

How to buy a home in Spain

S T E P B Y S T E P

Consumer safety
in purchasing property



Registradores de España

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in purchasing property

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Finding the right home



To choose the right home for you, you have to **COMPARE** the possibilities there are on the market, **EXAMINE** the property's physical features and **ASCERTAIN** the property's legal situation.

The hardest part of buying a home is probably choosing the right home for you. Take your time when looking around, so you can

❑ **COMPARE** the different possibilities the market has to offer.

❑ **EXAMINE** the physical features of the property in detail.

❑ **ASCERTAIN** the property's legal situation.

❑ You can look for a home yourself or find an **ESTATE AGENT** to do the looking for you. If you go to an estate agency, they will provide you with different possibilities to choose from. In this case, remember:

❑ The estate agent is a middleman between the seller and the buyer, and what he or she does is put buyer and seller in contact with each other so that they can decide if

they want to make a deal. So you must bear in mind that the person selling you the home **is not the estate agency, but the homeowner or promoter.**

❑ The agency is generally engaged by the seller, so it is the seller who must pay the agency its fees.

❑ The estate agency may provide management services as well, so it may offer you a mortgage financing plan, suggest having a particular notary make out the deed or offer to handle the tax paperwork and submit the deed for you at the Property Registry. You as the buyer **are not obliged to use these services.** You may say no to them.

❑ **AT ALL EVENTS**, before you sign any agreements or pay any money, make sure you do these things:



1 Examine the property's physical features

To do this, you must visit the home for yourself, look it over, see if it lives up to its claims in terms of the quality of its materials, the condition of its installed equipment, its general upkeep, the amount of light it gets, the views, the neighbourhood, the noise level, access to transport, and so on. If anything seems wrong, do not hesitate to let the seller or the agent who is showing you around know. If their explanations do not satisfy you, have a professional, such as an architect or a quantity surveyor, go with you.

When the first information you can get on the home comes from brochures, be sure to bear these facts in mind:

- You can require the seller to provide the services, installed equipment and payment terms listed in the offer, promotion and advertising for the home, even if they are not specified in the agreement you sign afterwards.
- All companies in the business of offering, promoting and advertising homes must keep the following information available to the public:
 - The seller's name, company name, address and particulars of registration at the Mercantile Registry (if registered).
 - General plans showing where the home is and plans of the home itself, plus a description and schematics of the power, water, gas and heating systems and their warrantee, plus

any fire safety measures the building has.

- A description of the home, including its floor space, and a general description of the building it is located in, common areas and accessory services.
- A reference to the materials used to build the home, including sound and heat insulation, and the materials used in the building, common areas and accessory services.

- Instructions on how to use and maintain any installed equipment that requires care or special knowledge, and instructions on evacuating the building in case of emergency.
- The particulars of the property's entry in the Property Registry, or a statement that the property has not been entered.
- Total price of the home and accessory services, and payment terms.

2 Examine the legal situation of the home

Just visiting is not enough to tell you all you need to know about the home you are thinking of buying. You also have to find out about its legal situation, that is,

ASCERTAIN:

- Who it belongs to, and therefore who its owner or owners are.
- If there are any liens or burdens, such as mortgages or injunctions affecting the property.
- If there are lessees or tenants.
- If the home is part of some special programme, like low-income housing

(*viviendas de protección oficial*).

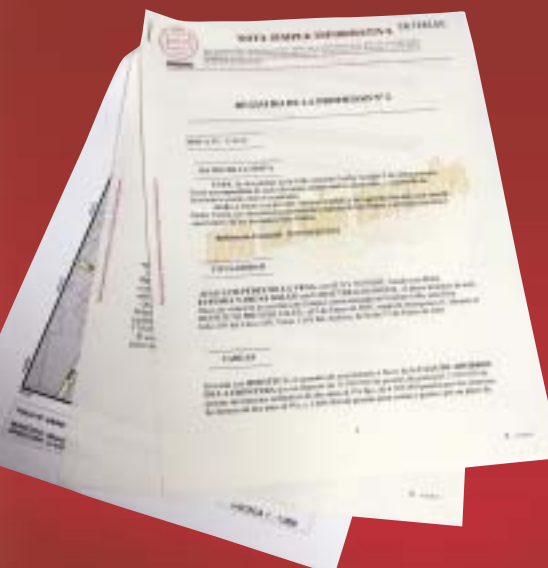
- In cases where the home is a flat and membership in the building tenants' association is mandatory, whether all association dues have been paid.
- If the owner owes any property tax (*impuesto sobre bienes inmuebles*, formerly called *contribución urbana*).
- In cases where the home is new or is still under construction, whether the promoter has insurance covering damage caused by structural defects in the building.
- In cases of low-income housing or price-controlled housing (*vivienda de precio tasado*), whether it is prohibited to sell the home or whether the public administration holds the right to buy the home back from its owner at the original price.

