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## BANK GUARANTEES IN SPAIN FOR OFF-PLAN PROPERTY PURCHASES

### PETITION & WEBSITE LAUNCHED

[www.bankguaranteesinspain.com](http://www.bankguaranteesinspain.com)

- Many Spanish Banks are guilty of gross negligence and lack of professional due diligence for their failure to issue or to verify the existence of Bank Guarantees/Certificates of Insurance to protect deposits paid in advance by purchasers for off-plan property in Spain, as required by Spanish Law, in particular, LEY 57/1968, Article 1.2
- Purchasers hold Spanish President, Mr José Luis Rodríguez Zapatero and the Governor of the Banco de España, Mr Miguel Ángel Fernández Ordoñez ultimately responsible due to their lack of supervision and regulatory control.
- In many cases where Bank Guarantees were issued to purchasers Banks are now refusing to honour them even though the developer has clearly defaulted on the contract, thereby unnecessarily forcing the purchaser into a lengthy and expensive litigation process

### BACKGROUND

Spanish Law - LEY 57/1968 provides comprehensive protection for purchaser deposit funds paid to the developer in advance for a property. The rights granted to the purchaser under LEY 57/1968 are of a 'Caracter de Irrenunciabiles' (Inalienable Character) and are INDISPUTABLE.

**LEY 57/1968 states:**

**Article 1.1: *The developer must ensure the return of the payments made plus six percent annual interest\*, by means of a Contract of Insurance granted with an Insurance Entity inscribed and authorized in the Record of the General Sub-department of Insurers or by means of a Bank Guarantee issued by an Entity inscribed in the Record of Banks and Bankers or Savings Banks, if the construction does not commence or complete for any reason by the agreed deadline.***

\* The Building Act LEY 38/99 amends this percentage to the legal rate as published annually in the Boletín Oficial del Estado.

**Article 1.2: *Must receive the sums advanced by purchasers through a Bank or Savings Bank, which must be deposited in a Special Account, with separation from any other funds belonging to the promoter, which may only contain funds deposited for the construction of dwellings. For the opening of these accounts or deposits the Banking institution or Savings bank, under its responsibility, will demand the guarantee to which the previous condition refers.***

The preamble of LEY 57/68 explains clearly the reasons for its implementation in 1968. It states that there was justified public alarm at the fact that repeated abuses had been taking place with regards to off-plan deposits. It says the abuses which were obvious criminal acts had a serious disruption of social life, constituted a serious alteration of the social coexistence and caused irreparable damage to trust and good faith.

It says LEY 57/68 was being introduced in the Public Interest to create general preventative standards to ensure the real and effective protection of funds paid in advance by purchasers and to ensure they received a refund in the event that the house building did not take effect.

However, despite LEY 57/68 being introduced in the public interest to protect deposits paid by Off-Plan purchasers we now find that during the past 10 years thousands of Off-Plan purchasers in Spain were **not provided with the legally required Bank Guarantees** and in many cases where Bank Guarantees were issued the Banks & Savings Banks are now **refusing to honour them**.

A number of Spanish Banks & Savings Banks accepted funds which they knew were for off-plan deposits and failed in their obligations under Spanish Law – LEY 57/68 – to either issue the corresponding Bank Guarantee or to verify the existence of a Bank Guarantee or Certificate of Insurance.

Some Banks included pre-determined expiry dates in Bank Guarantees that they issued even though this is contrary to the requirements of Article 4 of LEY 57/68 which states: ***'Once the Certificate of Occupancy is issued by the Provincial Delegation of the Ministry of Housing and given by the promoter of the housing to the buyer the rights guaranteed by the insurer or guarantor will be cancelled'***.

As a direct result of this negligence many purchasers have been unnecessarily forced to take expensive and lengthy litigation proceedings in an effort to have their **inalienable rights** which are granted by LEY 57/68 upheld.

## **THE SPANISH GOVERNMENT & BANCO DE ESPANA**

The Banco de España is the national central bank and supervisor of the Spanish banking system.

The Banco de España stated in their 2008 customer service report (Memoria del Servicio de Reclamaciones 2008) and in August 2008 in El Pais Newspaper ***"There are obligations imposed by LEY 57/1968 on financial institutions - some banks have not acted with diligence"***

Spanish President Mr José Luis Rodríguez Zapatero said in THE EU PARLIAMENT ON 6 JULY 2010: ***"My country is based on the rule of law and it respects and ensures that laws are respected. The courts are responsible for the application of law. We stand shoulder to shoulder with those people who, maybe, have had the wool pulled over their eyes in the property sector"***

## **ULTIMATE RESPONSIBILITY**

The ultimate responsibility lies with Mr Zapatero and the Banco de España for their failure to adequately and effectively supervise the Banks & Savings Banks who are the guardians of LEY 57/68 and who were the 'vehicle' through which the illegalities were allowed to operate.

## PETITION

Off-Plan purchasers are the innocent victims in a trail of lies, deception, negligence, lack of due diligence and complete lack of control within the real estate sector. In many cases the negligence and lack of due diligence began with the Estate Agents and has ended with the Banks & Savings Banks.

In a direct response, Ruth Genda, herself a victim of Bank Guarantee abuse, submitted a Petition to the Banco de España in January 2009, however at that time the Banco de España suggested that the matter be dealt with by the Spanish courts. This was a totally unsatisfactory response from the Supervisor of the Spanish Banking System, therefore another more detailed **PETITION** has now been organised for purchasers of Spanish Off-Plan Property who are currently suffering or have suffered **ANY type of Bank Guarantee abuse**.

This new **PETITION** has been organised by Keith Rule, Coordinator of the Finca Parcs Action Group, a group currently consisting of 63 purchasers on the Las Higuericas, Finca Parcs development, none of whom were provided with the legally required Bank Guarantees for their Off-Plan deposits.

