

The dream of buying a property abroad can turn sour because people do not follow advice that would be a normal process if buying in their own country.

Over many years, in conjunction with my professional contacts around the world, I have advised on the potential problems which could have occurred in purchasing or owning an overseas property. Therefore if required, we can hopefully advise and assist on how to best to avoid future potential issues.

Listed below are some of the most common problems we have come across, with some suggested tips on how to hopefully prevent them.

CONSTRUCTION ISSUES

CONTRACTS TRANSLATED INCORRECTLY

DIFFERENT TO ORIGINAL SPECIFICATIONS

EXPERIENCE AND REPUTATION OF DEVELOPER OR AGENT

FULL TITLE OWNERSHIP

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NO LICENCES

NO PLANNING PERMISSION

PROPERTY IS ILLEGALLY BUILT

PROTECTED PROPERTIES

TIMESCALES/OUT OF CONTRACT

TOO MUCH PRESSURE TO BUY

Property is illegally built

Problem

Some overseas properties have been built in areas that should have been set aside for green belt or agriculture land. Others may have been constructed in areas which impinge on bird sanctuaries and military zones, or which have been illegally built too close to the coast.

Many people are unaware that their property is at risk, but it is a harsh reality. One example is in Spain, where the environmental authorities have been knocking down homes built too near the shoreline or unregistered rural land.

Possible solution

Take independent advice from an English-speaking lawyer who is not connected to your seller, estate agent or property developer. Ideally, they should also not be located or represented in the same area as the property in question.

You can also check with similar independent professionals, such as surveyors or architects.

No planning permission

Problem

This refers to properties which have been constructed with incorrect permits, or no permits at all. In some instances, permission may have been granted as a result of corruption amongst local government or council officials.

Possible solution

Your independent lawyer should request paperwork to ensure that all parts of the property (including extensions, garages, swimming pools and outbuildings) have been built under the correct legislation and that plans comply with restrictions regarding height, floor space and distance from boundaries. Please also note that rules that apply locally may not apply regionally, so your lawyer should extend their checks further than just the vicinity where the property has been built.

No licences

Problem

This is similar to no/illegal planning permission, but could have an impact on which utilities you can access, as local councils may not grant permission for the use of gas, electricity and water unless the correct licences are in place.

Additional problems can arise if your property is part of a large development or apartment block. It is possible that the developer will not register your property for the correct licences until ALL the properties in that development have been registered in each client's name.

Possible solution

If purchasing a new build, establish when the whole development will be registered, so you know when the relevant licences will be issued. If the property you are buying is part of a very new development, it could be months or even years before this happens.

Problems can even be encountered if the property is a re-sale as it may be part of a yet to be finished apartment block. Your independent lawyer will hopefully be able to check this.

Inflated prices

Problem

Sometimes property prices are uplifted due to large volumes of foreign interest or because the property is situated in a 'touristic' area. If banks are not currently lending within that area, a 'true price' may not have been set, as locally-based valuations may not have taken place.

Possible solution

Instruct an independent surveyor, ideally one which is not locally based, to check the valuation and the appropriate comparable properties in the area.

If you are using a lender to secure a mortgage on the property, check what type of valuation they will be carrying out and if you are not satisfied that this will provide you with an accurate enough figure, still seek advice from an independent surveyor.

Protected properties

Problem

Occasionally properties are 'protected' due to their age, location, design or construction. This can lead to restrictions regarding your use of the property and any changes you wish to make to it.

Possible solution

If in doubt, take advice from either an independent lawyer and/or an architect and check that it is 'protected', what restrictions apply to usage, cosmetic changes or structural work (including extensions).

Full title ownership

Problem

When buying an overseas property, especially in rural areas or emerging markets, you must ensure that you have full ownership of it. Sometimes restrictions are applied – e.g. ownership can only take place in conjunction with a locally based resident (where you have a minority shareholding) or in the name of a locally based or offshore company.

There have been occasions when shady dealers have sold a property that they have no rights over, sometimes to more than one person. This is a particular risk in countries with an unstable recent past or a history of population displacement.

Possible solution

Your independent lawyer should conduct a search on the property. This will confirm that the property has a title deed and that the vendor is legally allowed to sell the property.

Construction issues

Problem

We have dealt with cases where new properties have been built in poor soil with unsatisfactory foundation depths, others where sub-standard building materials have been used, or where they've been built in dubious locations, such as flood plains, or too close to nearby cliffs.

However, construction issues are not unique to just new properties – older properties may have hidden problems such as damp, timber rot, wiring defects or subsidence.

Possible solution

Obtain an independent valuation, even if it is a new property, as this will highlight any problems.

If you are buying a new property, check the developer's past building record and look into comparable properties in the area and any re-sales on the existing development to see how they have 'weathered'. It may also be useful to get some personal recommendations from previous buyers.

Lack of amenities

Problem

It is sometimes the case that when a property is sold, especially if it is a new build, promises are made by the developer about certain facilities being provided on-site or nearby (such as shops, restaurants, hotels and medical centres) or that membership to local golf and health clubs will come part and parcel with the purchase. When contracts are exchanged, however, it is a different story and these promises turn out to be fruitless.