To find these things out, go to the **PROPERTY REGISTRY (REGISTRO DE LA PROPIEDAD)** where the home is registered. You can apply for the information yourself or have the seller, estate agency or an administrative agent do it for you. At all events, **get the information from the registry before you hand over any money or sign**



any agreements. Here is how to apply for information:

- You can ask any Property Registry in Spain, and you can apply for information
 - In person
 - By fax
 - By post
 - By e-mail
- You can also apply for information at the Association of Registrars' web site, www.registradores.org, **right from your home**, and the information will be sent to you by e-mail. Just charge the fees to your credit card. You will be charged 9 € for this service.
- At the Association of Registrars' Consumer Service (call toll-free 900 10 11 41), at the www.registradores.org web site or at this e-mail



One way to get information from the Property Registry is to ask for an uncertified note, which tells you just the most essential points of the property's description, ownership and burdens.



To really get to know the home you want to purchase, visiting it is not enough. You also need to know its legal situation and find out, among other things, who it belongs to, what liens are on it, whether it is part of any special programmes, whether any tenants' association dues or property taxes are owed on it, and whether it is forbidden to sell it.

address: consultas@registradores.org, you can get information about the registries in whose territory the different streets of cities and towns lie, the address, phone and fax numbers of registry offices, their e-mail addresses and generally any other matter related with registries and registration.

□ You can get registry information in the form of:

- **An uncertified note**, which will give a description of the home, its situation, its area, any property appertaining to it, its share of building ownership, any special administrative programmes it belongs to (such as the low-income housing programme),

mortgages, including the mortgage liability for principal, interests and costs, the mortgage's term, any injunctions, easements or possible lawsuits involving the property, any tax-related encumbrances, and generally any circumstances involving the home's ownership. The note may also include any other information you expressly ask for. This note is for your information only and cannot be used in legal proceedings as proof of the non-existence of burdens and liens.

- **Certificate of ownership and burdens**, which contains more information than an uncertified note, because if you prove your interest



You can ask the registrar for a written report on the registered situation of the property or oral advice on issues concerning the registered situation of the property.

as a potential buyer, you can ask for it to include a word-for-word reproduction of entries, or information on the non-current history of the property. Since this is a public document signed by a registrar, a certificate can be used in court and third-party proceedings to prove the absence or presence of liens on a given piece of property.

- You can also ask the registrar for a written

report on the property's registered situation.

- Or ask the registrar for oral advice. He or she is obliged to report orally on issues concerning the registered situation of property. This advice is always free of charge, and the registrar must spend at least two hours a day on this kind of work.

At all events, bear in mind that legislation on the protection of personal information may limit what registration information can be given to you.

In addition to checking up on the facts at the Property Registry, you must always have the seller provide certain **complementary documentation**:

- An authorised copy of the

seller's deed of purchase, if you are looking to buy a second-hand home.

- A tax receipt proving that the seller has paid the latest property tax.
- A certificate from the president or secretary of the building tenants' association, attesting that the home you want to buy does not owe the association any dues.
- A formal statement, in a deed, declaring that there are no leases on the home you want to buy.

Buying a home in the planning stage

It is trickier to examine the physical and legal situation of the home you want to buy if the home only exists on paper, in other words, if **the home is question has not been built yet**. In that case, the only description you can get will be from the plans the promoter will show you, and the home will only exist if the promoter fulfils its obligation to build according to the plans that formed the basis for your agreement.

