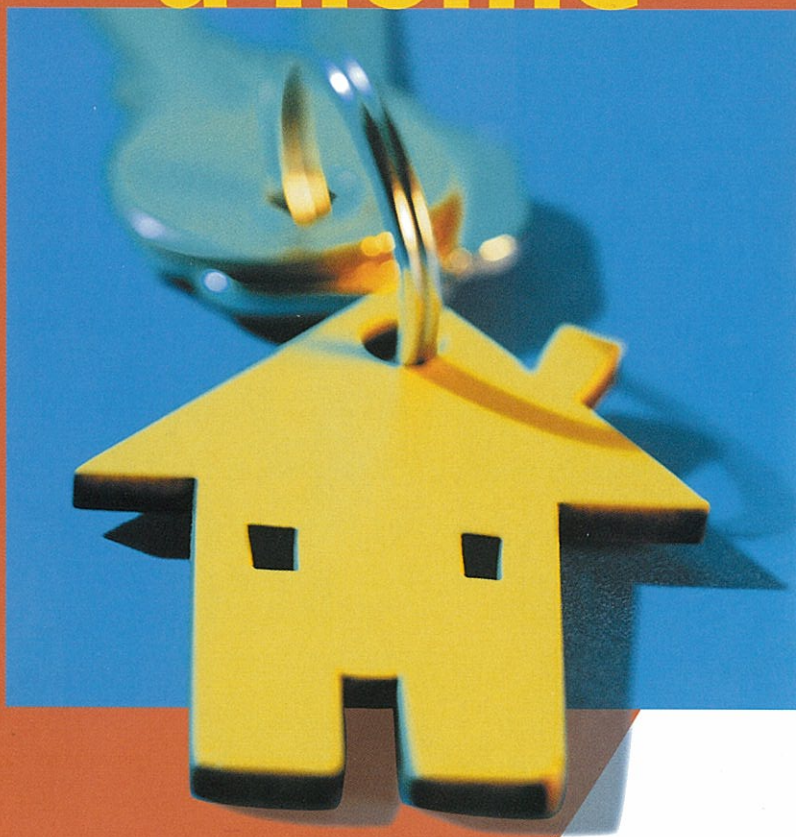


les mémos

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essential to carry out this
important transaction properly

Buying or selling a home



conseils
des **notaires**

Buying or selling a home

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Conseils par des Notaires

60, boulevard de La Tour-Maubourg, 75007 Paris

Tél. : 01 44 90 30 06



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Buying or selling an apartment, house or any other piece of property is not a commonplace activity. The decisions made by each party concerned often involve significant sums of money. The property involved may be the place where the buyer intends to live. The notaire is there to assist you in taking the necessary precautions to avoid common and costly errors. His or her duty is to ensure that you complete the sale or purchase without risk.

The reservation agreement

You are a seller or buyer and you and your contracting partner have agreed on a reasonable price. You will thus sign a reservation agreement* at the notaire's office. Depending upon the region, this will be in the form of an agreement to purchase (*compromis*) – a sale subject to prior conditions – or a promise to sell before the notaire or real estate agent subject to financial guarantees. However, no payment may be made for a “cooling-off” period of seven days prior to the signature of the notarised reservation agreement. The bilateral commitment of the parties depends upon the fulfilment of certain conditions, which are set out in the reservation agreement or provided by law : for example, obtaining a loan by the buyer.



➔ *You have found a buyer or spotted your dream home. You still have many formalities to carry out*

Information provided in the reservation agreement

Certain information must or should be included in the reservation agreement. Close attention should be paid to the information contained therein before signing. All aspects of the transaction should be raised between the parties. In the reservation agreement, the notaire will set out the terms of the agreement with your buyer or seller in writing.

