

The logo for 'tla' consists of three lowercase letters. The 't' is dark blue, the 'l' is a slightly lighter blue, and the 'a' is a greyish-blue. They are all in a bold, sans-serif font.

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MANUAL FOR CONSTRUCTION OF PROPERTIES IN SPAIN

LEGAL AND TAX ASPECTS

TLACORP 2023

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One of the founding objectives of **TLA CORP SLP** is to provide expert, specialized, and high-quality services for foreign investors in Spain, regardless of the size of the investment and its phase. Our services range from advice prior to the acquisition of a property in Spain, whether private or business, through the corresponding tax and legal planning of the investment, through the execution of the investment project, and ending with the management of the private or business activity of the foreigner in Spain. More than 20 years in practice, more than 30 professionals on board.

We cover different **services** in matters such as:

- **Real Estate Law:** Tax and legal advice and planning on the purchase and sale of properties in Spain, execution of the purchase and sale process, and support to the buyer/seller in each and every phase of the purchase or sale of their properties in Spain. Spain.
- **Real Estate Investments** – Business investment: Tax and legal study of the investment - “Due Diligence”, advice and representation in the development of the investment or construction project, and legal support in the commercialization of the assets.
- **International Inheritance and Inheritance Law**
- **Tax advice for investors and individuals**
- **Immigration Law**
- Advice and registration of **tourist rentals**
- **Business, Corporate, Civil and Labor Law**

We provide these services in **ALL the Spanish territory**, and in **English, French, Dutch and German**.

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1.- INTRODUCTION

Spain is one of the top countries in the world for property and real estate development for foreign investors. Areas as Madrid, Barcelona, Valencia, Alicante, Costa Blanca, Murcia, Costa Cálida, Almería, Málaga, Costa del Sol, Granada, etc., are oftenly chosen by foreign investors to invest in property market.

As lawyers experts in property and construction law, we assist our clients in the in the complicate but exciting process to build their Spanish properties, looking for a “place in the sun”. Our aim is to protect our clients in this process, and to assist them, in terms of strict specialization, providing high quality service from our qualified legal Spanish lawyers.

In **TLAcorp** we have an experienced staff of Spanish solicitors and lawyers specialized in Construction Law, including Architects and technical support. All of us with high level of English and French, but also of German, Dutch and Russian.

Our team of Spanish lawyers TLAcorp represents investors who are involved in the construction process of Spanish properties. Also, our legal company assists clients who may have legal disputes with the different builders or agents involved in the construction of their properties in Spain.

Sometimes, the problem arrives when the owner of a Spanish property discovers that the construction is illegal, or a part of it.

In other cases, the problem is that the construction of the Spanish property is not properly complete, or have construction defects, or with lack of legal paperwork like the proper building license, or certificate of habitation, etc.

There are other cases in which the problem comes from the utility connections to the property such as water, electricity , gas, etc..

We have wide experience dealing with a wide range of contentious Construction matters. These cases are usually multi-party actions that may involve claims for defects, delays of payments, as well as claims related to performance of professional construction.

Our work includes all aspects of drafting, negotiation and completion of building and construction contracts, professional appointments , redaction and control of documentation.

Our undoubted philosophy is to **solve problems and disputes** trying to avoid to end in expensive and time consuming litigations, whether through settlement negotiations or alternative dispute resolution. However, when litigation is necessary, our team of Spanish lawyers will defend or prosecute your case with all the necessary vigour in order to guaranty and to protect your interests, including, when necessary, urgent applications to Court for conjunctive relief.

2.- CONSTRUCTION IN URBAN LAND – STEPS TO FOLLOW TO BUILD A HOUSE IN URBAN LAND IN SPAIN

1.- FIRST STEP: TO KNOW IF YOUR PROJECT CAN BE DEVELOPED

The “Building License”, or “Building Permit”, or “Construction License” (*Licencia de Construcción, o Licencia de Edificación, o Licencia de Obra Mayor*).

As we pointed before if your intention is develop a project in one of the "URBAN" areas, you should first check with the legal authority (mainly the Town Hall or Council = “Ayuntamiento”), or, alternatively, consulting and getting the advice of lawyers specialists in construction and urban developments.

So, before to pass to advanced steps of the process, it is essential that you obtain the proper information about the local regulations and limitations of the area, and the possibillities to develop and execute your project. As well as in other countries, the authorization o your project will be formally approved when obtained the "Building License", or "Building Permit" from the Town Hall.

So, the **First Step is to know if the local normative authorizes the construction of a house on that plot, and which are the specific considerations to respect.**

URBANIZATION COSTS

In cities or urbanized areas it is compulsory to install all the necessary infrastructure to convert empty spaces into "cities" or "urbanizations". So, it passes to make, between others, the following actions:

- External roads and communication infrastructure: Connections to highway, train, airports, etc.
- Internal roads and communications: Pavement, streets, pedestrian areas, parks, public gardens, etc.
- Sewage, water, electric, gas, internet, etc.

Usually, a plot is ready to be build when the above infrastructure is completed. So, purely, it is not possible to build on a plot where there are pending urbanization infrastructure to complete.

But, in some cases, the area has been considered in such a way that, although the majority of the urbanization infrastructure is complete, there are some points not completed, which are left to the moment in which the owner decides to build on it. For example, it is quite common that the owner pays the urbanization costs of the frontal of the plot (the owner has to "give" part of their plots to the public road), or even installing (and paying) the pavement, or others like pedestrian areas, etc.

These type of requirements, when not discovered, may create economical damages to those ones who did not know about when bought these kind of plots for building. So, it is compulsory to account with the services of construction legal specialists to obtain the necessary information about the plot, and to confirm the exact possibilities and conditions of construction on it.

STUDY OF THE SURROUNDING AREAS

It is quite common to find empty plots in new developed areas, where the urbanization and the are is not completed yet. It makes difficult to know how will be

the area when completed, and which kind of properties, constructions and installations will be executed in the area.