IF YOU ARE BUYING A HOME THAT IS STILL IN THE PLANNING STAGE,

do not sign any agreements or hand over any money until you have checked all these things:

- ❑ Be sure the promoter you are signing the agreement with exists and the person who is going to sign on the promoter's behalf has the legal power to do so. For this information, **check the Mercantile Registry**, where the company ought to be registered. You can go to any Mercantile Registry office or use the www.registradores.org web site to get information about the company's registration, officers, attorneys-in-fact and bylaws. You can do this from your own home and get the information on line immediately over the Internet, charging the fees to your credit card. A check like this, which is always a good idea, is absolutely vital if you are buying a home that has not been built yet.
- ❑ Be sure the land they are going to build on is registered to the promoter company you are doing business with. That way you know it is the owner. To do this, **check the Property**

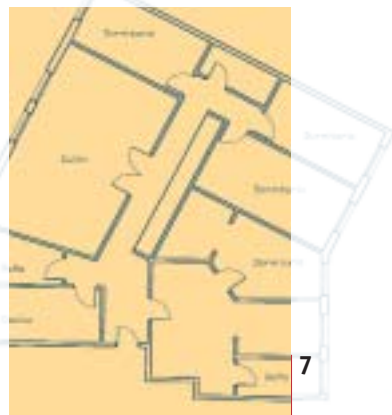
Registry as explained above.

- ❑ Be sure the planned building has been authorised by the city government through the correct licensing procedure. You can check this at the Property Registry, because if the description of the future building is registered, that means the registrar has seen evidence that the license exists and work has begun in accordance with the approved design. If the building's description has not been registered yet, go to City Hall to find out whether the land in question can be built on.
- ❑ If you are required to sign a private agreement and pay a sum on account before the building is constructed, bear these things in mind:
- ❑ If the agreement contains any abusive clauses, those clauses will be held not to exist, even if you have signed them, and they will be considered null. These include clauses allowing the promoter to change the design after signing and without your consent, clauses saying

you have waived your right to choose a notary, and clauses obliging you to sign into a mortgage loan the promoter has taken or obliging you to sign up for accessory services.

- ❑ If you give the promoter any money, you can demand proof that the money has been deposited in a special account that can only be drawn on for the construction project,

If the home you want to buy has not been built yet, the only description you can gain access to will be the plans the promoter shows you, because the home will only exist if the promoter complies with its obligation to build in accordance with the terms of the plans that formed the basis on which your agreement was concluded.



Once construction has finished, before you sign the deed of purchase, have the seller give you proof that work has been concluded in accordance with the description given in the plans.



When looking for a mortgage, remember that the bank you apply to will require you to have the home registered in your name before they will give you a loan.

plus proof that there is an insurance policy or bond ensuring that you will get your money back plus six percent if the building is never constructed or delivery is delayed.

- Once construction has finished, before you sign the deed of purchase, demand proof from the seller that the construction has been finished in accordance with the description given in the plans, and that there is an insurance policy covering all damages to you (the

buyer) as a result of defective construction. You can check this at the Property Registry; if there is an entry stating that construction has ended, that means the registrar has seen proof of the existence of a certificate of works conclusion pursuant to the approved design and an insurance policy. **Therefore, before you sign the deed, make sure that the Property Registry has an entry stating that the construction work has been concluded.**

3 How can you find mortgage financing?

Nowadays buying a home almost always means taking on a mortgage to



finance the purchase. The lending institution pays the seller, and the buyer has to return the money to the bank along with a certain interest. The bank makes sure the loan will be paid back by placing a mortgage on the home, which enables the bank to have your home sold off if you do not repay the loan promptly, so the bank can cover the debt with the price the home fetches.

When looking for a mortgage to finance the purchase of your home, take these things into account:

- The bank you apply to for the loan will first require you to have the home registered to your name. Generally the purchase agreement and the delivery of the loan (with the creation of

the mortgage) happen at the same time, so when the seller and the buyer go to the notary to make their deed of sale, the bank representative goes too, to turn the money over to the seller when the deed is made.

- Mortgage loan agreements are not usually negotiable, and they include general conditions, some of which may be abusive. Bear in mind the terms of consumer and user protection legislation on this subject.
- It may so happen that the home you are going to buy already carries a mortgage, made by the seller to finance his or her own purchase or, if the home is a new one, made by the promoter to finance construction. In these cases it is important for you to know that **you are not obliged to take the seller's place in (be subrogated to) the original mortgage loan. You may demand to have the seller cancel his or her mortgage, while you get a mortgage loan from another financial institution that offers you better terms.**

- If you are going to be subrogated to the loan the seller or promoter took, take these things into account:

- You must demand a certificate from the seller, issued by the lending bank, showing how much of the loan remains outstanding.
- You can ask the bank that holds the seller or promoter's mortgage for a better interest rate and better terms. If they refuse, you can look into having another bank pay off the old mortgage and become your creditor under new, more advantageous terms. This sort of transaction is practically free of charge, because it is tax-free and the notarial and registration fees and the commissions the bank can charge for doing it are very low, by law. ■

2 Signing the agreement



When the purchase agreement is signed, it generally means one party hands over the home and the other pays the price of the home.

