

HIDDEN DEFECTS IN THE PURCHASE OF REAL ESTATE IN SPAIN

After the financial crisis of 2008 the real estate market in Spain dramatically changed. The percentage of newly built properties sold has moved from 44% in 2007 to only 17% in 2022¹. In other words, in 2007 almost half of the total dwellings sold in Spain were newly built while nowadays this percentage is less than 20%.

This means that now more than 80% of the transactions are related to used or second-hand dwellings. Buyers must be very careful to avoid problems with hidden defects in those properties.

For a buyer it will be essential to make a complete due diligence check of the property before its acquisition, engaging the services of an architect or technical expert to assess non-visible construction defects, as well as the services of a law firm to ensure that the property documents and registration are in order, there are no outstanding debts against the property and the terms of the purchase deed are appropriate.

There are occasions in which defects that existed at the time of purchase but could not have been detected, appear once the property has been acquired. By way of example, some of the most common hidden defects are:

- a. Water leaks that produce significant dampness in the house.
- b. Existence of beams with aluminosis in the purchased property.
- c.

According to the Spanish Civil Code, **the seller is liable to the buyer for the hidden defects of the dwelling transferred that render it useless or less useful for the purpose for which it was intended**. However, in order for the buyer to enforce this liability, the following requirements must be met:

¹ Data from INE (Instituto Nacional de Estadística): Statistics on transfer of property rights. Monthly Series. Housing sales by system and status.

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- 1. It must be a *hidden defect*:** The seller is not liable for visible defects, which are those known by the buyer or those easily recognisable by him. Neither is the seller liable for defects which, although not manifest, should be easily known to the buyer by reason of his trade or profession.

In the absence of an agreement to the contrary, the fact that the seller was not aware of the hidden defect does not prevent him from being liable for it.

- 2. The defect must have existed at the time of the sale.**

- 3. It must be a *serious defect*:** It must render the dwelling unfit or unsuitable for its use - whether that arising from its nature or that agreed- or diminish its use in such a way that, if the buyer had known of it, he would not have acquired it or would have paid less for it.

However, some cases of hidden defects in the property sold are, by their nature, true cases of a contractual breach, since a different thing is delivered from the one agreed (*aliud pro alio*).

If the abovementioned requirements are met, the buyer can chose between two alternative options:

A. Decrease in the price (*quantum minoris*).

This decrease must be proportionate to the prejudice caused by the hidden defect, as it operates as an indemnity for damages. Both parties should agree on the amount of the price reduction. Otherwise, this amount must be determined judicially, and the parties should present reports issued by experts on the matter.

With the *quantum minoris* action, the contract is maintained for the rest of clauses other than the price.

B. Withdrawal of the contract.

This implies the cancellation of the contract. Thus, the seller should return the payment received plus all the costs of concluding the contract, and the buyer should deliver the property initially bought.

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Furthermore, if the seller was aware of the hidden defect, and the buyer chooses this remedy, he can also ask for a compensation for the damages and losses that have been caused.

Both actions must be exercised within the legal term of **6 months** counted from the moment the dwelling was delivered, which normally is the date of signing of the purchase deed before the Notary.

However, in the *aliud pro alio* situations that we mentioned, the term for the exercise of the legal action is the general deadline to claim for contractual breaches, which in Spain is **5 years**.

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