

Consumer market study on the functioning of the real estate services for consumers in the European Union

Country fiche – SPAIN

General information

Country	SPAIN
Researcher name	Prof. Dr. Sergio Nasarre Aznar (Coord.); Dr. Estela Rivas Nieto; Dr. Héctor Simón Moreno; Mrs. Gemma Caballé Fabra; Mrs. Rosa Maria Garcia Teruel
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Main Sources Used	See list at point 1.2

1. Regulatory background

1.1 Level of regulation in the country

Table 1: Level of regulation			
	Level of regulation	Source of relevant legislation	Ongoing discussion on regulation/deregulation (if applicable): current state of affairs and main arguments in the debate
Real estate transactions¹	Framework regulation	<p>Spanish Civil Code 1889 (Gazette 25 July 1889, n. 206)</p> <p>Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the General Law on the Protection of Consumers and Users and other supplementary laws (Spanish Official Gazette –BOE²- 30 November 2007, n. 287)</p> <p>Law of the Autonomous Community of Catalonia 3/2017, of 15 February, on the Book Sixth of the Catalan Civil Code, relating to obligations and contracts (Official Gazette of the Generalitat of Catalonia –DOGC³- 22 February 2017, n. 7314)</p>	<p>The general rules on sale contracts of the Spanish Civil Code are of application to real estate transactions.</p> <p>The Civil Code lacks specific rules regarding the sale of dwellings by developers or professionals. The existence of a Business to Consumer relationship is relevant in relation to the pre-contractual information to be provided to consumers, the protection against unfair contractual terms or the protection of the earnest money paid in the sale of dwellings off-plan. The main gaps are precisely to be found in relation to these topics, as shown below (point 11), which are regulated outside the Spanish Civil Code.</p> <p>It is further worth mentioning that current discussions in Spain focus more on mortgage law issues due to the decisions of the European Court of Justice (unfair contractual terms, remedies of consumers in the mortgage enforcement procedure, etc.) rather than on real estate transactions. Secondly, the Sixth Book of the Catalan Civil Code, relating to obligations and contracts, has been passed. It lays down rules on real estate sale contracts (see below).</p>
Notary system (or lawyer/conveyancer system)⁴	Highly regulated. E.g. Notaries are appointed by the Ministry of Justice after the approval of competitive examinations	<p>Notary Law, 28 May 1862 (BOE 29 May 1862)</p> <p>Decree 2 June 1944, on the Regulation on the Organisation and Regime for Notaries (BOE 7 July 1944)</p>	<p>There are some European studies that deal with the regulation and deregulation of professional conveyancing services in Europe with opposite conclusions (ZERP, “Conveyancing Services Regulation in Europe”, 2007; and Murray, “The Role of Notaries in Real Estate Transactions – Current Challenges and Perspective on the Future”, 2007).</p> <p>Some articles and academic papers (which take an economic perspective as a starting point) may also be found in Spain on this</p>

¹ E.g. limitations or prohibitions of certain transactions; specific formality requirements etc.

² Available at: www.boe.es.

³ Available at: dogc.gencat.cat.

⁴ Only in countries where notaries do not exist or do not have a monopoly on conveyancing.

Table 1: Level of regulation

	(numerus clausus, they opt for a limited number of places), and their remuneration (in the form of fees) is fixed by the government		issue ⁵ . The dominant view seems to hold that the particular organisation of Civil Law notaries does not restrain competition. Nevertheless, the attempt of the Spanish Government to address this topic has been the Preliminary Draft on Professional Colleges and Services of 27 February 2013, which established that the access and exercise of professional activities and professions shall be free, without any restrictions or conditions other than those established in the law. Notaries and land registrars, though, were still obliged to join a professional college. The Spanish government has decided to postpone the approval of this law. As result, it can accordingly be concluded that deregulation of professions is actually on the current Government agenda (it appears at the National Reform Program 2017 ⁶), but it remains to be seen whether this reform will have an impact on the notarial profession.
Profession of estate agents	Deregulated in Spain (except Catalonia) Regulated in Catalonia	Spanish Royal Decree-Law 4/2000, of 23 June, on urgent liberalisation measures in the property and transport sectors (BOE 24 June, n. 151), as amended by Act 10/2003 Catalan Housing Act 18/2007, of 28 December (DOGC 9 January 2008, n. 5044) Catalan Decree 12/2010, of 2 February (DOGC 9 February 2010, n. 5563), which regulates the requirements to exercise the activity of real estate agent and creates the Register of Real Estate Agents of Catalonia	Since 2000, the profession of estate agents in Spain is deregulated. This means that anyone can become a real estate agent without any academic qualifications and without the need to join a professional college. There is a certain paradox in Spain: on the one hand, there exists a real estate agent college; on the other hand, professionals are not, since 2000, compelled to join it. As the burst of the Spanish housing bubble has shown, this situation may affect intra and cross-border acquisitions of real estate ⁷ . There are a number of potential consequences that may result from deregulation and poor legal advice: demolition of houses; over-indebtedness; unfair contractual terms in preliminary contracts; lack of knowledge of property rights already created on the dwelling and binding to third parties or urban and public limitations or charges on the property, etc. As a result, the professionalisation of the sector is a topical issue, and other Spanish Autonomous Communities are trying to regulate the real estate profession, such as the Basque Country in 2015, but such attempts have been unsuccessful so far.

⁵ For instance, Benito Arruñada, "The economics of Notaries", *European Journal of Law and Economics*, 3(1), October 1996, 5-37 . Available at: <http://www.arrunada.org/Files/Research/%2f34.pdf>; or Pedro Garrido Chamorro, "La Función notarial, sus costes y sus beneficios", *Revista Jurídica del Notariado*, 37, 2001.

⁶ Available at: <https://ec.europa.eu/info/sites/info/files/2017-european-semester-national-reform-programme-spain-es.pdf>, p. 28.

⁷ See in this sense Prof. Peter Sparkes, *Cross Border Acquisitions of Residential Property in the EU: Problems Encountered by Citizens*, March 2016. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU\(2016\)556936_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU(2016)556936_EN.pdf).

1.2 National legislation

Table 2: List of national legislation		
List of national legislation	Classification of national legislation	Content of the national legislation
Law of the Autonomous Community of Catalonia 3/2017, of 15 February, on the Book Sixth of the Catalan Civil Code, relating to obligations and contracts	Real estate transactions Buyers and sellers	The law incorporates specific rules regarding the contract for the sale of real estate. For instance, the right of withdrawal is regulated for the benefit of the buyer if the contract foresees the need to obtain external financing (e.g. by a lending institution) that is eventually frustrated, unless otherwise is agreed. In turn, it foresees a “super-laesio enormous” for both parties if the seller or the buyer have sold or bought, respectively, for less than a half of the market value of the property. That is, if the market value of the property is 100€ and it is sold or bought only for 40€, the seller or the buyer can rescind the contract respectively. This will be applied in Catalonia once the new code of contracts is in force and if the Constitutional court does not render it unconstitutional.
Act 20/2015, of 14 July, for the management, monitoring and solvency of insurance entities and reinsurers (BOE 15 July 2015, n. 168)	Real estate transactions Developers/Buyers	Protection measures regarding down payments made by the buyer.
Royal Decree 235/2013, of 5 April, which approves the Basic Procedure for Certification of Energy Performance of Buildings (BOE 13 April 2013, n. 89)	Real estate transactions Sales/lettings	It requires energy performance certificates and establishes the technical and administrative conditions for certification of energy efficiency of buildings and the methodology for calculating its energy efficiency rating.
Act 22/2011, of 28 July, on waste and contaminated soil (BOE 29 July 2011, n. 181)	Real estate transactions Buyers and Sellers	Soil polluting legislation needs to be considered when transferring land, as the acquirer may be held liable in case of unsuccessful identification of the person liable.
Catalan Act 22/2010, of 20 July (DOGC 13 August, n. 196), on the Consumer Code of Catalonia, as amended by Act 20/2014, of 29 December (DOGC 31 December 2014, n. 6780)	Consumers	The Act 20/2014 has introduced some rules based on the European Directive 2014/17/EU on credit agreements for consumers relating to residential immovables, but it goes one step further in some aspects, e.g. the credit entity is not allowed to disburse the mortgage loan if the result of the consumer’s creditworthiness is negative, otherwise the loan contract will be void (which could affect the validity of the sales contract as well), and in the advertising and pre-contractual stage lenders must inform consumers about the risk of losing the dwelling if the loan contract is not repaid in due time. Despite this rule is no longer in force (due to a constitutional complaint lodged by the Spanish Government, 30 September 2015), there are some rules still in force that have an impact on credits entities, such as the duty to start a compulsory mediation procedure before initiating the mortgage enforcement procedure.

Table 2: List of national legislation

Catalan decree 12/2010, of 2 February	Regulation of estate agents	It requires estates agents to have a minimum qualification and to register so as to operate in the market.
Act 10/2010, of 28 April, on the prevention of money laundering and terrorist financing (BOE 29 April 2010, n. 103)	Real estate transactions Professionals	The Act is applied to property developers and persons whose business activities include those of agency, commission or brokerage in property trading, as well as to notaries and registrars of property, trade and personal property
Catalan Legislative Decree 1/2010, of 3 August, on Urbanism (DOGC 5 August 2010, n. 5686) ⁸	Real estate transactions Sellers and buyers	It establishes the subrogation of the buyer in all the rights and obligations of the previous owner. Until the whole duties are performed by the promoter, the City Council does not grant the license of first occupation. This can cause the buyer to not be able to contract the electrical, water, gas and telephony supplies.
Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the General Law on the Protection of Consumers and Users and other supplementary laws	Consumers	Consumer rights, unfair terms regime.
Royal Decree 314/2006, of 17 March, which approves the Technical Building Code (BOE 28 March 2006, n. 74)	Real estate transactions Developers	It establishes the basic requirements of quality of buildings and facilities.
Spanish Building Act 38/1999, of 5 November (BOE 6 November 1999, n. 266)	Real estate transactions Developers/Buyers	It provides for specific provisions regarding the liability and the insurance regimes in the construction sector for the benefit of buyers.
Act 7/1998, of 13 April, on General Contractual Terms (BOE 14 April 1998, n. 89)	Consumers	Unfair terms regime.
Urban Leases Act 29/1994, of 24 November (BOE 25 November 1994, n. 282).	Tenancy	It contains the provisions that govern urban leases in Spain.

⁸ According to article 148.1.3 of the Spanish Constitution, the Self-governing Communities of Spain may assume competences over town and country planning and housing, which means that each Autonomous Communities may enact rules on this topic, which may vary from one region to another. Here the Catalan law is taken as an example.

Table 2: List of national legislation

Unfair Competition Act 3/1991, of 10 January 1991 (BOE 11 January 1991, n. 10)	Real estate transactions Seller	Its goal is the protection of competition for the benefit of all those who participate in the market, prohibiting to this end acts of unfair competition, including unlawful advertising.
Royal Decree 515/1989, of 21 April, on Consumer Protection regarding the information to be provided in the sale and rental of housing (BOE 17 May 1989, n. 117)	Real estate transactions Developers/Consumers	Duty to provide consumers with some pre-contractual information regarding the dwelling concerned (name of the seller, location of the building and materials used, etc.) when the sale or tenancy contract is made within the framework of an economic or professional activity. There are also provisions on advertising.
General Advertising Act 34/1988, of 11 November (BOE 15 November 1988, n. 274)	Real estate transactions Seller	It contains rules regarding unlawful advertising.
Royal Decree 2960/1976, of 12 November, which approves the consolidated text of the social housing (BOE 28 December 1976, n. 311)	Real estate transactions Buyers and sellers	Rules on protected public housing, e.g. owners are not allowed to sell the property over the fixed price.
Decree 469/1972, of 17 February, on simplifying the issuing of the certificate of habitability (BOE 6 March 1972, n. 56) Catalan Decree 141/2012, of 30 October, concerning the living conditions of housing and the certificate of habitability (DOGC 2 November 2012, n. 6245); and Catalan Housing Act 18/2007, of 28 December (DOGC 9 January 2008, n. 5044)	Real estate transactions Sale/Letting	At state level the certificate of habitability is required to contract water, gas, electricity and telecommunications supplies The certificate of habitability is compulsory for all dwellings in the Autonomous Communities that regulate it, such as Catalonia, and it must be provided in both sale and tenancy contracts so as to certify that the building fulfils the minimum required conditions. It is necessary also for the contract to be entered into the land register
Spanish Condominium Act 49/1960, of 21 July (BOE 23 July 1960, n. 176) Fifth Book of the Catalan Civil Code (Boe 22 June 2006, n. 148)	Real estate transactions Buyers and Sellers	The seller remains personally liable for all previous debts with the board of owners of the condominium regime, but a hidden legal charge arises for the benefit of the board of owners securing the payment for the present and the preceding three (in Spain) or four (in Catalonia) financial years. This charge (it is not a mortgage) arises by operation of the law and its registration in the land register is neither usual nor compulsory. Nevertheless, it enjoys priority over any express prior mortgage in the case of the mortgage debtor's insolvency. In order to be liberated from the charge, the purchaser may pay the outstanding debt to the condominium, without prejudice to the right to bring proceedings against the debtor (the seller). The law imposes on the seller the duty to provide evidence that no debts are due once the notarial deed is concluded (otherwise the notary will not

Table 2: List of national legislation

		authorise the deed of conveyance), but the parties may agree otherwise, i.e., they may waive the delivery of the certificate issued by the secretary of the condominium.
Spanish Mortgage Law (Decree 8 February 1946)	Real estate transactions	It contains the provisions that govern the granting of mortgages.
Spanish Civil Code 1889	Real estate transactions	General rules on sale contracts.

