

CONVEYANCING IN FRANCE

Introductory guide by Fabien Cordiez

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This introduction guide provides an outline of some legal implications of buying or disposing of residential property in France. It also identifies some of the main pitfalls to avoid. A few English guides are published on this subject, but none are comprehensive, or necessarily correct or up-to-date. Every care has been taken in the preparation of this guide, but you should in all cases approach your French purchase with caution and seek comprehensive legal advice at the earliest stages from an independent bilingual solicitor qualified to practise French Law. No liability will be accepted for the consequences of failure to do so.

In many ways, the French purchase process affords a certain amount of protection to the buyer. French law is well endowed with Consumer Protection Laws: the process of buying a house in France is very structured and regulated. These laws are strictly enforced but there is however a small number of unprincipled agents and vendors who take advantage of the differences in language, culture, law and ethics. It is therefore advisable to instruct your own lawyer to guide you through the purchase or sale process and protect your interests.

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1. The sale contract

The purchase or the sale of a real estate raises many questions, even fears, particularly when buying overseas. The process involves a complex legal procedure intended to avoid problems both for the purchaser and the vendor.

1.1 The drafting of a preliminary contract

An initial agreement sets the sale's terms and conditions. It is a provisional contract while the notaire prepares the Title Deeds. The preliminary contract is legally binding upon both the buyer and the vendor. It is highly recommended to have the contract drafted by a professional (*avocat* or notary). The preliminary contract can take various forms:

- An unilateral undertaking to sell: the vendor alone commits himself to selling within a defined timescale and at a given price; the purchaser does not commit himself to buying but must pay a deposit which can be lost if he does not buy the property for a reason other than those which have been agreed with the vendor from the outset (*conditions suspensives*).

- An unilateral undertaking to purchase: the purchaser alone commits himself to buying a property under specific conditions; the vendor is held by no obligation.

A *compromis de vente* (bilateral agreement - most widespread): the two parts agree one to sell, the other to buy subject to specific conditions (called *conditions suspensives*) and only if all these conditions are complied with. The property transfer only becomes effective if all the conditions are fulfilled. The *condition suspensive* can be obtaining a loan: if a purchaser cannot gather the funds necessary to the operation, there is no more obligation to purchase and the deposit is returned. Conversely, the deposit can be kept by the vendor if the sale is not carried out and the responsibility falls with the purchaser.

Whatever preliminary contract is chosen, one must bear in mind that the preliminary contract is legally binding upon you. Do spend time analyzing the various terms into detail and ask questions to your solicitor. In the same way, do not hesitate to negotiate the clauses of the contract. Do not pay any money before signing. It is best to pay the notary or the estate agent, but never pay the vendor directly. The above mentioned contracts all have the same goal: to quickly concretize the agreement between the vendor and the purchaser and allow the notary to prepare the final sale Deed. But the true transfer of property takes place only at the time of the signature of the Title Deeds (Acte Authentique) at the notary's office.

1.2 Signature of the final sale contract

Once the notaire has carried out the relevant checks and searches and all the conditions are met, the final sale contract is signed at the notaire's office. You can also sign by proxy if you cannot attend but your signature on the power of attorney must be legalised by the French Consulate or a solicitor or notary public in your country of origin. The purchaser is given a

provisional ownership certificate whilst the Title Deed is being registered. The notaire pays the vendor the balance of the price and hands over the keys to the purchaser.

2. Planning permissions

A planning permission must be obtained for any new construction or for refurbishing an existing building.

Planning permissions applications must include the following:

- Identification details of the applicant, as well as the land on which there are plans to erect a building;
- The plot of land's location map;
- Layout plans indicating the height of the building, its influence on the surrounding area, plans of the frontages, localization of public and private equipment (access roads, evacuations, etc.);

Applications can be filed on your behalf by your representative, provided a proxy is signed in that regard. Your representative can be the architect who drew up the plans, your solicitor, the builder or any other person of your choice.

3. Conservation areas

A conservation area can be a site of artistic, historical, scientific, legendary or picturesque nature, which is registered on a list of protected sites. The purpose of the registration is to keep the area or site in their current state, control demolitions. Building owners living in or near a conservation area must inform their local authorities of all building projects likely to alter the state or aspect of the site. This must be done at least four months before the beginning of the works.

4. Gazumping

At French law, there are only two situations where gazumping can take place. In property transactions, a pre-emption right may arise in favour of one or several authorities. The "SAFER" is an agricultural organisation that can have pre-emption rights over rural properties and agricultural land offered for sale. Furthermore, in agricultural matters, there is often a pre-emption right in favour of a farmer who has worked the land. The DPU ("*Droit de Prémption Urbain*") allows a local Authority to buy in urban areas as and when land and properties are offered for sale. Under French Law, all purchases made by joint owners can be subject to the pre-emption right of the other joint owner.