■ **Mandatory provisions in the reservation agreement.** The reservation agreement must contain the following provisions :

- identification of the property being sold, its description, its dimensions, related costs like mortgages or decisions taken by the assembly of co-owners (where the property is part of a larger property, with



Things to avoid

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. Do not let the buyer prematurely enter the premises before signing the final deed of sale or before paying the purchase price.

communal areas) such as ones relating to significant construction work or renovation;

- a statement of the presence or absence of asbestos and certificates relating to termites, lead, the prevention of technological or natural risks, gas installations, energy efficiency etc ;
- the terms of the planned sale; the date on which the offer will elapse and the conditions for exercising the option;
- the price and date of payments;
- the amount of the security deposit or reservation indemnity;
- the date for taking possession;
- the latest date for signing the deed of sale;
- any conditions precedent, such as obtaining of loans or building permits

■ **Servitudes***. Careful attention should be paid in regard to neighbouring properties, for example any rights of passage or planning restrictions which could, in certain cases, be sufficiently burdensome to make you decide to renounce the purchase.

The notaire's role

The terms of the reservation agreement are subtle in nature. The drafting of such an agreement cannot be improvised; one must be familiar with the appropriate methods. Therefore, to avoid any mistakes when purchasing property, you should rely on a notaire.

He or she will give you advice, draft the reservation agreement and, after signature, perform all necessary formalities for the sale.

The reservation agreement is not costly, and a portion of its cost is deducted from the expenses of the final sale.

The identity and capacity of the parties

For purposes of obligatory land registration formalities, the notaire must verify the last and first names of the sellers and buyers and their place and date of birth. To confirm this, he must obtain birth certificate copies which are less than three months old at the time of the transaction. For the same purpose, the notaire must verify the legal capacity of the parties : that each one is an adult, is not subject to court protection (i.e. guardianship) and is not in a PACS (French civil

* See glossary page 24

partnership), which is shown by a note in the margin of the birth certificate. A copy of the marriage certificate will enable the notaire to verify whether a pre-nuptial agreement had been signed.

Marital regime

It is vital to know the matrimonial status and regime of the seller, since this determines whether the spouse can act alone or whether he/she requires the agreement of his/her partner. Thus, a person having joint property rights with a spouse cannot sell a property subject to the joint estate without their spouse's consent. In addition, and regardless of the applicable marital regime and even if there is a contractual separation of assets, a married individual may not sell the family home without their spouse's consent. The marital regime applicable to the buyer must also be taken into consideration to determine the conditions of realisation of the purchase, when there is a separation of marital assets. Similar issues must be considered when the purchasers live together as an unmarried couple (*see page 12*).

Verification of Title

A promise to sell a property may not be given by just anyone. The notaire ensures that the seller is the actual owner of the property for sale by reviewing the deed of ownership. Sometimes, the property for sale is subject to joint ownership, following an inheritance or a joint purchase. In this case, the sale will require the consent of all the joint owners.



The notaires' real estate register

If you would like to get an opinion on property prices in a given area, town or region or you are looking for a secondary residence, ask a notaire in the area. He is familiar with the real estate market. He can also check the notaires' real estate register, which records transactions registered by notaries in all of France.

Cooling-off period

The purchaser of a property has a period of seven days to retract after having signed a notarial deed or a document "*sous seing privé*" (private, not officially-recorded document). This rule applies to non-professional purchasers of property for use as a dwelling and to certain transactions of a similar nature, for example credit leasing (location-accession) of such assets. After the signing of the reservation agreement the cooling-off period runs from the day after the notification of the deed to the purchaser by registered post



Verification of the vendor

Certain questions should be asked before beginning negotiations with the seller of a property. Is the person representing the seller authorized to do so by special mandate? If the promise to sell has been given by a representative of a company, is he authorized to perform the sale? The notaire will ask for a copy of the minutes of the decision of the company authorizing the sale. If you are dealing with a merchant, a craftsman, a farmer or the representative of a company, is there a risk that your partner could be subject to bankruptcy or liquidation proceedings? It is wise to verify this with the clerk of the commercial court or the court of first instance. If you are dealing with an individual who is deep in debt, it is possible that he/she has been subject to excess credit (*surendettement*) proceeding. Is the seller subject to some form of legal protection, such as a custodianship? The notaire will check the record of birth, which may include such a reference.

with receipt by return, or any other manner which allows for determination of the date.

The property subject to sale

Identification of the property

One should refer to the statements indicated in the notarised deed of purchase, gift or will which transferred the property to the seller. This document establishes his or her title to the property. Sometimes it is necessary to indicate which fixtures and fittings the seller reserves for themselves or gives to the purchaser, such as decoration, objects in the kitchen, curtains, etc.