1.3 Implementation of relevant EU legislation

Table 3: Implementation of relevant EU legislation

EU legislation	Implementation achieved?	Implementation of EU legislation at the national level (e.g. the name of the law)	Source of the national implementation legislation	Content of the national legislation in keywords	Which parts of the EU legislation have been transposed?
Directive 2005/29/EC on unfair commercial practices (UCPD)	Yes	Act 29/2009, of 30 December, which modifies the Spanish legal system of unfair competition and advertising to enhance consumer and user protection	Spanish Parliament (BOE 31 December 2009, n. 315)	Amends the following acts to transpose the Directive: Consumers Act (RDL 1/2007); Unfair Competition Act (3/1991); Act on Retail Trade (7/1996) and the Advertising Act (34/1988)	All. In addition, Spain regulated a protection against unfair trade practices for B2B relationships, which was not included in the original wording of the Directive
Directive 93/13/EEC on unfair terms in consumer contracts	Yes	Spanish Act 7/1998, of 13 April, on General Contractual Terms	Spanish Parliament (BOE 14 April 1998, n. 89)	Introduces protection against unfair terms in consumer contracts	All
Directive 2008/122/EC on the protection of consumers, in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts	Yes	Act 4/2012, of 6 July 2012, on Timesharing	Spanish Parliament (BOE 7 July 2012, n. 162)	Act 4/2012 regulates this type of contract, as well as the obligation to inform the consumer, the advertisement, the withdrawal rights, etc.	All

Table 3: Implementation of relevant EU legislation

Directive 2010/31/EU of Energy Performance of Buildings Directive	Yes	Royal Decree 235/2013, of 5 April, which approves the Basic Procedure for Certification of Energy Performance of Buildings (BOE 13 April 2013, n. 89), as amended by Royal Decree 564/2017, of 2 June. Royal Decree 238/2013, of 5 April, which incorporates the regulation on thermal installations in buildings (BOE 13 April 2013, n. 89)	Spanish Central Government (BOE 13 April 2013, n. 89)	RD 235/2013 includes the obligation to have the energy efficiency certificate and the proceeding for issuing it	The main parts of the Directive were implemented. Note that some exceptions and dispositions with respect to “nearly-zero energy buildings” were not properly implemented, which led to an infringement of EU law. The RD 564/2017 was passed precisely to complete this process.
Directive 2005/36/EC on Recognition of Professional Qualifications, as last amended by Directive 2013/55/EU	Yes	Royal Decree 1837/2008, of 8 November, relative to the acknowledgement of professional qualifications, in addition to certain aspects of the lawyers' profession; repealed by Royal Decree 581/2017, of 9 June, which implements Directive 2013/55/EU	Spanish Central Government (BOE 20 November 2008, n. 280) (BOE 10 June 2017, n. 138)	Royal Decree 1837/2008 follows the same structure and articles as Directive 2005/36/EC. And Royal Decree 581/2017 introduces the European Professional Card for some professionals, such as Real Estate Agents.	All
Mortgage Credit Directive, 2014/17/EC	No	No transposition ⁹ (there exists a draft law, but it is not yet passed)			

⁹ See: http://europa.eu/rapid/press-release_IP-17-1049_EN.htm

1.4 Communications and strategy papers

Table 4: Communications and strategy papers

Communication or strategy paper	Have the following communications and strategy papers been referred to in national documents?	Name of document	Source	Content	Differences with respect to communications and strategy papers listed in the first column
COM(2015)550 final Communication of the Commission Upgrading the Single Market: more opportunities for people and business	Yes	"Economic Governance of the European Union". Consejo Económico y Social de España (advisory body of the Central Government). Report 1/2016	Consejo Económico y Social de España ¹⁰	The report only quotes the Communication in order to justify the actions to improve EU's position in the world economy	None
COM(2013)676 Communication from the Commission on evaluating national regulations on access to professions	Yes	Opinion of the Spanish Council of State (Consejo de Estado) on the Draft Law on Professional Services and professional bodies. No. 1434/2013 Report No. 110/13, on the Draft Law on services of professional bodies. Comisión Nacional de Mercados y Competencia	Council of State ¹¹ Comisión Nacional de Mercados y Competencia ¹²	Reports quote and promote the content of the Communication	None
COM(2016)820 Communication from the Commission on reform recommendations for regulation in professional services	Yes	"Economic Governance of the European Union". Consejo Económico y Social de España (advisory body of the Central Government). Report 1/2016.	Consejo Económico y Social de España ¹³	The report quotes and promotes the content of the Communication	None

¹⁰ See: <http://www.ces.es/documents/10180/3557409/Inf0116.pdf>

¹¹ See: <https://www.boe.es/buscar/doc.php?id=CE-D-2013-1434>

¹² See: <https://www.cnmc.es/expedientes/ipn-11013>

¹³ See: <http://www.ces.es/documents/10180/3557409/Inf0116.pdf>

European Consumer Agenda	No	N/A	N/A	N/A	N/A
Consumer Programme 2014-2020	No	N/A	N/A	N/A	N/A

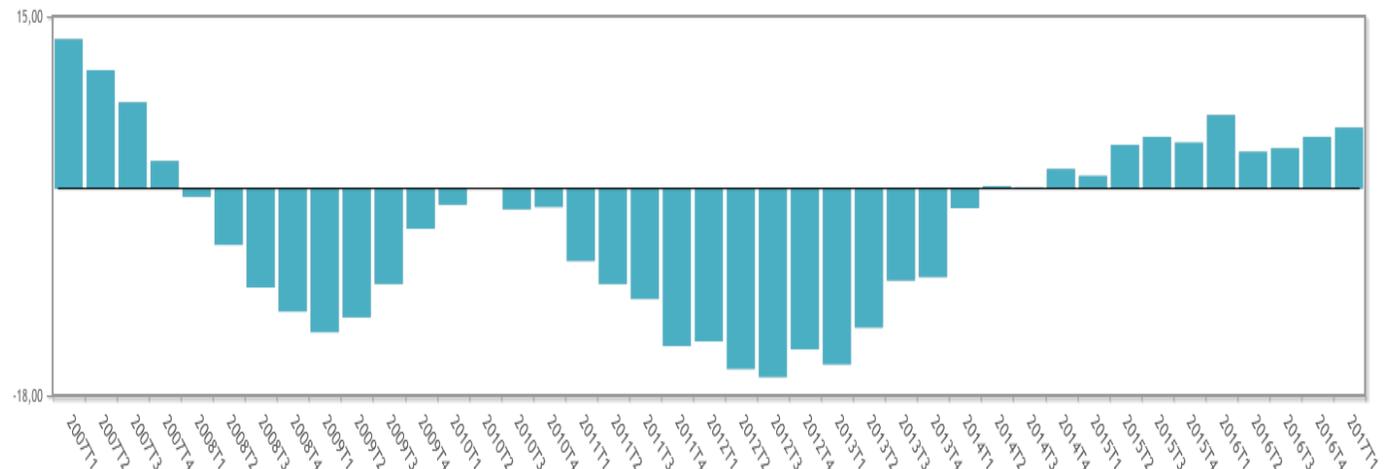
2. General market information

2.1 Key market data

Table 5: Key market data

General market situation (e.g. trends in the market, recent developments in the market, price fluctuations, etc.)

Spain is the Western European country with the highest rate of homeownership (approx. only 13% of the population live in a rented dwelling, EUROSTAT 2015). This is a direct result of the Spanish housing policies implemented between 1960 and 2007 that aimed at promoting homeownership. The value of the property has decreased sharply by more than 40% (INE, 2016) since the beginning of the financial crisis in 2007. However, the value is increasing again since 2015. See the following picture:



Source: Índice de precios de vivienda (INE, 2017)

Table 5: Key market data

	<p>The burst of the housing bubble in 2007 and the number of evictions (about 210,377 households were evicted in the period 2010-2015) show that the regulation of a suitable tenancy law framework and new types of tenure that ensure stability, affordability and flexibility, such as the temporal ownership and the shared ownership (they are only implemented in Catalonia since the Act 19/2015, of 19 July -DOGC 4 August 2015, n. 6927-) are paramount.</p> <p>Apart from that, getting a mortgage in Spain is more difficult since the housing crisis due to credit restrictions and the provisions against over indebtedness (Directive 2014/17/EU). Therefore, the only alternative to full homeownership in Spain (except Catalonia) is the tenancy market. Due to the rise of rental prices and other phenomena such as touristic apartments, it is more affordable even nowadays to buy a property than to rent it (only in three provinces of Spain, it is cheaper to rent it than to buy: http://www.elconfidencial.com/vivienda/2017-01-29/si-pagases-lo-mismo-de-alquiler-que-de-hipoteca-comprarias-casa_1315309/).</p>																														
<p>Total value of residential transactions for buying and renting for the year 2015 (2014 or 2013 depending on the latest available data) in EUR</p>	<p>Ministerio de Fomento (2017). Total value of residential transactions for buying: 2016: 60.869.283,7€ 2015: 51.961.457,9€</p> <p>Value of residential transactions for renting: no data available. Unlike the value for the acquisition of property, it is not compulsory nor common to record a tenancy agreement in the Land Register.</p>																														
<p>Ratio house owners – tenants (i.e. the percentage of households that are owners resp. tenants of dwelling units)</p>	<p>Spain is the country in Western Europe with less share of tenancy market (around 13.1% in 2015). Source: Eurostat. Population by tenure status, 2015. http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do?dvsc=9</p>																														
<p>Usage of land (Quotas for built land, agricultural land, “wild land” (forests, lakes etc.)</p>	<p>Data from 2011 (IGN, 2011):</p> <table border="1" data-bbox="611 970 1523 1201"> <thead> <tr> <th>Usage of land 2011</th> <th>Total hectares</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>Built land</td> <td>1,260,414</td> <td>2,48%</td> </tr> <tr> <td>Agricultural land</td> <td>23,762,388</td> <td>46,71%</td> </tr> <tr> <td>Forest</td> <td>25,179,341</td> <td>49,49%</td> </tr> <tr> <td>Wetlands</td> <td>100,660</td> <td>0,20%</td> </tr> <tr> <td>Water surfaces (rivers, lakes...)</td> <td>569,991</td> <td>1,12%</td> </tr> </tbody> </table> <p>In 2000, the usage of land was the following:</p> <table border="1" data-bbox="611 1297 1523 1417"> <thead> <tr> <th>Usage of land 2000</th> <th>Total hectares</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>Built land</td> <td>895,981</td> <td>1,77%</td> </tr> <tr> <td>Agricultural land</td> <td>25,387,248</td> <td>49,9%</td> </tr> <tr> <td>Forest</td> <td>23,953,657</td> <td>47,09%</td> </tr> </tbody> </table>	Usage of land 2011	Total hectares	%	Built land	1,260,414	2,48%	Agricultural land	23,762,388	46,71%	Forest	25,179,341	49,49%	Wetlands	100,660	0,20%	Water surfaces (rivers, lakes...)	569,991	1,12%	Usage of land 2000	Total hectares	%	Built land	895,981	1,77%	Agricultural land	25,387,248	49,9%	Forest	23,953,657	47,09%
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Table 5: Key market data

	Wetlands Water surfaces (rivers, lakes...) Total 50,872,794 hectares (Spain)	111,083 325,174 According to this data, Spain has built more than 300,000 hectares during part of the housing bubble.	0,23% 0,65%																																				
Average prices of residential property	<i>According to the type of property:</i> <ul style="list-style-type: none"> • Average flat of ca. 70 sqm • Terrace house of ca. 100 sqm • Detached (one family house) of ca. 150 sqm 	Data from Fotocasa (September 2016): 1,636€ sqm. There exist also other studies to calculate the average price of residential property, such as Tinsa (Quantity survey that states 1,209€ sqm).																																					
	<i>According to the type of location:</i> <ul style="list-style-type: none"> • Capital city • Urban areas • Rural areas 	The average price for a 70 sqm property in the following cities and areas (Fotocasa, May 2017) is: <table border="1" data-bbox="1025 807 2063 1402"> <thead> <tr> <th>Location</th> <th>Type</th> <th>€/sqm in May 2017</th> <th>€/property 70m2</th> </tr> </thead> <tbody> <tr> <td>Madrid</td> <td>Capital city</td> <td>2,889€/sqm</td> <td>202,230€</td> </tr> <tr> <td>Barcelona</td> <td>Capital city</td> <td>4,227€/sqm</td> <td>295,890€</td> </tr> <tr> <td>Valencia</td> <td>Capital city</td> <td>1,650€/sqm</td> <td>115,500€</td> </tr> <tr> <td>Bilbao</td> <td>Capital city</td> <td>2,940€/sqm</td> <td>205,800€</td> </tr> <tr> <td>Barcelona province</td> <td>Urban area</td> <td>2,564€/sqm</td> <td>179,480€</td> </tr> <tr> <td>Tarragona province</td> <td>Urban area</td> <td>1,450€/sqm</td> <td>101,500€</td> </tr> <tr> <td>Málaga province</td> <td>Urban area</td> <td>1,787€/sqm</td> <td>125,090€</td> </tr> <tr> <td>Alicante province</td> <td>Urban area</td> <td>1,323€/sqm</td> <td>92,610€</td> </tr> </tbody> </table>	Location	Type	€/sqm in May 2017	€/property 70m2	Madrid	Capital city	2,889€/sqm	202,230€	Barcelona	Capital city	4,227€/sqm	295,890€	Valencia	Capital city	1,650€/sqm	115,500€	Bilbao	Capital city	2,940€/sqm	205,800€	Barcelona province	Urban area	2,564€/sqm	179,480€	Tarragona province	Urban area	1,450€/sqm	101,500€	Málaga province	Urban area	1,787€/sqm	125,090€	Alicante province	Urban area	1,323€/sqm	92,610€	
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		Cuenca	Rural area	1,049€/sqm	73,430€																																																							
		Cáceres	Rural area	1,118€/sqm	78,260€																																																							
Price development of residential property	<p>According to the type of property</p> <ul style="list-style-type: none"> Average flat of ca. 70 sqm Terrace house of ca. 100 sqm Detached (one family house) of ca. 150 sqm 	<p>The maximum price was registered in 2007 (2,952€/sqm). In 2010, the average price was 2,262€/sqm and, in September 2016, 1,636€. Therefore, there was a huge decrease in the value of residential property (second-hand).</p> <table border="1"> <thead> <tr> <th></th> <th>April 2007</th> <th>December 2010</th> <th>September 2016</th> </tr> </thead> <tbody> <tr> <td>Property ca. 70 sqm</td> <td>206,640€</td> <td>158,340€</td> <td>114,520€</td> </tr> <tr> <td>Property ca. 100 sqm</td> <td>295,200€</td> <td>226,200€</td> <td>163,600€</td> </tr> <tr> <td>Property ca. 150 sqm</td> <td>442,800€</td> <td>339,300€</td> <td>245,400€</td> </tr> </tbody> </table>						April 2007	December 2010	September 2016	Property ca. 70 sqm	206,640€	158,340€	114,520€	Property ca. 100 sqm	295,200€	226,200€	163,600€	Property ca. 150 sqm	442,800€	339,300€	245,400€																																						
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Table 5: Key market data

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			Cuenca (province)	Rural area	1,899€/sqm	132,930€	1,049€/sqm	73,430€	
			Cáceres (province)	Rural area	1,734€/sqm	121,380€	1,118€/sqm	78,260€	
Development of price index (Housing price index if existing, otherwise Consumer price index)	Índice de precios de vivienda (Instituto Nacional de Estadística).								

2.2 Service

Table 6: Service providers

	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm (expressed in EUR)
Estate agents	At the end of the year 2011 there were 46.000 real estate agencies ¹⁴	Estate agents registered in the professional college and exercising the profession: 4.149 (in 2017) Estate agents registered in the professional college and not exercising the profession: 1.410 (in 2017)	It will depend on the offices and on whether the estate agent works by itself or is associated with others. No data available	It will depend on each office or firm. No data available	In 2015 between 8-10% search a home (to buy or rent) through estate agents ¹⁵ .	Main estate agents firms in Spain: Altamira (55.000 million euros) Servihabitat (52.000 million euros) Haya RE (45.000 million euros) and Solvia (28.000 million euros) ¹⁶

¹⁴ <http://www.elmundo.es/elmundo/2013/01/10/suvienda/1357805834.html>

¹⁵ <https://www.fotocasa.es/blog/wp-content/uploads/2016/06/informe-fotocasa-2015.pdf>

¹⁶ http://economia.elpais.com/economia/2016/01/15/vivienda/1452850789_547554.html

Table 6: Service providers

Lawyer/ Advocates/ Solicitor (In Spanish: called as "abogados")	There are lawyers who associate with others and lawyers who are self-employed ("freelance")	At the end of 2016 there were 142.061 resident lawyers registered; 10.893 non-resident lawyers registered; and 103.093 lawyers registered that did not exercise the profession ¹⁷	Examples of the main international firms of lawyers in Spain: Garrigues, 2.134 ¹⁸ employees; Cuatrecasas, more than 900 ¹⁹ employees; Uria Menéndez, more than 500 ²⁰ employees; Roca junyent, 230 ²¹ employees	It will depend on each office or firm. No data available.	No data available	There is some data that show that the incomes of lawyers have increased in recent years (e.g. Garrigues, Cuatrecasas, Uria Menendez, etc.) ²²
Notary	The number of offices depends on the population of each region (province) ²³ The Royal Decree 140/2015, of 6 March, on notarial office districts (BOE 9 March 2015, n. 58) establishes that there are 2.843 notary offices in Spain (2015)	3.000 ²⁴ There are notaries who associate with other notaries	It depends on each notary office. The notaries can have employees depending on the volume of the transactions (normally, between 5 and 10 employees per office)	Usually there is one office per firm. Each firm usually is formed by two to three notaries.	Notaries have the monopoly to write deeds. Notaires control the access to the profession. In some operations, like mortgages ²⁵ , notarial intervention is compulsory ²⁶ .	The average income of a notary per month is around 12.000-15.000 euros ²⁷