Possible solution

As well as checking with your independent lawyer that the provision of these facilities is within the contract you are eventually to sign, do some digging into the developer's track record. See if they have provided similar facilities in other developments and speak to current and past owners about their experiences.

It may be useful to build in a 'penalty/compensation' clause into your contract in the event of the amenities promised not being supplied.

Contracts translated incorrectly

Problem

When buying a property abroad, you may receive one contract just in the local language, or two contracts – one in the local language and one in your own language.

'Lost in translation' is a term we are all familiar with, but when it comes to contracts for an overseas property, you could be at risk of experiencing its full impact. In many cases, it has eventually come to light that the translation is not a true version of the original. In other cases, people have not bothered to have the contract translated at all.

Possible solution

If you have been provided with a translated version of the contract, you need to ensure that it does not contain errors, omissions or extras. One simple check is to see if it has the same number of paragraphs as the original. If not, there is almost certainly a problem.

The safest option is to check with your independent lawyer, or a professional translator. They can verify that the translation is a true version of the original.

Otherwise, you could unwittingly be agreeing to extra conditions or secured/unsecured charges not covered or applicable under the original contract.

Timescales/Out of contract

Problem

In some countries, conditions are set at the time you sign a sales contract, which mean you must either pay certain amounts of money at set times OR complete the transaction within a defined period. Time constraints may be set due to national laws rather than a developer's or agent's timeframe.

In France, for example, once you sign a sales contract and confirm the completion date, you could lose your deposit if you fail to meet that defined date.

Some of the conditions set are unreasonable and do not take into account delays which are beyond your control. For example, if the property is still being built, there may be construction delays, or if you are applying for a mortgage to purchase the property, you may encounter financial or valuation difficulties.

Possible solution

Calculate the timescales you personally need to work to, especially with regard to cash flow and finance which may need to be arranged. If a developer/agent is insisting on set times, you can research earlier work they have carried out to see if they have previously met their own deadlines.

We would also advise that your independent lawyer obtains financial references on the developer, to ensure that they have the cash resources to complete the construction of the development, and to establish what compensation you would be entitled to if they do not meet the agreed timescales.

Lost deposits

Problem

At the time of signing the sales contract, developers or agents may set dates when a small holding deposit or a larger stage payment is required. Quite often, they do this without providing a 'cooling off' period or with restricted timescales – e.g. seven days – beyond which you are unable to withdraw from the contract without losing your deposit.

Possible solution

Before parting with any cash, ask your independent lawyer to check the contract, in particular the clauses which will become applicable if you decide to withdraw from the purchase.

Ask for a 'cooling-off' period of at least 14 days (30 would be even better). This will give you plenty of time to return to your home country and seek other professional advice before proceeding further.

Beware if you are paying for any holding deposit by credit card. Make sure that the developer or agent is not utilising your rights under the credit card laws regarding refunds to avoid any 'cooling-off' period they should offer.

Too much pressure to buy

Problem

This can often happen on 'inspection flights', where you are corralled by the developer or agent within a tightly controlled timetable of property visits designed to get you sign on the dotted line whilst you are out there. The sales staff are with you "24 hours a day", trying to persuade you to buy, without any time out to consider it properly or to take professional advice.

Possible solution

Try to obtain references from previous clients of the developer or agent you are dealing with to establish their past customer service record.

If you do book an 'inspection flight', check if there are any restrictions on movement outside the defined area or developments you are visiting. Make it clear – ideally before you fly out – that you will not be pressurised into signing any paperwork without taking independent professional advice first and that you would only consider a purchase if an acceptable 'cooling off' period is in place.

Different to original specifications

Problem

This applies primarily to new properties which, when completed, bear little or no resemblance to the property you originally signed up for. For example, it may have fewer bedrooms; one or more rooms may be smaller than originally specified; there could be no sign of the garage or other outbuildings that were promised; the swimming pool may not be the shape or size that you're initially agreed to.

Possible solution

If you are building your own property, make sure you instruct a reputable site manager or foreman and obtain references from previous clients.

If you are purchasing from a development, your independent lawyer can check that the specifications you requested in the original sales contract match those of the completed version.

Experience and reputation of developer or agent

Problem

Over the past few years, many new developers and agents have come into the overseas property market with very little experience and, on occasion, a lack of cash reserves. This has inevitably led to problems with unlicensed agents, bad selling and, in some cases, bankrupt developments.

Possible solution

Before purchasing from an agent or developer, check how long they have been in business and that they have all the correct licences in place to operate in that country. Ask them to provide details of past developments so you can check the quality of these and how they have stood the test of time. You could also obtain references from existing customers and ask your independent lawyer to make some financial checks.

Location problems

Problem

Properties which may have looked great in a sales brochure could end up being located in problematic or totally unsuitable areas. For example, your dream property may actually be situated next to a motorway, a local airfield or a municipal rubbish dump. Alternatively, it could have been built next to the local sewage works, or within an area used for military manoeuvres. Or, it may be the case that the neighbours have dogs which bark incessantly or noisy livestock.

Possible solution

Never ever sign up for a property that you have not taken the time to visit. When you do visit, do so at day and night, and if possible, in different seasons.

Make time to talk to people who already live/own property in the area you like to get a better understanding of what it is like to live there. Ask the neighbours about their own experiences.