The cadastral map

The cadastral map is used to establish the basis for property taxes (called the “*assiette*”). All property, whether an apartment, house, or other, is identified by its cadastral references, which are indicated in the property register kept by the French mortgage authorities (*conservation des hypothèques*); these same references should appear on the seller’s deed of sale.

An exclusion of guarantees (or “as is”) clause

An exclusion of guarantees clause is often provided in the reservation agreement and the deed of sale. This allows the property to be sold “as is” (*en l’état*) even if significant repairs are indeed required. But be careful! If the seller is aware of hidden defects (for example if termites infest the structure or the building is a hazard through lead poisoning) and does not inform the purchaser of such defects, then

the agreement may potentially be rescinded and the seller may be liable to pay damages.

Generally, no guarantee is given regarding the exact surface area of the property, except in the case of apartments in co-ownership properties (that is ones which have shared communal areas), where the price is often determined according to surface area.

Planning matters

You may of course want to be sure that you can build on the land for which you are negotiating. The planning certificate (*certificat d'urbanisme*) provides this information. It also states whether the land is used for public utilities or whether any such equipment is planned to be installed, such as water pipes, sewage pipes, or electricity power lines.

If you purchase an apartment or home which you do not intend to modify, the notaire will seek various planning documents, such as ones relating to the boundary between public and private property, quarrying, numbering, declarations of danger or health risks, and any natural or technological risk plans relating to it.

Servitudes to neighbouring properties

Do not lose sight of the fact that provisions in the reservation agreement and the deed of sale may transfer the servitudes which are attached to the property, such as a prohibition to build on the land

or construct buildings higher than a certain height, or a right of passage granted to a neighbour for a plot of land which is nevertheless not an enclosed space, an obligation to comply with a certain style for any building to be completed in the future, the possibility that your neighbour may have a right to alter your view from a window or terrace.

The seller must inform the potential purchaser of the boundaries of the property and indicate common ownership of certain fencing or walls.



The municipality's rights of pre-emption*

The right to sell is subject to the pre-emptive rights provided to municipalities under urban planning law, and in particular to towns. The notaire therefore is required to inform the town of the sale and to send a “statement of intent to sell” (*déclaration d'intention d'aliéner*) to the mayor.



Certificate of conformity

If you are purchasing a lodging that has been recently built or significantly modified, you can be sure that the construction was done in accordance with the building permit by reviewing a certificate of conformity issued by the mayor of the township. Since October 1, 2007 the *mairie* has supplied a “certificate of non-opposition” to the declaration of conformity made by the builder.

If the property is subject to a mortgage

If the seller purchased the property with a loan which has not been completely reimbursed, the mortgage registered in the name of the bank is still in force. In the case of a resale, this mortgage registration gives the bank a priority right on the sale money up to the remaining amount on the mortgage. It is also possible that the seller may be in debt and that a court-ordered mortgage has been established on the property subject to sale. The notaire shall perform all of the checks that are necessary to ensure that the purchaser may not be held liable to pay the seller's debts, above and beyond the price of sale. Of course, the purchaser should not pay any money until the notaire has accomplished his task.

Purchase of a co-ownership property



→ *Find out about any plans for construction or renovation work on the building where the apartment is situated*

Dimensions of the property being sold

If you are selling a co-ownership property (for example a flat that is part of a larger building, with shared communal areas in common ownership) the 1965 Loi Carrez applies if it is larger than 8 square metres, whether it is an apartment, a shop, professional premises, both personal and professional in nature or an individual house on land in common ownership. The surface area must be precisely stated in the deed of sale and the reservation agreement. However basements, garages and parking spaces are exempt from this rule. If the dimensions of the property are not indicated, the sale may be rescinded at the purchaser's request within one month from signing the deed of sale. The agreement may not be annulled if the notarised deed of sale states the dimensions of the property. The notaire will see to it. The purchaser is protected by the guarantee of the surface area in the deed of sale. If the actual surface area is inferior to the surface area stated in the deed by more than 1/20th (5%), the purchaser may claim a proportional reduction of the purchase price for the difference.