¹⁷ <http://www.abogacia.es/2016/01/16/censo-numerico-de-abogados/>¹⁸ http://www.elconfidencial.com/ultima-hora-en-vivo/2014-04-29/garrigues-el-despacho-de-abogados-que-mas-factura-y-mas-prestigioso-de-espana_244044/¹⁹ <http://www.cuatrecasas.com/es/abogados.html>²⁰ <http://www.uria.com/es/quienes-somos/despacho/firma-lider.html>²¹ <http://www.rocajunyent.com/rocajunyent/>²² See: <http://www.expansion.com/juridico/actualidad-tendencias/2016/05/31/574d75df22601d3a218b459a.html>²³ See arts. 72, 73, 74, 75 and 76 Decreto 2 junio 1944, por el que se aprueba con carácter definitivo el Reglamento de la organización y régimen del Notariado.²⁴ <http://www.notariado.org/liferay/web/notariado/el-notario/el-notariado-en-espana/colegios-notariales>²⁵ Art. 145 of the Spanish Mortgage Law (Decree 8 February 1946)²⁶ 7 out of 10 Spanish consumers have used the services of a notary at least once : <http://www.notariado.org/liferay/web/notariado/el-notario/valoracion-social-del-notariado>²⁷ In Spain the Minimum Salary is 707'60 eur. See in: <http://www.salariominimo.es>

Table 6: Service providers

Licenced conveyancers	"Licenced conveyancers" do not exist in Spain. Their functions are fulfilled by estate agents. See above					
Architects	In 2016 there were 50.000 architects registered ²⁸ . Some of them work as self-employed and other are employees.	In 2016 there were 50.000 architects registered ²⁹	It will depend on the offices and if the architect works by herself/himself or is associated with others. No data available	It will depend on each office or firm. No data available	No data available	In 2016 461.124 million euros ³⁰
Surveyor	Top 10 firms of surveyors in Spain ³¹ (Tinsa, Eurovaloraciones, etc.)	No data available	It will depend on the offices and whether the surveyor is self-employed or is associated with others. No data available	It will depend on each firm. No data available.	No data available. Estate agents can also do surveys.	In 2016 241'9 million euros ³²
Engineers	No data available. There are different specialisations for engineers depending on the field or sector.	Technical and civil engineers (ingenieros técnicos de obras públicas e ingenieros civiles) In March of 2017: 10.528 ³³	It will depend on the offices and if the engineer is self-employed or is associated with others. No data available	It will depend of each firm. No data available.	No data available.	No data available. There are different specialisations for engineers. In this field, they are technical and civil engineers.

²⁸ https://www.cscae.com/images/stories/Noticias/Estado_de_la_profesion_de_arquitecto_en_Europa_2016.pdf

²⁹ https://www.cscae.com/images/stories/Noticias/Estado_de_la_profesion_de_arquitecto_en_Europa_2016.pdf

³⁰ https://www.cscae.com/images/stories/Noticias/Estado_de_la_profesion_de_arquitecto_en_Europa_2016.pdf

³¹ TINSA, tasaciones Inmobiliarias S.A, ST Sociedad de Tasación, S.A, Ibertasa, S.A, Valtecnic S.A, Gestión de Valoraciones y tasaciones, S.A, JLL valoraciones, S.A, Krata S.A, Euroval, CBRE Valutaion advisory, S.A and Valoraciones del Mediterraneo, S.A. See in: <https://www.euroval.com/ranking-2016-sociedades-tasacion-aev/>

³² <https://www.euroval.com/ranking-2016-sociedades-tasacion-aev/>

³³ http://www.citop.es/servicios/documentos/Movimiento_31032017.pdf.

Table 6: Service providers

<p>Land Registrars</p>	<p>As notaries, the number of offices depends on the population of each region (province) See Royal Decree 195/2017, of 3 March, amending the demarcation of Land, Mercantile and Personal Property registries (BOE 4 March 2017, n. 54)</p>	<p>There are approximately around 1000 Land Registers³⁴</p>	<p>It depends on each office. Land registers can have employees depending on the volume of the transactions (normally, between 5 and 10 employees)</p>	<p>Usually there is one office depending on the population. Each office usually is formed by one Land Registrar.</p>	<p>First trimester of 2017: 113.738 buy and sell operations registered³⁵ As notaries, in some operations, like mortgages³⁶, it is compulsory the Land registration</p>	<p>As notaries, the average income per month is around 12.000-15.000 euros</p>
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³⁴ https://www.einforma.com/registros-propiedad_

³⁵ http://www.registradores.org/wp-content/estadisticas/propiedad/eri/ERI_1T_2017.pdf_

³⁶ Art. 145 of the Spanish Mortgage Law (Decree 8 February 1946).

3. Roles of professionals and services in the real estate market

Table 7: Role of professionals in the real estate market

	Estate agent	Property valuator ³⁷	Lawyer/ Advocate/ Solicitor	Notary	Bank	Tax managers ("gestorias")	Technical expert (architect, engineer, surveyor)	Land registrars
Main function: does the professional typically work independently or as part of a firm or another organisation?	Matching the parties. They may work independently, in a firm or in collaboration with an online agency	Economic valuation of the real estate or properties	Legal advice and/or draft the documents such as the contracts	Legal control of the documents and legal advice	Finance mortgages loans. In recent years, due to the crisis, banks usually offer estate agent services as well	Taxes, paper work, consultancy, etc.	Control technical aspects of the buildings	Register the land property and the legal titles that affect it
Extent of engagement (at which point(s) does each professional intervene in the process?)	First negotiations or pre-contractual phase	When the value of the real estate is needed (ex: for a mortgage)	Pre-contractual phase and drafting the documents	Elaboration of the sales and mortgages deeds	Pre-contractual phase	During all the process or in the end	Elaborate the energy certificate and control habitability requirements	At the end when the deed is finished
Mandatory involvement	No	Usual in mortgage loans	No	Only is compulsory for mortgaging the property ³⁸		No, but their intervention is very usual	Depending on the cases their involvement is mandatory (i.e. energy certificate)	Only is compulsory for mortgaging the property ³⁹

³⁷ In some EU countries, the real estate property valuers are regulated as a profession that is separate from estate agents (e.g. Hungary, Lithuania, Latvia); their services might be obligatory, especially when taking mortgage loans.

³⁸ Art. 145 of the Spanish Mortgage Law (Decree 8 February 1946)

³⁹ Art. 145 of the Spanish Mortgage Law (Decree 8 February 1946)

Table 7: Role of professionals in the real estate market

How are their fees/charges structured	% based on value but fixed fee often agreed to client. Professional Colleges may establish a general criteria (See further 5.3 and 6.2)	Fee often agreed with the client. It depends on the operation (between 100-300 euros ⁴⁰)	Fees often agreed with the client. Professional Colleges of lawyers (http://www.abogacia.es) may establish a general criteria ⁴¹	Fixed fees ⁴²		Between 200-300 euros	Fees often agreed with the client. Professional Colleges can establish general criteria	Fixed fees ⁴³
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4. Land registration

Table 8: Land registration

Responsible authority(ies) dealing with land registration	Land and Mercantile Registrars Association of Spain (http://www.registradores.org)
Actors involved in the registration procedure and their main functions	Land Registrars (who register the act, if appropriate). They are in charge of assessing, under their responsibility, not only the legality of the extrinsic characteristics of all kinds of documents but also the capacity of grantors and the validity of any act, so they will not register void acts or contracts. They classify the documents submitted for entry in the registers for which they are responsible; advise the public on matters relating to registers and provide public access to the information entered; and check, where necessary, that persons requesting access have a legitimate interest and duly protect sensitive data. It must be borne in mind that registration is not compulsory in Spain; so only in specific cases, the registration is constitutive, such as with a mortgage. This means that the land registration system in the field of transfer of property is purely a publicity function.

⁴⁰ See examples of fees from "TINSA" in: <https://www.tinsa.es>

⁴¹ Act 2/1974, of 13 February, on Professional Associations.

⁴² From art. 1 to art. 7 of Royal Decree 1426/89, of 17 November, which approves the tariffs of Notaries.

⁴³ Art. 2 of Royal Decree 1426/89, of 17 November, which approves the tariffs of Notaries.

Intermediate steps of the registration procedure, if applicable	The public deed by which the real estate transaction is formalised may be delivered by hand to the Land Registry by the buyer, by the one who has provided advice to the buyer (e.g. the real estate agent or the lawyer), by the management company appointed by the credit entity to follow the whole procedure or by the notary through electronic means. The latter has prevalence unless the parties express otherwise, which means that this is the standard procedure in practice. Therefore, once the public deed is performed, an electronic submission takes place so as to ensure priority. The Land Registrar will verify within the next 15 days following the presentation that both the formal aspects and the content of the document are in accordance with the law. Should the land Registrar conclude that there are defects preventing the document from being entered into the Land Register, the parties shall have the possibility to correct them depending on the nature of the defect. As a last resort, the Land Registrar's decision may be appealed before the Directorate General of Registries and Notaries (an administrative body) or challenged before the Court of First Instance.
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5. The process to buy or sell a property

5.1 Main steps in the transaction process to buy or sell a property

Table 9: Main steps of the process to buy or sell a property			
Main steps	Main function	Applicable	National specificities/additional functions/main actors
Estate agent services	Matching the parties	Yes	The real estate agent provides intermediary services (Royal Decree 1294/2007, of 28 September, approving the General Bylaws of the Official Colleges of Real Estate Agents and of their General Council, BOE 3 October 2007, n. 237). Real estate agents normally offer their services before the intervention of the public notary (pre-contractual phase)
Alternative matching devices	Matching the parties	Yes	Lawyers; Newspaper advertisement or magazines; personal contact or "property finders", as the "Guide to buying a property in Spain" (The AIPP/RICS/RDE ⁴⁴) points out; and Internet (Fotocasa ⁴⁵ ; Idealista ⁴⁶ and Habitaclia ⁴⁷ are the most important real estate portals)

⁴⁴ Available at: <http://www.registradores.org/wp-content/uploads/2015/10/Guide-AIPP-RICS-RDE.pdf>.

⁴⁵ <http://www.fotocasa.es/es/>.

⁴⁶ <https://www.idealista.com>.

⁴⁷ <https://www.habitaclia.com>.

Preliminary contract	Securing the transaction before the final contract is concluded	Yes	<p>The parties usually conclude a preliminary sales contract before formalising the deed of conveyance with the help of the notary in big cities, in areas characterised by huge housing demand and when foreign investors are involved⁴⁸. In the preliminary contract, the parties agree on the object of the contract, the price, the method of payment and the conditions that could entitle one of them to withdraw from the contract.</p> <p>In this contract, the buyer assumes as a general rule the duty to provide the seller with an earnest money or deposit, the amount of which is not limited by law. Usually, both are free to withdraw from the preliminary contract before formalising the deed of conveyance, either the purchaser forfeiting the earnest money or the seller, which must return it in duplicate (this agreement is known as “pacto de arras”). These preliminary sales contracts have been the rule during the housing bubble in Spain (2000-2007) and are quite common when professional developers sell the properties just after starting the construction of the building (off plan).</p>
Preliminary checks (land register, administrative permits)	Ensuring that the buyer knows all legal obligations and relevant features related to the property	Yes	The preliminary checks are done usually by the professional involved in the transaction (e.g. the real estate agent).
Drafting the sales contract and/or deed of conveyance	Summarising the agreement of the parties	Yes	The professional involved in the transaction or a lawyer uses his own standard sale contract, which will be sent, if appropriate, to the notary, who will draft the deed of conveyance accordingly. The same may be sent when no professional is involved, in which case the parties will use the form and include the terms they deem appropriate.
Legal advice or counselling	Ensuring that the transaction is valid and that the parties know about their rights and duties	Yes	Lawyers may provide legal advice, and their intervention is quite common in Spain when foreigners are involved. Should the parties agree on formalising the deed of conveyance, the notary will inform the parties about the obligations and duties arising from the agreed contract, will be aware of the ownership and encumbrances on the property, and will consult the Land Registry before the deed is executed.

⁴⁸ See “Guide to buying a property in Spain”, p. 23.

Certification of signatures	Ensuring the validity of the agreement	Yes	This takes place at the notary office. The notary must state that both parties have enough capacity to carry out this legal act.
Contract execution (transfer of payment)	Executing the contract (and securing that both parties perform their obligations)	Yes	The transfer of payment so as to pay the sale price takes place usually at the notary office when the acquisition has been financed through a mortgage loan. However, the buyer may pay at the notary office through a bank guaranteed cheque or in cash (if any of the parties is a professional or a trader, payments can not be made in excess of 2500€ -Act 7/2012, of 29 October, on the modification of the tax regulations for the prevention of fiscal fraud, BOE 20 October 2012, n. 261-), or the parties may agree a deferred payment, in which case the termination of the contract shall take place by operation of law upon failure to pay the price within the agreed period. In any case, the notary must identify the price in the deed, stating if it is received before or at the time of execution of the deed, the amount and payment methods.
Contract execution (transfer of property)	Executing the contract (and securing that both parties perform their obligations)	Yes	<p>According to the Spanish Civil Code, ownership and other rights over property are acquired by law, by gift, by estate and intestate succession and, as a result of certain contracts, by tradition. As a consequence, the transmission of the property in Spain requires as a general rule a title (e.g. the sale contract on real estate) and the so-called tradition, that is, the physical delivery of the possession of the thing to the other party. Spanish law, thus, follows the Roman law tradition of title and modus. The same may be said regarding Catalan law.</p> <p>However, if the sale has been made pursuant to a public deed, the execution thereof shall be equivalent to the physical delivery of the thing unless the public deed states otherwise (instrumental delivery). This explains why sales contracts on real estate are concluded usually in front of a notary, and why the contracting parties usually draw up first a preliminary sales contract without delivering the possession of the real estate, without immediate transfer of property (as the buyer does not take possession of the dwelling).</p>

Registration	Making the transaction visible to third parties and the public	Yes	<p>The main goal of the Land Register is to register acts and contracts related to property ownership and real rights. In order to be registered, such rights and contracts shall be included in a public deed or in an authentic document issued by the Judicial Authority or by the Government or its officers.</p> <p>Despite the non-compulsory nature of registration, as pointed above, it is relevant so as to ensure the full effectiveness of the contract vis-à-vis third parties. In particular, third party purchasers in good faith and for a consideration will not be protected once the acquisition has been registered, no matter if other unregistered property rights have been previously created on the same immovable. This is an exception to the «nemo dat quod non habet» rule and protects purchasers from such unexpected circumstances. Moreover, there is a legal presumption according to which the property right registered belongs to its older holder in accordance with the corresponding entry.</p>
Taxation (esp. transfer tax)	Creating revenue for the state	Yes	See below Table 5.2.
Post-transaction controls (if applicable)	Securing that the contract is duly executed	No	Once the deed of conveyance is registered, there are no post-transaction controls on the part of notaries or land registrars, so the buyer may lodge a claim before courts in case of unfair contract terms, hidden defects, construction defects, etc.