The main aims of the **PETITION** which is primarily addressed to Spanish President, Mr José Luis Rodríguez Zapatero and the Governor of the Banco de España, Mr Miguel Ángel Fernández Ordoñez are:

- To expose the **negligent actions** of all those involved including the Banks & Savings Banks
- To highlight the **unacceptable delays** innocent purchasers are unnecessarily being subjected to in the courts
- To force **accountability** and demand **justice**
- To ensure **change** for the future

## SERIOUS PUBLIC ORDER MATTER – DEMANDS OF THE PETITION

This is a **serious public order matter** and our petition demands that the Banco de España and Spanish Government act immediately to ensure that:

- Any purchaser not provided with the legally required Bank Guarantee is **refunded immediately** in accordance with LEY 57/68
- Any purchaser in possession of a Bank Guarantee, where the developer has clearly defaulted on the contract, is able to **execute the Bank Guarantee**, in accordance with LEY 57/68, without the need for litigation
- **'Fast Track' specialised courts** be established
- The Spanish Government and Banco de España must immediately set up a **fund to underwrite the refunds** on all Bank Guarantee cases
- The Spanish Government and Banco de España must act now to ensure **the abuse** being suffered by innocent off-plan purchasers in Spain **is ended immediately** and that it is never allowed to happen again.

## THE EUROPEAN UNION

If the Banco de España and Spanish Government fail to act **within defined timescales** on the above issues then we ask the European Parliament and European Commission to take **firm and effective action** demanding that these very serious **financial illegalities** be addressed as a matter of extreme urgency.

## DOSSIER OF EVIDENCE

This is the most extensive Bank Guarantee petition ever undertaken and it is essential that we gather as much information as possible to ensure we are able to present a comprehensive dossier of evidence and a complete account as to the scale of abuse suffered by innocent purchasers of Off-Plan Property in Spain.

Any person affected by this issue is urged to visit the Bank Guarantees in Spain website and add their voice to this very important **PETITION**:

[www.bankguaranteesinspain.com](http://www.bankguaranteesinspain.com)

Other related information can be found on:

**Read my...**



<http://www.eyeonspain.com/blogs/ley5768.aspx>



<http://www.facebook.com/pages/Spanish-Off-Plan-Property-Lack-Of-Bank-Guarantees-LEY-5768/134524803233863>



[www.fincaparcsactiongroup.com](http://www.fincaparcsactiongroup.com)

Please also see the attached article – THE SHOCKING TRUTH

Contacts:

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## THE SHOCKING TRUTH

LEY 57/1968 provides comprehensive protection for purchaser funds paid to the Promoter in advance for a property. The rights granted to the purchaser under LEY 57/68 are of a 'Caracter de Irrenunciabiles' (Inalienable Character) and are INDISPUTABLE.

However many persons and companies associated with the Real Estate and Construction Industry in Spain failed to comply with the requirements of LEY 57/68.

Some Promotors / Developers failed to comply with any or most of the requirements of LEY 57/68

Some Banks and Savings Banks are guilty of Gross Negligence and acted with a complete lack of professional due diligence. It must be remembered that these Banks and Savings Banks are supervised by the Banco de Espana and many also carry out their business in other countries including the UK.

Some Lawyers who were being paid by the Purchasers and had a legal duty to act in the Purchasers best interests failed to carry out the relevant checks to ensure their clients funds were protected at all times in accordance with LEY 57/68.

Some Estate Agents failed to carry out any checks on the Promotor or Developer prior to marketing the developments. Many also continued to advertise properties on developments where they knew the developer and funding bank were failing to comply with the requirements of LEY 57/68.

Some Estate Agents continued to entice purchasers by stating in their promotional material '**BANK GUARANTEES INCLUDED**' when they knew that many of the clients they had already sold to on the exact same development had not received the legally required Bank Guarantees.

This is a shocking situation and many thousands of innocent purchasers are at risk of losing their hard earned money due to the negligence and greed of some Promotors, Banks, Lawyers and Estate Agents.

The Banks & Savings Banks were the 'vehicle' through which the illegal activity operated.

The Banks & Savings Banks who were funding the developers were happy to use purchasers 'unsecured deposit funds' to lessen the Banks exposure to the various developments.

The fundamental problem is that the Spanish authorities failed to ensure compliance with LEY 57/68. For many years' developers, banks, agents and lawyers have been allowed to ignore the requirements of LEY 57/68.

Many of the lawyers and agents received much of their business from the developers and banks; therefore it was not in their interest to attempt to stop the illegal activity because by doing so they would be 'biting the hand that feeds'.

Many thousands of innocent purchasers have been robbed by the corrupt developers and negligent banks, lawyers and estate agents.

The Banco de Espana has also failed to regulate and monitor the activity of the Banks & Savings Banks with regards to accepting off-plan deposits. The Spanish legal system has failed to uphold the INALIENABLE RIGHTS granted to the purchaser under LEY 57/68.

The Spanish Government must also be held accountable due to the fact that for years they have ignored this problem and have failed to take the appropriate action.

The Banks, Savings Banks, Banco de Espana and the Spanish Government must collectively accept responsibility and must act immediately to ensure that by whichever means all purchasers who were not provided with the legally required Bank Guarantees receive a FULL refund of their deposit together with the addition of legal interest.

The Spanish Government together with the Banco de Espana must ensure that all those persons and entities who failed to comply with the requirements of LEY 57/68 and all those who were complicit in the illegalities are punished accordingly.

Legal action is now being taken by many purchasers according to LEY 57/68 Article 1.2 and justice must be done in these cases if Spain wishes to go some of the way to repairing its badly damaged reputation in relation to the Real Estate and Construction Industry.