



Spanish mortgage problems guide



**A guide to problems with
Spanish mortgages**



SPAIN

Further beyond

47 million Population

28th most populous country on earth

50 Provinces

Capital : Madrid

Currency : Euro (EUR)

Languages : Spanish, Catalan, Basque, Basque, Occitan

EUROPE



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introduction

There can be all sorts of different reasons why you may wish to take out a mortgage when you buy a property in Spain. You may have your funds tied up in another venture and taking out a mortgage may allow you to buy now rather than later or even keep your funds working elsewhere. You may not have all the funds to buy the property outright and therefore need the mortgage to buy the property. It might allow you to buy a bigger property than you would have otherwise been able to do. You may wish to use this as an inheritance tax planning exercise. There may even be other tax advantages to taking out a mortgage.

Unfortunately a lot of people who previously took out mortgages to buy property in Spain are now experiencing problems repaying the mortgage. This could be because they over reached themselves when they took out the mortgage. It could be because their circumstances have changed – for example, they may have lost their job. It might be that they were relying on rental income to help pay for the mortgage which has not materialized.

Whatever the circumstances many people now find that they are struggling to pay their mortgages on a month to month basis and may even be in arrears.



You may have various options available to you but it is vital that you understand what your options are before starting anything.

Banks often think in a different way to the rest of us and therefore it is vital that you understand what their priorities are before speaking to them.

If you do not understand how banks think, what requirements banks have and what their priorities are then it is very easy to get yourself into even more trouble than you are in at the moment by saying something that seems innocent but which is then later on used against you by the bank.

Even worse than saying the wrong thing is sticking your head in the sand and hoping that the problem will go away. It won't. If you ignore the bank the problem will simply get worse and worse.

If you do not deal with the issue the banks will simply keep on adding on late payment fees and interest every month, which will make the amount due even greater. If they end up repossessing they will add on huge legal fees which are likely to swallow up any equity that you may have in the property.

Even if you are in arrears with your mortgage and are being pressured by the bank you may have more options than you originally thought. However, you need to know what those options are before you can make an informed choice.

Just assuming that the bank will not co-operate or assuming that because your attempts at resolving the issue have failed means that nobody else can help may be a big mistake.

Obviously you have to be realistic about what can be achieved and are, to a large extent, in the hands of the banks, but people who are experienced in dealing with banks, can speak their language and understand what their problems and priorities are can often get results that you could not on your own.

dación en pago

You may have heard the term “Dación en Pago”. This is a mechanism by where you hand the property back to the bank.

It has to be done by agreement with the bank – you can't just post them the keys back like some people think they can.

The vast majority of Spanish Banks have signed up to a Code of Conduct in which they have agreed to always agree to a Dación en Pago if certain criteria are met by the owners of the property and the people who took out the mortgage.

This system was brought in during the early days of the recession as a way of reducing the cost of repossession and making it easier for the people who had taken out mortgages and who could no longer fund them.

The way that this works is that if you comply with the requirements then you can hand the property back to the bank as full and final settlement for the debt / mortgage that you owe them.



dación en pago requirements

In order to qualify for an automatic Dación en Pago it is necessary to comply with all the following requirements.

1. **A restructure of the loan to make it more affordable must have been attempted.**
2. **The value of the property must be less than €200,000 in large cities and less than €120,000 in cities with less than 100,000 inhabitants.**
3. **The property must be the only home that the borrower owns anywhere, not just in Spain.**
4. **All family members of the borrower must be unemployed.**
5. **The mortgage was taken out to buy the property and is not subject to other guarantees registered on it.**
6. **The mortgage payments must make up more than 60% of the net family income**
7. **There is no other assets with which to satisfy the debt**



dación en pago by negotiation

Even if you do not comply with all the requirements for a Dación en Pago this may still be an option for you. The banks can, if they wish to, agree to take the property back from you in settlement of the amount outstanding to them under the mortgage

The requirements above only set out when a Bank that has signed up to a Voluntary Code of Conduct has to accept a Dación en Pago. It may still be possible to negotiate a Dación en Pago with the bank even if you do not comply with the requirements above. Obviously, however, the more requirements you meet and the greater the equity on the property the more chance that we can negotiate a Dación en Pago with your bank.

In some cases we have even managed to negotiate with the bank that they will take over the cost of running the property until it is sold and then give you back any difference between the amount that you owe them and the price realized upon a sale.





If you wish to keep the property but simply wish to negotiate over the terms of the mortgage then this may be possible. Obviously any negotiation and the scope of the changes in your terms will be up to the bank. However, fundamentally, the banks would much rather re-negotiate with you over the terms of the mortgage and get to a stage where you are paying regularly rather than be in a situation where they have to re-possess. The Spanish banks are already probably the largest estate agents in the country already as it is!

It may be possible to renegotiate over your mortgage and achieve one or several different changes that can have a major impact on your monthly payments or the amount that you have to pay back;

1. **Periods of time in which your mortgage is interest only**
2. **Extending the length of the mortgage to reduce down the monthly payments**
3. **Reducing down interest rates**
4. **Writing off part of the amount outstanding to the bank.**

The more you are behind in your mortgage payments and the more you have been ignoring the bank the less likely they are to co-operate with you. Similarly if you are not in arrears the bank may see no need to negotiate. It is therefore vital to deal with somebody who understands how banks think in order to negotiate on your behalf.

can they come after me in the UK?

Many people believe that because the property is in Spain, the bank is in Spain and the mortgage is in Spain that the bank cannot come after you in the UK for the debt. That is not necessarily true.

Obviously the bank will have a first charge on the property and are likely to go after that in the first instance. If they can sell the property through auction to cover the amount outstanding then that would bring the matter to an end. However, if the value of the property is less than the amount outstanding then the bank has a right to come after you for any balance.