5.2 Sale contract and transfer of ownership

Table 10: Contract of sale and transfer of ownership

Main steps	Actors involved per intermediate step	Payment details ⁴⁹		Typical risks associated to these steps, if relevant
		Payments expressed : • In EUR as % of total purchase price <u>and</u> • As a fixed amount if available (add if VAT applies)	When is the payment made	
Estate agent services or alternative matching devices	Optional but usual	Fees are not regulated, between 3-5% of the total purchase price	Once the contract is concluded, either the preliminary sales contract or the deed of conveyance	Lack of specific training (real estate agents)
Preliminary contract (usual)	Usual (Real estate agent or lawyer)	Real estate agent: Fees are not regulated, between 3-5% of the total purchase price Lawyer: The amount of the fee can be agreed freely between the parties, see below.	Once the contract is concluded, either the preliminary sales contract or the deed of conveyance	Lack of specific training (real estate agents)
Preliminary checks (land register, administrative permits)				
Drafting the sales contract and/or deed of conveyance				
Legal advice or counselling				
Certification of signatures	Usual (at the notary office)	The fixed tariff was established by Royal Decree 1426/89, of 17	At the notary office in cash or through bank transfer	Unusual, court cases in which

⁴⁹ Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

Table 10: Contract of sale and transfer of ownership

<p>Contract execution (transfer of payment and registration; transfer of property)</p>		<p>November, and covers all the entire extra-judicial public record service: offices, salaries of the professional team, civil liability insurance, computerisation, binding and archiving of notarial instruments, maintenance of notarial colleges... only a small part corresponds to the notary's own fees.</p> <p>On the value of the sale contract of real estate a tariff will be applied:</p> <p>A) When the value does not exceed 6,010.12 euros: 90 euros.</p> <p>B) For the excess between 6,010.13 and 30.050,62 euros: 4.5€ per thousand.</p> <p>C) For the excess between 30.050,62 and 60,101.21 euros: 1,50€ per thousand.</p> <p>D) For the excess between 60,101,22 and 150,253,03 euros: 1€ per thousand.</p> <p>E) For the excess between 150.253,04 and 601,012.10 euros: 0,5€ per thousand.</p> <p>F) Exceeding from 601,012.10 euros to 6,010,121.04 euros: 0.3€ per thousand.</p> <p>For what exceeds 6,010,121.04€, the Notary will receive the amount that he freely agrees with the granting parties</p>		<p>notaries are involved are not common. However, the Spanish ombudsman⁵⁰ pointed out that there were a number of complaints from clients expressing their concerns about the performance of some notaries, because -in their view- they felt that they did not provide adequate information when proceeding with the formalization of mortgage loans, thus limiting their intervention to quickly reading the corresponding deed.</p>
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⁵⁰ Defensor del pueblo, 2012, pp. 71 ff.

Table 10: Contract of sale and transfer of ownership

Registration in land register or similar device	Usual (at the land registry)	<p>The Land Registrar fees are established in the Royal Decree 1427/1989, of 17 November, which approves the tariffs for the land registrars (BOE 17 November 1989, n. 285).</p> <p>The inscription, annotation or cancellation of each property or right, the amounts set by the following scales will be collected:</p> <p>A) If the value of the property or right does not exceed 6,010.12 euros, 24 euros.</p> <p>B) For the excess between 6.010,13 and 30,050.61 euros, 1.75 per 1,000.</p> <p>C) For the excess between 30,050.62 and 60,101.21 euros, 1.25 per 1,000.</p> <p>D) For the excess between 60,101,22 and 150,253,03 euros, 0,75 per 1,000.</p> <p>E) For the excess between 150.253,04 and 601,012.10 euros, 0.30 per 1,000.</p> <p>F) For the value that exceeds 601,012.10 euros 0.20 per 1,000.</p>	Once the deed of conveyance has entered into the Land Registry	Unusual, court cases in which land registrars are involved are not common
Taxation (esp. transfer tax)	Mandatory	See below		

- ▲ **Information on the legal position of a tenant occupying the dwelling to be sold. In particular: Does the rule *emptio non tollit locatum* apply?** No. In Spain, the tenancy contract is only binding to third parties if properly registered (Act 29/1994, of 24 November, on Urban Leases, as amended by Act 4/2013), so purchasers will be protected no matter if someone is living inside the dwelling as a tenant. The third party must be however in good faith, i.e. he or she should not be aware that a tenant was living in the dwelling at the moment of conclusion of the contract. It is worth highlighting that tenancy contracts, generally speaking, are not registered in Spain. As a matter of fact, tenancy contracts do not appear on the official statistics provided by the Spanish Land and Mercantile Registrars Association.

5.3 Professional services performed in the real estate market related to buying and selling a property

Table 11: Professional services performed in the real estate market related to buying and selling a property				
Services in the real estate market	Minimum standards for information provided by law	Service providers involved	Quality of involvement	Fees expressed: <ul style="list-style-type: none"> • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)
Estate agent services or alternative matching devices	Information provided in Royal Decree 515/1989, of 21 April, on Consumer Protection regarding the information to be provided in the sale and rental of housing Also, Royal Legislative Decree 1/2007 of 16 November 2007, approving the revised text of the General Law on the Protection of Consumers and Users and other supplementary laws.	Estate agents and/or websites such as Fotocasa ⁵¹ , Idealista ⁵² , habitaclicia ⁵³ , etc.	Optional but usual	Royal Decree 1294/2007, which regulates the profession of real estate agents, does not deal with agent fees. Consequently, fees will be freely agreed between the client and the estate agent, without limitation. However, each Professional College of estate agents can establish criteria under Act 2/1974, of 13 February, on Professional Associations. Usually, fees are paid by the vendor (selling contracts) or landlord (rent contract). However, as the Royal Decree 1294/2007 does not contain any provision related to that, parties can fix a fee that they consider as adequate. Usually, in buying and selling operations, fees vary between 3% and 5% (in big cities or depending on the property, it can be around 10%) of the total purchase price + VAT ⁵⁴ .
Provision of mandatory information before the start of the transaction, if applicable	Directive 2014/17/EU of the European Parliament and of the council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (in Spain, the Directive is not transposed yet).	Estate agents, lawyers and notaries	Optional but not usual	See below Table 11 For estate agents see above. In relation to notaries, fees are established by art. 1 to 7 of Royal Decree 1426/89, of 17 November, which approves the tariffs of Notaries ⁵⁵ . For notary fees, see Table 10.

⁵¹ <http://www.fotocasa.es/es/>

⁵² <https://www.idealista.com>

⁵³ <https://www.habitaclia.com>

⁵⁴ To see examples of fees: <https://www.idealista.com/news/inmobiliario/vivienda/2010/09/17/255422-comisiones-de-las-agencias-inmobiliarias-puntos-a-tener-en-cuenta>

⁵⁵ Amended by Royal Decree 1612/2011, of 14 November, amending the Royal Decree 1426/1989, of 17 November, and 1427/1989.

Table 11: Professional services performed in the real estate market related to buying and selling a property

	In Catalonia there is: Ley 20/2014, de 29 de diciembre, de modificación de la Ley 22/2010, de 20 de julio, del Código de consumo de Cataluña, para la mejora de la protección de las personas consumidoras en materia de créditos y préstamos hipotecarios, vulnerabilidad económica y relaciones de consumo.			
Preliminary contract (usual)	The same as above	Estate agents, lawyers and notaries	Optional but not usual	See above
Preliminary checks (land register, administrative permits)	The same as above	Estate agents and lawyers	Optional but usual Mandatory for notaries	See above
Drafting the sales contract and/or deed of conveyance	The same as above	Estate agents, lawyers and notaries	Optional but usual (usually, when the parties go to the notary the contract is already redacted)	See above
Legal advice or counselling	The same as above and deontological rules ⁵⁶	Lawyers and notaries	Optional but usual	See above
Certification of signatures	No	Notaries	Mandatory in cases that is compulsory the intervention of notaries ⁵⁷	See above

⁵⁶ See http://www.cgcafe.org/wp-content/uploads/2016/01/cod_deontologico_cepi.pdf (for estate agents) and http://www.abogacia.es/wp-content/uploads/2012/06/codigo_deontologico1.pdf (for lawyers).

⁵⁷ E.g. Art. 145 of the Spanish Mortgage Law (Decree 8 February 1946).

Table 11: Professional services performed in the real estate market related to buying and selling a property

<p>Contract execution (transfer of payment; transfer of property)</p>	<p>Information provided in Royal Decree 515/1989, of 21 April, on Consumer Protection regarding the information to be provided in the sale and rental of housing Also, Royal Legislative Decree 1/2007 of 16 November 2007, approving the revised text of the General Law on the Protection of Consumers and Users and other supplementary laws</p>	<p>Estate agents and notaries</p>	<p>Optional but usual</p>	<p>Royal Decree 1294/2007 does not establish anything related to fees for estate agents. Consequently, fees will be freely agreed between the client and the estate agent, without limitation. However, each Professional Colleges of estate agents can establish criteria under the Act 2/1974, of 13 February, on Professional Associations.</p> <p>Usually fees are paid by the vendor (selling contracts) or landlord (rent contract). However, as the Royal Decree 1294/2007 does not establish any disposition related to that, parties can fix the fee by drawing on the common or traditional practice in their region. Usually, in buying and selling operations the fee varies between 3% and 5% (in big cities can be around 10%) of the total purchase price + VAT⁵⁸</p>
<p>Registration in land register or similar device</p>	<p>No</p>	<p>Land Register</p>	<p>Mandatory in cases that is compulsory the intervention of Land Registers⁵⁹</p>	<p>In relation to Land Registers, fees are fixed and established in art. 2 Royal Decree 1427/1989, of 17th November, which approves the tariffs for the land registrars The inscription, annotation or cancellation of each property or right, the amounts set by the following scales will be collected: A) If the value of the property or right does not exceed 6,010.12 euros, 24 euros; B) For the excess between 6.010,13 and 30,050.61 euros, 1.75 per 1,000; C) For the excess between 30,050.62 and 60,101.21 euros, 1.25 per 1,000; D) For the excess between 60,101,22 and 150,253,03 euros, 0,75 per 1,000; E) For the excess between 150.253,04 and 601,012.10 euros, 0.30 per 1,000; F) For the value that exceeds 601,012.10 euros 0.20 per 1,000.</p>

⁵⁸ To see examples of fees: <https://www.idealista.com/news/inmobiliario/vivienda/2010/09/17/255422-comisiones-de-las-agencias-inmobiliarias-puntos-a-tener-en-cuenta>

⁵⁹ E.g. Art. 145 of the Spanish Mortgage Law (Decree 8 February 1946).

Table 11: Professional services performed in the real estate market related to buying and selling a property

Taxation (esp. transfer tax)	No	Lawyers or tax managers ("gestorias")	Optional but usual	Between 200- 300 euros (often agreed with client).
Other services	The same as above and deontological rules	Estate agents or lawyers	Optional but usual	See above

In relation to lawyers, fees will be freely agreed between the client and the lawyer, without limitation. However, each Professional College of Lawyers (<http://www.abogacia.es>) can establish a general criterion⁶⁰. This criterion is a point of reference for both Professional Colleges (when they have to deliver opinions, e.g. when the lawyer's fees are challenged by their clients) and lawyers (e.g. when the fees have not been agreed on the contract). As an example, the following table (from the Professional College of Barcelona⁶¹) states the indicative fees according to four applicable scales (each one includes different court procedures, ranging from the least to the most difficult). The scales are applied on the basis of calculation (the amount of which is estimated by the professional on the basis of the time spent in the procedure, the work actually carried out, the degree of complexity of the matter, the actual amount of the subject or the degree of specialisation required for the professional).

Basis of calculation	Scale 1	Fees	Scale 2	Fees	Scale 3	Fees	Scale 4	Fees
Up to 3000 eur	10%	300€	15%	450€	20%	600€	30%	900€
Up to 20.000 eur	8%	1.660€	12%	2.490€	15%	3.150€	20%	4.300€
Up to 50.000 eur	7%	3.760€	9%	5.190€	11%	6.450€	15%	8.800€
Up to 100.000 eur	4%	5.760€	5%	7.690€	8%	10.450€	10%	13.800€
Up to 300.000 eur	2%	9.760€	2,5%	12.690€	4%	18.450€	7%	27.800€
Up to 600.000 eur	1%	12.760€	1%	15.690€	2%	24.450€	5%	42.800€
Up to 1.500.000 eur	0,50%	17.760€	0.75%	22.440€	1,50%	37.950€	3%	69.800€
For the excess	0,25%		0,30%		0,50%	1	0,60%	

It should be borne in mind, however, that specific indicative fees are established for some court proceedings, e.g. proceedings concerning matrimonial disputes, disputes among neighbours or challenges to corporate agreements.

With regard to the advice on selling or buying a property, the lawyer fees range approximately from 100 to 300 euros depending on the services performed.

⁶⁰ Act 2/1974, of 13 February, on Professional Associations.

⁶¹ Available at: <http://www.campocavia.com/wp-content/uploads/2014/12/HONORARIS-Criteris-Orientadors-2010.pdf>.

5.4 Creating a Mortgage

Table 12: Mortgage requirements

Main steps to create a mortgage	Actors involved	Minimum standards for information	Additional requirements for consumer mortgages, if relevant	Fees expressed: • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)	Typical risks associated to these steps, if relevant
Conclusion of credit and mortgage agreement with lender (bank)	Lending institutions, Notaries	Lending institutions must inform clients properly in the pre-contractual stage (Order EHA/2899/2011, of 28 October 28, on transparency and protection of clients of banking services; BOE 28 October 2011), e.g. the Personalised Information Form (FIPER) is given to the client once the needs, preferences and situation has been explained to the bank, with the aim of assisting the client in the choice of the most convenient offer. The next step is the binding offer that the client may request. This may be handed to the client at the same time as the FIPER, in which case they will be in a single document. The content of the binding offer is identical to that of the FIPER, except for the fact	Act 1/2013, of 14 May, on measures to protect mortgagees, debt restructuring and social rents (BOE n. 116, 15 May 2013) a) It limits the default interest rate to three times the applicable legal interest rate for mortgages over primary residences and only if the purpose of the credit was to finance the acquisition of said primary home b) It requires a handwritten declaration to be included in the notarial deed whereby the consumer declares that adequate information has been given concerning the risks involved in the operation for mortgages over primary residences. That Bank of Spain has	The notary fees depend on the amount of the mortgage loan (see above the scale). It accounts for 600€ for a loan of 150.000€, being the price of the sale contract 180.000€ ⁶³ Added to this it the AJD (Stamp Duty), see below; the property valuation (300€); and the banking fees (it ranges from 1% to 2% and are taken from the gross loan amount at completion)	a) Notaries may declare contractual terms unfair themselves if these abusive clauses have been entered into the Register of General Conditions once a Court decision has rendered them abusive (see examples of abusive clauses below in point 11). In Spain, it could last years for the abusive term to be entered into the Registry of General Terms and Conditions b) The draft deed is made available to the consumer for three days (five in Catalonia) at the notaries' office, but this still does not ensure that the client: a) takes the time to go and read it; and, b) understands between 50 and 80 pages of legal language.

⁶³ <https://hipotecas.com/solicitud/simuladores/gastos.asp>.

		that it is produced once the appraisal of the property and the land registry checks have taken place	produced a standardised text ⁶² c) The default interest rates may only accrue on the outstanding principal if the mortgage loan is over a primary residence		
Insertion of mortgage in the land register, usually at first rank	Land Registry	Land Registrars provides information on the services they perform, but they do not provide legal advice to buyer	N/A	It depends on the amount of the mortgage loan. The Land Registrar's fees accounts for 370€ for a loan of 150.000€, being the price of the sale contract 180.000€ ⁶⁴	N/A
Credit sum paid to mortgagor (buyer) or seller	Lending institutions	Lending institutions must provide, free of charge, to the clients of banking services all of the pre-contractual information, which is legally required in order to adopt an informed decision on a banking service and compare similar offers (commissions applied, nominal interest rate...) See above Order EHA/2899/2011	See above Act 1/2013	Regular banking taxation Banking Fees	N/A

⁶² Bank of Spain (2013). *Guía de acceso al préstamo hipotecario*, annex IX, 75 (available at: http://www.bde.es/f/webbde/Secciones/Publicaciones/Folletos/Fic/Guia_hipotecaria_2013.pdf).

⁶⁴ Source: <https://hipotecas.com/solicitud/simuladores/gastos.asp>.