When you sign the purchase agreement, you and the other party are giving your formal consent to the deal. The seller hands over the keys to the home, and the buyer (or the bank that is financing the transaction with a mortgage loan) hands over the money. So, this is the point of no return. That is why it is best to observe all the formalities you can, and bear in mind that:

□ The agreement can be concluded in a **private document**, without a notary, just between the seller and the buyer. You can only do this when the sale is not being financed with a mortgage loan, because a mortgage loan will always require a notarial deed and registration in the Property Registry. That is why housing purchases are generally formalised in a notarial deed. Nevertheless, when

buying an as-yet unbuilt home, private contracts are generally used to formalise the delivery of sums paid on account and the obligation to build and deliver the home.

It is important for you to know that when a private document has been made, either of the parties can demand to have the document notarised. If the other party refuses, the first party can call for the courts to step in. Remember that if you want to register your purchase in the Property Registry, you will always have to have a notarial deed.

□ The general rule is that housing purchase agreements are concluded in a **notarial deed**, which is a public document authorised by a notary, who writes down the wishes of the parties, judges their identity and legal capacity, draws up

the document according to the parties' instructions or written draft, making sure it fits the legal requisites, and cautions the parties about the obligations each must discharge as a result of making the agreement.

Having the notary do this will give the document's contents **authenticity**, which means that whatever the buyer, the seller and lending bank (if any) declare to the notary will be set down in the deed, and the deed will serve as proof to all of the fact of the sale and the date of the sale, and neither of the parties can deny to the other that he or she made the statements recorded in the deed.

Notarisation of the deed is tantamount to delivery of the home, and generally the price is



It is important for you to know that, when you sign a private document, either of the parties can demand to have the document notarised. If the other party refuses, the first party can ask the courts to step in.



No matter what kind of agreement was made, the seller is responsible for any hidden or latent defects in the home, even if the seller did not know about them. If there are any such defects, the buyer can choose between abandoning the agreement or getting a proportional discount off the price.

handed over to the seller in the notary's presence. That is why, before authorising the deed, the notary will ask the property registrar for an uncertified note attesting to the ownership of and burdens on the property, and immediately after the deed is signed, if the parties so request, the notary will forward a message to the Property Registry stating that the deed has been

authorised, thus preventing -now that the agreement has been concluded- the buyer from being affected by any injunctions or burdens aimed at the seller that reach the Registry before the deed of sale does.

It is important for you to know that the **choice of the notary** is supposed to be made by the person who is going to



Before authorising the deed, the notary will ask the property registrar for an uncertified note attesting to the ownership of and burdens on the property. Immediately after the deed is signed, if the parties so request, the notary will forward a message to the Registry stating that the deed has been authorised, thus preventing -now that the agreement has been concluded- the buyer from being affected by any injunctions or burdens aimed at the seller that reach the Registry before the deed of sale does.

pay the notary's fees. If the seller is a business owner and the agreement is concluded in the form of a standard contract (as when you buy from a promoter or you arrange for a mortgage loan), the buyer gets to choose the notary.

Lastly, we must point out that no matter whether the agreement is private or public (notarised), the seller is responsible for all hidden or latent defects in the home, even if he or she is not aware of them. If any such defects exist, you as the buyer can opt out of the agreement and receive payment for your expenses, or you can get a proportional discount off the price, set by an expert. In addition, the promoter, the builder and the chief engineer for the building are severally liable to buyers and



purchasing third parties for damage caused by structural defects in construction (liability good for ten years), damage stemming from defects that affect the inhabitability of the building (liability good for three years), and damage caused by defects in finishing work (liability good for one year). They are also obliged to take the proper insurance policies. ■

Paying taxes



The taxes you have to pay will depend on whether you are buying your first home straight from the promoter or buying a second-hand home.

Before you buy, it is important to bear in mind that any purchase agreement you make will involve taxes, so it is a good idea to find out ahead of time how much you will have to pay. The price appearing in the purchase agreement will be the base on which taxes are calculated, although if the price is lower than the property's real value, the tax authorities will make out a complementary assessment to cover the difference.

The taxes you have to pay will depend on whether you are buying a new home straight from the promoter or a second-hand home.