Co-ownership bylaws

Do not forget to read any co-ownership bylaws carefully. In that document you will learn, among other things, which areas of the building are communal spaces and which are privately owned, as well as their conditions of use.

You will acquire a proportional percentage of the communal areas and all associated costs : general maintenance, elevator, gardening, etc. You will be able to determine the acknowledged purpose of the building : is it entirely intended for accommodation? Are you allowed to run a business there?



Housing development*

If you purchase a lodging in a housing development (*lotissement*), it is wise to review the bylaws and the shared expenses. Verify the various expenses and conditions which appear therein, in particular the joint owners' rights and obligations regarding buildings, walls and maintenance of common areas, etc.

Construction work at co-ownership properties

The notaire will request a certificate from the co-ownership managing agent (*syndic*) as provided under Article 5 of the Decree of March 17, 1967.

The purpose of this document is to furnish the notaire who drafts the deed of sale with all useful information on the sale and the apportionment of expenses between seller and purchaser. This information may consist of any debts of the vendor to the co-ownership managing agent and any

existing decisions of the assembly of co-owners regarding construction work, either yet to be completed or completed but not yet fully paid for.

The notaire will ensure, prior to handing over the purchase price to the seller, that there are no outstanding debts. He or she will state in the reservation agreement the date on which the decisions of the co-owners will financially bind the purchaser.

The maintenance file (*carnet d'entretien*)

To ensure that the building is in a satisfactory state of repair, the purchaser may review the maintenance file (*carnet d'entretien*) which is held and kept up to date by the co-ownership managing agent, as well as the document relating to the technical checks which have to be made prior to putting any property built in the last fifteen years

into co-ownership. The notaire will show the purchaser this document in two cases : either if this would be the first sale of a lot following a division, or a transfer occurring within three years since the date of the technical checks.

Purchase of rented property

If the seller wishes to sell the property free of rental agreements, he or she must give a tenant notice to vacate the premises at least six months prior to the expiration of their lease. This notice is deemed to be an offer to sell to the tenant, at the indicated price. The tenant has a period of two months to inform the seller whether or not they are interested in the sale. In the absence of a reply or in the event that they waive such right, they are required to vacate the premises, at the latest by the end of the notice period.

The tenant may also accept the offer to purchase the property they occupy, pursuant to their prior rights. In this case, they have two additional months (four months if they require recourse to a loan) to sign the deed of sale at the notaire's office.

■ **Sale under more favourable conditions.** When the tenant did not accept the sale offer, and since such an offer the sale is now envisaged under conditions more favourable to the purchaser, the tenant must be notified of these new terms and shall once again have a prior right to purchase under these new terms.

■ **Sale to a relative.** The tenant's priority rights do not apply if the owner sells to a relative up to the third generation (great grandparent, uncle, aunt, nephew, niece, etc.), on condition that the relative occupies the property for at least two years.

The sale of an occupied property

If the property to be sold is rented out, then it is the seller who is bound to return the security deposit to the tenant at the end of the lease. The seller may be freed from this obligation by paying the amount of the security deposit to the purchaser, who must pay the same to the tenant upon his/her departure. In this case, the tenant must state his/her consent in the deed of sale.



Other costs

The purchaser must pay other miscellaneous costs, in particular related to obtaining certain documents (cadastral map, mortgage status, etc.) plus notaire's charges (*émoluments* ; see page 19). The purchase price is also increased, as the case may be, by the real estate agent's commission.

The price to pay

The reservation agreement will state the final purchase price of the property, indicated both in numbers and words. The amount appearing in words will be decisive in the event of a difference between the two. In order for the sale to be effective, the purchaser and seller must agree on the price.

Registration tax or VAT

Various costs must be added to the sum to be paid to the seller : registration taxes (5.09%) or value added tax (VAT) if the sale is subject to it, which applies essentially to the sale of building land, new buildings and for the first resale within five years after completion. Be careful – in the case of the sale of building land, the price is generally stated to be “*hors taxe*” (exclusive of VAT), however for other transactions the price is “*taxe comprise*” (VAT included) and the seller pays back the VAT to the state, with the right to deduct expenses.