6. The process to rent or let a property

6.1 Main steps in the transaction process to rent and let a property

Table 13: Main steps of the process to rent and let a property	
Main steps	Process involved⁶⁵
Finding and matching landlords and tenants	Parties may contact a real estate agent to find a suitable tenant/property. In addition, there are several ways to look for a property: newspapers, specialised websites, advertisements, etc.
Information search by landlords or tenants	The real estate agent or the landlord herself/himself usually asks for the following information to the tenant: the work life of the tenant, the payroll or even recommendation letters. Note that since 2013 a Registry of final judgments concerning rent defaulters is expected to be created (art. 3 Act 4/2013).
Inspection of the property by tenants	With a real estate agent: this professional usually allows the tenant to enter the property to check whether it is suitable for them or not. Without a real estate agent: the landlord may show herself the property to the tenant.
Delivery of mandatory information to tenants prior to the conclusion of the contract	The real estate agent or the landlord herself/himself. The minimum information to be provided is, according to RD 515/1989: building layouts, description of the property, materials of the building, total price, etc.
Delivery of energy performance certificate to tenant	The real estate agent or the landlord herself/himself (art. 1 RD 235/2013, of energy efficiency).
Provision of additional guarantees to landlord	The minimum guarantee is to make a deposit equivalent to one or two monthly rents (art. 36 Act 29/1994). However, apart from that, parties may agree on additional guarantees from banks or the tenant's relatives, such as personal guarantees, more quantity for the deposit or even the need to contract and insurance to cover property's damages.
Conclusion of the contract in the usual form (e.g. oral, written, preformulated)	The contract does not need to be in writing (art. 37 Act 29/1994). However, a contracting party may ask the other to conclude it in writing. If a real estate agent helps in this process, a preformulated contract is usually used (see an example in the following website: https://www.ocu.org/vivienda-y-energia/comprar-vender-alquilar/modelos/contrato-de-arrendamiento-de-vivienda458474).
Rent payment and deposit (e.g. bank account)	According to art. 17 Act 29/1994, parties may pay in cash, with a transfer in a bank account, etc. Apart from that, it is important to use a bank account in order to receive aids from the Government (for example, deductions at the income tax, aids to pay the rent, etc.). When parties agree to pay the rent repairing the property and not in money (art. 17.5 Urban Leases Act), the payment is confirmed with the final acceptance of the work.
Registration of the contract in the land register (e.g. excluded, optional or mandatory)	It is not compulsory to register the contract into the land register. However, arts. 7.2, 13 and 14 Act 29/1994 (since 2013) establishes that the contract does not bind third parties if it has not been recorded into the land register. Therefore, the registration is recommendable, but still unusual.

⁶⁵ Explain more precisely to what extent each step is relevant and how the step is performed

6.2 Rent contract

Table 14: Rent contract				
Main steps	Actors involved per intermediate step	Payment details ⁶⁶		Typical risks associated to these steps, if relevant
		Payments expressed : • In EUR as % of total purchase price <u>and</u> • As a fixed amount if available (add if VAT applies)	When is the payment made	
Finding and matching the parties	Estate agents (not mandatory)	In rent operations, the usual fee is around 10% of the rent if the duration of the contract is less than a year or one month of rent if the contract has a duration of a year or longer. This price includes the advertising of the property, consultancy, information provided	When the contract rent is celebrated, finished, or as agreed by the parties.	-There are websites that already match the parties (Fotocasa, Idealista, habitacalia...) -In some cases, there are estate agents who may not have any academic training or who do not have the appropriate required training / training which has no relation with real estate (that is to say, they are not registered in any professional college because the profession is deregulated). This can jeopardize consumers.
Information search by landlord on tenant	Estate agents or lawyers (not mandatory)	In relation to lawyers, the fee of the total service will be freely agreed between the client and the lawyer. See above	See above	The intervention of an expert is not compulsory to draft the contract
Inspection of the property by tenant	Estate agents (not mandatory)	See above	See above	The intervention of an expert is not compulsory
Delivery of mandatory information to tenant prior to the conclusion of the contract	Estate agents or lawyers (not mandatory)	See above	See above	The intervention of an expert is not compulsory

⁶⁶ Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

Table 14: Rent contract

Delivery of energy performance certificate to tenant	Technical expert (architects, engineers...)	It depends on the property or the location of it ⁶⁷ . Average: 50-150 eur.	See above	
Conclusion of the contract in the usual form (e.g. oral, written, preformulated)	Estate agents or lawyers. The usual form is written. A preformulated form is not usual. (not mandatory)	See above	See above	The intervention of an expert is not compulsory
Rent payment and deposit (e.g. bank account)	Estate agents or lawyers (not mandatory)	See above	See above	The intervention of an expert is not compulsory
Registration of the contract in the land register or other device (excluded, optional or mandatory)	Land register (not mandatory and not usual)	These fees are fixed in art. 2 of Royal Decree 1427/1989, of 17th November, which approves the tariffs for the land registrars ⁶⁸ . The inscription, annotation or cancellation of each property or right, the amounts set by the following scales will be collected: A) If the value of the property or right does not exceed 6,010.12 euros, 24 euros; B) For the excess between 6.010,13 and 30,050.61 euros, 1.75 per 1,000; C) For the excess between 30,050.62 and 60,101.21 euros, 1.25 per 1,000; D) For the excess between 60,101,22 and 150,253,03 euros, 0,75 per 1,000; E) For the excess between 150.253,04 and 601,012.10 euros, 0.30 per 1,000;	Once the deed of conveyance has entered into the Land Registry	The registration of the rent contract is not compulsory.

⁶⁷ See examples in: <https://www.certicalia.com/precio-certificado-energetico>

⁶⁸ Amended by Royal Decree 1612/2011, of 14 November, amending the Royal Decree 1426/1989, of 17 November, and 1427/1989.

Table 14: Rent contract

		F) For the value that exceeds 601,012.10 euros 0.20 per 1,000. However, the Royal Decree 297/1996, of 23rd February, on the registration of urban contracts of lease in the land register (BOE 14 March 1996, n. 64), establishes a 25% reduction of the applicable notaries and land registrar fees so as to foster tenancy contracts to be entered into the land register.		
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6.3 Professional services performed in the real estate market related to renting and letting a property

Table 15: Professional services performed in the real estate market related to renting and letting a property

Services in the real estate market	Minimum standards for information provided by law, if applicable	Service providers involved	Quality of involvement	Fees expressed: <ul style="list-style-type: none"> • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)
Finding and matching landlords and tenants	Royal Decree 515/1989, of 21 April, on Consumer Protection regarding the information to be provided in the sale and rental of housing (building layouts, description of the property, materials of the building, total price, etc.)	Estate agents	Optional but usual	In rent operations, the usual fee is around 10% of the rent if the duration of the contract is less than a year or equal to one month of rent if the contract has a duration minimum of a year
Information search by landlords or tenants (e.g. about salary, outstanding debts)	No	Estate agents, lawyers	Optional but not usual	In relation to lawyers, the fee of the total service will be freely agreed between the client and the lawyer. Therefore, the lawyer fees ranges approximately from 100 to 300 euros depending on the services performed.
Inspection of the property by tenants	No	Estate agents and lawyers	Optional and usual	See above - The cost of this service, if provided, is included in the global fee charged to the client, which is calculated according to the abovementioned criteria

Table 15: Professional services performed in the real estate market related to renting and letting a property

Delivery of mandatory information to tenants prior to the conclusion of the contract	No	Estate agents and lawyers	Optional but not usual	N/A
Conclusion of the contract in the usual form	No	Estate agents and lawyers	Optional but usual (written form)	See above - The cost of this service, if provided, is included in the global fee charged to the client, which is calculated according to the abovementioned criteria
Rent payment and deposit	No	Lawyers and notaries	Optional but not usual	N/A
Registration of the contract in the land register	No	Property registrar	Optional but not usual	Fees are fixed in art. 2 of Royal Decree 1427/1989, of 17th November, which approves the tariffs for the land registrars ⁶⁹ .
Other steps	Royal Decree 515/1989, of 21 April, on Consumer Protection regarding the information to be provided in the sale and rental of housing	Estate agents	Optional but usual	In rent operations, the usually fee is around 10% of the rent if the duration of the contract is less than a year or equal to one month of rent if the contract has a duration minimum of a year.

⁶⁹ Amended by Royal Decree 1612/2011, of 14 November, amending the Royal Decree 1426/1989, of 17 November, and 1427/1989.

7. Professional services regulation: notaries

7.1 Market entry and structure regulation

Table 16: Market entry and structure regulation

	Regulation	
Subjective requirements	<i>Qualifications (diplomas, exams, concours) required to become a notary in your country:</i>	Regulation: Act 28 May 1862 and Decree 2 June 1944. Art. 5 of Decree 2 June 1944 establishes that the admission of the notary will take place through an exam (a public concours). It is a very demanding exam difficult to pass. Art. 6 of Decree 2 June 1944 establishes the following conditions to be appointed as a notary: a) To be Spanish or to hold the nationality of a country of the European Union b) Be over 18 years old c) Not being ineligible for personal reasons (art. 7 Decree 2 June 1944) d) Be a Doctor in law or have the degree in law
Objective requirements	<i>Do numerus clauses and other objective requirements exist?</i>	These are established in Arts. 8 and 9 Decree 2 June 1944, for example those physically or mentally disabled to exercise the profession cannot become notaries, as well as those who as a result of disciplinary proceedings have been dismissed from the service of the Public Administration, etc. To take part in the concours to become a Notary, the applications must be addressed to the General Directorate of Registries and Notaries and follow the procedure regulated by this Decree.
Citizenship requirements	<i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>	Yes, but only Spanish or professionals who hold the nationality of another country of the European Union
Inter-professional cooperation	<i>Are forms of collaboration between notaries and other professionals allowed and usual?</i>	Yes, usually with lawyers and land registrars (e.g. arts. 9, 15, 22 Decree 8 February 1944) (which regulates the profession of land registrars)
Business structure	<i>Are notary associations/corporations allowed?</i>	It exists the General Council of Notaries (“Consejo General del Notario”). https://www.notariado.org/liferay/web/notariado/inicio In each region of Spain (Autonomous Communities) exist the Professional Colleges of Notaries that depend on the General Council of Notaries. See, for example, the Professional College of Notaries of Catalonia in: https://www.notarisdecatalunya.org Notaries have the double character of public office holders and liberal professionals

Geographical limitations	<i>Are there limitations with respect to the area in which the notary can exercise his/her activities (e.g. at the regional or municipal level)?</i>	Yes. According art. 8 Act 17/1993, notaries may only exercise their profession in the district in which their office is located. The office district coincides with the Spanish provinces. See them in: http://www.mjusticia.gob.es/cs/Satellite/Portal/es/administracion-justicia/organizacion-justicia/cartografia-judicial/cartografia-partidos . According to art. 3 Act 17/1993, each “judicial region” constitutes a Notary District, within which notaries will be appointed in sufficient quantity to provide the public service, taking into account the population, the frequency of transactions, and the circumstances of the region and the decent subsistence of Notaries. See further: arts. 72 and following Decree 2 June 1944.
	<i>Are these limitation restricted to specific tasks?</i>	Parties may freely choose their notary (art. 126 Decree 2 June 1944). There is no territorial limitation to choose the notary

7.2 Market conduct regulation

Table 17: Market conduct regulation

	Regulation	
Exclusive rights	<i>For which transactions or parts of them only notaries may act against payment.</i>	Art. 17 Act 17/1993 establishes in which transactions notaries can intervene: write deeds, extend and certify acts (e.g.: condominiums acts), copies, wills, creation of companies (S.L, S.A...), etc. According to art. 3 Act 17/1993, the Notary, as an organ of voluntary jurisdiction, may never act without prior request of the interested party, except in special cases legally established
Duty to provide services	<i>Are notaries allowed to refuse a request to act?</i>	According to art. 2 Act 17/1993, if a Notary required to intervene in any public or private extrajudicial act refuses this without just cause, he or she shall be held liable
Professional standards	<i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Notaries) in this context?</i>	The professional standards are regulated in Act 17/1993 and Decree 2 June 1944. The professional representation is under the General Council of Notaries (“Consejo General del Notariado”) and the notarial professional college of each region. Among its main objectives are to guarantee to society a notarial service that is economically sustainable and exercised for the benefit of society ⁷⁰
Mandatory intervention	<i>Is the intervention of a notary required for the registration procedure?</i>	Yes, the notarial deed is compulsory to register the mortgage (art. 3 Decree 8 February 1944)

⁷⁰ See it in: http://www.notariado.org/liferay/web/notariado/el-notariado-informa/detalle?p_p_id=NOT013_WAR_notariadoNoticiasPlugin&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_count=2&p_r_p_564233524_NOTARIO_INFORMA_DETALLE_ID=2817927

Table 17: Market conduct regulation

Compulsory indemnity insurance	<i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>	Yes (art. 24 Decree 2 June 1944 and art. 14 Act 17/1993). According to art. 26 Decree 2 June 1944, the amount of the insurance is 1.500 euros, unless there is a population of more than one million inhabitants, since in this case it will be raised to 3.000 euros. The amount can be updated by the General Directorate of Registries and Notaries. Each notary may have another higher insurance according to the value of the transactions where they intervene
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>	Yes, professional colleges may organize courses or other education programmes for notaries, but they are not compulsory
Advertising restrictions	<i>Are there limitations on advertising?</i>	Yes – unfair trading rules (See Act 15/2007, of 3 July, on the protection of competition, BOE 4 July 2007, n. 159) ⁷¹
Fee regulation	<i>Notary fee system</i>	According to art. 63 Decree 2 June 1944, the remuneration of Notaries will be in charge of those who require their services and will be regulated The fees are regulated in Royal Decree 1426/89, of 17 November, which approves the tariffs of Notaries ⁷² . The minimum for their services is 30 euros (for example, for a will). Usually their fees depend on the value of the operation, see above. The average income for notaries per month is around 12.000 EUR.

⁷¹ <http://www.elnotario.es/index.php/hemeroteca/revista-43/457-actuaciones-de-los-colegios-notariales-y-la-ley-de-defensa-de-la-competencia-y-ii-0-46104446562104345>

⁷² Amended by Royal Decree 1612/2011, of 14 November, amending the Royal Decree 1426/1989, of 17 November, and 1427/1989.

