

## Buying Property in France

### The French Conveyancing Process

The property purchase process in France is very different from the UK, with potential pitfalls to the inexperienced first time buyer. It is very important to use the services of a reputable Law firm to guide the buyer through the complications of buying a property abroad.

### The Parties

A French conveyancing transaction by its very nature will introduce you to a number of people and organisations which are "foreign", in several senses of the word.

#### • The French "Notaire"

He is the French lawyer who specialises in property matters. He is a public official appointed by the French Ministry of Justice who charges an 'ad valorem' fee for preparing the conveyance. He is not acting in the same way as a Solicitor. His duties towards his clients are different. Do not expect him to represent you in the same way you are used to in the U.K. The notary is neutral in a conveyancing transaction. In this neutral legal capacity he is responsible for conducting enquiries leading up to completion and is accountable to the Revenue for payment of the vendor's capital gains tax and to the "Bureau de Conservation des Hypothèques" for registration of the conveyance after completion.

The "notaire" is also responsible for making good title and liable for any mistakes he may make in the "acte de vente" (final completion contract) for which he has professional indemnity cover. Beware of "Notaires" who try to avoid their liabilities by excluding it. Do not complete if such a clause is inserted by the "Notaire". The "acte de vente" is kept in the "notaire's" archives in perpetuity, after it has been produced to the "Bureau de Conservation des Hypothèques" for registration purposes, and only an official copy ("expedition") is provided to the purchaser as evidence of title. A purchaser of property in France can never therefore obtain possession of the original title deeds and cannot consequently lodge the same with a bank as security for a loan. The fees of the notary are nearly always paid by the purchaser, even though the notary is, in practice, usually selected by the vendor. In large transactions, two notaries are frequently employed and share the single conveyancing fee. In smaller transactions, however, it may be advisable to employ only the single notary.

#### • The Estate Agent

The estate agent or "agent immobilier" has brought vendor and purchaser together and will take a commission, often of the order of 5%-8% payable at or before completion. They are operating on both sides of the Channel for individuals looking to buy French properties. They owe a professional duty of care to their clients and you should always check that they are duly

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registered. Check whether any quoted commission rate is TTC = inclusive of VAT. For a number of years, Notaires have also been able to act as agents and do so increasingly. Their commission over and above statutory legal fees tends to be less than that charged by agents. The French "agent immobilier" needs to be bonded, insured and possess certain minimum qualifications. Avoid non registered and non bonded agents.

- **The "Cadastre"**

It is the French land survey office. It is locally based and holds the plans of every parcel of land in the District, containing records as to parcel numbers and information as to the nature of each parcel.

- **The Bureau de Conservation des Hypothèques**

It is the Land Charges Registry, organised on a district by district basis. This is the registry where property ownership is recorded and also where charges against a particular property are registered. Both the Cadastre and Bureau de Conservation des Hypothèques are open to public inspection.

- **The "géomètre"**

The "géomètre" or land surveyor measures boundaries, settles boundary disputes and similar matters. A structural survey of a French property is not usually obtained as a matter of routine, as it is in Britain, and there is no direct equivalent in France to surveyors as we know them in the United Kingdom. We however recommend that a survey is carried out, and an architect or other qualified person can be employed to do so. This report is called an "expertise".

## **Buying an Established Property**

As in England, there are two stages in a French conveyance; contract and completion. The general French rule in property transactions is that when purchaser and vendor are agreed on the price and on the thing to be purchased, there is deemed to be a sale at that point. It is usual to "exchange contracts" at an early stage in France. Accordingly, many matters that would be dealt with in England before exchange such as local authority and land charges registry searches, establishing good root of title and so forth, are dealt with in France by way of vendors' representations and conditions precedent.

### **1. Making an Offer**

An offer can be made either verbally or in writing. Don't be put off by an asking price that is a little over your budget as, depending on the buoyancy of the market, most vendors will be willing to negotiate. It is worth asking the agent what he or she thinks you should offer, but do remember that ultimately they act for the vendor and their commission could be a percentage of the sale

price. Do not worry about making an offer that is lower than you can afford, as you can always raise it if necessary. Whether you make a deal depends of course on the local property market and how urgent the vendor wants to sell. If you cannot get the price you want then walk away, there are plenty more beautiful properties out there.

## **2. Signing the Preliminary Contract**

In France, when you buy a property you will be very quickly asked to sign a preliminary contract. A contract, known as a "compromis de vente", a "promesse de vente" or a "sous-seing privé", is entered into early on in the process, and this commits the vendor and buyer to a deal they will conclude with a deed of sale, or conveyance. The agreement is normally drawn up either by an estate agent or a notaire and then handed to the notaire overseeing the completion of the sale together with the deposit.

