maturity of the mortgage. The interest rate for these deferred instalments will be variable and will be published fortnightly on the website of the ICO.

### **"Low demand for ICO company aids"**

Also, Martinez stated that the liquidity line of the ICO, endowed with 10,000 million euros to meet the financing needs of capital for small and medium enterprises, which are solvent and viable, will succeed. Of this amount, 5,000 million are provided by ICO and 5,000 by credit institutions.

Martinez acknowledged that the line has so far received "low demand", which attributed to the novelty and assimilated to the lukewarm reception of the initial auction of liquidity. However, he maintained that "there is an avalanche of applications from the self employed and that the line will be used in its totality for sure"

On complaints from some employers who go to banks to apply for these lines and are informed that the ICO has not yet provided liquidity, Martinez considered normal for the staff of the entities to look for responsible outside their companies . "The staff is working for an entity and it has to defend it above all else"

And added that since the ICO made the first auction, the line is open to all entities and without limit, he said. "As far as financial institutions come and send proposals to us, we will distribute liquidity for them".

The ICO help line was hung on the website of the ICO on December 23.

**:: Legal Tip 35. Consumers Act III. Legal requirements for contracts with consumers in Spain.**

**Article 62. Contract**

1. In contract with consumers and users, their desire to contract or, if necessary, to terminate the contract must unequivocally appear.
2. Are banned, in contract with consumers, the clauses that impose onerous or disproportionate obstacles to the exercise of the rights recognized in the consumer contract.
3. Are banned, in particular, in those contracts of services or for the delivery of products or continuous tract, those clauses of unreasonable length or those time limits or constraints which prevent or hamper the right of consumers to end the contract. Consumers may exercise their right to terminate the contract in the same way they signed it without any penalty or onerous or disproportionate burdens, such as the loss of the amounts paid in advance, the payment of amounts for services which have not actually been provided, the execution of unilateral penal clauses which have been set by contract or the setting of compensation ways that do not correspond with the actual damage caused.
4. The contracts for services or for the supply of goods or continued future goods should expressly contain the procedure through which the consumer can exercise their right to terminate the contract.

## **:: Legal Tip 36. Consumers Act IV: Contract documents for consumers in Spain**

### **Article 63. Documentary confirmation of the contract**

1. For contracts with consumers, it will be provided: Receipt documents, copy or any document with the basic terms of the transaction including the general conditions of the contract signed and accepted by the consumer if they are used in the contract.
2. Except for those contracts which by Law need to be formalized by Notary Public deeds, contract documentation for consumers will be free of charge when the contract info is legally required to be documented in writing or in any other medium of a lasting nature.

## **:: Legal Tip 37. Why should I register my property...?**

### **What is the function of the Land Registry In Spain?**

The Land Registry is the public office for the record and publicity of the ownership rights on real estate and rights imposed on them.

### **What is in the Registry?**

Every document from first registration of the property through successive transmissions of the estate, any charge on it such as mortgages or easements and every judicial or administrative decisions that may affect them as charges.

### **What documents can access the registry?**

Public Documents: Both Judicial and Administrative and Notary documents. In very few occasions some private contract can also access the Land Registry.

**Is it compulsory to register?**

No. Registration is voluntary.

**What advantages are obtained by registration?**

Legal safety as once rights are registered they under judicial guardianship and just what is registered is assumed as certain. Registration of properties facilitates the transmission and obtaining finance at lower costs.

**What risks if not registered?**

The real non registered owner will be affected by those acts voluntarily performed by the registered one and by loans and encumbrances on the property as the registered person is assumed as owner for every effect.

**What risks can I run if I do not consult with the Registry?**

You will not obtain certainty on ownership or charges on the property.

**Do the Land records expire?**

No. Definitive records do not expire. Once registered they last for ever and you do not need to renew it.

**Do foreigners have a special scheme to register their rights?**

Legislation gives same treatment to nationals to foreigners.

**Is the registry open to general public?**

Yes, but only for those who prove legitimate interest. This will be appraised by the Registrar.

### **How do you get publicity?**

There are two ways: simple note and certification. Both must contain, in general, the description of the property, the ownership and burdens. The first have just informational value. Certification is the only way to reliably prove the contents of the register and it is signed by the Registrar.

### **How much does it cost to register?**

There is no fixed amount, it depends on the value of the registered element. Fees are based on tariffs approved by the Government and published in the Official Gazette.

### **:: Legal Tip 38. FREE OF CHARGE mortgage relief now!**

If you do not want to read the law-language text below:

**FREE OF CHARGE**... relief for your mortgage payments: If you agree with the Bank to extend the maturity term of your mortgage between May 2008 and April 2010... you will have no Notary and Registry costs and no tax burden attached...

We lawyers, should also be charging minimums by the Bar Association in these cases....in my humble opinion.

### **Now for the Law-oriented EOS readers:**

Lengthening of maturities of the mortgage loan is a possible way out of difficulties in payment of mortgage instalments, within a renewal contract, which is in essence a contract by which the bank and the loan debtor determine new mortgage conditions.

It is also a very practical measure in present days as, from May 2008 to April 2010, does not incur costs. This is due to the Royal Decree Law 2 / 2008 of April 21, on measures to boost the economic activity, which provides the no subjection to the tax

established in article 31.1 of the text of the Law of the transfer tax and Stamp Duty of individual deeds, of those renewal mortgage loans which relate to extending the term of the loan. This is part of the Law 2 / 1994 of March 30 on Subrogation and Amendment of Mortgage Loans, which has been subject to significant changes especially in 2003.

In addition, the Government has promoted an agreement with the various institutions (represented by the AHE, the AEB, the ECSC, UNACC and ASNEF) with the College of Registrar of the Property and Commercial Property in Spain and the General Council of Notaries of Spain, to ensure no Notary and Registrar costs attached to such amendments of the loans. This agreement has mainly affected the Law 2 / 1994 of March 30 on Subrogation and Amendment of Mortgage Loans, whose art. 8 refers to notary and registration fees in subrogation, amending renewals and cancellation of credit or mortgage loans.

### **:: Legal Tip 39. Law on Autonomy and disabled care in Spain**

Law 39/2006, of December 14, promotion of personal autonomy and care for people in a situation of dependency (Law Unit), creates a new individual right of citizenship in the Spanish State: the right of people who cannot fend for themselves, particularly the elderly and people with disabilities to receive the necessary attention from the authorities.

Act also creates the System for Autonomy and Care Unit (SAAD), which, based on respect for the constitutional framework established statutory powers, serves as a channel for collaboration and participation of all government involved and to optimise public and private resources available.

In addition to the information that the individuals concerned may demand for social services, the Ministry of Labour and Social Affairs has prepared two specific channels of attention:

The toll-free information on the Law of Unit 900 40 60 80

The website <http://www.saad.mtas.es>

## **:: Legal Tip 40. Education system in Spain**

The information provided below has been extracted from the website of the Ministry of Education and Culture

The Spanish education regime is divided into two classes: General and special.

The levels of the general system are ordered as follows:

- Nursery education.
- Primary education.
- Secondary education, including compulsory secondary education, high school and middle vocational training.
- Vocational training.
- College education.

Teachings of the special class are as follows:

- Artistic education.
- Languages.

### ***A) GENERAL SYSTEM***

#### **NURSERY EDUCATION**

Includes up to six years of age, contributes to physical, intellectual, emotional, social and moral development of children. Nursery education comprises two cycles. The first cycle extends to three years, and second, from three to six years old.

## **PRIMARY EDUCATION**

Primary education comprises six courses, from 6 to 12 years, organized in three cycles of two years each. This stage of education is compulsory and free. Its purpose is to promote the socialization of children and encourage their incorporation into the culture and contribute to the progressive autonomy of action in their environment. Education is organized into areas taught by teachers.

## **SECONDARY EDUCATION**

The ESO is a new stage of education (compulsory and free) to all citizens of school age; it has replaced the last two years of EGB (7th and 8th) and the first two of the Middle courses (1st and 2nd of BUP and FP). Thus extends along four years after the stage of primary education. Provides the necessary education to study both Baccalaureate and vocational training. Students begin this stage at the age of twelve and ends at sixteen. The purpose of designing this new stage of education is basically to extend compulsory education up to sixteen years to bring it into the initial working-age and also to match the Spanish educational system with those of EU countries

## **BACCALAUREATE L.O.G.S.E.**

The Baccalaureate is the final stage of secondary education is voluntary and lasts for two courses, normally between 16 and 18 years. The Bachelor has four different modes, which have been established to respond to the diversity of future studies as to the variety of interests, skills and attitudes that have youth in this age group. The four modes are: Arts, Natural Science and Health, Humanities and Social Sciences, Technology.

## **VOCATIONAL TRAINING**

Vocational training in the education system, aims at preparing students for the professional activity, providing a multipurpose training to enable them to adapt to job

changes that may occur throughout their life. Includes both basic training and specific vocational training for middle level and higher.

***B) TEACHINGS OF SPECIAL CLASS.***

**ARTISTIC EDUCATION**

Artistic education is to give students a quality artistic formation and ensures the qualification of future professionals in music, dance, drama, visual arts and design.

**\*Music and Dance**

The lessons of music and dance include three grades:

Elementary level: four years' duration.

Medium Level: three cycles of two academic year's duration each.

High level: comprising a single cycle whose duration is determined by the characteristics of these teachings.

**Elementary Level:**

Entry criteria for the elementary level of teaching music and dance are set by the Government that take into account, among other circumstances, the ideal age for these teachings.

**Intermediate level:**

The student must be overcome to access a specific test to access the middle level of the teaching of music and dance.

Passing the third cycle of the Intermediate level entitles the holder to teach with a professional degree.

**High level:**

Access to high grade of music and dance lessons, requires students to meet the following requirements:

1. To be in possession of Bachelor's degree.
2. To pass exams corresponding to third cycle of medium grade.
3. To pass a test of access established by the Government, in which the applicant must demonstrate knowledge and skills needed to take to use the lessons accordingly.

Those who have successfully completed the highest grade of these teachings are entitled to the High Title for the corresponding specialty, which have same value for all purposes, to the title of university graduates.

#### **\*Drama**

The training comprises just one cycle of high level and of length suited to the characteristics of these teachings. To access the lessons of drama, it is required:

1. To be in possession of Bachelor's degree.
2. To stand for the test set specifically for that purpose for the assessing of maturity, knowledge and skills necessary to take these lessons to good use.
3. Those overcoming the drama lessons are entitled to the Drama High Title, fully equivalent to the title of university graduate.

#### **\*Art and Design**

The teachings of the visual arts and design-related studies include applied arts, the crafts, the design of its various forms and the conservation and restoration of cultural property.

To access intermediate level teachings is needed:

1. To hold the title of Bachelor in Secondary Education

2. To demonstrate the necessary skills through a specific test.

Those who hold the Bachelor's degree and have passed the required tests can access higher levels of these teachings.

Studies for the specialty of the Preservation and Restoration of Cultural Property are considered higher education. Students who have overcome these studies obtained the title of the Preservation and Restoration of Cultural Property, which is equivalent, for all purposes, to the title of university graduate.

Lessons of design are considered higher learning. The title of Design in the specialty is granted at the conclusion of these studies. This is equivalent, for all purposes, to the title of university graduates.

## **LANGUAGES**

Language lessons are taught in formal schools. Requirements to access these lessons:

1. To have completed the first cycle of compulsory secondary education or be in possession of the Graduate School of title, certificate of schooling or primary school.

## **COLLEGE STUDIES**

The university is organized in cycles. There are three models:

First cycle: with clear professional orientation. No continuity in the second cycle (Library Science, Nursing, etc.)... They have got duration of three years and an academic load of not less than 180 credits. The qualifications are called first-cycle degree, Technical Architecture or Technical Engineering.

Two cycles without intermediate title. In this case, lessons are arranged by series, but once the first series is achieved, there is no right for a title, because they not constitute a full course of academic training and they do not provide a specific professional

qualification (Veterinary Medicine, etc ...). These cycles can last between four and five years, with a load of not less than 300 credits

Two cycles with an intermediate title. In this case the first cycle leads to the degree of Bachelor, Technical Architect or Engineer, the second cycle may continue to obtain the title of High Degree, Engineer or Architect.

### **The Spanish University System**

The Spanish university system has 49 public universities, 14 private universities and 4 universities of the Catholic Church.

The content of the guarantee of University autonomy is expressed in the article 3 of the University Reform Act of 1983 and includes the development of its statutes and internal rules of operation, the election, appointment and dismissal of its government and administration, the preparation, approval and management of their budgets, administration of property, the establishment and modification of templates and the selection, training and promotion of teaching and research staff and administrative services, the development and approval of curricula and research, admission, retention and verification regime knowledge of students, the issue of certificates and diplomas, etc ....

Precisely due this character of autonomous entities of public law, the university sets its own academic offering that may be of two types:

- Official title valid throughout the State
- Proper title of each university.

A proposal by the Council of Universities, the government sets the official titles and the general characteristic of these degrees, i.e. the minimum uniform content to be included in the curriculum. They are the so-called core subjects.

