



frankedelafuente



The Country Files United States



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About

International Law Firm Specialized in Property Transactions,
Corporate and Tax Law. Client first, always.
We speak 

The Country Files: USA

TAKEAWAYS:

In the USA, requirements around real estate and mortgages vary widely depending on the specific region you are selling or buying in, as will various related customs as the industry is heavily regulated on the local, regional, and federal level. Thus, it is crucially important to familiarise yourself with the regulations for your particular region and its governing agencies.

Regions will differ widely in terms of such factors as agent commission practices, which regulatory bodies agents are required to go through, what the disclosure laws are when selling real estate and how Real Estate Transfer Taxes apply - including to which governmental authority they are paid to, how much is to be paid, who pays them and even what name these taxes are referred to by. This is why it is recommended to consult with a Local Real Estate Attorney to ensure you are compliant with local laws, aware of your rights and protected from unscrupulous sellers

FAST FACTS



Language
English



Currency
Dollar



Capital
Washington, D.C.



Time Zone
GMT+5,+6,+7,+8,+10



Population
341,5 million

WHAT DO THEY BUY

20.83%

NEW BUILD



79.17%

RESALES

Why they buy in Spain

15th

Ranking of foreign nationalities buying property in Spain.
Representing 1.58% of all properties sold to foreign buyers in Spain.

2nd

National Ranking of foreign buyers by average transaction value. US buyers rank second nationally among foreigners who spend the most on a Spanish property, averaging €3,006/m².

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DIFFERENCES

Costa Del Sol and the USA exhibit notable differences in their real estate practices in that In the USA, real estate is regulated at a local, regional and federal level, so much of the regulations are dependent on states, counties and even individual towns and village jurisdictions. While real estate agent licenses are not mandatory in Costa Del Sol, in the USA real estate agents have to be licensed, which is governed by local bodies

Property information disclosure in Costa Del Sol is partial, whereas in the USA, it is legally mandated by almost every state that sellers give buyers specific information about what structural and other features the house contains, and their condition. In some cases, the brokers must also speak up about hidden conditions. Many states have created standard forms with which sellers are expected to record and pass this information to buyers.

Another significant difference is that in Spain, at completion, the title deed is signed by both parties and the remaining price is paid to the seller at the Notary office, from which moment the buyer becomes the new owner of the real estate property, taking physical possession of it. In the USA, closing practices vary widely by state.

These variations compare market practices and legal frameworks in the two regions.

REAL ESTATE AGENTS

In the USA's real estate market, there is typically an agent representing the buyer and one representing the seller who are paid when a property sells. The cost of both the buyer's and seller's agent's commission is a percentage of the sale price and is traditionally paid by the seller, usually split between the agents equally, although the split can also vary based on the original agreement.

Agent commissions have typically ranged from 5% to 6%, though variable depending on several factors such as market conditions, location and individual contracts. However, a recent lawsuit has caused a significant shift in the market which is expected to disrupt this and cause the 6% commission to fall.

In most states, agents are bound by a fiduciary duty to their client, whether buyer or seller. They are responsible for the client's confidentiality, loyalty to the client's interests, must ensure full disclosure, provide relevant accounting, compliance with the client's wishes and are required to exercise their due diligence. In states where the agent is a transaction broker, they owe all of these duties except for confidentiality and may work for either the buyer, the seller, or both in the same transaction.

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REAL ESTATE AGENTS

Real estate brokers are responsible for their own agents and the agents' behavior during the transaction. Real estate compliance exists at the local, state, and federal levels and helps to protect buyers and sellers by holding brokers accountable to these fiduciary duties.

In the USA, real estate agents need to be registered at the state level, with each state's real estate regulatory office having unique licensing requirements, which you can find the websites of by visiting the Association of Real Estate License Law Officials' regulatory agency directory and their profession is governed by requiring all prospective agents to take a pre-licensing course from an accredited real estate licensing school before sitting for a real estate license exam

Real estate transactions often require notarized documents to be utilised, to ensure that they are legitimate and enforceable. Real estate agents are authorized to work as notaries, as are signing notaries and title agents.

LOCATION-BASED JURISDICTION

It is important to note that the USA has three levels of law: federal, state, and local. Certain states will have local laws to give additional governmental oversight. For example, in the state of New York, certain Nassau County residents who live in incorporated villages will not only fall under jurisdiction of the county, but also of the town and village they reside in.

For this reason it is general practice - and highly recommended - to enlist the services of a local real estate attorney familiar with and licensed to practise in the specified area, who can prevent you from falling victim to exploitation from an unscrupulous seller - such as failure to disclose what they are legally required to, attempts to foist fees they are obliged to pay onto you, attempts bypass your rights and other potential disagreements.

In the United States, four major federal laws exist to protect the rights of consumers that largely impact real estate transactions. Two of them are the Truth in Lending Act (enacted in 1974) and the Real Estate Settlement Procedures Act (enacted in 2011). These laws require that lenders disclose interest rates, the buyer's right to cancel loans and how to resolve disputes that might affect their mortgage rates.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, (enacted in 2010), empowers borrowers to file civil lawsuits against lenders who have acted unfairly if the borrower has incurred monetary losses as a result. This law, through the Financial Stability Oversight Council and Consumer Financial Protection Bureau, helps protect consumers from hidden fees by lenders and fine print.

The Fair Housing Act also prohibits discrimination during buying, selling, renting, or leasing of housing. It covers discrimination based on the consumer's race, nationality, sex, gender, disability, religion and familial status. This is an area of real estate law that can also fall under civil rights law, so a civil rights attorney can guide you regarding legal recourse.

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FOREIGNERS OBLIGATIONS WHEN OWNING REAL ESTATE

Although there are no blanket restrictions regarding foreigners owning real estate in the U.S, various federal laws have requirements and restrictions on foreign real estate investors, which are primarily reporting requirements.

For example, the Agricultural Foreign Investment Disclosure Act of 1978 requires foreign investors who purchase or transfer agricultural land in the USA to publicly file a report within 90 days of the transaction.

REAL ESTATE TRANSFER TAXES

Most states require a Real Estate Transfer Tax (which may be based on the property value) to be paid. Depending on the jurisdiction, Real Estate Transfer Taxes may be referred to by various names, varying amounts as well as whether the buyer, seller or both are required to pay and will also vary in which government entity(s) they are payable to.

		
 <p>AGENTS COMMISSIONS paid by the seller in both cases</p>	4-6%	5% - 6%
 <p>ESTATE AGENT LICENCE</p>	None	Yes, by region
 <p>PROPERTY INFO DISCLOSURE OBLIGATION</p>	Some	Yes
 <p>FUNDS</p>	Escrow	Regulated by region
 <p>PUBLIC PROPERTY INFORMATION AVAILABLE</p>	No	Yes
 <p>SIGNING THE TITLE DEED</p>	Notary	Agents or other Notaries
 <p>AGENTS</p>	Yes	Yes



	COSTA DEL SOL	UNITED STATES
TECHNICAL INSPECTION ON VILLAS	To be negotiated between the buyer and seller	To be negotiated
VIEWINGS	Yes	Yes
HOME STAGING	Not always	Common
PRICE SETTINGS	Rely on agent	Rely on agent
VALUATIONS	Licence valuation companies	Yes
CONTRACT	Yes	Yes

SELLERS



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