So, it is also essential to account with a construction specialist lawyer to obtain detailed information about the future developments to execute in the area, in order to avoid undesirable surprises in the future.

So, We advice that before BUYING the plot, or to make any decision over the transaction, bear in mind to have a **PRELIMINAR STUDY OF THE PROJECT** consulting with local lawyers, architects, builders, or the construction technical staff from the Building Department of the Town Hall (*Departamento o Concejalía de Urbanismo*). This will make more secure the investment because, after all, you will have a concrete idea and acknowledge about the conditions and limitations to build in that plot, before to proceed to buy the land. It is more than recommendable that to make a study by a Solicitor ***expert in construction*** and, if possible, consulting the architect who will develop the project and the construction.

Also, in that preliminary study ask your lawyer to confirm not only the specific building rights on the plot, but also to discover what other developments are planned on that area, for example new roads, highways, train line, industrial parks, commercial areas, or even an urbanization.

This information can be obtained from your lawyer with meetings at the Town Hall, studying of the local normative, and also obtained from the Town Hall with a document named “CÉDULA URBANÍSTICA”.

Once you know exactly the type of building authorized to be built in that land, then you must contract the services of an architect to develop the ***PROJECT OF CONSTRUCTION, or BUILDING PROJECT.***

In the building project, your architect must adapt your ideas and preferences to the specific regulations from the Town Hall in that area. So, your architect will guide you throughout this process, informing you about the different possibilities to transform your “ideal house” in a construction fulfilling the regulations of the area.

The most important thing is to have every detail specified by your architect. Have your architect go through the plans in as much detail as you can stand. Try to visualize what

the views from different windows will be, and what size beds the guestrooms can handle etc.

In simple words: Try to obtain from your architect as much as information about how the final house will be. **Try to furnish and live in the house while it's still on paper.** You may not be on-site to catch things that could annoy you for years to come, like a window that's off center in a bedroom, or skylights that aren't exactly above where the bathroom sinks will be.

Once the project is complete, then your Architect must be present to the Building project to the local Town Hall at the Building Department ("*Departamento de Urbanismo*" or "*Concejalía de Urbanismo*"). With the application of the Building License, you have to pay a municipal tax, *Impuesto sobre Construcciones, Instalaciones y Obras*, which is applicable to all developments which need a building license (whether one is applied for / granted or not). This tax can vary from 2% to 4% of the cost of the construction, depending on the Town Hall of your area.

Then, they will study how suitable is your project to the specific conditions or limitations in the area.

If your project fulfills normative, and fulfills with the regulations and requirements to build on in that area, then they will authorize you to build there with the proper "*Building License*" or "*Building Permit*", so you will be entitled to build there exactly the same property as presented to the Town Hall with the project.

So, if you find a plot in one of these areas, and you have the aim to build there a determinate construction or project, you should first check in the legal authority (mainly the Town Hall , Council = "*Ayuntamiento*"), which are the specifications, requirements, and limitations, that you can have to build there.

2.- STEP 2: CONSTRUCTION PROCESS

Once you have the building permit, **you must contract the services of a builder** or constructor, to execute the project, and to build the house.

This builder must follow the instructions from the architect in order to execute the construction as strictly projected.

THE ARCHITECT:

At this point, is very important to pay attention to the work of the architect. When the services of a Spanish architect are contracted to make the project of construction, he will complete his work once the project is obtained. But, you can also contract his services to **“control”** the works made by the builder, and to guarantee that all the steps of the construction are done as the project specifies. In Spanish, this is *“Control de Obra”*, or *“Supervisión Técnica de la Obra”*. Of course, the fees from the architect will be higher if the architect assumes this work, but the guaranties of the construction will be higher, because the works of the builder will be periodically inspected by the architect.

It is very important that the architect must be registered in the Official College of Architects of the Region.

Then you need to appoint an architect, and to agree a contract with him that specifies exactly what he is responsible for, timescales, and costs of the buildings. The architect’s fee includes the preparation of the *“memoria de calidades”* (*Quality specification list of materials*). It has to be in detailed, including for example the formula for the concrete, the type of materials, and the size of pipes, plans, etc.

The architect will instruct an *aparejador*, a qualified architectural engineer, who will supervise the building, carrying out on site inspections, and ensure the building is built following the required standards. He will issue the architect’s certificates which are necessary to obtain the Spanish *Certificado de Fin de Obra* (*Completion Certificate - or Final Works License*), and the *Licencia de Primera Ocupación* (called the First Occupation License or Certificate of Habitation).

You will need to prepare an exact specification for the building, and then **find a reliable builder**. Your architect may accept responsibility for this, and for supervision. You need to agree a completion date, with a penalty clause in your favour for late completion. This needs to be incorporated into a legally binding contract to be signed with the builder.

“SEGURO DECENAL” OR TEN YEARS INSURANCE:

Also, in this point is very important for you to consider what is called *SEGURO DECENAL* or TEN YEARS INSURANCE.

When you buy off-plan from a Spanish builder or developer, or you build a new property (which this is the case now), the builder or developer, together with the architect, must guarantee you that the essential and most important parts of the construction will be secure at least for ten years.

In order to confirm this responsibility, the Spanish regulations forces to developers of new buildings to insurance the most important parts of the construction, as the foundations, internal structure, bines, etc. Other defects affecting the habitability of the property are covered for 3 years. Other minor defects are covered for 1 year. In the last two cases insurance cover is not required, but obviously if a builder can offer this as an additional guarantee, it will be better.

Also, it is an additional guarantee for the construction, because the same insurance company will force the builder to pass determinate quality inspections, to check the quality of the materials and the works made in the property, in order to give the proper policy.

Spanish Ten Years Insurance (or “Seguro Decenal”) is obligatory and compulsory when the promoter is a company with the activity to build houses for sale.