Universities develop and approve their own plans of study including, in addition to core subjects, the compulsory subjects of the university, the elective subjects for students, and materials of free election, i.e. chosen by the student.

The curricula of studies for Official Titles need to be by the Council of Universities for its validity.

In use of its own Autonomy, a University can establish own curricula, which also lead to the award of diplomas and degrees. These qualification lack full academic effects and full capacity for its official exercise throughout the whole national territory.

### **System for Teaching and Grading Methods**

The educational system includes both lectures and practical seminars and tutored. The attendance, though not mandatory, is a key part of university education. The classes last for 50-60min and the teachers delve into the topics usually relying on audio-visual methods.

Student tests are carried out by conducting a final evaluation in February, if a semester subjects or February- June if yearly subjects. Students who do not pass the tests are the ordinary call, can use a special call in September. In some cases teachers may opt to conduct several assessments (exams, papers, etc...) along the course of the passing of which can release the realization of the final exam.

### **Grading system**

Grades are awarded according to score based on 10:

0.0 - 4.9 SUSPENSE (SS)

5.0 - 6.9 APPROVED (AP)

7.0 - 8.9 NOTABLE (NT)

9.0 - 10.0 Excellent (SB)

9.6 - 10.0 REGISTRATION OF HONOR (MH)

The ECTS grading scale has been established as follows:

A - EXCELLENT: Making extraordinary only minor errors

B - VERY GOOD: Above average but with some errors

C - GOOD: Good job in general with some notable errors

D - Satisfactory: Well, but with significant shortcomings

E - Sufficient: The performance reaches the minimum criterion

FAIL-FX: We need some more work to grant credits

F - FAIL: You need a lot more work

Equivalence with the European ECTS system. Approximately equivalent mark depending on the scale corresponds to 10 Spanish ECTS grades:

9,6-10 MH Honors = A (EXCELLENT)

9,0-10,0 SB Outstanding = B (VERY GOOD)

Notable 7,0-8,9 NT = C (GOOD)

6,0-6,9 AP = Approved D (satisfactory)

5,0-5,9 AP Approved = E (Sufficient)

3,0-4,9 Suspenso SS = F (FAIL)

0-3,0 Suspenso = FX (FAIL)

### **:: Legal Tip 41. What is the Plusvalia Tax?**

Plusvalía (Local Capital Gains Tax) named in Spanish “Impuesto sobre el Incremento del Valor de los Terrenos de Naturaleza Urbana” is a municipal tax on the increase in the value of the urban land since the last recorded transfer.

Taxable amount or based is obtained by applying a rate, different for each municipality, to the value of the property at the time of the transfer, the number of years that the previous owner had the house is also taken into consideration. The more years the less tax burden.

There is a tax relief if you reinvest money from the sale of an urban house into another main address, the relief will consider the amount of reinvested money.

It must be paid within 30 days from the signature of the sales deed, or within 6 months in case of inheritance.

### **:: Legal Tip 42. Consumers Act V. Clauses non individually negotiated.**

#### **Article 80. Requirements of clauses non individually negotiated.**

1. In those contracts with consumers and users where non individually negotiated clauses are included, including those contracts promoted by the Government or dependent companies, the following requisites will have to be observed:
  - Concretion, clarity and simplicity in the writing, with possibility of direct understanding, without forwarding to texts or documents that are not facilitated previously or simultaneously to the conclusion of the contract, with express reference of those texts in the contract document.
  - Accessibility and legibility so that the consumer will be able to fully know and understand in advance regarding existence and content of the contract.
  - Good faith and right balance of rights and obligations of the contractual parts, which in any case excludes the use of abusive clauses.
  
2. When individual actions are exercised, in case of doubt on the sense of a clause, the most favourable interpretation to the consumer will prevail.

### **:: Legal Tip 43. What is the "legítima" for Spanish probate Law?**

In Spain, a testator can decide on who will inherit 2/3 of his goods after his death. The other 1/3 is reserved by Law to the obligatory legal heirs. This 1/3 is "el tercio de legítima" (Third for legitimate heirs or third of forced inheritance)

This comes, of course, from Roman Law, where all social system relied on the institution of family.

Just Modern England and the United States have complete freedom of disposition as they are submitted to a different system: Common Law System.

### **:: Legal Tip 44. Types of Wills in Spain**

Provisions 676 and seq. of the Civil Code presents to us the various kinds of wills in Spain:

#### **Holographic Will**

Just older age persons can grant this type of will. It will have to be written and signed by the testator with express mention of year, month and day of granting. If the document had crossed out, amended or rectified words or had words between lines, the testator will have to save them with his signature.

Foreigners can grant holographic will in their own language.

The legalization of this type of will is made before the First Instance judge corresponding to death domicile or testator's last domicile within 5 years from death.

The deceased's closest relatives will verify the deceased's handwriting. Once this has been done, the judge will enforce the provisions of the will.

## **Open Will**

The most common kind. It is just necessary to go to a Notary Public and to state before him on your decisions for your goods after your death. The Notary will provide the required Public character to the document but will very rarely advise you on the most convenient terms for you and your heirs. Every will is then sent to the National Registry of Last Wills in Madrid.

## **Closed Will**

The content of your will is not disclosed to the Notary. It is closed in a folder or envelope and sealed.

The solemnities of this kind of will are as follows:

1. The document will be placed in a folder or envelope and it will be sealed.
2. The granter will bring to the Notary the sealed document or will seal it before him.
3. The granter will mention before the Notary ( with the help of an interpreter if needed) that the document contains his will, if it is handwriting by him or third party or it has been typed and is signed at every sheet by him or someone on his behalf.
4. On the cover of the will, the Notary will place the Granting Letter and will express his knowledge of the granter and his judgment on testating capacity of the granter. This letter will be signed by testator and Notary.
5. A couple of pertinent witnesses can attend the signing if requested by Notary or granter.

This kind of testament cannot be granted by blind people or for those unable to read.

Once the will is granted, it will be given back to testator and the Notary will keep a copy of the letter of granting. He will inform on the existence of the closed will to the National Registry of Last Wills.

## **:: Legal Tip 45. Probate and succession in Spain**

### Probate and Succession in Spain

The procedure ahead after a person's death in order to administer his/her assets in Spain will vary depending on:

- Location of estate.
- Left a will (in Spain or in the foreign country) or not.

Having estate just in Spain (regardless nationality and legal residency) will drive the succession of the person to be regulated under Spanish Law. Therefore the "legitimas" (legal/obligatory heirs) will apply to the probate.

When we receive a petition for the administration of assets of a deceased foreign we start by establishing where he had his estate and if the deceased left a will in Spain.

In order to verify if he left a will in Spain and we proceed to the application for this information before the National Registry of Last wills. For doing so, we need a Death certificate. If the deceased died abroad, we would need the foreign death certificate to be translated into Spanish and apostilled with the Hague stamp.

The National Registry will provide information on the existence of the will, the Notary who authorized it and date of authorization. These data and our Power of Attorney to deal with the probate will be enough for us to retrieve a copy of the will from the corresponding Notary office.

The Deed of Testament in Spain will be valid title for us to perform distribution and adjudication of assets and proper registration to the heirs' names in the corresponding Land Registry, before payment of corresponding inheritance taxes on the heir's behalf.

If there is only a foreign will or the deceased died with no will expressed, we need to gather the following foreign documents, which will have to be translated and Hague apostilled:

- Death certificate
- Foreign will (if existing)
- Grant of Representation or equivalent
- For those cases where the deceased left no will, and had estate in Spain and abroad, it is also necessary to grant a Certificate of Law, which is a document by a Lawyer which explains the Law regarding intestacy in the deceased's country.
- If the deceased left no will but just had estate in Spain, Spanish Law of intestacy will apply to the succession.

With all these documents we will be able to pay the corresponding taxes and register the property under heir's names.

### **:: Legal Tip 46. Who are the foreigner taxpayers of Spanish Inheritance tax?**

#### **Who are the foreigner taxpayers of Spanish Inheritance tax?**

As you know, Inheritance tax in Spain is paid by the beneficiaries. Submission to the tax is due to either personal or real obligation.

#### **If the beneficiary is a Spanish resident:**

According to provision 6 of Act 29/1987 on Inheritance and Donation tax, you will be liable in Spain for the acquisition of all the inherited assets regardless the country they are located. The criterion for this submission is personal obligation (personal residency). Taxes paid in a foreign country by similar concept will be deducted according to a rule established in provision 23 of the Spanish Inheritance Tax Act.

**If the beneficiary is not a Spanish resident:**

According to provision 7 of the Act 29/1987, he will be under Spanish Inheritance tax obligation by real obligation (location of goods), and will have to pay Inheritance tax for those goods and rights located in Spain.

From date of death of the deceased, there is 6 months to pay the inheritance tax return. The forms are 650 and 652.

If you are a resident, it is necessary to have a Tax identification number (NIF).

If you are not a resident, you will need to have a NIE number.

There is no agreement for the avoidance of double Inheritance taxation between Spain and the United Kingdom (we should start preparing one by the way...!).

**:: Legal Tip 47. International double taxation agreements signed by Spain**

For your information and curiosity, here you have the list published in the Taxation National Office (AEAT) ( [www.aeat.es](http://www.aeat.es)), on the countries which have signed a double taxation agreement with Spain.

Just France, Greece and Sweden have signed a double taxation agreement on Inheritance with Spain:

- \* Alemania
- \* Arabia Saudí
- \* Argelia
- \* Argentina
- \* Australia

- \* Austria
- \* Bélgica
- \* Bolivia
- \* Brasil
- \* Bulgaria
- \* Canadá
- \* Chequia
- \* Chile
- \* China
- \* Chipre
- \* Corea del Sur
- \* Colombia
- \* Croacia
- \* Cuba
- \* Ecuador
- \* Dinamarca
- \* Egipto
- \* Emiratos Árabes Unidos
- \* Eslovaquia
- \* Eslovenia
- \* Estados Unidos
- \* Estonia
- \* Filipinas
- \* Finlandia
- \* Francia
- \* Grecia
- \* Holanda
- \* Hungría
- \* India
- \* Indonesia
- \* Irán
- \* Irlanda
- \* Islandia
- \* Israel

- \* Italia
- \* Japón
- \* Letonia
- \* Lituania
- \* Luxemburgo
- \* Macedonia
- \* Malasia
- \* Malta
- \* Marruecos
- \* Méjico
- \* Noruega
- \* Nueva Zelanda
- \* Polonia
- \* Portugal
- \* Reino Unido
- \* Rumanía
- \* Federación Rusa
- \* Sudáfrica
- \* Suecia
- \* Suiza
- \* Tailandia
- \* Túnez
- \* Turquía
- \* Estados de la antigua U.R.S.S. (excepto Rusia)
- \* Venezuela
- \* Vietnam

## **:: Legal Tip 48. Driving drunk in Spain**

### **What is BAC?**

BAC (Blood Alcohol Concentration) is the amount in grams or milligrams of alcohol that exist in a litre of blood or air. It is important to know that the maximum BAC is reached between 30 and 90 minutes after ingestion occurred.

BAC varies depending on:

- Amount of alcohol
- Kind of drink
- Speed of ingestion
- Mixture with solid food
- Weight of drinker
- Sex of drinker
- Age of drinker

### **When you drive under the effects of alcohol:**

- Your reflexes are lower
- You get a sense of excitement and overvalue your capabilities
- Time for reaction is higher
- You have less potential to valuate speed and movements
- Your visual, auditory and language acuity decrease
- You can become more aggressive and irritable
- You can experience some respiratory disturbances and lose some memory capacity and orientation.

## Maximum permitted alcohol levels:

Maximum permitted alcohol levels:		
TYPE OF DRIVER	LIMIT IN BLOOD	LIMIT IN BREATHED AIR
(1) GENERAL	0,5 gr/l	0,25 mg/l
(2) PROFESSIONALS	0,3 gr/l	0,15 mg/l
(3) NEW DRIVERS	0,3 gr/l	0,15 mg/l

## What might be the legal consequences...?

The Spanish Criminal Code (Chapter IV) says:

**Article 379:** Who drives a motor vehicle or a motor cycle under the influence of toxic drugs, narcotics, psychotropic substances or alcoholic beverages will be punished with imprisonment of three to six months or a fine of six to 12 months and, if applicable, work for the community from 31 to 90 days and in every case, the deprivation of the right to drive motor vehicles and motorcycles for more than one year and up to four years.

If the drunk driver is involved in a car accident, may also be charged with other crimes such as homicide by misadventure and therefore liable to pay and indemnity to the prejudiced person.

**Article 380:** When a driver refuses to submit to a legally set test to see if he is driving under the influence of a substance described in the preceding article, he shall be punished as a perpetrator of a crime of serious disobedience (Article 556 of the Criminal Code) punishable by a term of imprisonment of 6 months to 1 year and deprivation of the driving license.

**Article 380:** Who drives a motor vehicle or motorcycle recklessly (with high rates of alcohol in the blood and a disproportionate speed excess with respect to speed limits) and endangers the life or integrity of persons, will be punished with imprisonment

from six months to two years and deprivation of the right to drive motor vehicles and motorcycles for more than one year and up to six years.

