

New Balkans Law Office has a team of Bulgarian lawyers focused on property acquisitions by UK clients.

Set out below are typical questions and answers regarding the process of property acquisition in Bulgaria posed from the perspective of a first-time individual buyer in Bulgaria and answered by such a person's hypothetical adviser on Bulgarian law

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I have heard that in Bulgaria a person can own the building but not the land beneath it. How does this work?

Bulgarian law envisages three main types of rights over real estate: (i) full ownership; (ii) construction rights or "rights to build"; and (iii) rights of use.

(i) The full ownership right over a piece of land gives its owner the fullest set of rights possible - the right to build on the land, to use it, to mortgage it and to take all income and usufructs from it as and how the full owner pleases.

(ii) Construction rights entitle their owner to build, and own the building (or indeed any type of structure), on a piece of land that may itself be owned by another. In effect, the owner of the land and the owner of the building could be different persons.

Following construction, the owner of the building has the right to use the land only strictly to the extent necessary for the proper use of the building (analogous to the English concept of easements). This is a bundle of equivalents to the rights of way and passage, a right of quiet enjoyment and rights against nuisances.

In a way, the construction right is the spatial equivalent to an English law temporal cousin - the leasehold. Construction rights are fully alienable.

(iii) The right of use entitles its owner to use the property until the end of his/her life (or, in case of a company, for as long as the company exists) or until the end of its term, if shorter. This right is unassignable and therefore unsellable. The right to use acts to the exclusion of the full owner of the property. In that different sense, it too is similar to the English concept of leasehold.

Are there any restrictions on what property rights UK nationals can have?

Yes and no - it depends on whether the UK national is a permanent resident of Bulgaria or not. In short, UK nationals resident in the UK or elsewhere can purchase buildings in their own name, but not land. So they could buy a flat in their own name, but not a piece of land for their second home or even a house with a garden. If land is involved, the UK national would need to buy through a Bulgarian company (see the next question below). From 1 January 2012 non-resident UK nationals will be able to buy land for residential purposes just as well.

Do I need to set up a company to buy a property?

UK nationals (and UK companies) can acquire construction rights and the right to use - and therefore buy buildings and use land in Bulgaria - without restriction. The requirements for

buying full ownership over land, however, are different. UK nationals resident in Bulgaria (and arguably companies with a place or business or establishment in Bulgaria) can buy land in their own name. UK nationals who are not resident in Bulgaria need for now to buy land through a Bulgarian company. Typically, the UK national is the sole shareholder and sole director of that Company. At present (a new system of registration is expected to come in shortly) takes at present approximately three weeks to go through and is the task of the courts, although off-the-shelf companies are also available.

What is a Notary and what is their role?

Notaries are lawyers with additional specific qualifications. In Bulgaria, all transfers of rights over property in Bulgaria must be in a notarial form. Moreover, the signing of the relevant documents must be done in person or via a proxy in the office of a Notary Public in the locality the administrative municipality - of the location of the property. For the time being, there is no prospect for reform of this antiquated system.

The notary both checks that the law has been complied with and witnesses the document's execution. They may also act as a trusted third party to ensure that the transfer of the purchase price is complete before issuing the documentation.

For his role, the notary takes a fee, calculated as a percentage of the purchase price.

What are the main steps in buying a Bulgarian property?

Preparation: The Buyer will often want to view a property (though increasingly purchases are occurring over the internet or based upon architect's plans only). The price and any other conditions to the purchase are negotiated.

Title investigation: The level and the timing of legal investigation into the Seller's title to the property or rights will depend on whether the property is ready to be purchased, or if it is in the process of being built. Increasingly, buyers are committing "off-plan", and while full title investigations should be undertaken at the time of purchase, limited title investigation should be undertaken at the signing of any preliminary "off-plan" contract.

Preliminary Contract: When the parties agree on price and terms they typically sign a Preliminary Contract. This contract obligates both parties to proceed to completion but gives time to prepare the necessary documents, obtain financing and perform legal checks.

Title transfer: Both Seller and Buyer (personally or through a person authorised by them with an apostilled power of attorney) attend the Notary Public and sign the title deed. The title deed is entered in the Property Register at the Registry Agency. The Buyer receives the title deed after the purchase is registered.