Conditions for payment of the purchase price

The purchaser is bound to pay the price accepted in the reservation agreement, in accordance with the terms and conditions set out in that document. Sometimes the price is payable within a fixed period of time or through “*viager*” payments for the lifetime of the seller (see *mémo de Conseils, La vente en viager*).

Financing the purchase of a property by loan

The law protects the purchaser who takes out a loan to purchase his home. All reservation agreements, arrangements to sell or promises to sell are deemed by law to be concluded subject to the prior condition that the loan or loans required to finance the purchase will be obtained (*Code de la consommation, art. 312-16*). The sale is conditional



Notaire's «attestation»

This is a certification by which the notaire certifies that he is responsible for establishing the loan agreement of the purchaser or that he signed a unilateral promise or understanding to purchase and sell. The validity of such a certification is limited in time, to the limit of the duration of the reservation agreement.

on the performance of this prior condition, which is included in the reservation agreement as a safeguard. The term of validity of such a conditional sale is generally between two and three months, but may not be less than one month.

Consequences of failure to obtain a loan

If no loan is obtained in the period provided for this the reservation agreement will be rescinded without giving rise to any penalty. All of the amounts paid in advance, such as the security deposit or a reservation indemnity, will be reimbursed to the potential buyer. However the law does not protect a person who acts in bad faith.

No protection is offered to the purchaser in the event that he or she does not do what is necessary to obtain the loans in a reasonable period of time, or if he or she provides false information to the lender.

Terms of purchase

Now that the status of the seller and the property have been established, we must consider how the acquisition should proceed. Most often, this will not pose a problem. Thus, when a husband and wife having no pre-nuptial agreement (or having a marriage contract specifying “community of assets”) purchase a house with their savings, the property is jointly owned by them without needing to make any specific provisions. A “*participation aux acquêts*” marriage regime (separate property ownership during the marriage, but with property acquired during the marriage treated as jointly-owned if the marriage ends) also poses little difficulty. Unless the purchase money comes from assets of the individual spouses (owned prior to the marriage or received by gift or will), each spouse has identical ownership rights over the property, regardless of which spouse is the purchaser on the deed of sale (*see mémo de Conseils, Choisir son contrat de mariage*).

Selling a lodging to buy another

If you change your lodging, the best way of proceeding involves firstly searching for a purchaser, in order to be able to buy a new lodging. It is also possible to sign a unilateral promise of sale in view of the purchase of new accommodation, under the prior condition of the sale of your current lodging. Such a clause is valid in accordance with a ruling of the Court of Cassation (*Cour de cassation, 3e ch. civ., 22 November 1995, Cuvelier*).

It is still necessary for the seller to agree to this, and for the clause to be precise. This process should not be undertaken without a great deal of caution.

The personal acquisition of property by a spouse in a “community of assets”

A “community of assets” applies to those with no pre-nuptial agreement, or to certain marriage contracts. If the assets used to purchase the property belong to one of the spouses, the only way that the spouse can ensure that he/she has an exclusive right to the property is to make a statement in the deed, to the effect that the funds used for the purchase belonged exclusively to him/her and that the property purchased is also personal to him/her. If the assets used to purchase the property are partially individually and partially jointly owned, then the property purchased cannot be considered individually owned unless more than half of the cost and legal expenses is financed by individually-owned funds (*Code civil, art. 1436*).

Married couples with “separation of assets” contracts

A more delicate problem arises when the purchasers are not married under either a community of assets or a “*participation aux acquêts*” regime. In the case of a couple with a “separation of assets” regime, no rule establishes their financial relationship, except for that relating to contribution to the joint expenses of the marriage, and that does not provide a real solution to the issue of acquisition of a property. Generally, the spouses acquire property rights in proportion to their respective financial contribution to the purchase.

If one of the spouses has little, or no, personal income, but has helped the other in the exercise of their profession, or has taken care of the children and the house, they are able to claim that money is owed to them under what is called “*enrichissement sans cause*.” A document can be drawn up stating this right before the property is acquired, and the partial financing by the spouse concerned is thereby justified legally and financially, as long as the sum fixed is not excessive.



↳ *The case of spouses who have a “community of assets” and who are buying with their savings is the simplest one*



Read the draft of the deed

Take the time to read the document which you are shown. Ask the notaire questions regarding any points that you do not understand.