But, it is voluntary when the developer is a particular, usually the owner of the plot. This is called in Spain “*Autopromotor*”, translated as “*Self-Promoter*”, or “*Self-Developer*”. This is the case in which a particular buys a land in Spain with the intention to build a house for him, but he has not the activity of buying for sale. In these cases, Spanish laws gives the option to these particulars not to apply for this insurance, because the Spanish Government understand that, if a particular is building something to live inside, he will take the necessary care to build in a safe and secure way. So, the particular can choose whether to save costs avoiding to pay this insurance; or in instance, to contract this insurance to have a better protection against construction problems and defects.

But, if you, as self-promoter decide not to apply for this insurance, in the future, if you decided to sell the house to other buyers, Spanish Laws force you to inform the eventual buyers that the construction is not covered with this guaranty, and they must expressly accept this as an essential condition from the sale. From the point of view of an eventual buyer, it will be always a better option to buy a property with this insurance. So, they must be duly informed, and they must confirm, that the property is not with any insurance in this way.

THE BUILDER

As promoter of the construction, you must contract the services of a builder to execute the construction as per project and following the instructions made by the architect. **One of the most important elements of constructing a property is the *building contract with the builder*.** The builder will always try to protect his interests, and if you are not experienced with these type of contracts your property can end up being of a fare less quality than expected, or take twice as long as promised or even worse.

To protect yourself always make sure that your Solicitor draws up the contract or dicrectly negotiates the contract proposed by the builder.

The most important elements of the contract are to make sure that the contract considers:

- The full name and CIF number (*Tax number of the company*) of the constructing company, and the owner are included.
- That the construction is made with as much as detail as possible following plans and building description provided by the architect, and also including a detailed list of materials and qualities ("*memoria de calidades*").
- That extras (such as garage or pool, etc) are included the price
- That a start and termination date is included in the contract, considering also penalties for late completion.
- Payment terms (new properties pay more than 20-30% before the starting date of the construction and fix all the rest of the payments to different stages of the construction. It can also be recommended to retain 5-10% of the price to repair any defects after the building is finished).

- That certificates from the architect, electricians and the town hall have to be given on the last payment.
- Taxes involved in the transaction, explaining and detailing how much is for IVA (VAT), and Stamp Duty ("*Actos Jurídicos Documentados*"), Notary, Land Registry fees, etc.

Other aspect we recommend to agree with the builder:

- To ensure that the builder will organize the final steps of the process regarding documentation. It means that the builder itself will obtain the **Certificate of Final Works** (*Certificado Final de Obras*), or the **Declaration of New Building**, or **Horizontal Division** (*Declaración de Obra Nueva o de División Horizontal*), and, the most important, the **License of Occupation - Certificate of Habitation** (*Cédula de Habitabilidad*). These items are extremely important in **rustic land**, in which is not common to find enough electric or water points of connection mains supply.
- To guarantee that, once you have paid the final payment for the price of the construction you will have the **water and the electric meter connected**, and with the contracts signed on your private names.

Why ask these things to the builder?

Because it is very common that the builder leaves the case once he has completed the construction, or once he obtains the Final Works License – CFO (Certificado Final de Obra), and the New Building Declaration-DON (Declaración de Obra Nueva).

With these certifications, the builder declares that the new building is finished (with the CFO), and that the construction is complete and already declared in the land registry the (DON).

But, at this stage, the final administrative declaration of the building is not complete. **It rests to obtain the Certificate of Habitation – CH (Cédula de Habitabilidad o Licencia de Primera Ocupación). This document is very important because, you need it to pass the supply of the water and the electric contracts from “Works” supply to “Home” use.**

We are going to explain this concept in a better way :

With a strict interpretation of the Contract with the builder, he finishes his service in the moment in which the property is physically finished, and appears as a 'house' in the land registry (Registro de la Propiedad). This is obtained with the two documents named above:

- *Final Works License (Certificado Final de Obra), which is a document in which the architect who projected the construction certifies that the building is already finished, with the compliance of both, project and Building License;*
- *New Building Declaration-DON (Declaración de Obra Nueva), which is the process of inscription of the new building in the land registry (Registro de la Propiedad) over the existing plot.*

In this moment, you, as promoter, have the house complete, and duly inscribed in the land registry. Also, in the property, there is electricity and water. So, you can think that the property is ready to live inside..... BUT... NOT. For your information, the property is not ready yet, for you to live there, the property is not a "house" yet, it is a "construction" because, to be a "house" you need the following items:

- **CERTIFICATE OF HABITATION /OCCUPATION LICENSE ("CÉDULA DE HABITABILIDAD or LICENCIA DE OCUPACIÓN:** This is the confirmation from the Town Hall that the property is ready for habitation, and it is applied once the property is finished with the Final Works License (*Certificado Final de Obra*), and inscribed in the land registry with the New Building Declaration-DON (*Declaración de Obra Nueva*). You need this document to obtain the permission of the Town Hall to live live in the house. Before you get it, what you have is a construction, but not a "house". **This document will be necessary to obtain the individual supply of the main utilities on your name, and with the consumption use for a "house" .**
- **CERTIFICATE OF ELECTRIC CONNECTION (Boletín de Electricidad) :** Before the builder obtains the certificate of habitation, there could be water and electricity supply in the construction, because, it is normal that the builder obtains this supply to make the works of the house (for the tolls, machinery, etc.). But the supply obtained from the builder is a supply for "works", but not for "house" use consumption. Sometimes, buyers or promoters are left in their properties with electricity and water "supply for works use" for many years, because the builder did not obtained the proper CH (Certificate of Habitation). They have water and electricity, but in a very poor conditions, and expensiver than the

normal supply for a house. So, in order to ensure that you, as buyer or promoter, will obtain the proper CH from the part of the builder, it will be recommendable to leave a part of the payment of the price agreed with the builder to be paid when the CH is obtained. In this way, this will force the builder to work right and to do his best to get this document asap.

So, as explained above, we highly recommend you, as promoter or buyer, to obtain guaranties that the builder will hand over the property to you being habitable with the CH, with the proper water and electric supply (as a "house"), and with the security that you will not have any problems in the future with this.

The builder knows the area, he knows the architect, also the Town Hall, and he will obtain these documents three times faster and cheaper than you. And, if he wants to be contracted by you, he must just obtain these items. If he refuses to do it, it will be a reasonable argument to look to another.