**Article 381:** If the behaviour implies clear contempt towards others lives the sanctions are imprisonment of two to five years, fine of twelve to twenty four months and deprivation of driving license from six to ten years.

### **WHY administrative or criminal sanction?**

With the new rules any driver that exceeds the permitted level of alcohol may be punished by the administrative authority (Road safety law) or judged by the criminal procedure (Criminal Code). The traffic officers will decide on submitting the offender to the judge or to the Traffic Authorities, basing their decision on determined criteria which are set by them.

## **:: Legal Tip 49. Benefits for residents in Spain**

### **Should I become a Spanish resident?**

This question is essential for the enjoyment of some benefits and very especially for the ascertainment of your taxes liabilities. Actually many laws in Spain apply the “fiscal residency concept” to classify the residential status of persons for other purposes.

For any European citizen, the acquisition of the Spanish residency is very simple: you just need to register yourself at the National Police station through a very simple process (previous appointment) and pay a small fee of around 10 euros.

If you don't have Spanish citizenship, you're a resident if either:

- You stay in Spain for more than 183 days (including sporadic absences and day traveling in and out of Spain).

- The main base of your professional activities or economic interests is in Spain.
- Your spouse and minor age children reside in Spain.

### **What are the benefits for residents in Spain?**

#### **Tax benefits**

- In Capital Gains Tax: If you're a resident and are at least 65 years old, there will be no tax liability for Capital Gains when you sell what it has been your home for more than three years.
- In Inheritance tax: There is a reduction (up to 99% in some regions) on the value of your home if you leave it to spouse, children or a close relative who is also a resident.
- Lower Income tax burdens: as in Spain the rates are lower than in most of northern European countries.

#### **Health System benefits**

Health system in Spain is universal, which means that everyone (national or foreigner) has rights to basic and urgent health services. (We are very proud of that actually!)

Residents contributing to the Spanish Social Security system or a UK National Spanish resident receiving a UK state pension, will have rights to all the services of the Health system under same conditions as Spanish nationals.

And what about my obligations.....? Well, let's leave it for mañana's post, is it OK?

### **:: Legal Tip 50. Obligations of foreigners resident in Spain**

The main obligation if you become a resident is that of submitting your world-wide incomes to the Spain treasure, but it happens that it really is a benefit rather than an

obligation as most countries in northern Europe have now higher income tax rates than Spain . As a consequence, the income levels for the higher tax rates start lower in Spain than in other countries. Yes! we are cheap... in terms of taxation, hum... that may be a consolation to some fellow citizens.

If you are a Spanish resident, you need to have a Spanish registered car and a Spanish driving license, unless you have got an European driving card.

You need to make your choice and vote (well... vote is always a voluntary mission)

### **:: Legal Tip 51. The Hague Apostille**

One common question by my clients when they are granting to me power of attorney in the UK is : What is that of the Hague Apostille? It was time for me to introduce you to a good explanation of this.

The Hague Convention abolished the requirement of legalisation for foreign public documents on the 5th in October of 1961 and this convention entered into force on the 24th in January of 1965.

#### **Which documents need to be apostilled?**

Public documents emanating from an authority or official, such as:

- Documents from a court or tribunal of the State (including documents issued by an administrative, constitutional or ecclesiastical court or tribunal, a public prosecutor, a clerk or a process-server);
- Administrative documents;
- Notarial acts;
- Official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a

document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

### **Which documents are apostilled in practice?**

Birth, marriage and death certificates; extracts from commercial registers and other registers; patents; court rulings; notarial acts and notarial attestations of signatures; academic diplomas issued by public institutions.

The provisions of the Convention do not specify whether Apostilles should only be issued for original public documents or whether they may also be affixed to certified copies of public documents. However, in light of its practical importance, this question was expressly addressed by the 2003 Special Commission (SC). The Conclusion / Recommendation N° 11 of the meeting reads as follows: "Regarding the application of an Apostille to a certified copy of a public document, the SC concluded that Article 1 of the Convention applies. Individual States, however, may decline to issue an Apostille to the certified copy of a document on the grounds of public policy".

More information can be found at the official website of the Hague Convention, including the full text of the Hague Convention on Apostille.

[http://www.hcch.net/index\\_en.php?act=text.display&tid=37](http://www.hcch.net/index_en.php?act=text.display&tid=37)

### **:: Legal Tip 52. Bank of Spain. Complaints service**

For your information, from Bank of Spain's website ([www.bde.es](http://www.bde.es))

#### **Complaints Service. Purpose and functions**

#### **How it works**

The function of the Complaints Service is to receive and process customer complaints about specific transactions of credit institutions subject to the Banco de España's authority. Claims against currency-exchange bureau which, in addition to buying foreign banknotes or traveller's cheques, are also authorised to sell or transfer them abroad, are likewise addressed. The Complaints Service acts whenever the foregoing activities involve the possible infringement of norms of discipline or good banking practices and conduct. Complaints are processed free of charge.

The organisation and functioning of the Complaints Service are regulated under the Ministerial Order dated December 12th 1989 (Official State Gazette of December 19th) implemented by the Banco de España Circular 8/1990 of September 7th (Official State Gazette of September 20th).

### **Who can lodge a complaint?**

Any individual or company that is a customer of a credit institution can lodge a complaint concerning concrete transactions that affect them.

### **Prior procedures**

Before the Service can receive or process a complaint, the interested party must present evidence that the complaint has already been lodged in writing with the customer complaints department, or its equivalent, of the credit institution in question. This department must provide written evidence of receipt of the complaint presented.

If the customer complaints department refuses to handle the complaint (on grounds that must be justifiable), if the customer does not consider the solution given to be satisfactory, or if the complaint is not resolved within two months of its presentation, the interested party can then file a complaint with the Service.

For this purpose, an institution or group of institutions is considered to have established (or to be formally committed to) an institution or department created for the purpose of safeguarding the rights and interests of its customers, having notified the Banco de España to this effect.

## **Causes of Complaints**

Infringement of the norms of discipline or good banking practices and customs.

**Disciplining regulations:** These are laws and administrative provisions of a general nature that contain precepts specifically relating to credit institutions, which are obliged to observe them. Among these provisions are both those approved by State bodies or, where appropriate, by the Regional Governments with responsibility for this area, and the Circulars approved by the Banco de España, under the terms envisaged in the Law dated 29th July 1988 on the Discipline and Intervention of Credit Institutions.

**Banking customs:** These refer to commonly accepted trade and banking customs.

**Good banking practices:** These refer to practices that do not figure in disciplinary norms or constitute banking customs but which can be reasonably required for the responsible, diligent and respectful running of banking business.

The Complaints Service does not handle complaints relating to matters of business policy (the denial of a loan, for example) or those falling within the jurisdiction of the system of justice. Nor does the Service evaluate any possible damages or order the payment of any pertinent amounts.

Likewise, the Service does not accept complaints that are subject to legal proceedings or court litigation. Nor does it accept complaints lodged by the customers of credit institutions that refer to transactions or events dating back more than five years.

## **How to lodge a complaint**

It should be submitted in writing and include the following information:

- Name, surname and address of the interested party and, if applicable, the same data of the person representing the party and authorisation to this effect.

National identity card number (DNI) in the case of individuals, and public registry data in the case of companies.

- Corporate name of the firm referred to in the written complaint, and the office or offices where the events that gave rise to the complaint occurred.
- Description of the events, reasons and request, specifying clearly the matters for which a resolution by the Service is sought, expressly stating that these matters are not the object of any legal litigation.
- Documentary evidence of the complaint's prior presentation to the customer complaints department (if such exists) of the institution in question and, if applicable, the refusal to accept the complaint or the solution given.
- Place, date and signature.

The interested party should also present documentary evidence in support of the complaint lodged.

### **Processing the complaint**

On receipt of the complaint, the proceedings begin. If the identity of the interested party or the institution affected is not sufficiently clear, the events that caused the complaint are unclear, or no evidence is presented that the complaint has already been lodged with the customer complaints department, the party signing the request will be asked to furnish this information within a period of ten days.

Before the proceedings are concluded, the institution in question must be heard. The institution has 15 days to respond to any questions, after which, if these questions are left unanswered, the proceedings can continue.

As a general rule, the proceedings conclude with a reasoned report. It must contain clear conclusions, stating whether the events in question indicate an infringement of the norms of discipline and whether the institution has acted in keeping with good banking practices and customs. The report has no executive attributions.

Effects of the complaint

If the credit institution acts on the report and rectifies its situation with the party who lodged the complaint, as indicated in the conclusions, it should notify the Banco de España within one month of receiving the report, and the case is then closed. If no such notification is received in this period, the proceedings will be included in the records for any legal effects that may be in order.

If it is deduced that the institution's conduct represents an infringement of the norms of discipline or indicates criminal conduct, a tax offence, violation of regulations on foreign exchange, consumption or fair trade, among others, the Legal Services will notify the Executive Commission of the Banco de España to this effect.

Moreover, in the event the parties settle or abandon the action, irrespective of the responsibilities of a disciplinary or other nature that may be appropriate, the Complaints Service is authorised to present to the institution any recommendations it considers pertinent.

As stated, the reports of the Complaints Service are not binding for institutions, and nor may appeals be made against them.

Address of the Complaints Service

Banco de España

Servicio de Reclamaciones

Alcalá, 48, 28014 Madrid

Telephones: 913 385 068 and 913 385 851

Annual Report

Every year the complaints service publishes a report including a statistical summary of the cases processed; the description of the complaints the processing of which has concluded in favour of the claimant, expressing the criteria justifying the rulings, the institutions concerned and the infringements or improper practices in question; a summary of the criteria applied in rulings favourable to credit institutions, when they are of general interest to the public; and a summary of the complaints where, owing to acceptance of the claim by the defending institution or abandonment of action, no report has been delivered.

An electronic edition of the latest Annual reports is available on this site ([www.bde.es](http://www.bde.es)).

## **:: Legal Tip 53. Homeowner Insurance (Part I)**

### **Homeowner's insurance (Part I)**

Homeowner's insurance (seguro del hogar) covers:

- The house itself
- Everything inside

...against a huge number of different risks at your choice. Of course there are more or less complete policies and insurance contracts. Just to mention some of the risks that may be covered by a homeowner insurance: fires, explosions, rays, fumes, electricity shortcuts, super voltage, escapes, inundations, leaks, thunderstorms, icing, robberies, vandalism, salvation measures... expenses for fireman work, salvage, provisional accommodation, documents reposition, cleaning, surveys, placement of glasses...

The premium of the policy will depend on the value of the house itself, the valuation of covered objects and the risks you are guaranteed against.

There is no law obligation for homeowner insurance in Spain. Many banks, as a condition to borrow you money for the purchase, requires you to insure the mortgaged house at least with the minimum level of guarantee in order to protect the object till the loan is returned.

This type of Insurance is the one which causes more claims, according to the reports of the General Government Office of Insurance and Pension Funds.

By the time of contracting the home insurance is extremely important to tune the most regarding the continent and the content, because otherwise the contract would be ill-suited to reality, causing possible problems in the future.

The market offers many varieties of home Insurances; even the same Company usually offers several options for potential claims that may arise in the home. It is necessary to do a reasonable study of the different products and see which one is most appropriate to the needs of the user.

The insurance contract needs to be written in a document (policy) and need to cover a number of details:

- Full name or names of the contracting parties and their home, as well as the designation of the insured and beneficiary, if any.
- The insured concept.
- Nature of risk covered.
- Insured objects and location of same.
- Sum insured or scope of coverage.
- Amount of premiums, surcharges and taxes.
- Maturity of the premiums, place and method of payment.
- Duration of the contract, indicating the date and time you begin and end their effects.
- If an agent is involved in the contract, the name and type of agent needs to be mentioned too.

The documentation of the policy consists of two documents of great importance and should be reviewed before the actual signing of the contract. These should identify clearly the exceptions and situations where the insurer will indemnify the beneficiary of the insurance (these are the general and special conditions of the contract).

The vast majority of insurance claims tend to be motivated precisely because consumers assume that certain risks are covered when they are not. As you may know... the clue is in the exceptions of the General Conditions.

It is most advisable to do a “proposition of Insurance” this proposition has no binding character for the consumer and once the offer is made by the Insurance Company, it will be active for fifteen days.

The Insured contract period will be determined by the policy, which may fix a time not exceeding ten years. However, the period may be extended one or more times for a period not exceeding one year each time. The parties can oppose the extension of the contract by written notification to the other party. This needs to be made within a period of two months prior to the completion of the current period of insurance.

### **:: Legal Tip 54. Cancellation of Home Insurance contract**

The contract can be cancelled by either party.

**\*The insurer may proceed with the cancellation in the following cases:**

1. If the insured has lied or concealed regarding the necessary data provided for the hiring of the policy. In these cases, the insurer has a month since that circumstance is known to cancel the insurance. The insured will not be entitled to reimbursement of any premium for the time remaining to fulfil the term of the contract unless it is proved that he did not act in bad faith.
2. If during the contract, the risk covered by the policy is increased (for instance: less security of premises, more objects than initially).

In these cases, the insurer can either cancel the contract or propose a change in the conditions of it, which, if not accepted, will entitle the company to terminate the contract, in both cases he will be obliged to pay back the proportionate part of the premium.