8. Professional services regulation: lawyers or other licensed conveyancers (only relevant if legally admitted to perform real estate transactions and/or to assist the conclusion of tenancy agreements)

8.1 Market entry and structure regulation

Table 18: Market entry and structure regulation		
	Regulation	
Subjective requirements	<i>Conditions (diplomas, exams, concours) required to become a lawyer in your country.</i>	In order to become a lawyer in Spain, he or she must be of age and must not be disqualified from practising as a lawyer for any reason, according to Royal Decree 658/2001, of 22 June, by which the General By-law of the Spanish Lawyers is approved (BOE 10 July 2001, n. 164) Lawyers must hold a Spanish law degree and must complete a Postgraduate Course since the entry into force of the Act 24/2006 and Royal Decree 775/2011, at the end of which they must pass an official exam, they must also be a member of the bar association for the district in which the sole or main professional domicile is located
Objective requirements	<i>Do numerus clauses and other objective requirements exist?</i>	No
Citizenship requirements	<i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>	Yes, a Spanish national or a national of a Member State of the European Union may practise as a lawyer in Spain, provided they are in possession of the professional qualification required by the country of origin, which will be acknowledge according to the Royal Decree 581/2017, of 9 June (BOE 10 June 2017, n. 138).
Inter-professional cooperation	<i>Are forms of collaboration between lawyers and other professionals allowed and usual?</i>	The Royal Decree 658/2001 establishes that lawyers can practice as self-employed holders of office or employees of a self-employed lawyer or an associated office. They usually collaborate among themselves, each partner one being in charge of a specific area of law
Business structure	<i>Are lawyer associations/corporations allowed?</i>	Yes, the Act 2/2007, of 15 March, on Professional Services Firms (BOE 16 March 2007, n. 65), allows lawyers to set up commercial undertakings
Geographical limitations	<i>Are there limitations with respect to the area in which the lawyer can exercise his/her activities (e.g. at the regional or municipal level)?</i>	No, every lawyer registered in a Spanish Bar Association can rend a service freely in the whole State and in any area of law
	<i>Are these limitation restricted to specific tasks?</i>	No. The lawyer who wants to practise in a different legal bounds of his Bar Association, should inform the Bar in which scope is going to rend a direct service

8.2 Market conduct regulation

Table 19: Market conduct regulation

	Regulation	
Exclusive rights	<i>For which transactions or parts of them only lawyers may act against payment</i>	No, but the intervention of lawyers is mandatory in all civil proceedings as a general rule (art. 31 Spanish Law on Civil Procedure 2000)
Neutrality	<i>Is the lawyer allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees apply and which party has to bear them?</i>	Art. 4 of the Code of Conduct of the Spanish Bar Association 200173 states that the lawyer is obliged not to defraud the confidence of his/her client and not to defend the interests, which might be in conflict with those of the client. So there is no prohibition ab initio for a lawyer to act on behalf of both parties, as it is the case when both spouses decide to divorce by consent
Duty to provide services	<i>Are lawyers allowed to refuse a request to act?</i>	Yes, lawyers have full freedom to accept or reject a request to act, and they can also cease to act at any stage of judicial or administrative proceedings, as long as the client is still represented (art. 26 Royal Decree 658/2001). This means that the lawyer who withdraws from the representation of a party needs to ensure that the party does not remain unrepresented. If lawyers are appointed to give legal advice to people who have the right to free legal representation, then the conditions of termination of the representation shall be governed by the Free Legal Assistance Act 1/1996, of 10 January (BOE 12 January 1996, n. 11). However, it needs to be considered that art. 553.4 Act 6/1985, of 1 July, on the judiciary (BOE 2 July 1985, n. 157) establishes that lawyers and attorneys may be subject to disciplinary proceedings for their actions before courts and tribunals when they refuse to continue providing legal representation or defence without any justification (e.g. when differences with the client appear) within the seven days prior to the trial or the hearing (art. 26 Royal Decree 658/2001)
Professional standards	<i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Lawyers/Advocates) in this context?</i>	These are established at the Code of Conduct of the Spanish Bar Association

⁷³ Available at: http://www.ccbe.eu/NTCdocument/Spain_EN_Codigo_deon1_1251981686.pdf.

Table 19: Market conduct regulation

Compulsory indemnity insurance	<i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>	The indemnity insurance is compulsory. Thus, the Code of Conduct of the Spanish Bar Association states that an obligation for lawyers to be insured can be established by law, and Art. 9 Spanish Act 7/2006, of 31 May, on the exercise of qualified professions and professional colleges (BOE 6 July 2006, n. 160), establishes that the qualified professionals have the duty to cover by insurance the risks of liability that they can incur in the exercise of their profession. In practice, Professional Colleges offer its members the possibility to be covered by the indemnity insurance of the College (which is taken out for the benefit of all members), the cost of which ranges from 100 euros to 600 euros depending on both the compensation limit and deductibles per claim chosen by the lawyer. In general, the cost of the indemnity insurance is higher when lawyers take it out on their own.
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>	Continuing education is not mandatory after the law degree and the Postgraduate Course; however, Bar Associations offers usually a wide range of training courses for its members
Advertising restrictions	<i>Are there limitations on advertising?</i>	According to art. 7 Code of Conduct of the Spanish Bar Association the lawyer is entitled to realize honourable, loyal and truthful publicity of his/her professional services, with complete respect to the people's dignity, legislation in force on those subjects, on defence of competition and unfair competition, always in accordance to the deontological rules provided by this Code and those, as the case may be, announced by the Council of the Autonomous Region and the Law Society of the territory of professional practice, e.g. they are not allowed to promise results that do not only depend on the lawyer's activity that is being advertised
Fee regulation	<i>Lawyer fee system</i>	Fees may take the form of a fixed fee, hourly fee, or periodic payments and it can be agreed freely between the parties provided it does not go against the professional code of ethics or the rules of fair competition (article 15 Code of Conduct of the Spanish Bar Association). However, lawyers may set their fees according to the "guidelines" published by each professional college. These rules are based on general criteria for the preparation of minutes such as complexity of the matter, proportionality, etc. The contracting party must bear with the lawyer's fees

9. Professional services regulation: estate agents

9.1 Market entry and structure regulation

Table 20: Market entry and structure regulation

	Regulation	
Subjective requirements	<i>Qualifications (level and duration of education and training, diplomas, exams, traineeships or professional experience requirements, concours) required to become an estate agent in your country.</i>	<ul style="list-style-type: none"> - The profession is deregulated since 2000 (through royal Decree 4/2000). This means that in Spain anyone can become real estate agent without any specific academic qualification and without joining an official professional college of estate agents (Colegio de Agentes de la Propiedad Inmobiliaria). However, this college exist for those who want to be registered. - Therefore, the profession can be performed by (art. 3 Act 10/2003): <ul style="list-style-type: none"> a) Real Estate Agents with the professional qualification and requirements contained in their own specific regulation. That is to say those who join an official professional college of estate agents b) Professionals or companies with any academic title or in any official professional college (...) - The profession regulation (for those who join a professional college of estate agents) is in Royal Decree 1294/2007 - Those who join a professional college of estate agents must (art. 1 Royal Decree 1294/2007): <ul style="list-style-type: none"> a) Be over 18 year old and not be disabled b) Have the title of graduate, engineer, technical engineer or technical architect, or of the Official Title of Real Estate Agent issued by the Ministry c) Have lack of criminal records that disqualify the professional exercise - Catalonia (2007) and Basque Country (2015) have partially solved the deregulation of this profession. In Catalonia is compulsory to have an academic qualification related to real estate and to be registered in the Estate Agents Register (it is a public Register). However, in the Basque Country it is not implemented yet. <p>Regulation in these regions: Catalonia: Act 18/2007 and Decree 12/2010 Basque Country: (First Additional Disposition Housing Act 3/2015, of 18 June)</p>
Objective requirements	<i>Do numerus clauses and other objective requirements exist?</i>	No
Licence requirements	<i>Are estate agents licenced or do they work as employees?</i>	In Spain, the concept of licensed real estate agents does not exist. In addition, joining official professional college of estate agents (Colegio de Agentes de la Propiedad Inmobiliaria) is optional. However, in Catalonia and Basque Country the registration in the public Estate Agents Register as well as to fulfil the academic requirements are compulsory

Table 20: Market entry and structure regulation

Citizenship requirements	<i>Is unlimited access to the profession granted to foreign professionals de iure and de facto?</i>	Yes
Inter-professional cooperation	<i>Are estate agents allowed to exercise another profession or business activity? Is inter-professional cooperation regulated?</i>	Estate agents are allowed to exercise another profession. However arts. 41 and 44 of Royal Decree 1294/2007 sanctions those who act for their own benefit or interest (conflict of interest) The inter-professional cooperation is not regulated
Business structure	<i>Share of estate agent acts acting as sole practitioners and as companies (if data are available)? Can the agent be employed by another agent or establish a partnership with other agents? Are there any restrictions on the corporate structure of a real estate enterprise (such as voting rights reserved to qualified members of a profession, shareholding requirements etc.)?</i>	Not known. The agent can be employed by another agent and establish a partnership with other agents. No
Geographical limitations	<i>Are there limitations with respect to the area in which the estate agent can exercise his/her activities (e.g. at the regional or municipal level)?</i>	No
	<i>Are these limitation restricted to specific tasks?</i>	No

9.2 Market conduct regulation

Table 21: Market conduct regulation

	Regulation	
Neutrality	<i>Is neutrality regulated? Is the agent allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees applies and which party bears these?</i>	The neutrality is not regulated. The agent is generally employed by the seller (selling contracts) or landlord (tenancy contract)
Professional standards	<i>How are professional standards regulated? Are entities or associations ensuring the professional representation and respect of rules of good practice (e.g. association of real estate professionals)?</i>	Joining an official professional college of estate agents (Colegio de Agentes de la Propiedad Inmobiliaria) is optional. However in Catalonia and Basque Country the registration in the public Estate Agents Register and to fulfil the academic requirements is compulsory It also exists associations like "Asociación Profesional de Expertos Inmobiliarios (APEI)", "Asociación empresarial de gestión inmobiliaria (AEGI)" and "Asociación profesional de Gestores intermediarios en Promociones de Edificaciones (GIPE)".
Compulsory indemnity insurance	<i>Is indemnity insurance compulsory for estate agents? If yes, what is the indicative amount of the insurance?</i>	Yes for those who are in the professional college of estate agents (Colegio de Agentes de la Propiedad Inmobiliaria)
Continuing education	<i>Do forms of continuing education exist? If yes, is continuing education mandatory? What are the requirements related to the content and duration of continuing education? What are the consequences of non-compliance?</i>	It is not compulsory The professional college of estate agents (Colegio de Agentes de la Propiedad Inmobiliaria) offers academic courses and also some universities
Advertising restrictions	<i>Are there limitations on advertising?</i>	Yes – unfair trading rules (See Act 15/2007)

Table 21: Market conduct regulation

<p>Fee regulation</p>	<p><i>Estate agents' fee system</i></p>	<p>Royal Decree 1294/2007 does not establish anything related to fees. Usually fees are paid by the seller (selling contracts) or the landlord (rent contract). However, as the Royal Decree 1294/2007 does not establish any disposition related to that, parties can establish whatever they consider or according to the common or traditional use in each region. Usually, in buying and selling operations the fee varies between 3% and 5% (in big cities can be around 10%)⁷⁴ of the price + VAT In rent operation, the usually fee is around 10% of the rent if the duration of the contract is less than a year or equal to one month of rent if the contract has a duration minimum of a year.</p>
<p>Compulsory membership in professional bodies/compulsory registration</p>	<p><i>Is membership in professional bodies compulsory? If so, what are the membership conditions and the membership fees? Does the professional body have a supervisory or another important regulatory role?</i></p>	<p>No, it is voluntary</p>

⁷⁴ <https://www.idealista.com/news/inmobiliario/vivienda/2010/09/17/255422-comisiones-de-las-agencias-inmobiliarias-puntos-a-tener-en-cuenta>

10. The real estate market

10.1 Transaction costs for sample transactions

Table 22: Transaction costs VAT excluded

	Estate agent ⁷⁵	Technical services (if usual)	Legal services	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
€100,000 sales price (no mortgage)	Between 3%-5% of the total amount + VAT 3,000€-5,000€	Property valuation: 250€ approx.	It is not compulsory to ask for legal advice but, in this case, the lawyer can draft the contract (the fee depends on the lawyer and the Bar Association, approx. 400€) The estate agent normally offers legal services (drafting the contract) too Parties usually contract a tax manager (e.g. to pay the fees, taxes...) between 200€-300€	It is possible to sell a property without registering it into the Land Registry. However, due to its effects, it is usual and recommendable to do so A notarial deed is required to register the contract into the Land Registry. The costs of the deed and the registry are statutory (RD 1426/1988). Estimated costs are: <ul style="list-style-type: none"> • 450€ for the notarial deed. • 170€ for the Land Registry. 	Transfer tax: VAT: 10% (if the seller is a professional) of the total amount Property transfer tax (if the seller is not a professional): between 6-11% of the total amount (depending on the Autonomous Community) + Tax on stamp duty: between 1-1,5% of the total amount	Approx. 15.900€
€100,000 sales price + 100.000€ mortgage	Between 3%-5% of the total amount + VAT 3,000€-5,000€	Property valuation: 250€ approx.	It is not compulsory to ask for legal advice but, in this case, the lawyer can draft the contract (the fee depends on the lawyer and the Bar Association, approx. 400€). The estate agent normally offers legal services (drafting the contract) too.	It is compulsory to register the mortgage (agreed on a notarial deed) into the Land Registry. The buyer shall pay for the deed and registry of both the transaction and the mortgage. Estimated costs are: <ul style="list-style-type: none"> • 900€ for the notarial deeds. 	Transfer tax: VAT: 10% (if the seller is a professional) of the total amount Property transfer tax (if the seller is not a professional): between 6-11% of the total amount (depending on the Autonomous Community)	Approx. 16,700€

⁷⁵ An agent usually receives a percentage of the transaction value.

Table 22: Transaction costs VAT excluded

			Parties usually contract a tax manager (e.g. to pay the fees, taxes...) between 200€-300€.	<ul style="list-style-type: none"> • 330€ for the Land Registry. 	+ Transfer tax for the mortgage: between 1-1,5% of the total amount	
€250,000 sales price (no mortgage)	Between 3%-5% of the total amount + VAT 7,500€-12,500€	Property valuation: 250€ approx.	It is not compulsory to ask for legal advice but, in this case, the lawyer can draft the contract (the fee depends on the lawyer and the Bar Association, approx. 400€). The estate agent normally offers legal services (drafting the contract) too. Parties usually contract a tax manager (e.g. to pay the fees, taxes...) between 200€-300€.	Estimated costs are: <ul style="list-style-type: none"> • 550€ for the notarial deed. • 260€ for the Land Registry. 	Transfer tax: VAT: 10% (if the seller is a professional) of the total amount Property transfer tax (if the seller is not a professional): between 6-11% of the total amount (depending on the Autonomous Community) + Tax on stamp duty: between 1-1,5% of the total amount	Approx. 36,400€
€250,000 sales price + 250,000€ mortgage	Between 3%-5% of the total amount + VAT 7,500€-12,500€	Property valuation: 250€ approx.	It is not compulsory to ask for legal advice but, in this case, the lawyer can draft the contract (the fee depends on the lawyer and the Bar Association, approx. 400€). The estate agent normally offers legal services (drafting the contract) too. Parties contract a tax manager (e.g. to pay the fees, taxes...) between 200€-300€.	Estimated costs are: <ul style="list-style-type: none"> • 1,150€ for the notarial deed. • 450€ for the Land Registry. 	Transfer tax: VAT: 10% (if the seller is a professional) of the total amount Property transfer tax (if the seller is not a professional): between 6-11% of the total amount (depending on the Autonomous Community) + Transfer tax for the mortgage: between 1-1,5% of the total amount	Approx. 37,200€
€500,000 sales price (no mortgage)	Between 3%-5% of the total amount + VAT 15,000€-25,000€	Property valuation: 250€ approx.	It is not compulsory to ask for legal advice but, in this case, the lawyer can draft the contract (the fee depends on the lawyer and the Bar Association, approx. 400€). The estate agent normally offers legal services (drafting the contract) too.	Estimated costs are: <ul style="list-style-type: none"> • 700€ for the notarial deed. • 350€ for the Land Registry. 	Transfer tax: VAT: 10% (if the seller is a professional) of the total amount Property transfer tax (if the seller is not a professional): between 6-11% of the total amount (depending on the Autonomous Community)	Approx. 71,900€

Table 22: Transaction costs VAT excluded

			Parties usually contract a tax manager (e.g. to pay the fees, taxes...) between 200€-300€.		+ Tax on stamp duty: between 1-1,5% of the total amount	
€500,000 sales price + €500,000 mortgage	Between 3%-5% of the total amount + VAT 15,000€-25,000€	Property valuation: 250€ approx.	It is not compulsory to ask for legal advice but, in this case, the lawyer can draft the contract (the fee depends on the lawyer and the Bar Association, approx. 400€). The estate agent normally offers legal services (drafting the contract) too. Parties usually contract a tax manager (e.g. to pay the fees, taxes...) between 200€-300€.	Estimated costs are: <ul style="list-style-type: none"> • 1,400€ for the notarial deed. • 600€ for the Land Registry. 	Transfer tax: VAT: 10% (if the seller is a professional) of the total amount Property transfer tax (if the seller is not a professional): between 6-11% of the total amount (depending on the Autonomous Community) + Transfer tax for the mortgage: between 1-1,5% of the total amount	Approx. 72,850€
%VAT applicable	21%	21%	21%	None	-	-

The seller may pay a capital gains tax if s/he sells the property with gains (but not with losses according to STC 11.5.2017). The amount depends on the municipality. The transaction also affects the income tax of the seller.