WHEN YOU NEED TO FINANCE YOUR CONSTRUCTION – SITUATION FOR MORTGAGE PURPOSES- SELF PROMOTER MORTGAGE (Hipoteca Promotor o Auto-Promotor)

It is very common that you, as promoter, need to apply for a mortgage to pay the construction of the property. In this case, there is a specific mortgage which is offered by the bank to obtain enough financial to build the property. This is called: Promoter Mortgage, or Self-Promoter Mortgage (Préstamo o Hipoteca Promotor o Auto-Promotor). The situation is the following: You have the plot, and an initial idea about the house projected with the architect, and you have now found the builder to make construction. But you need money, and you need to ask for a loan to build the house. Then you go to your bank and ask for possibilities of financial. After studying your personal and economic situation to confirm that you will be a good client to pay back the mortgage payments, then if the bank accepts and offer you to lend you the money for the project. But, the bank will not give you the full amount of the construction expenses at the beginning, they will be giving you the funds by steps. Which steps?, the ones derived from the same evolution of the construction.

For example: *Imaging that you need € 100.000 to complete the works. The bank will give you 20 % to buy the land, and to make the foundations, 20 % when the structure is finished; 30 % when the roof is complete, etc., and the rest when the architect makes the "certification of final works license" or Licencia de Final de Obra. Your bank will request from your architect, an update of the buildings ,to issue a certification confirming that the works*

are satisfactory complete. Then you will bring that certification to the bank, and they will lend you the corresponding percentage for that step in relation with the global. Your bank might ask you to have the plot on your name before to give you the approval of the mortgage, and to declare the house "on construction" in the land registry. This is because, sometimes, the builder offers you one of the plots which are on his name to you to build there, and the plot keeps in the builder's name till completion. **So, in order that you give a better guarantee to the bank, they may request to change the land into your name, and to inform the land registry that a house is being built in that land. If this is the case, then you have to go to the notary, and get the deeds of the land into your name. With the deeds of the land in your name, you have to go to the land registry together with the Building Project, and the Building License. In this way, the land registry will have the house "in construction" over that land.**

3.- THIRD STEP. THE HOUSE IS BUILT: DOCUMENTS

Final Works License – Licencia o Certificado Final de Obra

As explained before, once works are finished, then it is necessary that somebody confirms that the job is complete. This is the work of the architect. He has the obligation to go to the building and to inspect that works are completely finished and following the instructions and specifications made in both, his project, and the building license obtained. This is done through the **Certificado Final de Obra**.

But, meanwhile, the construction is not declared in the land registry. So, there is a process to register the construction in the land registry, which is called: **Declaración de Obra Nueva**. This process will get the construction declared in the land registry.

New Works Declaration – Declaración de Obra Nueva (DON)

This is a process done in front of a Spanish Notary, who will prepare the deeds of the house over the pre-existing land or plot.

In order to prepare the DON for new houses, it will be necessary to obtain the Certificate of Habitation (CH) from the Spanish Regulations approved on 2007 (Ley del Suelo de 2007) Land Law. Before 2007, new houses could be inscribed in the land registry without the CH.

As result of the DON the notary produces the deeds from the house, and they are duly registered at the land registry office.

So, in order to complete the registration of a property, the following documents are needed:

- The Building Project from your architect.
- The Building License
- Final Works License – (CFO) *Licencia o Certificado Final de Obra*
- New Building Declaration–DON (*Declaración de Obra Nueva*).
- Ten Years Insurance (*Seguro Decenal*) – This is voluntary

Expenses and taxes

At this point, is very important to differentiate **two concepts** which are the most widely used in the market when somebody is buying an individual plot for building:

1.- To buy from a promoter or a developer the final building. Then, acquiring the position of a normal “buyer” off plan. It means that the builder assumes the position of the promoter, and he offers the property to you once works are complete.

In that way, you pay to the builder the price by stages as long as the working process advances. And you obtain the possession of the building once works are finished.

Following this concept:

- The builder is the "Promoter": It means that the building license is on "his" name, and not on "yours".
- You do not have the ownership of the plot. It keeps in the hands of the builder till the end of the building process.
- In case the building fails, you cannot recover the amounts paid on the process getting the plot or the existing constructions currently built. What you have is a "debt" against the builder.
- The builder is forced to contract a "Building guaranty" to ensure that the amounts paid on account of the price are secured in a guaranteed bank account. So, in case the project fails you can easily recover them directly from the bank.

- The builder is forced to contract the "Ten Years Insurance" to cover the structural defects from the building during 10 years.

So, when the property is finished, you pay the final price of the property, as well as if you were buying a property off-plan with the following expenses:

- 10% VAT over the total price of the sale.
- Notary and land registry fees for the sale.
- 1-2 % Stamp Duty over the price of the sale.

2.- To adopt the position of Self-Promoter: In this case is YOU, and not the builder, who adopts the position of the Promoter of the building project.

Following this concept:

- YOU are the "Promoter": It means that the building license is on "your" name.
- You have the ownership of the plot. It keeps in your hands till you decide to sell it.
- In case the building fails, or you have a legal dispute with the builder, you will always keep the plot and the existing constructions currently built.
- The builder is NOT forced to contract a "Building guaranty" to ensure that the amounts paid on account of the price are secured in a guaranteed bank account.
- The builder is NOT forced to contract the "Ten Years Insurance" to cover the structural defects from the building during 10 years. It can be contracted voluntarily in case you wished to.

