

The buying process in France - “Resale” properties

Stage 1: Finding the Property of your dream and making an offer

You may find the property of your dream through an Estate Agent in France or in England, a Notaire (French Lawyer) or directly with the seller.

You must ensure that the agent you are using is properly licensed by holding a Carte professionnelle and that there is adequate indemnity insurance in place by being bonded with an organisation such as FNAIM. These details should be available on the estate agent’s letterhead, particulars of sale and in their shop window. As it is difficult for English agents to hold such a licence, many in fact have a network of French agents who do hold the necessary licence and insurance. You should ask the agent to confirm that this is the case.

When looking around at potential properties, make sure you ask for a breakdown of the purchase price as it is not uncommon for estate agents and notaires to include their fees in the asking price. You need to make sure that you take into account all the relevant costs involved in the purchase and those which you are liable to pay. Please note that as a purchaser, you are usually responsible for the estate agents and notaire’s fees as well as the base price of the property.

It is also advisable to check the property for any alterations to the building/ extensions etc. Ask the agent about these as he/she should know and if there has been any works done to the property, all relevant paperwork should be in order and supplied as part of the contract package. You should also report these to your legal adviser who will check that the relevant planning permissions are in place. If some fixtures and fittings are included in the sale, make sure

you have a detailed schedule of the items to be left at the property and the price agreed in their respect. This will ensure that all the relevant items are left in the property.

Once you have found the property of your dream, you may decide to make an offer. The offer can be made verbally or in writing. A written offer which has been accepted is binding so if one of the parties decide not to proceed, it is a breach of contract. In this case, the French court may award damages if it can be proved that there was an agreement and that a loss has been incurred.

If an offer has been agreed, the seller should take the property off the market and appoint a Notaire to prepare the relevant paperwork.

A Notaire is a French Public Official who ensures that all the documents involved in the transaction are legally in order. One should not assume that a Notaire will carry out the same steps as a solicitor in an English conveyance. Notaires are independent and do not represent either party to the transaction. They make sure that the documents are properly drafted and the relevant taxes are paid. For this reason alone, it is important that you have your own legal adviser to represent your interests so that the documents suit your particular circumstances.

A suitably qualified UK solicitor fluent in both languages and legal systems will be able to advise you as the purchaser and ensure that your interests are best protected under French and English law. Many notaires are not fluent in both languages and certainly only a few will have any knowledge of the English legal system which must be taken into account as it is relevant to anyone who is UK domiciled.

Stage 2: Signing the “Compromis de Vente” or “ Promesse de Vente”

This is the first initial contract prepared by either the Estate Agent or the Notaire and forms the basis of the purchase. It is important that this document is checked through carefully to ensure that it contains all the relevant clauses to suit your particular circumstances. There are special clauses (“clauses suspensives”) which can be added to protect your interests particularly if the property needs to be converted and you require planning permission. If you do not have these special clauses inserted in the contract, you may lose your deposit and incur penalties if you decide to withdraw from the agreement. Other standard conditions suspensive refer to mortgage finance, local authority search, pre-emption rights, easements and rights of way. However, it is not unknown that some contracts do not have these and so it is essential that the contract is checked by someone legally trained to ensure that all is in order and your interests are protected.

Once the contract has been checked through and everything appears to be in order, you will be asked to sign the Compromis

and pay a deposit (usually 10%, although this can be less if agreed with the Seller). The contract can be signed in this country as it is a document sous seing prive and not authentique.

It is advisable that the deposit is paid to the notaire rather than the agent. The notaire will pay the deposit into a designated account in the name of the client and will only release the money to the seller upon agreement from both parties. The estate agent may not be as vigilant so that if there is a disagreement between the parties and the deposit is to be returned to the buyer, the agent may have already released the deposit to the seller and may struggle to get it back.

The original Compromis you have signed will then be sent to the seller for his signature and a copy of it will then be sent to you. Upon receipt of the copied document, you will have the benefit of a 7 day cooling –off period to change your mind and withdraw from the agreement without having to give any reasons. After this period, if you withdraw from the contract, you will lose your deposit, be compelled to execute the contract and pay the Agent’s fees and any damages to the seller.

Stage 3: Pre-completion searches and ownership structure

Once the 7 day cooling-off period has expired, the Notaire will carry out the various searches against the property and obtain any other relevant reports such as termites, asbestos, lead, environmental, gas and electricity but also energy efficiency reports if these have not already been supplied.

The notaire will also investigate title to the property to ensure that the seller has title to sell. This investigation may reveal that the property falls within the ambit of pre-emption rights. If this is the case, the notaire should write to the local authority (Mairie) to make sure that they will not exercise their pre-emption rights.