10.2 Transaction features

Table 23: Transaction features			
Transaction/service	Party bearing the costs of intermediation service (buyers or sellers, landlords or tenants) Costs expressed: <ul style="list-style-type: none"> In EUR as % of total purchase price <u>and</u> As a fixed amount (if available) 	Fees as expressed in the contract: <ul style="list-style-type: none"> In EUR as % of total purchase price <u>and</u> As a fixed amount (if available) 	Possible hidden costs faced by buyers or tenants
Estate agents	Usually the seller/landlord. However, they may agree to share the Estate agents' fee or to be paid for the tenant.	Estate agent fee for buying a property: between 3%-5% of the total amount. Estate agent fee for concluding a tenancy agreement: <ul style="list-style-type: none"> Less than one year: a 10% of the amount. More than one year: the equivalent to a monthly rent. 	VAT
Technical services	Usually the buyer/tenant *According to STS 23.12.2015, the assignment of all taxes and fees to the mortgagee is an unfair term (only regarding the mortgage)	N/A	N/A
Legal services	Usually the buyer/tenant *According to STS 23.12.2015, the assignment of all taxes and fees to the mortgagee is an unfair term (only regarding the mortgage)	A fee, when they draft the contract	VAT
Land register fees	Usually the buyer/tenant *According to STS 23.12.2015, the assignment of all taxes and fees to the mortgagee is an unfair term (only regarding the mortgage)	The amount depends on the value of the property (buying a property) or the contract (renting a property)	N/A
Taxes on conveyancing	Usually the seller/landlord. However, they may agree to share the Estate agents' fee or to be paid for the tenant. It includes the VAT applicable for the estate agent's service.	A proportional cost on the agent's fee	N/A
Transfer taxes	Usually the buyer/tenant *According to STS 23.12.2015, the assignment of all taxes and fees to the mortgagee is an unfair term (only regarding the mortgage)	A proportional cost depending on the value of the property (buying a property) or the value of the contract (renting a property)	N/A

10.3 Taxes during the process of buying and selling a property

Table 24: Taxes related to buying and selling a property

	Relevance of the tax	When to pay the tax as part of the process of buying or selling	Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)
Registration tax⁷⁶	No	No	No
Mortgage tax	Yes	When the deed of conveyance is formalised	ITP (Tax on capital transfers) in each autonomous region, when the mortgage is established: the amount depends on the region, it ranges from 1% to 1,5% of the amount of the guaranteed capital covering interest, indemnities and similar concepts The AJD (stamp duty) arising from the mortgage deed depends on each region in Spain; it ranges from 1% to 1.5%. It is incompatible with the previous one
Cadastral tax	No	The IBI (Tax on real estate) arises for the mere fact of being an owner of a real estate, but it is not compulsory paid in the process of buying and selling strictly speaking. It depends on the local authority and it must be paid on a yearly basis.	
Stamp tax	No	No	No
Transfer tax (tax on the acquisition of property)	No	When the deed of conveyance is formalised	State VAT in purchasing directly from the promoter: 10% of the value of the purchase, paid by the buyer ITP (Tax on capital transfers) in second purchases between individuals; tax of regional nature, it depends on each region and ranges from 6% to 11% of the value of the purchase. Paid by the buyer IIVTNU (tax on the increase of value of urban nature, surplus value) when the property is sold: it is paid by the seller. It depends on the city councils. The law establishes a percentage depending on the time the seller have own the good, the 30% cadastral value at most is paid. Each city council determines it in its tax ordinance

⁷⁶ Registration taxes are public levies associated with the registration act. They are not to be confused with registration fees, i.e. the payment required by the registration office to carry out the registration. Registration fees are contained in Table 10.

Table 24: Taxes related to buying and selling a property

Archives tax	No	No	No
Other taxes	No	Notarial and land registrar fees are not taxes strictly speaking If the seller earns or loses money, he declares it in his personal income tax (IRPF) for that year. Here it taxes the general tax base of the IRPF together with his other incomes; the scale depends on each region (19% and 48%). This money, if reinvested in another dwelling, is exempt from the IRPF	

10.4 Taxes during the process of renting and letting a property

Table 25: Taxes related to renting or letting a property

	Relevance of the tax	When to pay the tax in the process of renting or letting	Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)
Registration tax	No	No	No
Stamp tax	Yes	ITP (Tax on capital transmissions) for the constitution of the lease. The tenant is the one who pays this tax. The landlord (lessor) is the subsidiary responsible for its payment in the event he received the first rent and did not require the justification of the payment of the tax to the tenant	Catalonia has a single tax rate: 0.5% of the total rent (the minimum taken as a starting point is 3 years) The remaining Autonomous Regions have a scale of 10 tranches from 0.09 euros to 0.024040 € for each 6.01 € or fraction Some Autonomous Regions establish exemptions of this tax: Andalusia and Galicia: 100%, Aragon 90%, Cantabria 99%

<p>Other taxes concerning the use of the property, if applicable</p>	<p>Yes</p>	<p>The owner declares what has been received of the rent and can deduct expenses in the Personal Income Tax. The rent is included in the general taxable base together with the remaining incomes, and taxed according to the sliding scales - the General or State sliding scale and the Complementary or Regional Government scale (the percentage could range then between 19% and 48% depending on the whole landlord's income)</p> <p>The tenant does not have state deductions, and the autonomic ones depends on each autonomous region; landlords are allowed to subtract a certain amount of what has been paid (5% to 20%,) with a maximum limit</p>	
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11. Consumer situation in the market

11.1 Consumer rights

Table 26: Consumer rights

Are there specific consumer rights? In particular: are residential tenants treated as consumers?	<i>With respect to buyers</i>	Royal Decree 515/1989
	<i>With respect to sellers</i>	Consumer rights when dealing with real estate agents or lawyers (e.g. unfair contractual terms, RDL 1/2007)
	<i>With respect to tenants</i>	Protection against abuses or unfair practices from professional landlords. Some information must be provided on the basis of Royal Decree 515/1989
	<i>With respect to landlords</i>	Consumer rights when dealing with real estate agents or lawyers (e.g. unfair contractual terms, RDL 1/2007)
If relevant, which existing marketing practices are non-compliant with national consumer legislation?	<p>The main practices are non-compliant with national consumer legislation are related to the existence of unfair contractual terms in sale contracts of real estate and mortgage loans concluded to finance the acquisition. Here are examples of Court decisions that have rendered some terms void:</p> <p>A) The Supreme Court decision of 3 June 2016 (ECLI:ES:TS:2016:2401) established that the default interest rate -agreed with consumers on mortgage loans- exceeding 2 points the remunerative interest are deemed to be unfair and abusive. In this regard, the Act 1/2013, of May 14, on measures to protect mortgagees, debt restructuring and social rents, amended Article 114 of the Spanish Law on Mortgages (Ley Hipotecaria) through the addition of a third subparagraph worded as follows: “Default interest on loans or credits for the purchase of a habitual dwelling, secured by mortgages charged on the dwelling in question, may not be more than three times the statutory rate of interest and may accrue only on the outstanding principal”. The ruling argues that this provision does not preclude the court from rendering the default interest rate clause void should this interest be below three times the statutory rate of interest.</p> <p>B) The Supreme Court ruling 18 February 2016 (ECLI:ES:TS:2016:626) rendered void both default interest rate and acceleration clauses included in mortgage loans concluded with consumers.</p> <p>C) According to the Sentence of the Supreme Court of Spain 9 May 2013 (RJ 2013\3088), mortgage floor clauses are deemed to be abusive, not for not including an interest cap clause in that same mortgage contract, but for a lack of disclosure and information transparency that may result in an unexpected change in the contract price. This judgment also stated that consumers are not entitled to claim the repayment of the amounts wrongly paid during the contractual term. Some judgments have adopted the same solution afterwards, such as the Provincial Courts of Alicante 12 July 2013 (AC 2013\1545), Cáceres 3 October 2013 (AC 2013\1753), Madrid 23 July 2013 (JUR 2013 \307654), Granada 18 October 2013 (AC 2013\2041), Córdoba 31-10-2013 (JUR 2013, 374434) and Burgos 28-1-2014 (AC 2014\27).</p> <p>However, other courts have ruled in favour of the mortgagee, who is entitled to claim the amounts undue paid until the suppression of the floor clause, such as the judgment of the Commercial Court Num. 1 of Bilbao 21 October 2013 (AC 2013\2269); and the Judgment of the Provincial Court of Málaga 12 March 2014 (JUR 2014\76962).</p> <p>The Spanish Supreme Court ruling 24 March 2015 (ECLI: ES: TS: 2015: 1279) confirmed the judgment of the same court of 9 May 2013 (ECLI: ES: TS: 2013: 1916), according to which mortgage floor clauses are deemed to be abusive, not for not including an</p>	

Table 26: Consumer rights

	<p>interest cap clause in that same mortgage contract, but for a lack of disclosure and information transparency that may result in an unexpected change in the contract price. The Court states that the interest paid in excess shall be refunded to the borrower as from the date of publication of the ruling on 9 May 2013. As pointed out below, the European Court of Justice of the European Union has not followed this line of reasoning.</p> <p>D) The Supreme Court judgement 23 December 2015 (ECLI:ES:TS:2015:5618) rendered abusive a set of clauses that are common in the banking contracts with consumers. This judgement is in line with the judgement of the Supreme Court 9 May 2013, where several clauses were deemed to be abusive, such as the early termination for non-payment of a one monthly quota; the imposition to the consumer of the payment of all pre-procedural, procedural or attorney's fees and the attorney hired by the lender, in cases of breach of the mortgage contract; or clauses concerning default interest rate or the so-called "floor clauses". As a result, the Supreme Court rendered abusive the term by which the credit entity imposes the payment of all fees related to taking out the mortgage. The underlying reason is the following: as the Lending institution is the party interested in creating the mortgage, banks should be the ones facing these costs. Usually, this term is written in a general manner, but it may be included in the notary costs, the fees of the land registry and the cost of the management company appointed by the lending institution in order to follow the whole procedure, and also the stamp duty. Lending institutions, however, are not voluntarily paying these costs, thus forcing consumers to go to court. It must be taken into account that there is only one Judgement of the Supreme Court so far (if consumers go to court, it is expected another Supreme Court decision of on this issue), but some lower courts are already ruling in favour of consumers.</p> <p>In the field of tenancy law, there are also unfair terms, but these are difficult to identify, as there is no notarial supervision.</p>
<p>If relevant, which existing marketing practices are non-compliant with EU consumer legislation?</p>	<p>A number of decisions by the European Court of Justice show the non-compliance of Spanish rules on mortgages with the Directive 93/13/EEC, of 5 April 1993, on unfair terms in consumer contracts. Examples are the following:</p> <p>a) Judgment of the European Court of Justice of 14 March 2013 (ECLI:EU:C:2013:164, Case C-415/11, Mohamed Aziz contra Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)). The Court of Justice holds that the Spanish legislation does not comply with the principle of effectiveness, as it makes impossible or excessively difficult, in mortgage enforcement proceedings initiated by sellers or suppliers against consumer defendants, to ensure the protection that the directive on consumer protection of 1993 confers on them. Following this decision, the Spanish mortgage enforcement procedure, as well as the general enforcement procedure, was reformed by Act 1/2013, of 14 May.</p> <p>b) However, the bias towards the creditor with regard to appealing the judicial decision led to another Judgment of the European Court of Justice of 17 July 2014 (ECLI:EU:C:2014:2099, Case C-169/14, Sánchez Morcillo and Abril García v Banco Bilbao), which held that the domestic rule infringed the principle of "equality standing ". As a result, Act 9/2015, 25 May, regarding urgent measures on insolvency (additional provision 3), amended the Spanish mortgage enforcement procedure once again.</p> <p>c) Judgment of the European Court of Justice 29 October 2015 (ECLI:EU:C:2015:731, Case C-8/14, BBVA SA v Pedro Peñalva López and Others). Following the delivery of the judgment in Aziz in 2013, Spanish law was modified, in particular, in relation to enforcement proceedings for mortgaged assets (Act 1/2013).</p> <p>Thus, for proceedings instituted after the entry into force of that law, an objection by the defendant, based on the unfairness of a contractual term, which is brought within an ordinary time-limit of 10 days from the date of notification of the decision ordering the mortgage enforcement, henceforth allows the suspension of the mortgage enforcement proceedings until the objection to</p>

Table 26: Consumer rights

enforcement has been adjudicated upon. A transitional provision in that law aims to take account of enforcement proceedings in progress at the date of entry into force of the law, that is to say, proceedings in which the 10-day period for objecting to enforcement had already started to run or had expired. In these cases, in order to lodge an objection to enforcement, the parties concerned had a time limit of one month that began to run from the day following the publication of the law in the Spanish Official Journal.

The Court states, first of all, that a time-limit of one month within which to bring an objection to enforcement appears, in principle, to be sufficient to prepare and bring an effective action and thus is reasonable and proportionate, having regard to the rights and interests concerned. Therefore, the duration of such a time limit does not undermine the principle of effectiveness.

However, the Court emphasises that the mechanism chosen by the legislature to start the time-limit running, namely publication of the law in the Spanish Official Journal, infringes the principle of effectiveness. On the date on which the enforcement proceedings against them were instituted, the consumers were informed individually by a notice sent to them personally of their right to oppose enforcement within 10 days from the date of that notification. The Court holds that consumers could not reasonably take advantage of a further opportunity to object to enforcement since they were not notified of it through the same procedural means used to convey the initial information. By providing that the time-limit begins to run in the present case without the consumers concerned being personally informed of the possibility to raise a new ground of objection in enforcement proceedings which were already in progress before the entry into force of that law, the transitional provision at issue is not such as to guarantee full enjoyment of that period and, therefore, the effective exercise of the new right recognised by the Spanish legislative amendment. The Court observes that taking into account the progress, the special features and complexity of the proceedings and the applicable legislation, there is a significant risk that the time-limit will expire without the consumers in question being able effectively and usefully to exercise their rights through legal action because they are unaware of or do not appreciate the exact extent of those rights.

d) The Judgment of European Court of Justice 21 January 2015 (ECLI:EU:C:2015:21, Joined Cases C-482/13, C-484/13, C-485/13 and C-487/13, Unicaja Banco, S.A., contra José Hidalgo Rueda y otros y Caixabank, S.A., contra Manuel María Rueda Ledesma y otros) gives an answer to the request for a preliminary ruling from the Court of first Instance of Marchena (Spain) lodged on 12 August 2013, which concerns the interpretation of Article 6 of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. In this sense, these rules are paramount:

1) Article 3(2) of the Act 1/2013, May 14th, on measures to protect mortgagees, debt restructuring and social rents, which amends Article 114 of the Law on Mortgages (Ley Hipotecaria) through the addition of a third subparagraph worded as follows: ‘Default interest on loans or credits for the purchase of a habitual dwelling, secured by mortgages charged on the dwelling in question, may not be more than three times the statutory rate of interest and may accrue only on the outstanding principal. Such default interest may not in any circumstances be capitalised, except in the case provided for in Article 579(2)(a) of the Law on Civil Procedure.’

2) The Second Transitional Provision of Law No 1/2013: “The limitation of default interest on mortgages on habitual dwellings, provided for in Article 3(2), shall apply to mortgages created after the entry into force of this Law. Likewise, that limitation shall apply to default interest, provided for in mortgage loans secured on habitual dwellings and created before the entry into force of the Law, which falls due subsequently, and to any interest which, having accrued and fallen due by that date, has not been paid”.