It means, that you assume the position of the Promoter, so, you have to pay the following expenses:

- The price of the plot (Remember that you have to buy the plot first)
- The fees for the project of the architect
- The fees for the final works license of the architect
- The builder fees and materials
- The notary fees for the acquisition of the land
- The notary fees for the Declaración de Obra Nueva- DON
- The land registry fees for the Declaration of the building "in construction"
- The land registry fees for the inscription of the DON

Taxes for:

- Building License: 3-5 % over the budget of construction. This budget is fixed in the same project made by your architect
- Certificate of Habitation: around € 200-1.000 (depending on the area).
- Taxes on the land:
 - In case the land is in RUSTIC land, or if the land belongs to a particular, and not to a company, then, 6-10 % Transfer Tax, over the price of the land. This is to be paid when the deeds of the land are passed into your name.
 - ***If the land belongs to a company, then, 21 % VAT.***
- 1-2% Stamp duty, over the total price of the construction. This is the budget of the house when declared for DON. And it is required when you bring the deeds of the DON to the land registry to inscribe the house over the land.
- VAT (IVA) for fees for the builder, the architect and for materials.
 - Architect: 21 % VAT
 - Builder: 10 % VAT
 - Materials:
 - If you bought materials directly by yourself: 21 % VAT.
 - If the builder supplies materials: 10 % VAT

As you may note, differences between the "buyer off-plan", and the "self-promoter" are very high, so, the decision to adopt one or the other requires of detailed study to consider directly with your legal advisor.

CATASTRO (In English "Cadastral") OR COUNCIL TAX.

In the position of the self-promoter, the Catastro over the land is called "rustic". In other words, the land is paying the Council Tax as "land".

The "Catastro" is the institution which consider the properties for maps, drawings, plans, and for Council Tax purposes.

Whilst the Registro de la Propiedad and the escritura may well confirm the ownership of a property, and the conditions of this ownership, like who owns the property, in which percentage, if is there limitations or charges (like mortgage, public auctions, Tribunal disputes, etc), the Catastro details will give you a better understanding of the

boundaries of the property (usually in a visual form) and, size and description of the property.

But, when you complete the building of a house over that land, then you must inform the Catastro (*Council Tax authority*), that over that land now there is a "house", with determinate specifications. If you do not do it, you can have future problems.

There are areas in Spain (like Andalucía and Murcia) in which the notary, when declare a new house over a pre-existing land, they send the deeds to the Catastro to inform about the modification. So, once you have the deeds of the DON in the land registry, the job is finished in this way. But, in other areas, like Valencia region, once you present the deeds of the property with the DON to the land registry, you must bring a copy of the CFO, and the Building license to the Catastro, in order to inform them that, over the land, there is now a house. If you do not do it, they will contact you in the near future to provide them with these documents.

Once the construction is duly inscribed in the Catastro, the job is finished, and soon (it takes sometimes around 1 or 2 years), you will start to receiving the bills from the Council Tax- SUMA BILLS.

3.- BUILDING YOUR HOUSE IN RUSTIC LAND - STEPS TO FOLLOW

1. FIRST STEP: TO KNOW IF YOUR PROJECT CAN BE DEVELOPED

The "Building License", or "Building Permit", or "Construction License" (*Licencia de Construcción, o Licencia de Edificación, o Licencia de Obra Mayor*).

As we pointed before if your intention is develop a project in one of the "rustic land" areas, you should first check with the legal authority (mainly the Town Hall or Council = "Ayuntamiento"), or, alternatively, consulting and getting the advice of lawyers specialists in construction and in rustic developments.

So, before to pass to advanced steps of the process, it is essential that you obtain the proper information about the local regulations and limitations of the area, and the possibilities to develop and execute your project. As well as in other countries, the authorization of your project will be formally approved when obtained the "Building License", or "Building Permit" from the Town Hall.

So, the **First Step is to know if the local normative authorizes the construction of a house on that plot.**

Second Step: WATER AND ELECTRICITY SUPPLY:

As explained above, mains water and electricity supply, and the sewage service, are items that are guaranteed to citizens who lives in urban areas "suelo urbano". **But in rustic land is out of urban areas, and frequently out of the main points of connection to mains water and electricity.**

In fact, the Town Hall has not any obligation to supply main water and electricity in rustic land areas. Only in urban. So it is very important to study carefully the possibilities to get water and electricity on the selected plot.

For example: If there is mains water and electricity supply near the land, and it can be connected then, there is not any problem.

But sometimes it happens that the closest point of the electricity or water connection is far away. So, it means that, in order to be connected, you need to pay high costs and the expenses to bring the supply to the property.

Only consulting local electricians and plumbers, or local builders, you will have the necessary information to confirm the possibilities of supply and connections of water and electric to that plot.

So you must have this into account from the beginning of the process, before to move forward with the purchase process.

It is always possible to get water from an internal deposit tank installed at the property, and from the typical Spanish "POZOS" = WATER WELLS. In the same way, it is possible to obtain electric from solar pannels, or eolic "wind power". But, not always these kind of supplies are authorized by the local Town Halls to give authorization to

build. So, this information must be taken into consideration in the very early steps of the purchase/building process.

So, We advice that before BUYING the plot, or to make any decision over the transaction, bear in mind to have a **PRELIMINAR STUDY OF THE PROJECT** consulting with local lawyers, architects, builders, or the construction technical staff from the Building Department of the Town Hall (*Departamento o Concejalía de Urbanismo*). This will make more secure the investment because, after all, you will have a concrete idea and acknowledge about the conditions and limitations to build in that plot, before to proceed to buy the land. It is more than recommendable that to make a study by a Solicitor ***expert in construction*** and, if possible, consulting the architect who will develop the project and the construction.

Also, in that premilinar study ask your lawyer to confirm not only the specific building rights on the plot, but also to discover what other developments are planned on that area, for example new roads, highways, train line, industrial parks, commercial areas, or even an urbanization.

This information can be obtained from your lawyer with meetings at the Town Hall, studying of the local normative, and also obtained from the Town Hall with a document named “CÉDULA URBANÍSTICA”.

Once you know exactly the type of building authorized to be built in that land, then you must contract the services of an architect to develop the ***PROJECT OF CONSTRUCTION, or BUILDING PROJECT***.

In the building project, your architect must adapt your ideas and preferences to the specific regulations from the Town Hall in that area. So, your architect will guide you throughout this process, informing you about the different possibilities to transform your “ideal house” in a construction fulfilling the regulations of the area.