This could include coming after any assets that you have in the UK.

The banks would have to balance up whether it is worth coming after you as cross border debt recovery is more difficult and expensive, but it is possible and is an option that is available to the Spanish banks if they wish to take that option up.



When you are converting from one currency to another the difference between one exchange rate and another can literally make a difference of thousands of pounds on your purchase.

Do not underestimate the difference that a good exchange rate can make. In some cases it can make the difference between being able to afford to pay your mortgage and not being able to. We know people who have sold properties and have made more money on the exchange rate difference than they have on the sale of their property.

We are not banks or currency dealers, but would recommend that you investigate the cheapest way of sending your money abroad. If you would like we can put you in contact with currency dealers that we know will give you a good exchange rate and a good service.

Currency dealers have increasingly sophisticated products. You can agree rates for the future. You can get them advising you when to buy or agreeing to buy for you when the rate hits a certain level. You can even agree a fixed rate for longer periods of time if you make regular payments abroad (for example for a mortgage or moving your pension money). Getting a good exchange rate should form part of your mortgage payment strategy.

We work with [Currencies Direct](#) who can give you a good exchange rate for your purchase and whom we have known for years. We will normally receive a commission for introducing them to you. This does not cost you anything more as they are simply paying us part of what they make. This commission is costed into our overall charges for providing our services.



floor clauses

When you take out a variable mortgage the amount of interest that you pay on your mortgage changes according to the rate of interest that applies at the time. As the interest rate increases then the interbank rate (EURIBOR) changes. Typically a variable mortgage will have an interest rate that is set so many points above the EURIBOR rate.

Consumers may be used to having a maximum interest rate that applies to their mortgage. This is a term in their mortgage agreement which states that the interest rate can never go above a certain percentage. This allows a certain amount of security to the consumer. This is often referred to as a Ceiling Clause (clausula techo).

What many people have not been aware of is the flip side of the Ceiling Clause. Banks in Spain inserted what is known as a “Clausula Suelo”. This is a clause which means that the interest rate can never go below a certain percentage even if the EURIBOR drops significantly.

Over the last few years the EURIBOR has dropped significantly and therefore these floor clauses in Spain have kicked in, meaning that the customers of the Spanish banks have had to pay a higher interest rate than they would have if these floor clauses did not exist.

A Court decision made at the Supreme Court in Spain on 9th May 2013 stated that these floor clauses were abusive and ruled that in the future they could not apply.

This meant that if a bank applied the floor clause from that point onwards then the client could claim back the overpayment in interest that applied.

That court judgment was very specific in stating that the judgment did not have retrospective effect— i.e. it would not oblige banks to pay back any interest received as a result of the floor clause before that date

The Spanish court decision was then taken to the European Court of Justice and that Court rules on 21st December 2016 that the judgement could apply retrospectively.

That means that anybody who had a floor clause in their mortgage conditions and had that floor clause apply can then apply to have the difference returned to them by the bank.

This can therefore go back right to the date when the mortgage started.





Spanish lawyers

We have an experienced Spanish legal team comprising Spanish lawyers and English lawyers who have studied Spanish law.

We are Solicitors

We are a UK based firm of Solicitors regulated by the Solicitors Regulation Authority and who specialise in international legal issues.

We understand both sets of laws

Because we understand both sets of laws we understand the difficulties that come when two sets of laws meet.. This is particularly important when it comes to issues involving ownership, taxation and inheritance.

We are members of AIPP

The Association of International Property Professionals was set up to improve standards of professionalism in a largely unregulated overseas property market.

Experience

Our Spanish team has many years of experience dealing with a whole range of legal issues with Spain.

We speak your language

You need a lawyer who can speak your own language. More importantly you need somebody who can explain and discuss often complicated issues in terms that you understand.

Independence

We are independent. We are not allowed to act for the buyer and the seller at the same time. We are not linked with any Development Companies, Builders or Estate Agents

useful terms

Abogado	Lawyer or solicitor
Agente de propiedad inmobiliario	Estate Agent
Apartamento / piso	Apartment
Asesor fiscal	Tax consultant
Ayuntamiento	Town Hall
Banco	Bank
Clausula suelo	Floor Clause
Clausula techo	Ceiling Clause
Comunidad de Propietarios	Community of owners / Residents Association
Compra / compraventa	Purchase / Buying and selling
Dación en Pago	Handing the keys back to the bank
Deuda	Debt
Dirección	Address
Embargo	Embargo / Charge
Escritura	Title Deeds
Garantía	Guarantee
Gastos	Costs
Hipoteca	Mortgage
IBI (Impuesto Sobre Bienes Inmuebles)	Council Tax
Impuesto	Tax
Inmobiliaria	Estate Agency
Interés	Interest
IVA (Impuesto Valor Añadido)	VAT (Value Added Tax)
Llave	Key
Ley	Law
Licencia	Licence

Ley	Law
Licencia	Licence
Mensual	Monthly
Muebles	Furniture
Negociación	Negotiation
Negociar	Negotiate
NIE (Numero de Identificación de Extranjeros)	Foreigner's Identification Number
Nota Simple	Land Registry Search
Notario	Notary Public
Permiso de obra	Planning permission
Pleito	Court case
Poder	Power of Attorney
Póliza de seguros	Insurance policy
Promotor	Developer
Propiedad	Property
Registro de propiedad	Land Registry
Renta	Income
Residente	Resident
Seguros(s)	Insurance
Sociedad	Company
Sucursal	Branch (Bank)
Subasta	Auction
Valor Catastral	Official value of the property

Contacts

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