According to the ECJ, Article 6(1) of Directive 93/13 must be interpreted as not precluding a national provision under which the national court hearing mortgage enforcement proceedings is required to adjust the amounts due under a term in a mortgage-loan

Table 26: Consumer rights

<p>contract providing for default interest at a rate more than three times greater than the statutory rate in order that the amount of that interest may not exceed that threshold, provided that the application of that national provision:</p> <ul style="list-style-type: none"> – is without prejudice to the assessment by that national court of the unfairness of such a term and – does not prevent that court removing that clause if it were to find the latter to be ‘unfair’, within the meaning of Article 3(1) of that directive. <p>e) The Judgment of European Court of Justice 11 June 2015 (ECLI:EU:C:2017:60, Case C-421/14, Banco Primus SA v Jesús Gutiérrez García) gives an answer to the request for a preliminary ruling from the Court of first Instance of Santander (Spain) lodged on 19 November 2013, and confirms the idea that Article 6(1) of Directive 93/13 must be interpreted as not precluding a national provision under which the national court may adjust the default interest in mortgage enforcement proceedings, provided that the application of that national provision:</p> <ul style="list-style-type: none"> – is without prejudice to the assessment by that national court of the unfairness of such a term and – does not prevent that court removing that clause if it were to find the latter to be ‘unfair’, within the meaning of Article 3(1) of that directive. <p>f) The Judgment of European Court of Justice (Grand Chamber) 21 December 2016 (ECLI:EU:C:2016:980, Joined Cases C-154/15, C-307/15 and C-308/15, Francisco Gutiérrez Naranjo v Cajasur Banco SAU, Ana María Palacios Martínez v Banco Bilbao Vizcaya Argentaria SA (BBVA), Banco Popular Español SA v Emilio Irlés López and Teresa Torres Andreu). It deals with the temporal limitation of the legal effects stemming from the declaration of nullity in respect of ‘floor clauses’ made by the Spanish Supreme Court in its judgment of 9 May 2013. According the Court, article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding national case-law that temporarily limits the restitutory effects connected with a finding of unfairness by a court in accordance with Article 3(1) of that directive, in respect of a clause contained in a contract concluded between a consumer and a seller or supplier, to amounts overpaid under such a clause after the delivery of the decision in which the finding of unfairness is made.</p> <p>Following this decision, and in order to avoid consumer claims overloading the courts, the Spanish Government designed an out-of-court procedure to facilitate agreements with regard to the reimbursement of the amounts that consumers may have paid unduly (Royal Decree-Law 1/2017, 20 January, on urgent measures for consumer protection in the area of floor clauses (BOE 21 January 2017, n. 18).</p> <p>g) The Judgment of European Court of Justice (Grand Chamber) 26 January 2017 (ECLI:EU:C:2017:60, Case C-421/14, Banco Primus SA v Jesús Gutiérrez García). It establishes that Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding a provision of national law, such as the Fourth Transitional Provision of Law 1/2013 on the protection of mortgagors, restructuring of debt and social rent) of 14 May 2013, which, as regards mortgage enforcement proceedings which were instituted before the date of entry into force of the law of which that provision forms part and which were not concluded at that date, imposes a time limit of one month on consumers, calculated from the day following the publication of that law, within which to object to enforcement on the basis of the alleged unfairness of contractual terms. In addition, in the case the bank satisfied the requirements of Article 693(2) of the Law on Civil Procedure and initiated the mortgage enforcement proceedings only after non-payment of seven successive monthly instalments and not, as provided for in Clause 6a of the loan agreement at issue in the main proceedings, as a result of failure to pay any amount owed. However, it cannot exonerate the national court from its obligation to draw the appropriate conclusions from the potentially unfair nature of that term.</p>

Table 26: Consumer rights

Are there existing marketing practices detrimental to consumers, even if not necessarily illegal, in both domestic and cross-border transactions?	A number of European Reports have condemned the abusive planning practices in Spain, which resulted in a European Parliament resolution on March 26th 2009 on the impact of extensive urbanisation in Spain on individual rights of European citizens, on the environment and on the application of EU law, based upon petitions received (the Report was drafted by Margrete Auken). This pointed out that “many thousands of European citizens have, in different circumstances, bought property in Spain in good faith acting with local lawyers, town planners and architects, only to find later that they have become victims of urbanisation abuse by unscrupulous local authorities and that, as a result, their property faces demolition because their homes have been found to be illegally built and therefore worthless and unsaleable” ⁷⁷ . These problems were pointed out by the Report headed by Prof. Peter Sparkes, Cross Border Acquisitions of Residential Property in the EU: Problems Encountered by Citizens, March 2016 ⁷⁸ . This study has demonstrated that lack of transparency and lack of advice about public law aspects of land purchases have been a major factor in problems encountered by cross border purchasers.
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11.2 Consumer complaints

Table 27: Consumer complaints

How often do consumers complain due to arising legal issues? Are complaints against a professional service provider frequent?	See below
To whom can consumers complain? Is the procedure effective?	In the event that the consumer decides to file a complaint with the competent Consumer Administration (after trying first to reach an agreement with the company through its Customer Service department, or directly with the person in charge of the establishment), the consumer may either contact the Municipal Consumer Information Office (OMIC) of the locality or the Directorate General of Consumer Affairs of its Autonomous Community. In the first case, consumers can complain through an online form (e.g. in Madrid or Barcelona). The action of these Administrations begins with a mediation procedure with the company with which the consumer has a controversy. Associations of Consumers and Users may also represent the interests of consumers. Lastly, it is worth to mention Royal Decree 231/2008, of 25 February, regulating the Consumer Arbitration System (BOE 25 February 2008, n. 48), which provides that any disputes that may arise between companies and consumers may be resolved by the competent Consumer Arbitration Board. The procedure will not last for more than 6 months from the beginning of the arbitration. As a last resort, consumers can complain before the Courts of Justice; but such a court action may last months or years.

⁷⁷ Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU\(2016\)556936_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU(2016)556936_EN.pdf).

⁷⁸ Idem

The Council of Consumers and Users (a representative and consultative body at national level) provides data on the enquiries and complaints of consumers on an annual basis. The following table shows the amount of enquires and complaints regarding leased dwellings (vivienda arrendamiento) and homeownership (vivienda en propiedad). Enquires and complaints regarding leased dwellings are in the top ten topics, as tables below show⁷⁹.

Comparativa del total de consultas y reclamaciones en asociaciones 2014- 2015		
Sectores	Total 2015	Total 2014
Administración	25.256	23.312
Adquisición de muebles	4.479	5.455
Agencias viajes	11.332	14.285
Agua	3.462	4.357
Alimentación y bebidas	6.349	5.159
Automóviles nuevos	60.559	2.356
Automóviles usados	9.096	5.470
Compañías de Seguros	69.783	69.424
Compañías eléctricas	56.816	63.582
Comunidad de propietarios	7.533	8.521
Contenidos no publicitarios	9.760	31.164
Correos y mensajería	9.133	1.168
Datos personales	4.335	12.154
Electrodomésticos	9.806	9.693
Electrodomésticos – S.A.T.	7.166	8.136
Enseñanza	2.518	3.275
Farmacia	524	459
Gas y derivados	30.015	25.221
Hostelería - restauración	4.010	4.581
Informática y reparaciones	14.332	17.089
Medio ambiente	4.047	2.220
Otros sectores	14.391	95.064
Publicidad	84.922	81.197
Reparación de automóviles	6.008	11.197
Reparaciones en el hogar	12.746	8.449
Ropa - calzado	7.124	11.234
Sanidad privada	4.884	5.348
Sanidad pública	2.462	3.262
Seguros de automóviles	8.877	16.007
Servicios financieros	299.787	284.738
Servicios municipales	459	7.799
Telefonía	152.865	160.169
Tiempo compartido	52	176
Tintorería	1.312	1.085
Transportes públicos	24.598	36.410
Venta a distancia	6.379	18.708
Vivienda arrendamiento	25.126	24.910
Vivienda en propiedad	9.351	12.488
TOTAL	1.011.256	1.095.259

Gráfico nº 3: Total de consultas y reclamaciones atendidas según sectores económicos en 2014			
CONSULTAS Y RECLAMACIONES EN ASOCIACIONES 2014			
Sectores	Total consultas	Total Reclamaciones	TOTAL
Administración	19.636	3.676	23.312
Adquisición de muebles	4.775	680	5.455
Agencias viajes	11.936	2.349	14.285
Agua	3.579	778	4.357
Alimentación y bebidas	4.633	526	5.159
Automóviles nuevos	2.036	320	2.356
Automóviles usados	4.698	772	5.470
Compañías de Seguros	62.075	7.349	69.424
Compañías eléctricas	50.099	13.483	63.582
Comunidad de propietarios	7.290	1.231	8.521
Contenidos no publicitarios	30.886	278	31.164
Correos y mensajería	979	189	1.168
Datos personales	7.391	4.763	12.154
Electrodomésticos	8.370	1.323	9.693
Electrodomésticos – S.A.T.	6.904	1.232	8.136
Enseñanza	2.891	384	3.275
Farmacia	390	69	459
Gas y derivados	21.417	3.804	25.221
Hostelería - restauración	3.900	681	4.581
Informática y reparaciones	14.559	2.530	17.089
Medio ambiente	2.206	14	2.220
Otros sectores	80.083	14.981	95.064
Publicidad	80.914	283	81.197
Reparación de automóviles	9.675	1.522	11.197
Reparaciones en el hogar	6.895	1.554	8.449
Ropa - calzado	10.438	796	11.234
Sanidad privada	4.612	736	5.348
Sanidad pública	2.688	574	3.262
Seguros de automóviles	14.408	1.599	16.007
Servicios financieros	238.654	46.084	284.738
Servicios municipales	6.536	1.263	7.799
Telefonía	119.516	40.653	160.169
Tiempo compartido	157	19	176
Tintorería	820	265	1.085
Transportes públicos	30.700	5.710	36.410
Venta a distancia	14.569	4.139	18.708
Vivienda arrendamiento	21.672	3.238	24.910
Vivienda en propiedad	11.610	878	12.488
TOTAL	924.531	170.728	1.095.259

⁷⁹ Source: <http://www.consumo-ccu.es/dictámenes/memoria2015.pdf>, <http://www.consumo-ccu.es/dictámenes/memoria2014.pdf>

Though the Council of Consumers and Users does not provide data on the issues at stake in each topic, the study carried out by Legalitas (Observatorio Jurídico de Légalitas), based on the analysis of almost one million queries to its lawyers by clients of all ages and social strata distributed throughout the national geography during the year 2016, shows that the second most consulted subject in Legálitas was housing (19.89%), with the volume of consultations received in recent years being very stable. The main arguments for consultation were centered on leases (rental contracts, lack of payment of rent, damages to the home, return of the deposit, conservation works...) and in the community of neighbours (noises, owners' meetings, extraordinary works...). However, in the sale of housing, there was an increase of 11.73% over the previous year, which could reflect the trend of the real estate market.

In addition, controversial issues may be easily identified when they reach courts. The following examples may be quoted:

1) The existence of unfair terms in sale contracts of real state

a) Terms that impose expenses on consumers for which the seller is legally liable, such as the clause that imposes on the consumer the cost of the certifications that the seller has to deliver along with the sale contract, and specifically, the certification of energy efficiency; or the one by which the seller is authorized to pass on to the purchaser the tax on the increase of value of urban land (Supreme Court decision of 17 March 2016, ECLI:ES:TS:2016:1292).

b) Terms that link the contract to the will of the seller, e.g. when the professional seller has an excessively long or merely indicative period to perform his due obligations, or when the promoter reserves herself/himself the right to distribute the mortgage burden between the dwellings when they have already been transmitted to the buyers (Supreme Court decision of 2 December 2008).

d) Abusive terms for lack of reciprocity, e.g. when a penalty must be paid by the buyer for the delay in the payment of the price, but no penalty is due in the case of delayed delivery of the housing on the part of the seller; this term is abusive for lack of reciprocity (Provincial Court decision of of Sevilla 12 September 2013).

d) Clauses that impose disproportionate guarantees, e.g. the clause that, in the event of a breach of contract by the buyer, allows the seller to withhold all amounts already paid as a penalty (Supreme Court decision of 15 April 2014).

e) Abusive clauses for imposing waivers on consumer rights, such as the clause of submission to the jurisdiction of courts other than the court locally competent for the domicile of the buyer; or the clause that requires the buyer to comply with his obligation to pay the price even if the seller has not fulfilled his obligation to deliver the property (Supreme Court decision of 21 December 2011).

2) Sale of housing off-plan. Unfair contract term related to the delivery period, according to article 85 RDL 1/2007 and article 5 RD 515/1989 (Supreme Court decision of 13 March 2017; ECLI:ES:TS:2017:859).

3) Obligation of the promoter to return the earnest money paid by buyers on the basis of the Act 57/1968 (repealed by Act 20/2015); Supreme Court decision of 21 December 2016, ECLI:ES:TS:2016:5520; 16 November 2016, ECLI:ES:TS:2016:5104 ; and 24 June 2016, ECLI:ES:TS:2016:2960). A case in which the developer falls into bankruptcy, Supreme Court decision of 23 July 2015, ECLI: ES:TS:2015:3443.

4) Resolution of a sales contract of real estate due to the non-compliance with the delivery date, Supreme Court decision of 9 March 2016 (ECLI:ES:TS:2016:976)

5) Validity of a penalty clause included in a sale contract of real estate by which in case of termination of the contract for breach of the buyer, the seller may take all or part of the quantities delivered by the buyer on account of the price as damages, Supreme Court decision of 21 January 2016 (ECLI: ES:TS:2016:28).

6) Time-sharing disputes, e.g. regarding the condition of consumer (Supreme Court decision of 15 February 2017, ECLI: ES:TS:2017:540); and the nullity of the contract due to the existence of terms that go against the law, Supreme Court decision of 15 February 2017, ECLI: ES:TS:2017:475; and 10 November 2016, ECLI: ES:TS:2016:4840).

7) Finance the deposit needed to buy a dwelling not from the own pocket but with personal loans. No delivery of the sales deed by the Bank, misleading information about the provision of funds to face the cost of the sale and subrogation into an existing mortgage, no provision of information about taxes (Servicio de Reclamaciones BDE 2008, complaint number 20073126 <http://www.bde.es/f/webbde/Secciones/Publicaciones/PublicacionesAnuales/MemoriaServicioReclamaciones/08/Fic/msr0806.pdf>).

8) In the preliminary sales contract concluded before formalising the deed, the buyer assumes as a general rule the duty to provide the seller with an earnest money or deposit, the amount of which is not limited by law. However, problems arise when the developer fall into bankruptcy before finishing the construction and the buyer needs to start a long and complex procedure to get back the earnest money already paid⁸⁰. In this case, the Spanish Act 22/2003, of 9 July, on insolvency proceedings establishes that purchasers are not privileged creditors, but they may seek the termination of the contract (arts. 61 and 62). The Act 20/2015 (repealing the Act 57/1968) introduced some protection measures regarding down payments, according to which either a surety contract must be signed by the seller with insurance companies duly authorized to operate in Spain, or a guarantee must be issued by credit entities for the benefit of the buyer's payment. Nevertheless, the consumer protection has been reduced in the sense that the above-mentioned duties only arise when the seller has obtained the building license, whereas the vast majority of claims on the part of consumers take place before the grant of this license. Furthermore, the prescription period has been reduced from 15 to 2 years.

9) In addition to this, Spanish households have faced difficulties due to the credit crunch in obtaining the mortgage loan to finance the acquisition of the property once the construction is completed. The Spanish Supreme Court did not accept the resolution of the preliminary contract in these circumstances (Resolution 17 January 2014). Therefore, the buyer still has the duty to obtain the purchase money in order to perform his obligation of payment; otherwise he will be liable with all his present and future assets (art. 1911 Spanish Civil Code).

⁸⁰ Purchasing off plan is one of the problems in cross-border acquisitions of immovable property pointed out by Diana Wallis, 'European Property Wrongs – what can the EU do?', in Diana Wallis and Sara Allanson (eds.), *European Property Rights & Wrongs*, 14.