Unless special arrangements have been made, the conveyancing on the sale will be conducted by the notaire appointed by the seller of the property. The buyer may, if he wishes, appoint his own notary to protect his interests.

The contract gives the details of the parties and the property, the price and the completion date when the signing of the final deed of sale takes place. The contract must also contain references to conditions covering the presence or absence of termites, asbestos in the property ("amiante") and lead and lead poisoning ("saturnisme"), and recently there must also be an "Etat des risques naturels et technologiques" pursuant to article L.125-5 and R 125-26 of the Environmental Code, and a "Diagnostic de performance energetique" which shows the efficiency of the heating and an estimate of gas emissions. Finally, it will include details of the notary or notaries overseeing the transaction and of where the deed that completes the conveyancing, the "acte de vente" – sometimes referred to as the "acte authentique" or even the "acte authentique de vente" – will be signed.

## **3. The Deposit**

At this stage, a deposit of 10% of the purchase price is paid by the buyer to the notaire or the estate agent, backed by a financial guarantee and a professional liability insurance. The amount can be reduced if the parties agree. It is extremely unlikely that a deposit will attract interest. The deposit will be considered as a payment on account should the completion take place. Under no circumstances should money be paid directly to the vendor at this or any other point in the process, nor should the buyer agree to any side payments, or "dessous la table".

## **4. Seven-Day 'Cooling-Off' Period**

By virtue of a Law which came into force on 1st June 2001 ("Loi SRU") applying to most French Residential property purchase contracts there is a seven-day 'cooling-off' period from the day after you receive a copy of the contract, countersigned by the vendor. During this period, you can withdraw from the sale and not be liable

for any penalties.

You cannot normally be required to pay the deposit before the end of this time. If you decide not to proceed you must notify the seller formally within seven days. The seller must receive the notice within that time, and there are strict rules as to how the notice must be served. If you have paid a deposit, this is to be returned within twenty-one days of service of a valid notice to cancel. If you withdraw from the purchase after this cooling-off period, you will probably lose his deposit and may be liable for penalties. If a penalty clause is included in the contract, it will stipulate the amount payable in case of withdrawal. Should the vendor withdraw, the deposit will normally be refunded and the vendor must pay any damages stipulated in the contract. These damage payments will have to be settled in a court action.

## 5. Get-out Clauses

If the contract contains "clauses suspensives", or get-out clauses, laying out conditions to be met during the sale process, the buyer may, in some circumstances, be able to withdraw from the purchase without the risk of losing the deposit and having to pay penalties. The sale can be made conditional upon a number of factors, such as: the offer of a mortgage; the absence of rights of way across the property; the absence of a "droit de pre-emption", or right of preemption, that gives a local authority, land commission or another third party the right to buy the property or its land; the absence of asbestos in the property, termites, dry rot and wet rot and lead piping. The vendor must declare in the contract whether the land falls within an area highlighted by the local authorities as being susceptible to lead, asbestos and termites and, if so, must annex a report to the contract saying that an inspection has taken place and that the property is free or not free from termites etc.

## 6. Between Compromis de Vente and Completion

The Notaire will do his work and obtain information from the various bodies involved before completion:

- **Searches** for the presence of lead, asbestos and termites. As necessary, searches for the presence of lead, asbestos and termites are also carried out through the agent or Notaire.
- **"Hypotèques"** (mortgages/charges). Once the contract is signed, the Notaire will obtain the equivalent of a Land Registry search from "the Bureau de Conservation des Hypothèques". This search will disclose any restrictions on the seller's right to convey title and the existence of mortgages. The contract should have provided that the proceeds of sale will be used to pay off any mortgages or other charges which must be removed from the Register at your seller's own expense.
- **Urbanisme.** The Notaire will apply for planning information from the local authority which affects the property you are buying. A "Certificat d'Urbanisme" or "Note de Renseignements d'Urbanisme" is obtained. This is a document from the local authority that declares the future use of the land and administrative restrictions or requirements which apply. The "Certificat" also gives

information on whether building is allowed, the density and other details of development. If the "Certificat" is positive, the planning authorities may not refuse planning permission, which is obligatory before any building work starts. Note however that a "Certificat d'Urbanisme" is only valid for one year.

- **The Right of Pre-Emption** ("Droit de Pre-Emption") In most cases a local authority will have the right to buy the property instead of you if they wish. They usually have two months in which to exercise this right and therefore completion is very unlikely to take place before a two month period has expired.

- **Title Deeds.** To ensure that you have undisputed ownership of the property, the Notaire will be asked to provide either copies of title deeds or a 20 year origin of title in your final conveyance deed. These documents also give information on rights of way etc affecting your property.