If, in bad faith, the insured person conceals to the company a situation that exacerbates the risk covered by the policy and this is materialized, i.e., the

incident is covered by the insurance (theft, fire, flood, etc.). , the insurer may be free to pay compensation.

In cases where there is no bad faith, the insurer is only obliged to pay the difference between the contracted premium and that which would have derived from the increased risk.

3. The insurer can cancel the insurance if the object is sold. He will repay the outstanding premium.

**\*The insured may also proceed to the cancellation of the insurance contract on the following cases:**

1. When there are circumstances that have made the risk decreased, so the premium should be reduced and the insurance company does not agree on the reductions. In these cases, the policyholder is entitled to receive the difference between the premium he has paid and that other which would have corresponded due to the decrease of the risk.
2. When the consumer buys an insured object and he is not interested on the Insurance hired for the said object.

### **:: Legal Tip 55. Claims against Insurance Company**

One of the most common problems with Insurances is when the insured has “non conformance” with the report on the accident made by the Insurer’s surveyor.

In many occasions, the compensation valued by the Insurer’s surveyor is not enough and in other occasions, the Insurer considers the incident not being covered by the Insurance.

**Legal and judicial proceedings might be needed then:**

The procedure begins with the appointment of an expert by each party. Those experts might reach an agreement which will be exposed in a joint report which shall state the grounds of the incident, the assessment of damages, other circumstances that affect the determination of compensation, depending on the insurance in question and the liquid amount of compensation.

If there is no agreement among experts, both parties shall appoint a third expert or it will be named by the corresponding Judge of First Instance

**How to act in case of an insured incident:**

The holder, insured or beneficiary of the Insurance policy must report the accident to the insurance company within five working days, stating the circumstances and consequences of the accident.

Once the accident is reported to the insurer, the Company will send an expert for the analysis and evaluation of the incident. After the valuation by the expert, the insurer must pay the agreed compensation, repair or replace the insured object.

The Insurance Company is required to pay at least the minimum amount within forty days of being notified of the incident and to complete the payment within three months from that date.

If the insurer fails to pay the compensation within a period of three months, the possibility for judicial request of the amount is open: this claim will comprise the assessed amount, plus legal interests plus compensation for the damages that this delay may cause.

**:: Legal Tip 56. Maternity/paternity leave in Spain**

The Spanish Congress passed on March 2007, the Effective Equality of Women and Men Act. This Law, among other measures, allows for the extension of paternity

leave to 13 days, in addition to the two that were granted, which can be extended to a month in a six years period.

Beneficiaries of this new Act are self-employees, employees, training employees and part time workers in order to enjoy paternity, adoption and foster care (either temporary or permanent) time.

The employee can enjoy these 15 days, or can reduce it, as a woman can also reduce her maternity leave. These “out of work renounced days” cannot be changed for vacations or any other birth’s maternity leaves. The decision to have total or middle leave should be in line with the company.

The starting day for woman can be before the delivery date (due to obvious reasons of gravity...); men cannot choose: they need to start when the child is already crying outside the womb in this wonder...-full world. In cases of adoption or foster care, the starting day will be the day the judicial decision or the administrative approval is in place.

Among general procedures to be performed, the General Practitioner of the Public Health services should be sought in order to produce a maternity report, one copy needs to be kept by the user/ applier to this benefit, and another copy will be kept by Public Health Services. The applier also needs to be prepared with personal identity documents (identity card or residence card), family book and the documentation relating to the registration within the Social Security system.

The right to enjoy these benefits will prescribe five years after the birth/adoption/foster care.

## **:: Legal Tip 57. New, unexpected circumstances... can I cancel my contract?**

Relatively often, once a contract is signed, there are events beyond the control of the contracting parties which substantially alter the contractual circumstances; the inevitable result is that certain effects violate the due contractual balance.

These cases of unexpected change of contractual circumstances produce numerous problems that need to be solved by the Legal System, regardless of the silence of the Law or the foresight or anticipation of the signatories of the contract.

A clear example of this are, in my opinion, off plan contract purchases, where external financing was part of the contract assumptions in relation to the current situation derived from the credit crunch.

Supreme Court Case Law in Spain resort to the legal principle "rebus sic stantibus" as an instrument to try to mitigate the consequences of the imbalance produced by the alteration of the contractual circumstances. This High Court understands that all contracts with deferred completion have this implicit clause by which alteration of circumstances legally demands the adaptation of contract clauses to new reality and therefore, obligatory enforceability of original contract obligations is somehow questioned or modified. (The Latin statement for that is: *contractus qui habent tractum succesivum vel dependentiam de futuro rebus sic stantibus intelligitur*).

Anyhow, the application of the clause by the Supreme Court is restrictive and conditioned to the following facts:

1. Extraordinary event happening between circumstances existing at the moment of the signing and those existing at the moment of fulfilment or completion.
2. Exorbitant disproportion of reciprocal obligations arising out of the extraordinary event.
3. No other compensation legal mechanism being practicable.

4. New circumstances being entirely unforeseeable by the parties when the contract was signed.
5. Good faith and no responsibility by the claimer.

Virtuality of the clause "rebus sic stantibus," understood as adaptation of the content of the contract (revision) or a declaration of their ineffectiveness (cancellation) in the future, is not the result of any contractual agreement, nor a presumed clause, but one of the rules of contractual mandatory integration under Article 1258 of the Civil Code, which is applicable to contracts with deferred completions:

"Contracts are perfected by mere consent, and since then require not only compliance with what has been expressly agreed, but also with all the consequences that according to their nature, are consistent with good faith use and Law"

### **:: Legal Tip 58. Contract revision: an alternative to judicial affair.**

#### **Contract Re-signing: an alternative to judicial affair.**

If you are cancelling your contract, based on effective and legal reasoning with the aim of using that money in the future to buy again in Spain, it may be a good idea for you to try to renegotiate with the developer the terms of the contract.... specially the price and the completion deadline.

As there is a previous breach by the developer, which could drive the case to cancellation, you can take the chance to put some pressure on the developer and get same property at a much more reduced price. It actually is a win-win deal so I cannot see a developer refusing it and if so, I am sure the Judge will agree with you and will revise the contract on your favour.

This new contract can be drafted now with full respect and coverage of all your rights as a consumer... those that your current contract lacks. Of course with a proper Bank Guarantee in place.

In terms of price reduction: I know a developer who is offering its properties at a price reduced by the money the interested person is trying to recoup from the developer in Courts (that 20-30% of the price paid as a deposit). I think it is a good example of common sense and keenness to put some balance and life back to the market.

If you cannot get finances now, as there is also a possibility of cancelling the contract because of this, you can try to agree to have completion postponed and a good discount on price.

Crisis brings opportunities.

### **:: Legal Tip 59. Motor vehicle tax in Spain**

Tax on motor vehicles is a direct tax, established in Spain, municipally owned, mandatory and which management is fully carried out by Local Councils.

It is a tax levied on ownership of motor vehicles, which are suitable for circulating in public roadways

The regulation of this tax is in the Local Treasures Act. (Real Decreto Legislativo 2 / 2004 of March 5).

The classification of a vehicle as being suitable for roadways circulation is dependant on being registered in the corresponding registry. Collection or antique units are not levied by this tax.

Tax payers are those individuals or entities appearing as holders in the log book.

The tax amount is calculated under a tariff table. The table assigns every type of vehicle a minimum amount to pay. This minimum amount depends on: the output tax of the vehicle, the number of seats, cargo capacity and engine capacity.

Every type of vehicle has a different criterion for the calculation of the minimum:

Cars	(output-power)
Bus	(seats available)
Trucks	(usable load)
Tractors	(power tax)
Trailers and semi trailers	(usable load)
Mopeds and motorcycles	(cubic capacity)

Local Councils can increase the quotas established in the table above with a coefficient, whose limit is set by law depending on the population of the municipality.

There are some subsidies to the taxpayer depending on the type of fuel consumed by the vehicle and the characteristics of the engines, all in relation to their impact on the environment.

The tax period coincides with the calendar year, accrued on January the 1st.

Management of the tax corresponds to the Local Council which corresponds to the address mentioned in the circulation permit.

### **:: Legal Tip 60: Tax on property in Spain: IBI**

The IBI tax is local tax levied on property, both urban and rural, which is accrued yearly. The collector of this Tax is the Local Council where the property is located.

The tax amount is calculated on the cadastral value of the property and determined by such other factors such as surface, specific location...

IBI rates vary from town to town, mainly depending on size of the town.

Non payment of IBI tax is attached to the property which generates it. So, if you are buying a property, it is very important you verify if all the yearly IBI taxes have been paid.

### **:: Legal Tip 61: What the hell is the Land Registry in Spain?**

It is not the Town Hall property registry, it is not a census, it is not a cadastre, it is not a list... is the ultimate authority on ownership and real estate rights in Spain. ....a public office for the record of ownership and real estate rights to the general knowledge of people.

The main function of a property registry is to provide reliable information and legal safety to citizens; they can rely on what is recorded there at the time of contracting on ownership or any other real estate rights: full and legal ownership, encumbrances, loans, charges, easements, habitation rights, ownership limitations, prohibitions for transference, judicial actions on the property, embargos...

Land Registry was created in Spain in 1861 to cover three goals:

1. To provide solid foundations to the mortgage loan system.
2. To provide protection to the holders of registered rights
3. To provide speed to real estate legal traffic.

In some jurisdictions, such as German, registration is mandatory in order to convey the property. In other countries such as Spain, registration is voluntary, but it has huge and immensely relevant advantages that make it highly advisable!

#### **Some registration principles in Spain:**

1. Principle of request: Any registration in the Land Registry must derive from the request of interested party; the Registrar can not record rights ex officio.

2. Principle of priority: "First in the registry, better in Law". Once a right is registered, any other non-compatible right cannot win over it. For instance: in the case of double sale of an estate (a person sells a property twice, taking advantage that the first purchaser has not registered the property) the ownership will belong to that one good faith buyer who has duly recorded the right in the Land Registry, leaving the other only entitled to claim a compensation.
3. Principle of Register Public Faith: This principle has the aim to provide legal safety to the market: "that which is not in the Register, is not in the reality". It is important to remark that the principle of Public Good Faith covers just purchasers for good and valuable consideration acting in Good faith. Good faith is supposed and who denies it need to prove it.
4. Principle of legality: Just valid and perfect right titles are registered. The legal judgement on validity and fullness is the mission of the Land Registrar.
5. Principle of publicity: Nobody can argue ignorance of what is recorded in the Land Registry
6. Principle of legitimacy: All the Land registry records make every necessary legal effect and are fully valid unless they are expressly declared inexact or invalid.

(more principles in tomorrow's article... hopefully written from London!)

## **:: Legal Tip 62. More protection by the Land Registry**

### **Principle of successive tract:**

"No entry except the first, will not be registered, or recorded without the right form where it emanates has been recorded previously" In simple words: Land Registry in Spain works as a chain, so no link can be engaged without the previous one. Sometimes, in order to register a right which has no immediate right recorded, you will have to do through the registry procedure for resumption of the successive tract.

For instance: we are working for a client who wants to register a house he has inherited, the deceased person did not have the house registered under his name in the Land Registry, we need to prove ownership through public and private means and apply for the registration of ownership by the deceased person BEFORE instating our client's (the heir) record.

**Principle of specialty:**

Tells about the system of the Land Registry, whose unit is the PLOT, which has a number and on which all related rights are recorded. So if you own a house in Spain, you need to know its registry number. Your property must be registered in the Registry according to location, not every town has one, so if your house is in a little town, it is very possible the Registry will be in the nearest big one. Anyway, your lawyer will be able to check on your registered ownership status online.

**Principle of impenetrability:**

Once the procedure for registration of a right has started, there is no gate for any incompatible rights to try to enter the Registry.

As you know Land Registry procedures in Spain are very controlled and strict in order to provide safety and consistency to the mortgage market and the real estate traffic.

The role of Notary and Registrars is generally unknown by common law citizens as it is completely different from the role of them in your legal system. That is also why conveyancing lawyers play a very different part in Spain and in the UK when working for you at the buy or sale of your house in Spain.

Your conveyancing lawyer in Spain is a guide who will make your company while you are immersed in a system, country and language that you do not know. The Spanish conveyancer will procure that deposit and purchase contracts are fully respectful to your Consumers rights, and will defend your position before the other contract party in every sense, but it is very advisable that you end the process by signing a Notary deed and registering the property in the Land Registry.

The sale is completed with the private contract but you will not be able to oppose it to good faith buyers if it is not registered and of course, no bank will lend you money if the property is not also properly recorded.

What to do if you obtain your registry certification and discover that your house is different/bigger than what is registered? I will tell you about this in a couple of days.

### **:: Legal Tip 63. Things to take with you in your car.**

Together with learning the rule or the trick of turning left indicators on and watching through the left rear-view mirror while circulating inside the “rotondas” (roundabouts), as my driving teacher recommended to me, there are another few things that I want to pass it on to you.

It is obligatory to bring...