Your care is required not only concerning the state of the apartment, house or land, but also for the legal aspect of the sale.

Cohabitants and PACS partners

When the purchasers live together unmarried, they acquire rights in proportion to the money each puts in, for example half and half or any other proportion, such as $\frac{1}{3}$ and $\frac{2}{3}$ or $\frac{1}{4}$ and $\frac{3}{4}$. It is wise to maintain a record of the payments made by each of them.

It is common that an unmarried couple wish to protect the survivor in the case of one of them dying. This is often not easy to accomplish, especially due to inheritance tax consequences. Unmarried partners who have not entered into a PACS (French civil partnership) are treated as strangers to each other: gifts and testamentary dispositions are subject to a 60% tax (*see mémo de Conseils, Le concubinage et le Pacs*).

When the unmarried couple entered into a PACS before January 1, 2007 they are considered to be joint owners of the assets acquired by one or the other. A clause to the contrary may nevertheless be inserted in the deed of sale.

A law of June 23, 2006 concerning inheritance and gifts has modified the rules concerning PACS partners. They can now choose between a “separation of assets” regime or a joint-ownership one, similar to the “legal community of assets” which can exist between marriage partners.

The preparation of the deed of sale

As soon as the reservation agreement is signed, the final deed of sale will be prepared. If he or she has not already asked for them, the notaire will ask you for certain documents. He or she will make various checks with the administrative authorities, which can take several weeks. Ask your notaire to provide you with a probable date of signing of the deed of sale. The maximum deadline will be stated in the reservation agreement.

Personal information and origin of ownership

The purchaser and the seller must produce their livret de famille (family information booklet containing birth and marriage certifi-



→ Ask for any necessary clarifications before signing the deed of sale

ates, supplied on marriage or on the birth of a first child) and, if applicable, their marriage contract. The seller delivers his title documents to the notaire, so that the notaire can perform the necessary checks (see page 6).

Clearance of priority rights

For any sale of a property, the notaire must confirm that the local authorities (commune, department, the regional agricultural land bodies called SAFER, or the coastal protection body the Conservatoire du Littoral) where the property is located have no prior rights on the sale. In the event that such a right does exist, this prior right may be cleared by sending a statement of intent to sell (*déclaration d'intention d'aliéner*).

The beneficiary of the prior right has two months from receipt of this statement to indicate whether it wishes to exercise this right. If it decides not to exercise its right of prior, then the sale may proceed. The notaire must also clear the existing tenant's prior rights (see p. 10).

If the purchaser resorts to a loan

The notaire contacts the bank to find out the conditions of the loan. Before the sale, the bank will receive a draft deed for which the notaire will ask its agreement. If the answer is 'yes', the notaire will receive the funds on the date planned for signing the deed of sale.

The deed of sale

If all of the formalities are performed and the notaire has all documents necessary to establish the deed of sale in his possession, he will propose a date to the purchaser and seller to sign the deed of sale. If you are unavailable at that date, you may be represented by a power of attorney, given to a parent, a friend, or a clerk at the notaire's office.

Signature of the deed of sale

Prior to signing, the notaire or the clerk given power therefore shall read the deed of sale to you and explain the meaning of its contents. Ask him for any clarifications that you may need.

Delivery of the cheque

On the date of signing, the purchaser shall give the notaire a cheque for the purchase price (less the reservation indemnity or security deposit) and costs related to the purchase. The notaire shall give the

purchaser a certification of sale, so that the purchaser may thereafter provide evidence of ownership when dealing with various utilities, such as Electricité de France (EDF), Gaz de France (GDF), France Télécom, etc.



The certificates of technical checks

Various certificates of technical checks done by experts must be supplied by the seller.

- **Loi Carrez:** the exact floor space has to be supplied for all co-ownership properties.
- **Asbestos and lead:** for accommodation built before July 1, 1997 a check on the presence of asbestos in the construction materials is required. A similar check has to be done on risks of exposure to lead in accommodation built before 1948.
- **Termites:** a statement about infestation by parasites must be done for all accommodation situated in designated risk zones (lists available at prefectures).
- **Natural and technological risks:** since June 1, 2006 this check has been required for accommodation situated in areas covered by a prevention of technological and natural risks plan.
- **Energy efficiency:** required since November 1, 2006, this check is aimed at establishing the building's energy consumption.
- Since November 1, 2007 the seller also has to provide a document relating to gas installations in the property.
- Finally, from January 1, 2009, an electricity check will be needed if the electricity installations are more than 15 years old.