5. Surveys

There is no direct counterpart in France to building surveyors as they are known in the United Kingdom for example.

Since the 1st of September 2002, a survey mentioning the presence or the absence of building materials containing of asbestos (walls, posts, beams, floors etc) must be carried out before

the sale of those buildings whose planning permission was delivered before the 1st of September 1997. For dwellings built before 1948 and located in designated areas, another survey must be carried out by a qualified technician in order to establish the risks of lead poisoning. In other designated areas, a further compulsory survey reveals whether or not the property is infested with termites. The expert's report must be less than three months old at the time of completion and is attached to the Title Deeds.

Whilst structural surveys are rarely carried out by most French purchasers, it is highly advisable to do so, especially when buying older properties. We can put you in touch with bilingual building surveyors if necessary.

6. Leasebacks

"Leasebacks" are in essence new build apartments which, in designated areas, benefit from tax rebates, equating effectively to a 16.4% reduction. They can be an attractive formula to carry out a rental investment. The candidate acquires an apartment in a residence and management is entrusted to a development company during a period ranging between 9 and 11 years.

This offers two advantages:

1. The purchaser is completely exempted from paying VAT;
2. The management company assures the purchaser of a clear annual profitability throughout the rental contract (around 4.5% on the purchase price net of tax).

It is the management company which deals with the furnishing and the equipment of the apartment and rules all the inherent expenditure (insurance, maintenance, collecting rents etc). It also offers the possibility to enjoy a second home without having the constraints. Purchasing in a "residence de tourism" costs between 25 and 35% times less than in traditional property. The investment is not always a good bargain however.

7. Costs and Duties

The costs associated with the purchase of a French property break up into three distinct elements:

1. Sums due to the Treasury

These vary according to the type of property sold, the area where the property is located and the date of its construction.

2. The Notary's fees

The notary's fees are regulated by a Decree of 8 March 1978 (modified in 1981, 1985 and 1986). They are calculated according to the following scale (VAT in addition):

- From € 0 to € 3.049: 5 %

- From € 3.049 to € 6.098: 3,30 %
- From € 6.098 to € 16.769,40: 1,65 %
- Above € 16.769,40: 0,825 %

3. Miscellaneous disbursements

They include, *inter alia*, the surveyor's fees, registers searches, excise tax, etc...). These expenses may be paid up front by the notary and usually vary between € 458 and €1.525 €.

8. Co-ownership

Parts of a building can be the property of several owners and intended for the use of all: roof, walls, staircases, corridors, floors. These common parts are managed by a Factor on behalf of all co-owners. Important decisions are taken in assembly, according to various rules of majority. Other parts of a building are reserved for exclusive use: this is the case with individual apartments for example. They constitute the privative parts. The law of 10 July 1965, which has been recently updated, provides the legal framework for relationships between co-owners. Prospective purchasers should familiarise themselves with the co-ownership's statutes (Règlement de copropriété), as these provide detailed information about what is or not permitted in the building and the way the building's common charges (e.g. lift costs, general maintenance) are to be split between all co-owners.

9. Insurance

As with mortgages, there is a multitude of insurance products whose price and services depend on each case. It is thus necessary to define the various guarantees to which you can or must subscribe.

When a property is already insured at the time of its sale, the policy cover automatically extends to the purchaser. The vendor must give the buyer the insurance policy and contact the insurer to inform him about the transaction. Property and contents can be insured against a number of risks: fire, water damage storms, explosions, natural disasters and acts of terrorism. Please note that insurance cover against fire hazards include a guarantee against the storms and their consequences (rains, hails...). Most insurers offer an electric damage cover which insures you against a dysfunction of the electric system and its consequences (provided the damage do not arise from a lack of maintenance).

In properties shared between several co-owners, the building's manager must take an insurance policy covering the common parts (staircases, elevator...) and some privative parts of the apartments and their inside fittings. This is referred to as group insurance and provides cover for fire damage, lightning, explosions, water / flooding, natural disasters, acts of terrorism, storms, hails, snow etc. In these contracts, a clause must specify that co-owners are regarded as being third parties between them.

10. Tax

When planning your investment, the taxes and costs associated with buying property in France should also be considered.

Bear in mind that there are high taxes for a start, including income, property, residential taxes, wealth and capital gains. Although the French government has pledged to reduce income tax by 30% in the coming years, tax is still rather high in France and there are hefty penalties for late payers, so check your French tax return for the deadline.