- **Personal Details.** The Notaire will require evidence of your "état civil" or civil and marital status. Normally you will be required to provide birth certificates, marriage certificates and divorce Decree Absolute or Death Certificate of any previous spouse if relevant, and sometimes photocopies of passports.

## 7. Completing the sale

When all the procedural formalities have been concluded, the notary will summon the parties to his office for the signing of the final deed known as the "Acte de Vente". The formalities leading to completion usually take between two and three months. The completion date in the contract will be postponed automatically by the notary if any part of the administrative process remains outstanding. This should be borne in mind by the buyers, who should not make any travel arrangements until the notary has given them a date. The Notaire will ask you for the balance of the purchase price and legal fees which must be in cleared funds in his account before completion can take place. Make sure

that the full purchase price will be available in good time before the date fixed for completion.

Transfer of money between the United Kingdom and France can take longer than you think and often at least one week. In most instances you can avoid having to travel to France purely for the signature of documents by organising for a "procuration" or power of attorney for signature. This document may appoint a friend who is resident in France or (and more usually) a member of the Notaire's own staff. The attorney can then sign the deed of sale on your behalf at a time convenient to the Notaire and your seller.

## 8. Registration

Once the "acte de vente" is executed, title to your property is registered by the Notaire at the "Bureau de Conservation des Hypothèques", the equivalent of the English Land Registry. After it has been registered, the "acte de vente" is kept in the Notaire's archives in perpetuity and only an official copy or "expédition de vente" is provided as evidence of your title. You can never therefore obtain possession of the original title deeds and cannot consequently lodge the same with a bank as security for a loan. If you require proof of ownership immediately after completion for the purposes of,

say, taking a subscription to the utilities or sorting out insurance, the Notaire should be asked to

supply a statement or "Attestation de vente" confirming that you are the owner. The registration process itself often takes several months or even a year to complete. If you are not French resident for tax purposes you should register your ownership of the property by 30 April in the year following completion of your purchase with the Centre des Impôts des Non-résidents at 9 Rue d'Uzès, 75094 Paris Cedex 02.

## **Buying an Off Plan Property**

Contracts for the sale of new properties that are as yet incomplete, differ from those used for the sale of existing properties, in that they are subject to strict laws for the protection of the consumer. The French off plan sale is called "Vente à l'Etat Futur d'Achèvement". Sales off plan or purchased during construction are governed by Article 1601 et seq. of the French Civil Code. This legislation permits the sale of property from plan, provided a number of fairly strict legal requirements are met as to title, planning permission, financing guarantees, stage payments, statutory warranties, insurance cover etc.

**There are three distinct stages which are summarised below:**

**1. The Option Contract**, known in French as a "Contrat de Réservation" The option or "contrat de reservation" is a document that varies little in practice as most of its provisions are fixed by law. This gives the purchaser an option to buy a specific property, usually at a fixed price, inclusive of TVA (VAT) at 19.6%, secured by deposit of not more than 5% of the purchase price into a blocked, non-interest bearing, account, to which neither the purchaser nor the vendor have access until legal completion. Although there are a number of cases in which the purchaser can demand the return of his deposit, the purchaser will usually forfeit the 5% deposit if he merely changes his mind.

**2. Completion.** The purchaser is invited by the notary to take up his option and will be sent a copy of the draft conveyance ("Acte de Vente"), plans and elevations, the "état descriptif de division", the "règlement de co-propriété" and other documents. The purchaser then has one month from date of receipt of these documents to consider them and either execute the conveyance or forfeit the deposit. The "Acte de Vente" should provide inter alia either that an appropriate financing guarantee has been provided by a bank ("garantie extrinsèque") or, if the developer meets certain liquidity or other requirements, state that those requirements have been met in which case no external guarantee will be given ("garantie intrinsèque"). These guarantees, known as "garantie d'achèvement", are to protect purchasers from defaulting builders and developers. The conveyance should also offer a 10 year warranty against structural defects, which is compulsorily underwritten by insurance if the development began after 1979 and a 2 year warranty against defects which do not affect structural integrity.

On completion, title passes to the purchaser, the initial 5% deposit is released to the developer and the purchaser pays the amount required at completion, usually at least 30% plus the conveyancing fees and costs. These are roughly 2 to 3% and include the notary's fee, stamp duty

and Land Registry Charges. Off plan sales carry no transfer duty payable to the French Government, because TVA at 19.6% is included in the price of the new property. Thereafter, stage payments are made as the building work progresses, against a Certificate from the developers' architect that the particular building stage, to which the progress payment relates, has been completed. Periodic visits should be made to the site during the construction phase to ensure that all is well, that building is progressing and to forestall any problems.