The most important thing is to have every detail specified by your architect. Have your architect go through the plans in as much detail as you can stand. Try to visualize what the views from different windows will be, and what size beds the guestrooms can handle etc.

In simple words: Try to obtain from your architect as much as information about how the final house will be. **Try to furnish and live in the house while it's still on paper.** You may not be on-site to catch things that could annoy you for years to come, like a window that's off centre in a bedroom, or skylights that aren't exactly above where the bathroom sinks will be.

Once the project is complete, then your Architect must be present to the Building project to the local Town Hall at the Building Department ("*Departamento de Urbanismo*" or "*Concejalía de Urbanismo*"). With the application of the Building License, you have to pay a municipal tax, *Impuesto sobre Construcciones, Instalaciones y Obras*, which is applicable to all developments which need a building license (whether one is applied for / granted or not). This tax can vary from 2% to 4% of the cost of the construction, depending on the Town Hall of your area.

Then, they will study how suitable is your project to the specific conditions or limitations in the area.

If your project fulfills normative, and fulfills with the regulations and requirements to build on in that area, then they will authorize you to build there with the proper "*Building License*" or "*Building Permit*", so you will be entitled to build there exactly the same property as presented to the Town Hall with the project.

2.- STEP 2: CONSTRUCTION PROCESS & DOCUMENTS

We apply here the same steps as mentioned in the previously and above mentioned steps as per construction in URBAN LAND.

4.- CONSTRUCTION AND LEGAL CONCEPTS

Do I need a Building license to reform my house?

Yes, you need a building license to reform your house. The type of license required for these works depends on the works to be done with the reform.

Minor Works License – “licencia de obra menor”: This is required to changes of use of the rooms, and distrubution of walls, etc. To obtain this license it is not necessary a project form an architect, because it can be applied by particulars, just explaining the works, and evaluating them to pay the taxes.

To a better comprehension, this license is applied when the works to be done int he property does not affect to the essential infrastructure of the property, like the change of the roof, the supporting bimes or structure of the building, or inside stairs.

Normal cases in which this license is needed:Reform of the roof (not to change it completely, just to renew it). Here are some cases to apply for this license:

- To build garage, shed, or warehouse
- To build a fence
- To build a pool (depending on the area)
- To build a corral, etc.

Please, note the cases described and the conditions to get the license can vary from a zone or region to another substantially.

Major Works License – “licencia de obra mayor”: This is the same license as requested to build a house, explained in the section of “Construction in rustic land”, and “Construction in urban land”. This permit is required when the works to be done in the constructions affect to the essntial parts of the building, and requires a Project of an Architect. For example, to build an extension of the house (like a new room), or to change the roof.

- To change completely the roof
- To build a new room extending the construction
- To build a garage with tiles and concrete
- To build a second floor
- To build a pool (depending on the areas and regions), etc.

There is not title deed or escritura for the land, or the extension or boundaries of the land are not correct.

We can find often that there is not escritura (title deeds) for some properties, and you need to establish your right to the property through a process known as **“expediente de dominio”** or **“acta de notoriedad”**. This is complex, involving publication of your claim in the Boletín Oficial de la Provincia (the Official Gazette). The difference between both process are, mainly, that the “expediente de dominio” is made in a normal process in the Tribunals, and the “acta de notoriedad” is a process made in front of the notary of the area. It is not necessary to say that the “acta de notoriedad” is always more recommendable because is a shorter, cheaper, and faster process than the other one. Usually, “expediente de dominio” is used when the situation of the land, and the ownership is in dispute with the neighbors, or is not clear. And the “acta de notoriedad” is used when the ownership is well known, and there are problems of boundaries or size of the property.

Then you need to ensure that the records of the Registro de la Propiedad and the Catastro agree, and that these are in accordance with what local custom holds to be the property boundaries. You are only allowed to build on a certain percentage of the land area. You need to check for availability of utilities – especially water and electricity. You need to check for servidumbres de paso (rights of way) as these cannot be blocked. Then having “created” your property, it is necessary to register it for the first time. For all these matters you need the services of your Spanish Solicitor.

It is also frequently that **the size of the land is not the same as the real plot**. In these cases, again, an “expediente de dominio” or “acta de notoriedad” must be made in order to confirm which are the real boundaries of the land, and to update both, Spanish catastro and Spanish land registry.

The land is duly registered but the existing house does not appear in the deeds:

Sometimes happens that the house (construction) itself **may not be registered**, either for historical reasons or because whoever built it wanted to avoid tax and expenses for registration. Generally in such cases all that appears in the land registry and the official paperwork is the land.

In some other cases, the construction is registered (appear in the deeds and in the land registry), but not as a “house”, maybe as storehouse, or shed (“albergue”, or “almacén”) or some other similar construction. This is not sufficient to have the construction legally declared as a “house”. This situation should have been highlighted in the pre-contract stage, as it must be clear from the nota simple.

In these cases, before you buy the property, your Spanish Solicitor – or the vendor – must to register the house for the first time, if it not registered yet, or as a “house2, if it was registered but as any other similar constructions (shed, storehouse, etc). This is done by what is called a **“declaración de obra nueva”** (declaration of new works). And this must be done even though if the house is there for hundreds of years, because, as per the Register is concerned, this is a first registration, or at least the first registration as a house.

The “declaración de obra nueva” (DON) is a process of inscription of a building or construction in the land registry. **The process is very similar as when the house is new**, the differences are the documents required, and it is reduced to the elaboration of a deed from the Spanish notary, in which the new building is declared with the proper description of the rooms, service, size and measurements, plans, etc.

If the house was recently built (usually less than 4-8 years, depending on the area), the documents are exactly the same as considered as if the house is new, which are the following:

- The deeds of the land on your name- To proof the ownership of the land.
- The Building Project from your architect – To proof the size, description, etc., from the house and the building.
- The Building License – To proof that the property obtained the proper permission from the Spanish authorities.
- Final Works License – (CFO) Licencia o Certificado Final de Obra – To proof that the Works in the Spanish property are finished.
- Ten Years Insurance (Seguro Decenal) – If you have finally chosen to contract this insurance. If not, you must indicate to the notary that you have not proceed in this way, in order to inform the buyers and obtain the confirmation that they agree.
- Certificate of Habitation from the Town Hall – To proof that the Spanish authorities considers the building as a Spanish “House”.