- Driver's license
- Registration certificate of the vehicle
- Vehicle data sheet
- Certificate of the last ITV (Inspeccion tecnica de vehiculos: technical vehicle inspection)
- ITV sticker in place.
- Spare pair of glasses or contact lenses (obligatory)
- Spare set of bulbs and tools for its replacement.
- Spare wheel, under the required revision and correct inflation pressure
- Emergency triangles: in case of emergency they need to be placed in front and behind the car at a 50 meters distance.
- Reflective Vest in the interior of the car: you need to use it if you have to get out of the car between sunset and sunrise

Policy and receipt of insurance used to be obligatory too but is not strictly necessary anymore. Nevertheless, I would recommend you to still keep bringing them as it could be actually required from you if the traffic agent cannot locate it electronically.

If you are driving another person's vehicle, it is advisable to bring an authorization by the owner.

Make a good check on validity and accuracy of papers: expiration and non accuracy of data can be fined. If you change your address, you need to communicate that to the Traffic authorities within 15 days.

You can bring just photocopies of these documents to keep the originals always safe at home but, the copies need to be officially verified and stamped. The validation of documents can be done by Notaries and Traffic agents. Bring the originals if you are driving out of Spain with a Spanish license and Spanish car as International agreements do not allow the use of photocopies.

Other important, advisable items are:

- Sun glasses (advisable)
- Jack and wheels key
- Medical documents showing blood type, allergies and medical conditions of the travellers, especially in long trips.
- And such other ones as a road map, a flashlight, duct tape, a cloth or a "gripper" to start the battery if necessary

### **:: Legal Tip 64. Loans for Community of Owners**

It might be the financial crisis is having an impact on the general status of common elements of your development.. Do you know that there are specific lending products for this? Let's ask Banks for some help!, the conditions happen to be quite convenient.

These collective loans are adjustable to the specific saving capacity of the owners' community (OC), so that the owners do not get in debt individually and are designed to finance investment and expenditure of repairs of the OC such as walls or decks reforms, removal of architectural barriers, lifts, heating and gas installations

The holder of the loan is the OC. There is no further requirement of warranty or guarantee.

The maximum repayment term is around 10 or 15 years (with the possibility of initial two years of grace!), and carries the possibility of an irregular fee (between 1% and 1.5%).

In exchange for these conditions, the contract involves the obligation by the OC to open and maintain an account in the lender Bank or institution, for the payment of the ordinary and extraordinary shares.

Documents needed:

- Photocopy of CIF (Tax identification number) of the OC.
- Permission to consult the community CIRB. Central Information Risk of the Bank
- Photocopy of budgets or repair contract to be accepted to fund.
- Information on existing accounts and on accounts of the last two years.
- Accounting documents.
- Book of Minutes, including at least the last three agreements.
- Legal representatives of the OC.
- OC agreements regarding the needed repairs.
- Certification of the financing agreement signed.

## :: Legal Tip 65. Reverse mortgages

I do not know how many of you are in the glorious situation of retirement, being over 65 years old, but thought this information will be of interest for you, your relatives and/or friends.

If you are from the United Kingdom, you are fully familiar with this financing product which is used there since 1965, but I just wanted to let you know that there is also that possibility with your Spanish home as many Cajas and some Banks are now allowing the establishment of this kind of loan on your second residency in Spain.

That might help you a bit to cope with the crisis as a complement to your pension... and maybe help yours.

The reverse mortgage is a mortgage loan intended for people over 65 years or dependent. The financial institution pays a guaranteed monthly amount which is guaranteed by the house. Heirs will not lose ownership of the house.

In Spain, the 22% of clients interested in reverse mortgages have houses located in Andalusia, mainly because the over supply of properties in that region

Some figures for correspondences between value of apartments and monthly rentals obtained with them:

A 250.000 € valued apartment will generate:

365 € per month for a 70 y/o man

333 € per month for a 70 y/o woman

647 € per month for a 80 y/o man

584 € per month for a 80 y/o woman

The reason for rent difference between men and women is that we, women, live longer, statistically.

The interest rate applied is around 6% and the repayment period varies between 12 and 15 years.

The reverse mortgage market began in Spain in 2004. At present a total of 20 financial institutions are selling this product: Ibercaja, La Caixa, Caixa Sabadell, CAI, Caja Vital, Caixa Manresa, Caixa Terrassa, Caja G, Caja Navarra, Caixa Penedes, Caixa Girona, Caja de Ingenieros, Bancaja, Kutxa, Caixa Galicia, Sa Nostra, and BBK Caja Castilla La Mancha.

As for banks, BBVA is the only one which sells this product. Also an insurer, Catalana Occidente, launched its own reverse mortgage.

Together with the United Kingdom, where this product has been used since 1965, other countries with a tradition in this type of products are the U.S., New Zealand, Canada and Australia.

### **:: Legal Tip 66. To buy a fully free property: IBI tax**

Your lawyer did check on loan and encumbrances on the property through the Land Registry and found it fully clean and clear now... the Local Council is asking you to pay 5000 € on old taxes! ... what taxes?

Provision 64 of the Local Taxes Act explains how property itself is liable for unpaid local property taxes due... that is why your lawyer and the Notary needs to expressly check on the status of these tax payments. The report on this status needs to be provided up to date by the Administrator of the Community of owners.

The abovementioned provision says that in the event of transmission of ownership rights of properties, the estate itself will be subject to the tax liability in a subsidiary way under the terms of the General Tax Law. It means that if the debts are not paid, the Local Council can place an embargo on the property.

For this purpose, notaries that authorise the signature of a public deed for transmission of ownership will specifically ask and warn regarding:

1. Pending IBI debts on the property.
2. Deadline for payment of the debt.
3. Liabilities involved if not paying.

Liability is jointly and severally distributed among all co-owners according to Cadastre records.

### **:: Legal Tip 67. Coast Act...: some reforms needed.**

The Coast Act provides that on sea banks areas there can be no private property, and identifies an area of 100 meters (zone of protection) from the shore on which building is prohibited and where the houses built are subject to limitations. In urban zones this area is at least of 20 meters. This Act also establishes a zone of influence of 500 meters (zone of influence) from the inner margin of the sea bank area which can be urbanised while avoiding the formation of built-up areas and architectural screens.

To determine which areas are maritime-terrestrial public domains, the Administration carried out a demarcation. In this procedure, an expert determines the lines of division of private and public domain. If there are houses within the public area, regardless of the time they have been there, even if prior to the enactment of law, owners may lose their property. These owners also have the option of stay as users of the house for 30 years extendable for another 30.

Legal advice tip of today: The revision of the character of the land needs to be done by an expert, as none the Land Registrar or Notaries may be aware of the public character of the land you are buying and for which you will be paying a large sum of money.

The National Platform of People Affected by the Coast Act estimated that around 15% of those affected were foreign citizens, mostly retirees Europeans. They have just worded what it can be the reform of the Coast Act where they basically propose the revision of :

- The two definitions of zone of influence and zone of protection.
- The prohibition of retroactivity
- Enough compensation for good will buyers of illegal houses.

### **:: Legal Tip 68. Financial brokers under transparency**

The Spanish National Congress has recently approved the draft of Act that regulates the offer of loans, mortgages and the brokerage services for the procurement of a loan or credit. This is a new Law that will benefit not just consumers but also those companies which offer those services, which, as not being Banks or official financial institutions were just under the regulations of Consumer Law.

There was no a unifying legal text for the regulation of these services before.

Obligations remarked by the Law are mainly for transparency and information:

- Transparency obligations of companies engaged in this activity.
- Certain and clear conditions for the contracts.
- Guarantees needed
- Clear consequences for breaches of contracts
- Out of Courts mechanism for the solving of conflicts.

There are specific requirements for transparency which request certain information to be provided to the consumer 15 days before the signing of the contract.

Publicity of these services must clearly state that the brokerage/agency character of them.

## **:: Legal Tip 69. Claims against IBI tax amount**

If your IBI receipt (Local property tax) over-rises after a Cadastre review, there are two possible avenues of legal action:

### **A) Before or against the body of cadastral revision.**

I. Submitting a Request for review to the Cadastre management organisation which corresponds territorially.

The document you will receive with the revision of the Cadastre value needs to mention the address of the office for the claim and the possibility of the claim itself.

II. Directly to the pertinent Court with judicial power on economic acts of the Administration.

In both cases (I and II), the earlier deadline for filing an appeal is 30 working days (it includes working Saturdays and excludes Sundays and public holidays) from receipt of notification of cadastral revision. You need to receive that document by registered mail.

You are obliged to pay the IBI receipt you are challenging even if you are claiming against it.

### **B) Before the Local Council**

The Local Council applies an index to the cadastral value; this determined the IBI tax amount. It is also possible to submit a claim against that index.

## **:: Legal Tip 70. Fruits and vegetables by Law**

A new EU regulation (288/2009) requiring the consumption of fruits in schools.

Member States will have to submit the strategy for the implementing of this regulation by May 31 of this year.

The Regulation stipulates that the products covered in the promotion program are fruits and vegetables, transformed fruits and vegetables and banana products. It excludes products with sugar, fat, salt and added sweeteners. The target group will be children, from 3 to 15 years who regularly frequent a school administered or recognized by the competent authorities of a Member State.

## **:: Legal Tip 71. Questions and answers on Community of Owners.**

### **Part 1.**

#### **1. Do I own some of the common elements?**

Yes you co-own them. You are the exclusive owner of your apartment and co-owner of the common elements: stairs, patios, yards, entrances, elevators, structural elements, power supplies' installations, pools, gardens, tennis courts, common facades, roof...

#### **2. How do I know which are "my" common elements of my Community of Owners?**

The chart of individual and common elements is a Notary deed, the deed of Horizontal division which is granted when the building is finished.

It is a document which describes the building as a general unit and every flat or premise individually, with indication of surface, floor and annexes such as parking garages, attics or storage rooms.

**3. So, as I am a co-owner, can I freely allot some of them for my private use? It would be so nice to have a corner of that pool....!!**

Unfortunately not. Co-ownership on these just implies you need to maintain them (there the community of owners quota) and you need to be asked on any alteration of them.

**4. Oh well... how is that quota calculated?**

Every apartment or premise has a quota or share of ownership (cuota de participación) of the total value of the building, which is the scale to determine the percentage on the community expenses to be paid by each owner.

The proportional share of every flat or premise is fixed having as the calculation base, the net usable area of every flat or premise in relation to the whole building, its interior and exterior location, situation, and the kind of use of common elements that the owner is supposed to be doing in the future.

**5. What if I do not agree with the quota assigned to me?**

You can of course analyse how it was calculated and challenge it before the Community of Owners. You can also go to Courts if they keep "overcharging you".

**6. How can I know where are the legal rules of the Community? I do not want to obey too many rules...**

That Notary chart, the horizontal division deed, also has certain regulations (called Estatutos) of the building use, its flats and premises, installations and services, expenses, administration, maintenance and repairs. Every new owner will be bound automatically by them and the decisions legally taken at previous meetings.

**7. Where I can know of previous decisions made by the Community of Owners?**

The minutes of the Meetings of the Community are kept by the President or Administrator.

#### **8. Can stupid rules be removed?**

Of course yes but you need the unanimous consent of all the owners if they are part of the Statutes and the majority if they are part of additional internal rules.

#### **:: Legal Tip 72. Modern lawyers**

I started the working hours today by reading an article by both a Spanish Judge and University Professor Don Manuel Martin Bernal. He analyses there the legal grounds for the submission of rentals to arbitration.

I enjoyed several statements by him regarding the need of promotion of arbitration formulas in order to make the judicial system fluent and effective, and the need of promotion of rentals in a society that has been over-valuing property for ages. It is certainly not difficult to see how correct he is when we count the current thousands of empty, built properties in Spain. How true is the saying that states that need makes virtue.

Two great propositions to become more "European", modern and competitive (arbitration and rentals) Both for the sake of flexibility and dynamism....Yes, we lawyers need to be "people of our time" not just by using blackberry phones and mini laptops.

We need to perform a permanent attitude of healthy and constructive deconstruction, criticism and question of present institutions, pre-assumptions and prejudices...

I remember a good colleague ( and brother) of mine who said to me: " That is what system is for... to be deconstructed" He meant when it is illegitimate or unfair: I laughed a lot, I always do with his brilliant appreciations. I agree that it is what we

lawyers need to pursue in a great extent. No unmeaningful that he said that when a Judge stated in a Conference that a certain proposal by a lawyer was "against the system". How boring Mr. Judge!

**:: Legal Tip 73. Questions and answers on community of owners.  
Part 2.**

**9. My community established additional rules to the Statutes, is this legal?**

Yes, owners can establish new rules (always provided they are respectful towards applicable Law). Just majority is needed in these cases

**10. What if the rules are against Law?**

If a rule is against Law, it is null and void and you are not under legal obligation to obey it.

**11. I want to do some refurbishment in my apartment? What do I need to do?**

You just need to communicate it to the President in writing, make your budget and hire the necessary workmanship.

Every owner can just do building works in his flat or premise, modifying its architectural elements, installations and services, provided:

- The safety of the building, its general framework and its outer configuration and conditions are not altered.
- None of the other owners' rights is damaged.