1. Local tax (*taxe foncière*) covers your contribution to services such as road maintenance and garbage removal. The cost varies according to the area where you live and the size of your property.
2. Remember that wealth tax applies if your French assets exceeds €720,000.
3. Properties with a rental value over €4,600 give rise to residential tax (*taxe d'habitation*). The tax is due by whoever lives in the property on 1 st January.
4. Income tax applies to rental income. Regardless of their nationality, individuals who do not reside in France are taxed on their income from French sources only. In accordance with the provisions of Article 164 B of the French tax code, income from immovable property situated in France is subject to French tax. Non-residents should file their tax form by 30th April of the following year using a tax form n° 2042 with, if there is any income from real property, a tax form n° 2044. Besides, if a property is rented out furnished and provides a gross amount of rents over EUR 23 000, a specific return has to be submitted to the local tax office where the property is situated. Income from Furnished Letting is classified as "*Benefices Industriels et Commerciaux*". Income from unfurnished letting is classified as "*Revenus Fonciers*". Rental income from French property is subject to French tax at a rate of 25% minimum on net income (CGI Art 197A), but no assessment raised if liability less than EUR 305 (Ins Adm. 5 B-7123 No 4 01.12.86).
5. French capital gains (CGT) may apply when you sell the property. Income earned from French property is considered to be income arising in France and, as such, must be declared to the French Inland Revenue. For non-EU residents, the rate is 33.3% of the net gain. You may have to appoint a guarantor which may be a bank or other approved financial institution operating in France.
6. Your beneficiaries may be liable to French inheritance tax when you pass away. Parents, spouses and children benefit from higher tax free allowances, but successors who are neither blood related nor married to the deceased are liable to pay tax at the rate of 60%.

11. French Inheritance Law

Your French property will be governed by French Succession Law. The consequences are that children automatically inherit part of their parents' estate. There is a limit to how much may be left by Will to non-blood relatives.

An individual's assets on death consist of the retained portion (*reserve légale*) and a disposable portion (*quotité disponible*). The former goes to the protected heirs, regardless of the wishes of the deceased. If there are no children or grandchildren but there are surviving ascendants (i.e., living parents or grandparents), the retained portion is 25% of the deceased's Estate. That difficulty can be avoided by opting for a purchase *en tontine*: the whole French estate devolves upon the survivor, as if the property were owned in the survivor's sole name from the time of purchase. For married couples, changing your marriage regime to "Communauté Universelle" is also an excellent method of ensuring that when either spouse dies the other inherits the property in full and avoids Inheritance Tax liability. *Communauté universelle* involves all of the couple's assets falling into joint ownership. A special clause (*clause d'attribution intégrale au conjoint survivant*) allows all the assets to devolve on the surviving spouse without the payment of French inheritance taxes. The French civil code has been recently amended in consideration to the 1978 Hague Convention on marital regimes. As a result, it is a lot easier for couples married abroad to change their matrimonial regime than it is for French couples to do it. Changing your matrimonial regime affects your French assets alone and therefore any provisions made in your home country remain unaffected. regime before signing the *acte authentique*.

The *acte Authentique* can also be amended to include a *Tontine* clause. With such a clause, the survivor has complete autonomy to dispose of the property as he or she wishes. The surviving partner or spouse is deemed to have owned all the property from the beginning. The downside of a tontine resides in the fact that:

1. In the event of a dispute, a Judge can have difficulty making an order in relation to the property because so long as both parties to the *tontine* are living, there is uncertainty as to who is the owner. A court could therefore only order a sale by both parties.
2. The sale of a property when both parties to the *tontine* are alive is only achievable if both agree. If one refuses to sell, the other cannot force the sale.

12. Useful tips

1. Be sure what you are buying: inspect the property thoroughly and enquire whether there are any covenants (servitudes) such as rights of ways for example. *Caveat emptor* applies to French property purchases: remember that buyers take responsibility for the condition of the items they purchase and should inspect them before purchase.
2. Where a property is purchased off-plan, the purchase process is strictly regulated. It is nevertheless advisable to check what completion guarantee is offered by the developer. Is the latter financially sound? Will the works realistically be completed by the contractual date?
3. Is there proper access?
4. If this is an older property, has a survey been carried out?
5. Are you buying the contents too?

6. Are there any rights of way?
7. Where are the property's boundaries and who pays to define them?
8. Is there agricultural land and is it farmed? (If this is the case, the farmer may have a right to gazump you);
9. Check costs first;
10. Keep simple/traditional: the property must be appropriate to a majority of purchasers in the event of resale;
11. Be careful with attractive tax loopholes: never neglect the character and quality of a property in consideration to tax advantages;
12. Think of your retirement: an ideal "holiday home" can prove to be a not very convenient permanent residence;
13. Seek legal advice on what happens to the property when you sell, upon your death or in the event of a dispute with co-owners;
14. Do not pay money directly to the seller, since you may lose it or have to pay twice: sometimes the seller is not empowered to sell, or the property is subject to mortgage, etc;
15. Do not let the buyer enter the premises before signing the final Deed of Sale or before paying the purchase price.

This introductory guide is by no means an exhaustive textbook on French property law. It is intended to be no more than a general overview of the position. Law is complex and every effort has been made to offer information that is up to date, accurate and plainly expressed. We would be happy to provide you with specific advice applicable to your own particular circumstances.