

Legal Information .. Sept 2008

Buying or Selling Property with undeclared building additions..

1.. Re The legalization of Building work using a Legalization Project

Legalization of building work can be done at any time following illegal construction. IF, and ONLY if it would have gained planning approval initially. (There are some grey areas in planning legislation, so always take expert advice.)

If a project based legalization of illegal building work cannot be done, a potential seller has only two options available.

a. Wait 4 years from the date of construction and make a legal declaration that 4 years have passed since the works were carried out (Urban projects only) by means of Informe Tecnico (if not stopped, instructed to present the relevant project, or fined in this period), (An Informe tecnico is not a legalization, but a solution to stop legally any legal financial penalization by part of the local municipal government.)

On rural land however this is a very different issue and legal advice should be sought in detail.

b. Demolish the illegal additions to ensure that the description of property is again the same as the escritura. (See mis-declaration consequences below.)

2.. Re the Informing of Building work using the 4 year prescription (Informe Tecnico)

This can ONLY be done after the building work has stood for 4 years or more and proof of time of building can be shown. If sold on a false declaration, again see consequences below, then this 4 year cycle repeats from the sale date. An *Informe Tecnico* is NOT the same as legalization, it serves to protect only against future fines for declared work, and does not protect against Regional Authority actions, which at this time, are unlikely in Murcia.

Basically from a legal standpoint the following applies to both the above when selling or buying...

To inform you, buyer and seller, of the following issues when purchasing a house that has been modified and not legalized. When a buyer goes to buy a house the seller declares the actual "building" or "finca" as it stands on the day of purchase. You may wish to re-mortgage, or alternatively raise a "sell to rent back mortgage" to improve your retirement pension fund. In which case the same would apply! It will be a condition of any lending company or bank that the information is actual and legally correct.

When a sale goes to the Notary office, the Notary testifies that the information is correct and from that date legally the new owner takes all responsibility for all and any new works, each owner under contract on "camposol" for example is a "self promoter" as in the contract for the original first ownership clauses signed with the constructor at camposol. In this scenario all new works as of the date of the escritura at the point of sale. Once purchased the 4 year prescription act cannot now apply if you don't declare the additional works, and it would have to be done in another 4 more years time from purchase date. But, the town hall sanction any sum of money they consider relevant to the value of the illegal works carried out during this time (They estimate the fine). The best alternative would be an informe issued now prior to sale, ready for signature at the Notary....

So if say a "topbox" is added, or swimming pool, both are illegal, plus the local municipal planning taxes are not paid, or any other small works carried out, the new owner will be legally responsible as they also declare that they agree with the declaration of the state of the property under purchase on the notary date of signature.

If the declaration is untrue THEN. If this is not true then there is an intent to defraud

1. Intent to defraud on count of Tax evasion (potential fine and criminal prosecution)
2. The building of e.g. a top box, extension or pool etc, is a criminal offence (the town hall will issue a violation of planning law for the pool, extension or top box etc and fines, unless you legalize all that you can with a relevant project signed and prepared by an architect in Spain.

The "Informe". If the owners declare the building work included in our services for the *informe*, which will serve in the declaration at the Notary Office on the sale of the property, they have the right to include all of this in the informe after the 4 years for works outside of current planning allowances, they may pay slightly more tax on the sale at the Notary office, but no criminal offence to defraud has occurred, and this problem is put to bed.

Leaving outstanding the issue of a possible swimming pool, top box, extension, tiled porch, garage etc. as a separate building consent. The town hall and local police will basically pursue any legal way to obtain authorization and license fees that they can find. Our Fees are based on volume of work and legal complexity of the work undertaken. Remember we are dealing with the same development all the time and our fees reflect this volume and catchment area which allows us to be very competitive. If you consult an *aperajador* (technical architect) as an alternative, there is a problem, he can't sign these projects because he's not recognised as being proficient in planning law under Spanish law by the planning department at the town hall. Our architect is! Only an architect registered at the official college of architects can produce and sign this work under Spanish law.

Our professional recommendations would be always to legalize fully whatever it is possible to legalize at any time, even after 4 years. Why, because this offers the most protection to both seller and buyer. Whatever can not then be legalized in the four year statute of limitations period, then the only option is wait and put in place an *informe tecnico*. The *informe* as outlined only protects the owner from future local government sanctions, not future regional sanctions. So in the interests of maximum clarity, particularly with major additions such as 'top boxes', kitchen or bathroom extensions which change and increase habitable space significantly, even if used for the purposes of an *informe* only. We would always recommend drawing up a complete set of plans and elevations for the property, supported by photographs of all work to be legalized. Plus a full report and description of work done. This information will not then be open to interpretation and will offer the maximum protection for clients. Often with such larger illegal works the total cost of an *informe tecnico* can roughly equate to the same as costs as legalization, minus some college fees. The sanctions and fines are many times more costly than required architectural work. Smaller works such as walling and glazing or partitioning terraces for example may just require a plan, photos and a full description of works. The days of working from a few notes on the back of a cigarette packet are gone and the burden of correct evidence is increasing along with sanctions against illegal building, so be wary of contrary advice.

If any "lawyer", (and this is used in the loosest of terms, so always check legal credentials and never assume that just because they have a suit, shop or office they must be legal), has told the client that they, i.e. the buyer can just buy the house and take the risk, he/she is poorly advised from all legal standpoints (common sense too, did you leave your head in a locker at the airport).

If when the day arrives of a court order against the owner, you can guarantee that this "advisor/lawyer" wont be anywhere to be found, you have limited recourses against this "advisor/lawyer" in Spain, and you are the one with the legal problem, and the dream you've worked so long for becomes a harsh financial lesson. Not declaring the truth at the notary ie. Lying at the Notary, tax evasion, planning consents evasion,...it goes on, the property buyer will spend more money to resolve the issue eventually when the letters end up in his hands, i.e. no sleep, more money than previously imagined! A true lawyer is a "*LETRADO*" and will be registered with a licence number with the *colegio de abogados* in Murcia.

Always use an independent lawyer for yourself, but you will be told what you are being told now. Do as you would do anywhere else as a sensible property owner. Spain is not the wild wild west, it is very similar to the UK in all aspects of planning law.

Use common sense and have the job done legally and effectively, it will save a lot of lost sleep, and money. It will also leave you in a better position to sell quickly if needed, or leave you in a perfect situation ready for financial loans if you need to re-assess your finance options in retirement.

The public spending purses are tightening up with the current economic situation and the public offices have no money, its logical that they will pursue every opportunity to recover funds for the public spending of the townhall. We are here to help and hope that this small message goes a long way..

Latest information can always be found at www.kanodesign.com

Call Mike Everett on 0034 963141082 or 0034 636297872 at Kano Architectural Solutions, Spain.