**12. My community does not allow pets? Is this a legal prohibition?**

Community of owners cannot restrict the way you use your private property or the guests you have in it: other way said they have no jurisdiction on your home (thank goodness!).

Decisions by the Community need always to be made just regarding common elements. So the answer is... YES. You can have pets; provided they behave according to the rules of the Community in common areas and they are healthy, safe and innocuous. (Cannot have a panther for instance).

**13. But what if a neighbour has a dangerous animal or has a pet in unhealthy conditions?**

After reporting it to President, for an amicable solution, you can also report it to the Police and the Health Local Authorities, which can oblige the owner to “relocate” the funny animal out of the Community.

**14. Can the community prohibit me to walk my dog through the common elements?**

No, they cannot. Always the walk performs in healthy, safe and innocuous condition. They can ask you to always walk your dog tied up as a matter of safety or health and/or clean if he/she... "burn ..." or “water...”

**15. What can we do if the crocodile persists in the Community, bathing in the pool?**

The President of the Community of Owners either by own initiative or by the initiative of any of the owners or users, must request the owner to send him to the... river, or inform that person about the legal actions against him/her that might be started if the behaviour is not stopped.

If the offender crocodile persist doing it, the President, once authorised by the committee of owners, can call the Police and local health authorities.

### **16. What if the problem is a noisy baby?**

Babies cry and it is unavoidable. There is nothing to do but use ears blockers or... offer some help to those busy parents.

### **17. What if an owner plays music very high?**

Disturbing=illegal. The president can ask him to stop and if persisting can call the Local authorities for a stop.

### **18. Can a Judge ask the owner to compensate damages?**

Of course yes, if a judicial procedure is needed to stop an illegal activity, the Judge can order:

- The offender to stop the forbidden activity once and for all.
- The offender to compensate the Community for the produced damages.
- The offender to be deprived of the right to use the house or premise for a period no longer than three years.

### **:: Legal Tip 74: Banks, dependence and autonomy.**

Not every financial institution but some of them have these services for "dependence and assistance".

The aim of these programs is to benefit old people and in some cases, it is included the possibility of obtaining loans at very good conditions. These services intend to enhance the quality of life of the elderly men and women and to increase their personal autonomy.

These services can be hired by anyone, but are always aimed to people over 60 years, and consist of a comprehensive package covering health and social needs of them and their closest relatives.

Some services, among others: telephone contact with a doctor all day long, remote assistance, a wide range of home services (house cleaning, personal hygiene, etc.) and services for meals at home.

It is time for financial institutions to turn to real needs.

### **:: Legal Tip 75. Intellectual property rights in Spain**

Intellectual property in Spain is regulated by Royal Decree 1/1996. The Decree distinguishes between standard copyright (whose holder is the author of a literary, artistic or scientific work) which comprises full exploitation rights on the work, and other related rights, out of a connection with the work (performers, artists, players, producers...).

Registration is voluntary and it is not needed for the acquisition of copyrights, which arise just out of creation. Registration constitutes a qualified proof of existence of those registered rights.

Registration can be done on-line. Fees need to be paid in advance.

### **:: Legal Tip 76. Questions and answers on Community of Owners.**

#### **Part 3.**

#### **19. Can I turn my apartment into two?**

Yes, you can. Flats can be divided and joined, the consent of affected parties and of the Community of Owners by unanimity is needed.

#### **20. Am I fully free to keep my house dirty or un-maintained?**

No.... you are not, for the common good of the neighbours. If smells, leaks, noises ... cause damage to your neighbours, you will have the obligation to compensate them.

**21. Should I bear every work agreed by the Community?**

Of course, you have, even if they limit your ownership rights if they are for the creation of common services of general interests (access for disabled people, additional elevators for stairs stretches, anti-fire devices....)

**22. What if I want my Community mail to be sent to the UK?**

You cannot receive your community mail in the UK. You need to choose an address in Spain. Your Spanish lawyers' address may be a good idea as he/she will be ready to oppose anything found illegal in the mail right away! Some foreigners suffer the decline of their rights just because they did not receive a communication or a lawsuit. Some plaintiffs take advantage of this to win judicial cases!

**23. Can I communicate the mail address by telephone?**

No, you need to use a mean which leaves proof of reception: a registered fax or letter most advisably.

**24. I have not communicated any special address in Spain. Where is the secretary sending the communications?**

In the case of no given specific mail address, the secretary sends the letters to your apartment located in that Community and if not possible there, he/she places a post in the news board of the building!

**:: Legal Tip 77. Questions and answers on community of owners.**

**Part 4.**

**25. The lift is broken... who should I call?**

You need to notify it to your President (he might have to call the Property Manager) as the Community of Owners (CO) is obliged to make all the required reparations to keep services in good use.

**26. What about a crack in the pool? Or in the communal front wall?**

Of course they are also obligations of the Community of Owners, which need to have insurance for these reparations. If the building defects appear within the first 10 years there is an Insurance that the developer needs to hire and maintain.

**27. Is it the so called seguro decenal?**

Yes, correct! It is called that way because it covers building defect during ten (decena) years.

**28. Some parts of the façade of my building are falling and no one takes action... what should I do?**

You need to communicate it to the President for the Community to take measures as, the Community will be liable for any damage or injure caused. That is why a good Insurance for the community of owners needs to include civil liability coverage.

**29. Can I ask for a change of look of the façade? It is in a great condition of conservation but.....it is so old fashioned!**

No owner can demand new installations, services or improvements in the building which are not necessary for the needed conservation, habitability and safety of the building.

**30. I would need a video entry phone for the building? Am I entitled to ask the community to place and pay for it?**

If you are deaf or think there are clear safety reasons which require it, of course you can and the Community needs to pay for the installation.

**31. The members of the community of owners have decided to install a hot tub and some gym equipments in the garden, which will entail to pay a double community fee. I opposed to that to the Community of Owners. Can I omit the payment as I do not need such extra things!!**

I am afraid you will have to pay for them, as just if the fee was three times the amount of an ordinary quota you can exclude yourself to pay it if you did not agree with the unnecessary improvements.

**32. We have placed electronic devices to open the common main doors with the TV remote control, my neighbour opposed the installation and now is benefiting for the service because it is also reached by his T and we cannot deprive him from it.... what a nerve! Can we ask him to pay?**

If the fees for that installation was more than three times a regular fee, and he opposed the installation in a community meeting, you cannot oblige him to pay.

If the deprivation of use of an extraordinary, non-necessary improvement is possible (hot tubs, gym machines...) and later on, the dissident neighbour wants to take advantage of the improvements, he will have to pay his instalment on the expenses related to the installation and maintenance, duly updated, applying the corresponding legal interest.

### **:: Legal Tip 78. Electricity companies paying your bills if...**

The Cabinet approved on Friday a Royal Decree that will allow more than five million households to freeze their electricity rates for four years, and in return, the Royal Decree includes an agreement to resolve the shortfall of electricity tariff. The measure, implemented through a Royal Decree and under the label "social bonus" will be funded by companies that generate electricity and will cover the difference between the value of the rate of last resort (TUR) and a reference rate called the "reduced rate".

The approved subsidized fee will apply to low income user. Beneficiaries of the bonus will be:

- Families with all members unemployed.
- Large families (three or more kids)
- Those receiving the minimum pension.
- Those with a contracted power lower than 3 KW in first residence.

Of course, resident foreigners have same rights as Spanish nationals to benefit from this bonus.

### **:: Legal Tip 79. Can I cancel my trip to Mexico?**

The General Law for the Protection of Consumers and Users (Royal Legislative-Decree 1 / 2007) says that the consumer has the right to cancel the trip without penalty and without having to pay anything to the agency or wholesaler, provided he is claiming a force majeure. Force majeure is those unexpected, objective, unavoidable circumstances.

The Spanish Foreign department has already advised not to travel to Mexico unless urgent, necessary reasons. These recommendations by the Foreign Department are considered by the Travel Industry as force majeure.

You may find that the Agency better tries to offer to you a different destination, well, you need to know you are not obliged to accept it and are entitled to ask for the full refund of your money before the same Agency.

If the cancellation is done with more than 15 days of anticipation, there should not be any charge for it. If it is done 11 to 14 days in advance, a penalty of 5% is due, if done 3 to 10 days before the trip, the corresponding penalty is of the 15%, if in a shorter deadline, 25% of the money.

If the agency is adhered to the Consumers arbitral system (click and email here to ask for information regarding this [http://mailto:junta-nacional@consumo-inc.es/](mailto:junta-nacional@consumo-inc.es/)) this will be the institution in charge of the solution of the dispute, within 10 to 15 days.

### **:: Legal Tip 80. Ask your Bank to correct your interest rates!**

If you have got a mortgage loan with reference to the Euribor index, you have got the right to ask your bank to adapt the interest rate according to lower money prices offered by the European Central Bank. Just in case they forgot to do it!

### **:: Legal Tip 81: Day, week rental contracts**

A very interesting source of financial aid for your home in Spain is the "very-short" rental contracts: on a daily, weekly, bi-weekly or monthly basis for work or tourism reasons.

Of course the medium-term contracts (seasonal: several months or a determined medium length period) and the permanent or home rental contract are always possibilities to add.

This tourism schemes are actually a strong competition to hotels these days. Internet provides to you the sideboard for the offer of your house or apartment to anyone, anywhere in the world. As an owner it is very advisable to choose a competitive, fully legal company/website to market it.

It is also important to know that if your apartment is classified as Touristic apartment, it is under specific regulations.

Some legal tips for agencies, owners and users:

For owners:

- Search for an effective and legal company in order to market the apartment.
- Make clear the price, terms of payment of the agency fee and reserved dates when you want to enjoy the property. A good agency contract is needed in that case.
- Submit rent disputes with both the agency and the user of the house to arbitration rather than Courts.
- Take out liability insurance.
- Make sure the apartment meets the current regulations for vacation homes/tourist apartments and register it (in the case IT IS NOT a tourist apartment) in the department of Tourism of the corresponding region.

For users:

- Ask and keep both reservation and contract documents for any claim.
- Check that the intermediate company is registered and have a CIF number.
- Ask for Civil liability Insurance coverage of the apartment.
- You can be asked for a bond of 150 and 250 euros to be returned once you leave the apartment.
- You are liable for any damage you caused to the apartment.

- Ask for the keys to be handed in the apartment at a specific time on the day of your arrival so both agent and you can perform the inspection of the apartment together (cleaning, list of objects, lighting, gas...)

For agency:

- Make sure your company complies with legal requirements and registration and with the Consumers Law regarding this type of services.

### **:: Legal Tip 82. Anticipated deduction on habitual residence purchase**

Amongst measures to boost economy and employment...

#### **Anticipated deduction on habitual residence purchase**

Tax payers' deductions will be reduced by two points on demand in order to bring into line the fiscal benefits obtained from Income Tax deductions applied to habitual residence purchase and mortgage fee payments. Thus, if a tax payer has been deducted 15% in his monthly payroll and he decided to apply for this measure, he will be deducted 13% from them on at the expense of the allowance he will be liable for when he presents the Income Tax Return. Thus, in 2009, citizens with lower income – between 1,700 and 2,000 Euros - will be applied lower allowances.

#### **Beneficiaries**

Workers and self-employed workers whose annual income is inferior to 33,000 Euros. According to official estimates, at least 3.5 million tax payers may benefit from this measure.

#### **Development**

It was approved of by virtue of Royal Decree 1975/2008, dated 28 November 2008.  
The forms for tax payers to communicate their decision to apply for this measure are available since last 18 December.

Further information

[www.agenciatributaria.es](http://www.agenciatributaria.es)

Telephone no.: 901 335533

(Information obtained from: <http://welcome.plane.gob.es/>)

### **:: Legal Tip 83. Aids for schooling and University studies**

The Government have increased by 6% the annual budget for scholarships in 2009 in order to guarantee equal opportunities, devoting up to 1,281 million Euros to this. Thus, the maximum income limits to obtain a scholarship and, therefore, more families will benefit from this policy.

Students meeting the requirements to obtain a scholarship will be granted the corresponding aid, because no limits have been set with regards to the number of scholarships to be granted. This year, the maximum income limits to be granted a scholarship will increase by 13.5% minimum as compared to the previous year; the limit will increase up to 62% in the case of “basic scholarships” for upper secondary school students. Besides, the Erasmus grants for university students intended to promote international mobility will increase by 10% in 2009; and the total budget set aside for these actions will amount to 66 million Euros

Schooling costs for both students and their families will be reduced. This scholarship policy is aimed at providing 50% of secondary students and 30% of university students with aids.

(Information extracted from <http://welcome.plane.gob.es/>)

As a foreigner in Spain and taking into account the following provision by the Foreign Act:

**Provision 9. Right to education of foreigners in Spain**

1. Every minor age foreigner has same right and obligation to education as Spanish nationals, these rights comprises: right to free and compulsory basic education, right to obtain the corresponding qualifications and right to access the public system of grants and aids.
2. Public Administration will guarantee enough number of vacancies for those who apply for pre-school education, which is voluntary.
3. Foreigners will have the right to access the non-compulsory education under same conditions as Spanish nationals. In particular, foreigners will have access to every education level, to obtain the corresponding qualifications and the right to access the public system of grants and aids.
4. Public powers will promote the necessary education for the better social integration; will full acknowledgment and respect to their cultural identity, for those resident foreigners who need it.
5. Resident foreigners can access teaching and research positions according to current legislation. Furthermore, they can create and direct education centres according to applicable law.

