

Unfamiliar terminology used in Spanish law

Watch out for the term "joint property"

Lawyer Armin Gutschick offers advice on some of the things to bear in mind when buying property

In Spain, the term "joint property" means that both parties in a marriage share all their property – including anything that one of the parties has purchased or already owns – and everything that he and she possessed when the couple got married. It is therefore extremely important to give careful consideration to your choice of terminology when entering into a notarial contract to purchase property ...

If you are meeting with your Spanish solicitor to discuss notarial arrangements for a property purchase in Spain and he asks you what marital property regime has been agreed, mentioning the term "joint property arrangement" (comunidad de bienes) with a questioning look, you may nod, because you haven't agreed on separation of property (separación de bienes) and the concept of joint property seems to fit your situation.

A marriage which did not take place in Spain is usually governed by the law of the country of origin. In many countries, the law states that the legal marital property regime is equivalent to a community of acquisitions whereby the increase in the capital assets of both partners is jointly owned. In a community of acquisitions, all assets remain separate and only the increase in value since the marriage must be shared. In a marital property regime, however, the total assets of both parties are combined.

Most Spanish solicitors are unaware of the intricacies and details of foreign marital property regimes. In a community of acquisitions, both partners are individually responsible for their own property. If the marriage ends in divorce or death of one of the partners, the increase in the total assets for both sets of property must be shared. This law means that one partner can enter into a contractual agreement without necessarily implicating the other partner.

If only one partner is present when the notarial certificate is signed and signs only in his or her own name and has also mistakenly agreed to the use of the words "comunidad de bienes" (joint property agreement), then the Spanish solicitor will assume that both the signatory and the absent partner are jointly acquiring property on Ibiza. This means that both names will be entered as the owners of the property in the land register.

Of course, as the sole signatory, the first partner assumes that the property is his or hers alone and that he or she will be able to make all notarial arrangements to sell the property at a later date without requiring his or her partner to be present. If the first partner wishes to sell the property without the second partner in attendance, the notary will inform him or her that he or she is not the sole owner of the property and must obtain the second partner's agreement before selling.

This mistake can end up being very unpleasant and costing a fortune in legal fees. If the couple have divorced in the meantime and the partner who signed the sales contract is unaware of the way property rights work in Spain and assumes that the house on Ibiza is not affected by the divorce proceedings, then getting the former partner to agree to a sale can be a costly business.

If the former partner refuses to agree to a sale, the case may have to go to a court of law to revoke the joint ownership agreement. In addition, the partner who did not sign the original purchase contract requires a Spanish tax number in order to sell the property. It can take a long time to obtain a "NIE number", as it is known, issued, particularly in the summer.

To summarise: if a Spanish notary asks you what marital property regime has been agreed and you and your partner have neither agreed on a separation of property nor a joint property arrangement, then you should explain the system of the community of acquisitions as follows: "separación de bienes con participación en las ganancias". In the long term, this could well end up saving you a lot of time, energy and money...