But, if the house is not new, is an old house (more than 4-8 years, depending on the area), then the documents required are different. In this case, as the Spanish house is old, **it will be necessary to proof how old is it.** For this, there are several systems:

Certification of age made by an architect or engineer or “Certificado de Antigüedad”: If the house is not declared in the land registry, nor in the rest of official registries like the Spanish Catastro, somebody must confirm to these institutions how old is the construction, and which is its size, and description (how many square meters, how many floors, how big is, etc.). For this, in some areas of Spain, it is required the property to be inspected by a specialist who will confirm approximately the age of the building with a personal survey made in the property to check the estate of the house, and considering the rest of evidences like registries and records at the Town Hall, and other public or private database.

Although it is not applied for the Spanish laws in order to make the DON, the certification of the architect should be accompanied by the **drawings or plans for the house**, in order to proof the measurements. The plans will be very useful in the future to declare the house in other registries like the Catastro, or the Town Hall.

Some people confound this certification with a “survey”, or with the “evaluation” made from the bank in order to approve an eventual mortgage. As you can see in this report, the certification of age from the architect (sometimes engineers) is to measure the house, to detail the description, and also to provide an approximate age of the property. This certificate, is very specific, and it is used expressly to declare the Spanish construction in the land registry with the Declaración de Obra Nueva process.

A **“survey”** is made by professionals, who can be architects or not, who just indicate the situation of the house, and the estate of the construction to detect defects in the construction, and it is used, mainly, in the process of purchase or acquisition of a property. In fact, this is something which is not used when buyers and sellers are Spanish, but, it is widely used in Spain when the buyer is from other nationalities, like British.

And, finally, the **“evaluation”** made by the mortgage bank is different from the “survey” and from the “certification of age” because it is made by professionals, usually not architects, just to “evaluate” the property. It means, that the bank, as the creditor of the loan, wants to know how much value it has before to provide the funds

of the loan, mainly to check if the property will be enough guaranty to cover the risk and the funds borrowed.

Certification of age from the Town Hall. "Certificado de Antigüedad del Ayuntamiento". This is a certification issued by the Town Hall. This certification is not so detailed in the description of the construction as the one made from the architect, but, it serves to confirm to the Spanish land registry, and to the notary, what is the exact, or approximately, age of the construction.

Certification from the Catastro. "Certificado Catastral o del Catastro". In some areas, the Catastro has a detailed database from the properties, construction, and land of the rustic zones. In such a way that, although the land registry cannot be informed about the current existence of the property, the Catastro, due to its "automatic" or "inspection" activity (the Land Registry only act when the interested parts inform about a determinate transaction, it never act by his own inspecting, or acting automatically), has detected previously the existence of the house, and can confirm the age with more or less exactitude. In these cases, and depending on the areas, notaries and land registries accept the certification from the Catastro as proof of the existence and age of the property in the process of DON.

In both cases, I mean, in the case of a relative new, or old house, the documents required are provided to the notary, who will prepare the proper deeds which be called Declaración de Obra Nueva, which must be signed by the owner of the land. Once the deeds are properly signed, these ones will be the current deeds of the property, and the previous ones, which contained just the land, will be cancelled.

Then, once you have all these documents, you need to bring them to the notary. The notary will prepare the title deeds of the construction, and you will **sign them**. This process is called **Declaración de Obra Nueva**. This will declare that, over the pre-existing plot, there is now a construction, which is a house.

Then, you will need to bring these documents to the Land Registry to make the proper modification of the inscription of the land, now including the house, and the house will be legally complete.

So, the expenses of the DON will be, mainly:

- Notary fees to prepare the DON deeds
- Land Registry fees to inscribe the DON in the inscription of the land
- Stamp Duty – 1, 1,5, ,2 % (depending on the area) of the evaluation of the property

In these cases, it is highly recommendable to you to negotiate with the vendors that they register the house with the proper DON before proceeding with the sale. In fact, if you are getting a mortgage, the bank will not be able to value the property until the house has been registered using the DON, because until then (1) it does legally exist; and (2) until it is registered there is no official designation of what the property is exactly (size, land area and boundaries etc.). Also it cannot complete a mortgage on property that is not registered. So in this case there is no choice: the vendors must register it before you can buy it.

The land is perfectly registered in the deeds, and the house appears, but its full extension is not declared , or there are other elements not declared in the deeds like garage, or pool, or storehouses, etc.

These cases are really common in rustic land. These are the typical cases in which, in a determinate time, somebody inscribed and declared the land, and even also the house, but they did not include other parts of the house, or other elements, because they were built after.

For example, the owner who, after buy the house, builds a pool, or a garage, or extends the house with a new room, or a new porch, or a new floor, or terrace, etc.

These cases are extremely problematic, because the process to declare and update the deeds with the new extension **requires an specific study of the matter.**

There are so many different probabilities and requirements, depending o **WHAT is the size of the land; WHERE is the property located** (Valencia, Almería, Alicante, Murcia, Castellón, Granada, Cádiz, Málaga, etc.), with extremely high differences between regions, and even between cities; **WHEN these extensions were made** (4 years before, 10 years, 20 years), and **HOW they were built** (without building license, with reform license, etc.), that it is absolutely impossible to give a valid overview over this matter which could serve to affected owners as guide.

What is "FUERA DE ORDENACIÓN" – OUT OF NORMATIVE?

"Fuera de ordenación" is an OLD construction, or an OLD part from a construction, which has been built with no license, it is not fulfilling construction normative, and that it cannot be legalised.