YOU ARE WELCOME TO OUR EDUCATION AIDS!

**:: Legal Tip 84. Law for promotion of Personal Autonomy... for resident foreigners**

On December 2006, the Law for the Promotion of Personal Autonomy and attention to dependent people (the so-called Dependence Act) was approved of and it became the fourth pillar of the Welfare State, after universal health care provision, pensions and education.

This Law contemplates the creation of the System for Autonomy and Attention to Dependence (SAAD), which will come into force by 2015. It is aimed at meeting the requirements of dependent persons, providing them with high-quality public health care, and its sole access criteria will be the degree of dependence. Apart from financial aids for caretakers, the System of Attention to Dependence gives pre-eminence to the provision of services (help at home, day and night care centres, tele-health care and rooms at homes for dependent people).

In 2009, the Autonomous Regions will receive 1,159 million Euros to develop the Dependence Act, plus an additional investment of 400 million Euros from the special State fund for the stimulation of economy and employment. These additional funds will be invested in consolidating and improving the existing services, in creating more rooms at homes for dependent people, in enhancing caretaking services and in providing professional training.

In 2008, nearly 450,000 dependent persons (suffering from severe dependency or from moderate 2nd level dependency) in the whole of the Spanish territory benefited from financial aids or were provided with social services thanks to this programme.

In 2009, according to the agenda for the implementation of this Law, people suffering from severe 1st level dependency will also benefit from this programme. Besides, the System of Attention to Dependence will enhance the economic activity and create jobs in the social services' sector.

(Information from <http://welcome.plane.gob.es/>)

Well, these aids are applicable to foreign residents according to provision 14 of the Foreigner's Act, as follows:

**Article 14. Right to Social Security and social services.**

1. Foreign residents have rights to access the benefits and social security services under the same conditions of Spaniards.

2. Foreign residents have rights to enjoy social services and benefits, of both general and specific kind, under the same conditions of Spaniards.
3. Foreigners, regardless their administrative status, are entitled to basic social services and benefits.

### **:: Legal Tip 85. Tax relief for owners when renting**

In order to encourage owners to place their properties in the renting market, the Government will increase up to 60% the tax deduction for earnings obtained from rentals. This deduction will keep being of 100% if the tenant is younger than 30 years/old or up to 35 years/old for already existing contracts.

### **:: Legal Tip 86. Monthly VAT returns**

VAT payers can apply for their corresponding monthly return since January 2009: not necessary to wait till the end of the year. This measure improves the liquidity of companies.

The tipping was quick today.... was not?

### **:: Legal Tip 87. Redemption leeway for new assets in the Corporate Tax**

Investments in new assets having to do with economic activities and acquired during a chargeable period starting in 2009 and 2010 may be paid at will provided the company maintains staff. This will contribute to encourage companies to carry out new investments.

### **Beneficiaries**

Corporate Tax payers, that is to say, 1,350,000 companies, more than one million of them being small and medium-sized enterprises.

Development

Approved of by virtue of Law 4/2008, dated 23 December, only for the period 2009-2010.

### **:: Legal Tip 88. Ten years insurance to cover your building defects**

According to the LOE (General Building Act) the ten years insurance plan for building companies guarantees for ten years all damages caused by faults or defects in construction which directly affect the resistance of the building.

The developer is the policyholder and is obliged by law to sign a ten years insurance plan. The developer is also the assured party, and following the sale of the home, buyers become the beneficiaries of the insurance.

Individuals and companies involved in the construction process are accountable to the owners of the material damage caused to the building, provided they claim in time. Time limits for filing a claim vary depending on the importance of the fault.

1. For 10 years, of material damages caused in the building due to defects or vices that affect the foundations, supports, beams, floor structure, charging wall or another structural elements, that directly compromise the mechanic resistance and the stability of the building.
2. For 3 years, of material damages caused in the building by defects or vices of the building elements or the installations that produce the breach of the habitability requirements.
3. For 1 year, of the material damages by vices or execution defects that affect the elements of finishing of the works.

The deficiencies that may appear within these timeframes need to be fixed by the appropriate operators at no cost to the user.

It is very important to have written record of how the damage had occurred within the time set. Most advisable to do it through certified letter or burofax so that the sender can have acknowledgment of reception and date of reception of writing by the addressee.

Liability is individual for every different building agent (developer, builder, architect...), however, when it is not possible to tell who was the responsible, accountability is asked in a jointly way.

The period of limitation of actions to ask for these liabilities is of two years from the time such damages occur.

**Damages covered:**

- Material damages that endanger the stability of the building (foundations, floor supports, beams, design errors).
- Material damages to secondary works, installations and equipment of the building (resulting from a major damage in the main building).
- Costs of repairs to eliminate the threat of subsidence.
- Cost of demolition and removal of debris (as a result of damages covered by the policy).

**Optional Coverage:**

- Secondary work
- Waterproofing of decks.
- Waterproofing of facades.
- Waterproofing and sealing of basements.
- Waiver of appeal against the builder.
- Waiver of appeal against the contractor and / or subcontractor.

- Waiver of appeal against the technical direction.
- Damage to pre-existing goods.
- Revaluation of insured sum and franchises.

**Not covered damages:**

- Body injuries or economic damage other than those protected by the General Building Act.
- Damages caused to properties contiguous or adjacent to the building.
- Damages caused to movables goods which are located within the building.
- Damages produced by works performed after the receipt of the building, except those made to fix construction defects
- Damages caused by misuse or lack of proper maintenance of the building.
- Those that have their origin in a fire or explosion, except those caused by defects in the facilities themselves.

**:: Legal Tip 89. Want to renovate your B&B in Spain?**

There is an ICO (Official Credit Institute) line which finances small and medium size enterprises in the tourism sector (90% of an investment of up to 1 million Euros at 1.5%, to be returned in up to 12 years).

The funds are aimed to challenge and support renewal and refurbishment of infrastructures for tourism. This financing line amounts to 400 million Euros for 2009.

Preferential actions within the Tourism Renovation Plan:

- Increasing of the quality and added value of products
- Improving the sustainability of the different premises (energy saving)
- Preserving and enhancing the environment
- Implementing quality systems
- Improving accessibility

- Implementing new technologies.

Destinated to hotels, boarding houses for tourists, restaurants, travel agencies and other related or complementary.

It will remain in force until next 31 December 2009 or until the funding is over.

More information:

[www.mityc.es/es-ES/Servicios/Ayudas/Otros/PlanRenoveTurismo/](http://www.mityc.es/es-ES/Servicios/Ayudas/Otros/PlanRenoveTurismo/)

Telephone no.: 901 50 1002

### **:: Legal Tip 90. Who to hire? Better if she/he has a family**

Now, hiring someone with family charges is a plus:

The Government has approved of new tax allowances on Social Security fees for businessmen who offer indefinite contracts to unemployed workers with family responsibilities between the beginning of December 2008 and the 31 December 2010. The amount of the allowance is of €125 in their Social Security fee (1,500 Euros/per year).

Currently in force: it was approved of by virtue of Royal Decree 1975/2008, dated 28 November, on urgent measures for economy, taxes, employment and access to housing, published in the Official Gazette of the Spanish State on 2 December 2008 ([www.boe.es/boe/dias/2008/12/02/pdfs/A48135-48142.pdf](http://www.boe.es/boe/dias/2008/12/02/pdfs/A48135-48142.pdf)).

## **:: Legal Tip 91: Some advice for refurbishments**

We refurbished the attic floor of a building in order to have the new Costaluz Lawyers office last year, here you have got some tips you may find useful:

### **Choosing the workers:**

- Choose a professional, legally trading company, “jack of all trades” may seem cheaper initially but... as the Spanish saying says “ Cheap turns expensive” ( lo barato sale caro: Choosing a product or a service just because of a low price is not a good deal)
- Have the Identity number: Identity card or Tax Number if a self-employed or NIF (Tax identification number) if a company.
- Check they have got professional liability insurance.

### **Budgets:**

- Get three or four budgets. The best way to find the better price is the all known “busque y compare” (look for and compare).
- Safest budgets are:
  - Written
  - Detailed: materials, labour price...For reference and information: ask for invoices of materials bought by the worker.

### **Payment method:**

- As an advanced amount, do not pay more than 50 % of the budget.
- Final payment:

- Do not pay 100% of the work until the works have been completely finished. We advise to pay the final amount (around 15- 20%) once every detail has been checked and found OK.
- Ask for a written guarantee of works at the end of the works.
- Needs to be according to the budget (that is what they are for!). Know that payment on variations that have not been duly notified, can be refused.
- Ask for VAT invoices, dated, stamped and signed by both parties. Without them, there is no possibility of claim.

## **:: Legal Tip 92. Questions and answers on community of owners.**

### **Part 5**

#### **33. Do I need to sign a Power of Attorney for someone to attend a General Meeting on my behalf?**

No, you do not, just an authorisation is needed.

#### **34. What if the apartment belongs to me and my brothers and sisters? Do we all need to attend?**

No, you do not. Just name a representative and have him/her going to the party.

#### **35. Are owners in default of Community fees allowed to vote?**

No, they cannot vote, but they can deliberate. The minutes of the meeting need to mention those private owners who have been deprived of their right to vote, their votes will not be taken into account to reach the necessary majority for agreements. The announcement must contain a list of the owners who are not up-to-date with payments to the Community and a warning of their deprivation of the right to vote.

#### **36. Why should we meet once a year obligatorily?**

The yearly obligation is for approval of budgets and accounts (it is good to take a look once a year). Of course any other matter can be added to the agenda, by proposal of the President or of any member. To do so the owner must present a document, identifying those subjects considered of general interest to the President, who must include them in the order of the day of the following meeting to be celebrated.

**37. How many people are needed to call an extraordinary meeting?**

A quarter of the owners or a number of them which, at least, represents 25% of the community.

**38. Can we (more than 25% of owners) call the meeting?**

The call needs to be made by the President and, just in his absence, by the promoters of the meeting, by making a list of the subjects to be discussed and by choosing date and time to be held in first and in second call.

**39. What if he refuses to call it?**

Owners can convoke and hold it, but it is needed the 100% of the owners.

**40. How many of us need to attend to reach the legal quorum?**

50% +1 of owners who represent 50%+1 of the shares (majority), for the first call. No specific quorum is needed for the second call.

**41. Another trip to Spain for second call due to lack of quorum: my goodness!?**

No, you do not need to gather in a different day, just half an hour later, same place is fine. Generally, both calls are included in the same citation.

**42. The president called me yesterday to announce there was a General Ordinary meeting today, he said to me he has forgotten to include me in the call for the General Meeting.... what should I do?**

You can attend out of your good will, but you can also oppose the call of the General meeting as it has not been legally announced to all parties. The citation for the annual General Meeting must be done at least 6 days in advance and, in case of extraordinary meetings, the sooner for all the interested parties to know about it.

**:: Legal Tip 93. More legal safety for Consumers**

The Government has submitted to the Parliament a Bill through which consumers will see increased security to malpractice. Specifically, Law 3 / 1991 of January 10 on Unfair Competition, Law 34/1988 of November 11 on Publicity, Royal Legislative Decree 1 / 2007 of November 16, which approves The text of the General Law for the Protection of Consumers and Users (Consumers Act) and other laws such as Law 7 / 1996 of January 15th on Retail Trade will expand their spectrum of action, so that the "siege" to the citizen will be much restricted by the Law. More rigors in information, less glossy, impressive phrases, a uniform post-sale service of quality for each type of service and the elimination of phone spam to help consumers be freer.

The reform of legislation affecting the consumer believes that the economic behaviour of an individual can be altered either by false information, or messages that even being true, can lead to error. In addition, it considers unfair and aggressive those behaviours that can significantly reduce, by harassment, coercion, force or undue influence, the freedom of choice or the behaviour of consumers in relation to the good or service being offered.

The bill transposes, in turn, two European rules: Directive 2005/29/EC of the European Parliament and the Council of 11th of May 2005 on unfair trade practices of companies towards consumers in the European market and the Directive 2006/114/EC

of the European Parliament and the Council of 12th of December 2006 concerning misleading and comparative advertising.

It will be illegal, among other ones, the following behaviours:

- The comparison of public activity, performance or the internal or external establishments to a third party when such activity relates to ends that are not similar, relevant or comparable.
- The withholding of necessary information for consumers to adopt a knowingly economic behaviour.
- The transmission of information in an unclear, unintelligible, ambiguous way or in a non appropriate moment.
- To induce consumers to make immediate decisions on the pretext that a good or service is only available for a limited period, when it is not.
- To present rights given to consumers by law as a distinctive feature of the offer by the employer or professional.

Apart from increasing the safety of consumers, the reform seeks to give legal certainty to companies that legitimately compete in the free market against those who carry out practices that damage the good faith, lacking professional ethics; which distort the spontaneous economic behaviour of consumers.