BUYING A NEW HOME: As a buyer, you must pay value added tax (VAT) to the seller, and if the home is in the Canary Islands, you must pay the indirect tax for the Canary Islands. This tax you pay to the seller, together with the price of

the home. As the buyer, you also have to pay stamp duty to your autonomous community (region), which is between 0.3 (only for special legally protected cases) and 2% of the selling price appearing in the deed. To pay this tax, you have to fill out an official self-assessment form and deposit the tax into the Exchequer's account at a participating financial institution.

BUYING A SECOND-HAND HOME:

When you are buying a second-hand home from its owner, you do not pay value added tax (VAT), but you do pay transfer tax to the autonomous community where the home is located; just fill out the official self-assessment form and deposit the tax into the Exchequer's account at a participating financial institution. Amount: This will be a percentage of the price, set by the autonomous community, and will range between 6 and 7%.

THE MORTGAGE LOAN DEED

will be subject to stamp duties, which will range between 0.5 and 1% (depending on the autonomous community in question) of the total amount of the mortgage liability, that is, not the sum actually loaned to you, but the sum secured for the return of the principal, interest and foreclosure costs. Deeds of novation, subrogation and cancellation of mortgage loans are exempt from taxes.

Lastly, bear in mind that if you buy low-income housing (viviendas de protección oficial, or VPO), the tax rates will generally be lower. ■

Who handles the payment of taxes?

Handling the payment of taxes (meaning picking up the self-assessment forms, calculating the payment due, depositing the sum at the proper institution and turning in the form with the completed payment receipt at the tax office) can be done by the buyer, an agent, or the notarial office where the deed was executed (if the notary offers these services as well). The buyer is the one who chooses the system. As a buyer, you ought to know:

■ The place where the self-assessment form for transfer

tax (in the case of a second-hand home) or stamp duties (in the case of a new home) has to be turned in is as follows:

■ If the home is located in a provincial capital, turn the form in at the tax bureau (*delegación de Hacienda*) for the autonomous community in question.

■ If the home is located in a town that is not a provincial capital, turn the form in at the district settlement office (*oficina liquidadora de distrito*), which shares quarters

with the Property Registry.

■ Transfer tax and stamp duty must be paid within 30 working days of the date when the deed is executed. Any delays will mean surcharges.

■ You have to pay these taxes before you can have your right to the home registered in the Property Registry.



Registering your property

at the Property Registry



You have to register your property at the Property Registry before your right to your newly purchased home can earn full protection and you can get a mortgage loan.

Once you have signed the purchase agreement and the mortgage loan agreement and paid your taxes, you still have one last step left, which is to register the right you have just acquired in the Property Registry. You need to do this so that:

- You as the buyer will have full protection for the right you have just acquired, because only if you register your right will you:
 - Be considered the one true owner of the property, until and unless a court rules otherwise.
 - Be protected from the seller's creditors.
 - Be protected from hidden burdens that might affect your home.
 - Get judicial protection for your right in case others challenge it or disturb your possession.

- Once you have registered your right, nobody can acquire any effective rights whatsoever to your home without your consent.

- You can get a mortgage loan to finance your purchase with. Only if you register your right can the bank register the mortgage that secures the loan.
- In addition, once you have registered your right, the Property Registry will notify the Cadastre of the property's change of ownership, so that the next property tax notice will be made out to you.

For all these reasons it is essential, as we have already explained, for you to buy only from the person who is listed in the Property Registry as the owner of the home or

the lot your home is going to be built on. That way you can find out if there are any injunctions, mortgages or other burdens in the property's registered history. And after you have signed the deed, it is equally essential for you to register your right with the Property Registry. ■

Who handles registration?

In order for ownership rights to be entered in the Property Registry, the following papers must be submitted to the registry office in whose territory the home lies:

- An authorised copy of the notarial deed of sale.
- The self-assessment form for the applicable type of tax, showing that the self-assessed sum has been deposited.
- The latest property tax receipt, so the Registry can record your home's cadastre reference number.

These documents may be submitted

- Directly by you, the buyer.
- By an administrative agent acting on your behalf.
- By the notary's office, if it renders this sort of services.

At all events, you should know that once the document has been submitted to the Property Registry, the registration entry must be made within the next fifteen working days. The registrar will check that the agreement meets all the requirements set by law for full efficacy and that the buyer's ownership right can be registered. If the registrar believes the document has

any defects that prevent it from being registered (defects of form, parties who do not have the legal capacity to act as parties, terms that do not match the terms in the registry, etc.), the registrar must give notice to the person who submitted the document. This person may correct the defects or, if he or she does not agree with the registrar's decision, the person may file an appeal with the Directorate-General of Registries and Notarial Affairs or ask for the decision to be reviewed by another registrar, assigned by a duty roster approved in regulation fashion. He may appeal to Court as well.