**3. The Handover of the Property, known as "Remise des Clefs".** The third and final stage is the handover known as "remise des clefs". Once building work is complete, the purchaser will be invited to pay a final instalment, usually 5%, and attend to inspect the property. It is important that either the purchaser personally or a representative attend to inspect the property and take delivery of the keys, having previously arranged appropriate insurance. A thorough inspection of the property should be made at this stage. The French system does not provide for guaranteed delivery dates for new build properties.

## Acquisition Costs

### Buildings and Contents Insurance

Once the contract is signed, adequate building insurance cover should be arranged, as a contract to acquire the property is legally binding, whatever the condition of the property on completion. It is a criminal offence in France not to have minimum third party civil liability and fire insurance in force on completion.

French insurance coverage is similar to that given in the UK and should be automatically extended to include "recours des voisins et des tiers" (damage or injury to neighbours and third parties). "Assurance multi-risques habitation" or householder's comprehensive insurance is an extension to minimum cover which protects you not only against damage or injury to third parties but also usually covers:

- fire, explosions, lightning and terrorist attacks;
- storms, hail and the weight of snow on roofs;
- natural disasters;
- damage to installations due to flooding or freezing;
- breakage of glass and mirrors;
- household accidents and damage to electrical appliances;
- theft and acts of vandalism.

Sometimes, objects of value such as jewellery, objects in solid precious metals, cash and securities, radio and TV sets, record players, music systems, tape recorders, video tape recorders, cameras and photographic equipment are excluded from the theft and acts of vandalism cover when the property is uninhabited. You may wish to take over your seller's existing insurance policy and, if so, you should establish what

cover he has effected. Alternatively, you can arrange insurance from England using one of the firms specialising in French property insurance. If you are buying a property in co-ownership, such as an apartment or a villa on certain forms of estates, you should pay extra attention to the cover that needs to be taken out. It is likely that the co-ownership will insure the buildings, although the extent of this buildings insurance can vary. Thus you should obtain a copy of the coownership's insurance certificate and provide this to your own insurer, to be certain that all risks are covered. There may for example be certain elements of the property or its fixtures that are not covered by the co-ownership's policy.

## **Legal Costs and Expenses**

As buyer you will be solely responsible for the legal costs and expenses incurred in relation to the transfer of French property which must be paid to the Notaire before completion takes place. The conveyancing costs consists of the Notaire's fees, land registry fees and stamp duty. They depend on the purchase price of the property.

### **1. Registration Fees (broadly equivalent to UK Stamp Duty)**

The most significant part of the acquisition costs are for taxes and stamp duties to be paid to the French State. Stamp duty is payable at a maximum of 5.09% of the purchase price. This comprises 3.6% to the Département, 1.2% to the Commune, 0.20% to the State and 0.09% duty made by the state for assessment and collection charges ("frais d'assiette et de recouvrement").

### **2. Notaire's fees**

The notaire's fees include various fixed costs for formalities for performing certain acts and formalities, entitled "emoluments", which are calculated in proportion to the purchase price (see table below). When the purchaser takes out a loan, the notary receives fees on the amount borrowed, at a rate of approximately 0.1% of the amount borrowed.

#### **Portion of purchase price Fee rate**

First €3,050 or part thereof 5%

Second €3,050 or part thereof 3.3%

Next €10,670 or part thereof 1.65%

Above €16,770, with no upper limit 0.825%

For any price over €16,770, use the following formula to work out the notaire's fees:

$$(P-16770) \times 0.825\% + \text{€}429.21, \text{ where } P \text{ is the purchase price.}$$

VAT at 19.6% must be added to this, so overall allow around 1.1% of the purchase price for notaire's fees. Please note that notaries can charge extra if they have negotiated the sale or if there are any exceptional difficulties; it is a good idea to reach agreement on this at the outset, if you can.

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### 3. Mortgage Fees

In addition to any fees charged by your lender (whether in the UK or France), a further registration fee of 0.1% of the purchase price is payable to the French mortgage registry (only, of course, if the mortgage is over the French property being bought).

### 4. Estate agent's Fees

Although estate agents' fees are often at the expense of the seller the contract may provide that these be paid by you in addition to the agreed price. It is important to check this point before you sign any document in France or England. Agents' fees are usually between 3% and 10% of the purchase price.

### 5. Detailed Statement of Costs

When the formalities are completed, the notary will send you, with your deed of title, a statement of costs, which will show individually the taxes paid to the French State (transfer taxes, stamp duties), the other amounts incurred and the emoluments received by the notary's office. If your account shows a credit balance, a cheque to that amount will be sent with your deed of title. Otherwise, you are required to pay the remaining sums owing.

The above information was provided by the French legal specialists at the International Property Law Centre. If you would like to discuss how the International Property Law Centre could help you safeguard a purchase in France, you can visit their [website](#), or contact a member of the Edison Ford team, who will happily make an introduction for you.

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