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What aspects should I consider when buying or selling a house or apartment?

The choice of a property to be used as a dwelling, whether it is a house or an apartment, is an important decision that must take into consideration the lifestyle of each person, the purpose of the purchase, as well as identifying the environment in which the property is located. In Mexico City, several reforms have been approved with the purpose of establishing new parameters to regularize the intended use of the property, specifically, if the property is intended to be rented.

In this series of published articles, we will be sharing the important aspects that every person must take into consideration when purchasing real estate. In this article, we will be presenting the most relevant points to consider in the purchase of a real estate property for housing:

1. Do I have to sign any document prior to the purchase contract?

In practice, it is common that, in a purchase-sale, the parties decide to negotiate the economic agreements (purchase price, delivery date, form of payment, etc.) and, once they reach an agreement, they decide to sign a private purchase-sale contract or before a notary. However, in the event that one of your interests is to agree on a fixed price, to prevent the property from being offered to third parties, and/or to fix a relevant agreement, the ideal is to sign a promise document.

Whether it is a letter of intent or a promise contract, the signature of this document will help you to establish the basic agreements of the purchase-sale that will have to be included and respected, at the time, in the signature of the public deed in which the purchase-sale contract is formalized.

The promise has the purpose of agreeing the obligation to celebrate a contract that will be celebrated in the future, being able to be unilateral or forced for one of the parts, or bilateral. Article 2246 of the Civil Code for the Federal District, today Mexico City, establishes that for this promise to be valid, it must be in writing, contain the basic elements of the contract to be entered into in the future and be limited to a certain period of time. This will help to set the date on which the parties must sign the definitive contract, which in this case would be the purchase and sale contract.

2. What taxes do I have to pay with the purchase and sale?

The purchase of a property generates the obligation to pay certain taxes in accordance with Mexican tax legislation, these taxes and their rates vary depending on the person who enters into the contract, either the seller or the buyer and if applicable, benefit from an exemption.

What taxes must I pay as a seller?

The seller must pay the Income Tax derived from the purchase price of the property, which can be up to 35% of the value of the agreed price.

If you are an individual, you can obtain an exemption for selling a property destined to be used as a residence. The Income Tax Law, article 93, section XIX, paragraph a), establishes an exemption to the payment of income tax as long as the amount of the purchase price is less than \$5,904,608.50 Mexican pesos (or 700,000 investment units) and the transfer is formalized before a notary public. If the price exceeds this amount, the gain will be determined in order to calculate the amount of tax to be paid. It is important to remember that the value of the investment unit varies from day to day, so it is important to take into consideration the value published on the day of the sale.

It is important to consider that the exemption will be applicable as long as, during the 3 years prior to the date of purchase, the seller has not disposed of another house for which he has requested the exemption of this tax. This benefit is not applicable to real estate companies or legal entities.

What taxes do I have to pay as a buyer?

If you are buying a real estate property, whether you are an individual or a legal entity, the tax you must pay is the Real Estate Acquisition Tax or ISABI (Impuesto Sobre Adquisición de Bienes Inmuebles). The percentage of this tax varies in each state of the country taking into consideration the value of the purchase price and can range from 1.8% to 6.5%.

3. What happens if I grant a mortgage?

Mortgage financing is one of the most common alternatives in real estate sales and purchases. In this context, it is essential that the deed of sale includes all the antecedents of the credit and the constitution of the mortgage, which works as a guarantee for the grantor of the financing. In the event of default by the buyer, the bank may exercise its collection rights over the property. Once the debt is paid off, the buyer must arrange for the cancellation of the mortgage for the total release of the line, thus facilitating future transactions.

Once the buyer has paid the loan, he must request the bank cancellation of the mortgage and therefore, the release of this lien on the property in the event of a future sale of the property.

At ECIJA Mexico, we provide comprehensive assistance to owners and real estate companies in identifying the interests and needs of our clients, negotiating the economic agreements of the parties and drafting the necessary legal documents that are adapted to each specific case.

Real State Area ECIJA Mexico

socios.mexico@ecija.com

(+52 55) 56 62 68 40

www.ecija.com