The law provides that expenses for the transfer of the property - fees and taxes for the Public Notary, state and municipal fees and taxes, are divided equally between the parties, unless they agree otherwise.

The Buyer is obliged to register the newly acquired property at the Tax Administration at the administrative address of the property in 2 month after the date of signing of the Title Deed. A non-resident overseas Buyer is treated as a species of "merchant" in the eyes of a recent amendment to the law. This translates in a requirement to register (with regional authorities)

for a business ID number, as a sole trader, shortly after completion.

Is a Preliminary Contract necessary?

Preliminary contracts are involved in the majority of property purchases (similar to the exchange of contracts in the UK pending completion). In a Preliminary Contract the parties undertake to complete a transfer of a property. By itself, it does not transfer property rights but is merely a contractual exchange of promises: to transfer and to pay, respectively (it typically contains all legally “material” clauses – price, timeframe, deadline for notarial transfer and for grant of possession - and any other clauses the parties may want incorporated). In case of default, the innocent party can demand in court a transfer of the property and seek damages for delay. In limited circumstances the innocent party may be able to repudiate for breach and claim damages.

Often, the Preliminary Contract provides for a deposit (commonly 10 percent) paid at signing by the Buyer, to ensure commitment. This is forfeitable on a Buyer’s breach of material terms and repayable in double by the Seller on a Seller’s breach.

What kind of legal checks should the Buyer require?

The Buyer needs to check that the Seller has good title to the property. The Title Deed should identify the Seller as the owner. The Registry Agency is the competent authority certifying lack of encumbrances – such as mortgages, third party construction rights or easements.

If the Seller is a company, it is advisable to check whether there is a charge over the company’s business and/or assets. The competent authority in this respect is the Central Register of Special Pledges.

Title and related investigations should ideally be made before signing the preliminary contract and, again, at completion.

What documents will the Buyer (or their lawyer) expect from a Seller?

The Seller should provide:

- The original of the Title Deed of the Seller for the property;
- Sketch of the Land, issued by the Municipal Administration;
- Tax Evaluation Certificate, issued by the Tax administration;
- Certificate of Clear Title;
- Declaration of No Outstanding Tax Obligations of the Seller;
- Certificate of the Civil Status of the Seller, if he or she is a natural person;
- Married individual Sellers need their spouse’s consent at the sale.

At the Notary Office, the Buyer should also provide a declaration of No Outstanding Tax Obligations, and a declaration for the source of the funds used for paying for the property.

What if we bought land – can we begin developing it immediately?

In Bulgaria, construction is allowed only on land that is “regulated”. If your land is agricultural or forest, its designated use will be “unregulated”. Accordingly, the designated use should be changed before construction begins. Change of designated use is a dedicated administrative procedure on the basis of a development proposal. During the procedure, the size and the kind

of permitted construction are determined in line with the detailed zoning plan of the town/village.

In addition, nearly all construction requires a prior building permit. In most cases the local municipal authorities are the competent authorities to issue the permit. Building without a permit is illegal and permitless construction can be interrupted and any completed structures demolished by the authorities. For extra peace of mind, off-plan buyers may wish to investigate the building permits pertaining to the property they are investing in before signing a preliminary contract.

If we buy a property off-plan, how do we know when development is formally complete?

The Bulgarian system is based on periodic inspections and certifications of the structure by the state during the construction period (16 in total for residential/holiday developments). The certificate called “Act 15” certifies completion of works overall. “Act 16” signifies a readiness to use for newly-built or reconstructed buildings. It comes in two flavours - a Habitability Certificate (for large buildings), issued at national level by the Director of the National Construction Control Directorate or a Certificate for Registration of Exploitation (for small structures), issued by the municipal administration at the location of the property.

As the procedure for issue of Act 16 is relatively slow, preliminary contracts drafted by the developer’s lawyers typically envisage transfer of title on Act 15. Ideally for a buyer, this should be on Act 16.

How long does it take to buy a property and what are the statutory fees for that?

It takes approximately two weeks to negotiate a preliminary contract and a further month to complete the legal transfer of title.

The statutory taxes and fees amount to approximately 3.5 % of the purchase price. They cover: municipal taxes for property acquisition 2 %; scale-based fees of the Notary Public ranging between €100 and €1,500; fees for registration of the Title Deed in the Registry Agency.

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