Pre-emption rights allow local authorities to step in the transaction and demand that the property is sold to them for the purposes of development. If this is the case, the buyer will receive his deposit back and the contract will be withdrawn. If the notaire fails to notify the local authorities and they decide to exercise their rights, the buyer will be forced to resale the property to the local authority who can step in at any time within a period of two years from the date of completion. This can have devastating consequences.

If the notaire notifies the local authorities, they have a period of two months from the date of notice within which they have

to respond. If they fail to respond, it is presumed that the local authority will not exercise their rights and this gives sufficient protection to the buyer. Alternatively, the local authority may simply write to confirm either way. It is very important to know where you stand otherwise you may be in a difficult position.

The results of the various searches together with a draft of the Transfer Deed (acte de Vente) will be sent to you usually around 2 months after signature of the Contract. You will therefore have the opportunity to check through the results and make sure that everything is in order. At this point a fixed completion date will be given to you. (see below)

The Transfer Deed is the document which transfers title to you and which will be registered after completion. It is drafted based on the information contained in the Contract. It is at this stage that you should consider the best method of ownership. Your legal advisor should explain the various options available to you so as to mitigate inheritance rules and taxes. These include buying “en tontine “ or “ en indivision”, through a marriage contract or through a company in France or in the UK.

The ownership structure should be determined before completion takes place as it may not be possible to change it afterwards.

Stage 4: Completion

Once the draft Transfer Deed has been approved, the Notaire will fix a date for completion. This means that both parties should make arrangements to attend the Notaire’s office in person to sign the final Transfer Deed. The buyer should arrange for the balance of the purchase money to be sent to the Notaire, ensure that insurance is in place from the date of completion and notify all the relevant utility companies that he will be the new owner as from the date of completion.

If you are not able to attend completion in person, it is possible to have a specific Power of Attorney appointing the notaire’s clerk to sign the Transfer deed on your behalf and deal with paying stamp duty and registration of title. This power of attorney is usually prepared by the Notaire and as principal I am qualified to witness your signature to the French legal document and obtain the Apostille (special seal) . It usually takes 10 working days to

set up the power of attorney so it is important that this is in place as soon as you know that you will not be able to attend in person so as to avoid delays in completing.

You should note that once you have signed a contract, you have contracted to complete the transaction so that failure to do so will result in the other party being able to seek indemnity for breach of contract. The amount the defaulting party will have to pay is either fixed in the contract with reference to a “clause penale” or at the discretion of the Court. In any event, the deposit will be forfeited.

Once the Transfer Deed has been signed (Completion) , the Notaire will deal with the stamping and registration formalities and will keep the original deed in his office. The notaire will only send you a certified copy upon request (“expedition”) or an “Attestation” and this may take several months to come through.

Stage 5: Wills update

Both English and French laws make a distinction between movable and immovable assets. Whether an asset is movable (such as bank accounts, furniture etc) or immovable (land) dictates which law is applicable.

Movable assets are dealt with in accordance with the laws of the domicile whereas immovable assets are dealt with in accordance with the laws where the asset is situated.

This means that in the case of a buyer of a French property who is domiciled in England & Wales, all his worldwide movable assets (ie. Money in accounts in France and England, furniture, stocks and shares etc) will be dealt with under English Law. Any immovable assets will be dealt with under the law where the property is. His English home will be dealt with under English law but his French home will be dealt with under French law.

It is important therefore to make sure that you have updated your English will to make reference to your worldwide movable assets

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falling under English law and to exclude your French property. This will save your beneficiaries costly court proceedings.

You should also consider having a French will which would deal only with your French property. Your French will should be carefully drafted so that it does not contain a revocation clause which could cancel your English will. For this reason, it is important that your legal adviser liaises with the solicitor in

charge of preparing your UK will and we can assist with this so please do contact us.

In addition, there are strict inheritance rules in France which means that testators do not have the same testamentary freedom as the one allowed in this country. Your legal adviser should discuss these with you so that you may mitigate the various inheritance rules and taxes. (See above on ownership structure)

If you have any queries or would like further information and advice, please do not hesitate to contact us on 01202 355480 or email Lauren@frenchlawmatters.co.uk.

French Law Matters can also assist in a whole range of other non-contentious issues including:

- » sales and purchases of resale , newbuilt, leaseback properties and plot of land;
- » inheritance involving French assets;
- » advice on town planning applications
- » advice on tax planning and inheritance issues;
- » French wills and powers of attorney;
- » Long term and short term rental agreements;
- » Company formation