- An old construction: The construction must be built more before the time that the Spanish administration has to react against the construction (demolish+fine).
- Before 2014 : 4 years from the time of construction
- After 2014 : 15 years from the time of construction
- It cannot obtain now a license to legalise it

Positive consequences:

- It can be PATRIMONIALISED: It can be part of your patrimony or personal Wealth. It can be registered at the land registry office, obtaining a mortgage, sell it, inherited, etc.
- It is a construction which is now legalised and legally consolidated by the time, although not fulfilling with normative. So, from a legal point of view, if there are not any fines affecting the property currently so, there are not any actions that the Town Hall can take against this property due to its age, and not possible to be demolished by the administration.

Negative consequences:

Also, due this fact, the Town Hall respects the existing constructions, but they cannot be extended. So, new constructions in the property cannot be built. The Town Hall allows inside reforms on these kind of properties, but not extensions, neither constructions of other buildings like garages, etc.

But, due to the fact that the property is out of normative, the Town Hall will not approve a license to reform essential structural parts from the building like foundations, roof, etc. The Town Hall will admit to "reform" the existing house, and "repairing" the existing structure, but not "remove" from the old parts to install new ones. For example, in the case that there is a "fire", or inundation which may affect the house on its structure, the Town Hall may not give rights to "rebuild" the

property. So, as conclusion, the Town Hall allows internal reforms to maintain the construction, but not structural reforms from bines, foundations, change of roof, etc.

Eventual problems when renewing/applying CH: Properties in Fuera de Ordenación may find problems in the future to obtain/renovate CH.

What are SEMI – CONSOLIDATED URBANISATIONS?

In this report we have explained about differences between **URBAN LAND** and **NON-URBANISABLE (RUSTIC LAND)**.

In relation to **URBAN LAND**, we were explaining that this is a land in which it is authorized to build with determinate specifications contained in the "Development Plans" of the city or area (Plan General de Ordenación Urbana), or in specific areas of urbanization called "Partial Plans" (Planes Parciales), etc.

This land has all the facilities and requirements to live there in high density of population, like the proper water and electric supplies for the properties and constructions, and public electric and water. And other supplies connections, like sewage, gas, telecommunications, etc.

Urban Land or "Suelo Urbano" is the land of cities or village or urbanizations and it uses to have the proper access by roads, with pavement, streets, commercial areas, health assistance, schools, colleges, sport centers, etc.

But, talking about Urban Land, there is an important difference between Urban Land "CONSOLIDATED" and "NON CONSOLIDATED" or "SEMI-CONSOLIDATED".

A **CONSOLIDATED URBAN PLOT** is a plot where all the necessary urbanization infrastructure has been completed, and the plot has all the services to be considered as "urban" (electric, wáter, road Access, sewage, etc.), and has already given all the necessary space to the public administration to install all this urbanization infrastructure. This plot has participated on the payment of the infrastructure, and already given (if necessary) parts of the land to be used for this public infrastructure.

If the plot is not built, then, it will be a plot with the proper rights of building defined by the current construction laws.

If the plot is already built, then, the existing constructions, if built following the constructions laws, will be totally legal Properties, as the ownership rights will be absolutely protected from the public administration for both, land and construction.

A **NON CONSOLIDATED URBAN PLOT** is the opposite. Is a plot where there are not installed all the necessary infrastructures to be considered as "CONSOLIDATED".

So, if the plot is not built, then, before obtaining the building permission, the Town Hall will request to complete the urbanization infrastructure in the area, following the existing construction laws, and/or the plot has not given the space to the public administration for the installation of this infrastructure. So, eventual costs of urbanizations may be pending on the land, and eventual parts of the plot may be affected by the urbanizations rules, and then, consequently, being forced to "give" to the public administration in order to install such as infrastructure.

If the plot is already built, then, eventual *charges of urbanization* may affect the developing and the use of these constructions, and these constructions may be also *affected if they are in the middle of the future infrastructure areas*. These cases are the ones in which Properties were built before the areas was converted into "urban" (because they were quite old), or simply because these constructions were built without the proper building permission (illegal).

In these cases, the ownership rights on the plot, and the eventual constructions, are not consolidated by the owner. In other words, the Public administration may have faculties to obtain part (or total) of the land, and constructions may be affected when adapting the plot to the urbanization requirements. So, both, plot, and constructions, are not totally integrated in the ownership rights from the owner, as both may be affected by the urbanization requirements and projects.

Inside the NON CONSOLIDATED areas, there is also an special classification called **SEMI-CONSOLIDATED**. Semi-consolidated areas are those ones that, being "urban", they are in one of the following cases:

- **There are some urbanization works done, but not all of them.**
- **There are some parts of the land given to the public administration for public infrastructure, but not all what the laws request.**

These are the typical cases that we may find in areas from Valencia, Alicante (Denia, Campello, Benidoleig, Onda, Javea, Benissa, Moraira, Calpe, Gata de Gorgos, etc.), some others from Murcia, Almeria (Almanzora Valley, Vera, etc.), Málaga, and Sevilla.

Usually, these are areas where the land was always considered as “rustic”, and with the time, there were progressing the constructions of houses with a high density of constructions (following current normative, more than 6-8 per hectare). In these areas these constructions are provided more or less with determinate infrastructure of water, electric, public access and roads. Depending of the case, we may find areas where the infrastructure installed is total, and other areas in which is poorer.

In this cases, in Semi-Consolidated constructions use to be legal. And “legal”, because they were built with the proper building license, or because they were legalized after built.

In these cases, then, the owner “consolidates” the ownership of the construction, but not the ownership of the land. So, the public administration cannot do anything against the construction, but the land may be affected by eventual parts of it to be given for urban infrastructures, or affected by urbanization charges.

Typical problems that we may find in these properties are:

- **That to extend, or to build houses in plots inside these areas, the Town Hall may request to give some of the land to be used for the installation of public infrastructure (pedestrian areas, sewage connection, wiring of electric, gas, water, etc.)**
- **That the owners are requested to pay part, or all, the expenses of urbanization of the area (connection to sewage, water, electric, installation of modern septic tanks, giving part of the land for public roads, etc).**

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