Settling

the costs of buying a home



Buying a home involves a series of costs. The seller, the estate agency, the notary, the administrative agents and the Property Registry all have to be paid.

Buying a home involves a series of costs for the buyer, and sometimes you are not quite sure why they must be paid or to whom. They make the initial outlay you must make to buy a home considerably larger. That is why you ought to get a clear idea:

Who do I have to pay?

□ **Pay the seller** the price of the home. If you paid a sum on account or a deposit before making the notarial deed, subtract that sum from the price you have to pay

when you sign the purchase agreement. It may be that you signed an agreement securing the safe conclusion of the sale (contrato de arras) and turned in a sum to the seller as security. If so, subtract that sum from the price payable when you sign the notarial deed.

Remember that if you decide not to buy after all, you will lose the money you put up as security. If the seller decides not to go through with the deal, he or she must give back twice the sum you put up as security.

□ **Pay the estate agency.**

Remember that the person who ought to pay the estate agency for its services is the person who engaged it. Therefore, if it is the seller who engaged the agency (as generally happens), the agency



can only present its claims for payment to the seller, never the buyer.

□ **Pay the notary.** The notary will charge fees according to an official schedule, for authorising the deed of purchase and the mortgage loan deed. It is important for you to know that by law the seller has to pay the fees for the authorisation of the deed and the buyer has to pay the fees for the copies of the deed. The buyer only has to pay all notarial fees if buyer and seller have expressly agreed to that arrangement. The amount of fees is established by the regulation schedule or list of notarial fees.

□ **Pay administrative agents** the cost of their services, if you have engaged any to take care of paperwork for you. It

is very important to insist that your agent show you the original bills issued by the notary and the registrar and the tax receipt, so that you will know how much you have paid for each service.

□ **Pay the property registrar** the fees charged for drawing up the entry of your right and, if you have agreed to this, the fees charged for registering the mortgage. The registrar's fees are established by a regulation schedule or list, which is available to all users at each registration office.

Before making any payments, demand to see the bills and make sure they include a breakdown into the component charges, the VAT, and the identity and identification number of the person or company that issued the bill. In the case of bills

from notaries and registrars, if you do not agree with the items or sums you are being charged, you may file an appeal according to the instructions in the rules establishing the fee schedule. ■

Links

■ Association of Property and Mercantile Registrars of Spain
www.registradores.org

■ Office of the President for Catalonia, Association of Registrars
www.regcat.org

■ Office of the President for Castilla-La Mancha, Association of Registrars
www.registradoresclm.org

■ State Board of Notarial Affairs
www.notariado.org

■ State Tax Administration Agency
www.aeat.es

■ Directorate-General of the Cadastre
www.catastro.minhac.es

■ Spanish Confederation of Organisations of Homemakers, Consumers and Users
www.ceaccu.org

■ Organisation of Consumers and Users
www.ocu.org

■ Association of Nationwide Construction Firms
www.seopan.es

■ Confederation of Consumers and Users
www.cecua.es

■ Spanish Mortgage Association
www.ahe.es

■ Association of Promoters and Builders of Spain
www.apce.es

■ Association of Estate and Property Managers
www.agif.com

Autonomous Communities

■ Andalusia
www.juntadeandalucia.es

■ Aragon
www.aragob.es

■ Asturias
www.princast.es

■ Cantabria
www.gobcantabria.es

■ Castilla y León
www.jcyl.es

■ Castilla-La Mancha
www.jccm.es

■ Catalonia
www.gencat.es

■ Extremadura
www.juntaex.es

■ Galicia
www.xunta.es

■ Balearic Islands
www.caib.es

■ Canary Islands
www.gobiernodecanarias.org

■ La Rioja
www.larioja.org

■ Madrid
www.madrid.org

■ Murcia
www.carm.es

■ Navarra
www.navarra.es

■ Basque Country
www.euskadi.net

■ Valencian Community
www.gva.es

■ Ceuta
www.ciceuta.es

■ Melilla
www.camelilla.es



COLEGIO DE REGISTRADORES
DE LA PROPIEDAD, BIENES MUEBLES
Y MERCANTILES DE ESPAÑA