Therefore, the Project also provides a type of action to be carried out by the government. This will be realized through the promotion of codes of conduct between business and professional organizations that help to minimize the unfair advertising practices of firms and raise the level of consumer protection. In the development of these codes it may also be counted with the participation of consumer organizations.

These guidelines will be in any case within the orbit of the current law, so that they can not cut rights or add guarantees not provided by enforceable legal regulations. In this sense, independent monitoring bodies will be created to ensure compliance with the commitments of the members, which should establish effective systems for resolving complaints.

Free translation of information in Legal Today

(<http://www.legaltoday.com/index.php/actualidad/noticias/se-incrementa-la-libertad-y-seguridad-de-los-consumidores>)

### **:: Legal Tip 94. Some risks to avoid when buying a repossessed house**

- Loans and encumbrances (a Land registry note will tell you about it)
- Unpaid Community fees or expenses (a certificate of Administrator or President of the Community of owners will give to you that information)
- Unpaid IBI payments (The Local Council tax department will be able to inform you on this)
- Former owner living there (squatter): the judicial process to have him out can take as long as an eviction procedure. More than 6 months...at least.

Of course, if you are buying from a Bank's store of repossessed properties, they will be liable on safety regarding all the aspects mentioned above!

### **:: Legal Tip 95. Education grants 2009-2010 for foreigners**

The Ministry of Education convokes yearly calls for grants in order to fund general studies, aimed to pupils in high levels of the Spanish educational system.

In the next academic year 2009-2010, it is estimated that 5% more students will benefit from these aids. The budget is of 1134 million euros, but grants are not limited to this amount, as these grants are a right for all those who are eligible to obtain them.

Scholarships are awarded according to academic achievements and levels of income and wealth of the student's family.

Therefore, to obtain them, the applicants must meet certain academic and financial requirements. These vary depending on the type of help that is offered to students.

Income levels established for income during 2009-2010 are:

**Level 1:** from 3786 euros maximum for families of one member to 26,764 for families of eight members. Entitles, subject to other requirements to compensation aid: (salary grant, maintenance grant), travel, residence, schooling and tuition expenses, learning material and Final project.

**Level 2:** from 10,668 euros maximum for a family of one member to 40,882 for families of eight members. Entitles all aids except the compensation aid (salary grant and maintenance grant).

**Level 3:** from 11,937 euros maximum for a family of one member to 45,744 for families of eight members. Eligible for aid for travel, tuition expenses, learning material and Final Project.

**Level 4:** from 13,236 euros maximum for a family of once member to 50,333 for families of eight members. Eligible for assistance for tuition and residence expenses and learning material.

**Level 5:** from 14,826 euros maximum for a family of one member to 56,380 for families of eight members. Eligible for aid for tuition and learning materials.

As a foreigner: <http://www.eyeonspain.com/blogs/costaluz/1010/legal-tip-17-right-to-education-of-foreigners-in-spain.aspx>

- Every minor age foreigner has same right and obligation to education as Spanish nationals, these rights comprises: right to free and compulsory basic education, right to obtain the corresponding qualifications and right to access the public system of grants and aids

- Foreigners will have the right to access the non-compulsory education under same conditions as Spanish nationals. In particular, foreigners will have access to every education level, to obtain the corresponding qualifications and the right to access the public system of grants and aids

## **:: Legal Tip 96. Questions and answers on Community of Owners.**

### **Part 6**

#### **43. What matters require the unanimous consent of all the attendants to the Meeting of owners?**

Unanimity is just required for approving or modifying the rules contained in the constitutive title of horizontal property (Horizontal division Notary deed) or in the statutes of the Community.

#### **44. What matters require just three fifths of the total of the owners that, also, represent the three fifths of the shares?**

The establishment or suppression of the services of the lift, porter's lodge porter's office, security and any other common service of general interest, even when this implies the modification of the constitutive title or the statutes.

#### **45. What matters require majority of the owners, which at the same time, represent the majority of the shares?**

The realization of works or the establishment of new common services intended to suppress architectural obstacles that make difficult the access or mobility of disabled persons, even when it implies the modification of the constitutive title or the statutes.

#### **46. What if not all these required owners (3/5 or majority of owners-shares) are present at the General Meeting?**

If they have been duly cited and informed by those owners who were present, and have not disagreed in writing to the Secretary within a period of 30 days from the date the decisions have been communicated to them by the rest of the owners, will be considered as favourable to the agreement.

**47. Can those who did not vote or disagreed not consider themselves submitted to the agreement?**

No, the agreements adopted in valid form are obligatory to all the owners.

**48. I want to install a special collective antenna for International TV: what percentage of votes I need?**

The installation of common substructures for the access to telecommunication services (collective antennas, digital television, etc), or the adaptation of those already existing as well as the installation of solar energy or any else of the necessary substructure to access to new collective energy supplies (natural gas, electricity, etc) can be decided, at the request of any owner, with the favourable vote of just one third of the owners who also represent, one third of the shares.

**49. What about those owners who voted against the special TV antenna? Do they need to pay the extra expenses related to this?**

No, they do not need to pay the extra fees.

**50. And what is they change their mind later and want to see their UK channels through the Antenna?**

They can be authorized always they pay the amount that had duly corresponded to them, by the application of the correspondent legal interest.

**51. What about the rest of the possible matters of discussion? Dogs allowance, pool use...**

It is just necessary the vote of the majority of the owners who also represent the majority of the shares for the validity for any other sort of agreement.

At the second call, those agreements adopted by the majority of the present owners, are valid if they also represent, more than the half of the present shares.

## **52. What if majority can not be reached?**

When the majority can not be it can passed to the Judge of First Instance to decide regarding that.

## **:: Legal Tip 97. Questions and answers on Community of owners. Part 7**

### **53. Owners decided in last general meeting to deny my right to protect my apartment against strong winds with a glass curtain in the back side, can I oppose it?**

Yes, you can certainly oppose it.

Agreements of the General Meeting can be judicially opposed in the following cases:

- When they are against Law or Statutes of the Community of owners.
- When they seriously damage the interests of the Community or those of one or some of the owners.
- When they pose a serious damage to any owner who is not obliged to bear it or they have been adopted with abuse of process.

### **54. Can I oppose the agreement myself?**

Yes, you can if you voted negatively against it in the General Meeting, were absent or were improperly removed of the right to vote. You need to also be updated on your payments to the Community or to firstly deposit in the Courts any due amount.

**55. That agreement was taken in the last general meeting which was held four months ago....winds have been terrible since then. I am sure I can still do the opposition. Can I?**

Well... I am afraid you cannot: deadline to oppose Community of Owner's agreements is within 3 months after the agreement was except for those agreements that infringe either Law or Statutes of the Community of Owners, in these cases the deadline for opposition is one year.

**56. I want to compile agreements made by my Community of owners. How can I do it?**

You can ask the administrator/president for a copy of last minutes and since now, you can start compiling the future ones as the minutes of the meetings must be sent to all the owners at the addresses designed by them, if the address is unknown, they will be sent to the apartment which belongs to the Community or will be placed in the notice-board.

**57. Where are all those past minutes?**

They are written on an official Book of Minutes, this book is approved by the Land Registry where the building is registered.

The minutes of each meeting must contain:

- The date and place of the meeting location.
- The promoters of the location.
- Mentions to the ordinary or extraordinary character of the meeting and if first or second call.

- A list of all the assistants, their respective shares and the owners who are being represented by others, with indication of their shares.
- The Agenda.
- The agreements adopted, indication, in case that it was relevant for the validity of the agreement, of the owners' names who voted in favour or against those agreements, and their shares.

## **:: Legal Tip 98. Questions and answers on Community of Owners. Part 8.**

### **58. I want to be the President of the Community of owners. Do I have right to?**

Yes, if

- You are an owner
- You get elected

### **59. We are holding elections for President in the Community of owners next week, what if no one shows him/herself available as candidate?**

A turn is then in place and the corresponding owner by said turn will be the president.

### **60. What if the designated by turn member does not want to be the President?**

The designation is binding. If the designated owner does not want to become the President, he needs to ask the Judge to release him from that responsibility, giving to the Court enough arguments for the exemption.

The Judge will designate, by a simple procedure, the owner who must replace him/her until new election.

The Community of owners can also invoke the Judicial assistance if, for any reason, it is impossible to name a president at the General Meeting.

**61. I am being elected president of my community. What are my responsibilities?**

You hold the legal representation of the Community, either before the Courts or in out of Courts managements, at every subject related to the Community.

**62. Could we elect two vice-presidents?**

Yes you can elect as many vice-presidents as you need, but it is not obligatory. Designation follows same procedure as for President.

The vice-president is in charge of policing for the President when during leave, absence, vacancy, etc... He also has to assist him in his duties as President according to the rules of the Community of owners.

**63. Is a secretary needed?**

The functions of the Secretary and the Administrator are carried out by the President of the Community, except when either the Statutes or the Meeting of Owners, by majority agreement, agree on the appointment of specific people for these positions.

Secretary or Administrator's duties can be performed by either same or different person. These positions can be performed by an owner or by an agent.

These positions can be replaced before the end of the deadline if that is agreed by the General Meeting of owners, called in extraordinary session.

**64. We have recently hired as administrator in our community of owners. What are specifically his duties?**

- To watch over the good management of the building, its installations and services, for those purposes he is entitled to do the necessary warnings and notices to all the owners.

- To prepare in advance and to submit to the General Meeting the budget of foreseeable spending, and to propose the necessary means to confront them.
- To watch out for the conservation and maintenance of the building, deciding on the urgent repairs and the means to make them, and communicating them immediately to the President or to the owners.
- To execute those agreements adopted regarding works and to pay for them.
- To operate in cases as the Secretary of the Meeting and to keep the documentation of the Community.

## **:: Legal Tip 99. Questions and answers on Community of Owners.**

### **Part 9.**

#### **65. Can I pay my Community fees by Bank transference?**

The way of payment is determined by the Community of owners. If you want to propose a change on it, you can ask the President for that point to be discussed in the next general meeting.

#### **66. A lawsuit against owners in default is in Courts without that being decided by the Community. Can we challenge it?**

Yes, of course you can, if you are one of the defaulters, as you will have to answer the lawsuit, you can expose it in the plea. If not, I would just encourage you to contact any of the defaulters for him to argue this as a response to the claim.

The use of that proceeding needs:

- Previous certification of the agreement by the Meeting of Owners.
- Approval of the liquidation of the debt with the Community of owners by the Secretary
- Approval of the President
- Correct notification to affected owners.

**67. Do we need a Lawyer or a Procurator for these?**

No, you do not. But it is advisable.

**68. How is the whole procedure? Can the apartment be seized for the payment of the debts?**

1. The lawsuit is presented and registered in a Court and the Judge requires the defendant to either pay to the Community, in a period of 20 days time, by depositing it in Courts, or to appear in Court and argue their positions, by an opposition writing, stating the reasons for not paying the whole or part of the required amounts.
2. If the defendant does not appear in Courts or he does not oppose the lawsuit, the Judge will order the execution of all his goods with the possibility of being seized and sold by public auction for the recovery of the debt, plus interests, judicial expenses and notary expenses involved.
3. Even though the defendant owner presented an opposition writing against the Community's lawsuit, the Owners can ask for a preventive seize of goods which is estimated as enough to cover the claimed amounts, plus interests and costs.
4. Once the judicial proceeding is over, the Judge will impose the costs to the party whose allegations have been totally rejected.
5. The condemnation to pay costs will contain the lawyer's fees and Procurator of Tribunal's fees of the lawyer and procurator of the winner part.

**:: Legal Tip 100. Questions and answers on community of owners.**

**Final Part 10**

**69. We are a group of 30 villas. Can we form a Community of owners?**

Yes, you can, as the Horizontal Property Act can be applied to developments under these requirements:

- To be integrated for 2 or more buildings or plots which are independent of each other, composed of apartments or premises.
- The owners of the apartments and premises which are “horizontally divided” have inherent co-property rights on the common elements of the building.

**70. What about the blocks of apartments next to us, of same development... can they be integrated I our Community?**

In that case, you can decide between:

- Being set up as an individual Community of Owners.
- Being set up as a “Communities of Owners Association”. In this case, they will be submitted to the regulations of the Horizontal Property Act, with the following particularities:
  1. The Constitutive title of the new grouped Community must be conferred by the unique owner of the complex (developer) or by the presidents of all the communities that will integrate it, previously authorized by a majority agreement of their respective meeting of owners.
  2. The Meeting of owners is composed, if not agreed otherwise, by the Presidents of the communities integrated in the group, who will be the representatives of their correspondent community at every Associations meeting.
  3. The adoption of agreements for which specific majorities are required, need to have in any case, the previous obtaining of that specific majority in every one of the associated Communities.
  4. A reserved fund is not required for the Association.
  5. The governing body of the Association only can decide about the elements of the building, lines, installations and common services.

6. Its agreements can not limit the faculties that corresponded to the governing body (General Meeting, President, Secretary, etc.) of the communities of owners integrated in the association of the communities

**More top tips will follow from Maria very soon.**

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