In the event that the seller or purchaser does not want to sign the deed of sale

It may sometimes happen that one of the parties changes his mind and refuses to sign the final deed of sale. In that case, the other party may see a lawyer and apply to the court of general jurisdiction to obtain a judgement that the sale is effective, or to obtain damages against the recalcitrant party.

Death of the seller

If the seller dies prior to signing, the purchaser can obtain the signature of the deed of sale from the heirs. Indeed, they are bound by fundamental principles of French law to comply with the undertakings of the deceased. In case of refusal, an action may be brought against the heirs to enjoin them to perform the sale.

Death of the purchaser

If the purchaser dies and the conditions precedent to the sale have been realised, his heirs are in principle bound to purchase. However, in practice, the heirs often do not have the cash available for the purchase.

Formalities to be performed after the sale

The notaire's job is not over after the signing of the final deed of sale. He is required to perform a number of formalities after the sale. Some of these formalities concern the purchaser, others concern the seller.

Delivery of the purchase price to the seller

The notaire is not required to deliver the purchase price to the seller until the deed of sale has been published at the mortgage registry (*see above*) and he has obtained a statement indicating the absence of any mortgage or security interests on the date of publication of the deed of sale. If any record of such security interests does exist, these creditors must be paid. Given the financial imperatives of the seller, notaires do their best, while taking some risks in so doing, to deliver the purchase price to the seller as soon as possible. Of course, the sums which may be due to the managing agent (*syndic*) of a co-ownership property, or to financial institutions, etc., will first be deducted from the purchase price. To avoid any debts to be settled at a later date, the *taxe foncière* (annual property tax) due is shared out between the seller and the buyer, based on the tax paid the previous year.

Registration of the sale

This formality must be carried out rapidly. Since the *Télé@ctes* system was put in place, a certain number of contracts, notably sales, can be registered in a few weeks. *Télé@ctes* allows for electronic exchanges between notaires' offices and the local Land Registries (*les Conservations des Hypothèques*) via a secure computer network.

Notification to the managing agent of the co-ownership

If the property sold is a co-ownership lot, the notaire will notify the managing agent of the building (*syndic de copropriété*) by registered letter with return receipt within fifteen days from the date of transfer of ownership. This notification enables the managing agent to be informed of the identity of the new co-tenant for the management of the co-ownership. In addition, from the moment he receives this notification, the management agent has fifteen days to oppose the

payment of the price to the seller by bailiff. This opposition is made to recover sums that the seller owes to the management agent of the co-ownership. The portion of the purchase price corresponding to these debts is held by the notaire until such time as the seller pays those debts to the co-ownership.

Insurance on the property subject to sale

If you are purchasing an apartment in joint ownership, the property you purchase will be covered by the insurance on the building taken out by the managing agent.

You will only need to take out insurance to supplement the guarantees provided in the building insurance. In practice, this means taking out a multi-risk householding insurance policy for your movable assets. Be sure to inform your insurer of your move. You may transfer your current insurance policy to your new residence, or terminate it in accordance with the terms of the policy.

For a house, the insurance will remain in force to your benefit. Either the insurer or the purchaser may terminate the policy in accordance with Article L. 121-10 of the French Insurance Code. In practice, the seller may terminate his policy with the consent of his insurer. In this case, you may transfer your former policy to your new residence.

If the property you have purchased was built less than ten years ago, then it will continue to benefit from ten year building indemnity insurance.

Local taxes

The purchaser shall be liable for property taxes (taxe foncière) from the date of signature of the deed of sale. A provision is generally provided in the agreement which apportions these taxes between the purchaser and seller for the current year. This apportionment is done according to their respective “term of enjoyment”. The seller shall remain legally liable for such taxes. When the seller receives the tax collection statement for the current year, he will contact the notaire, who will claim the pro rata portion from the purchaser; for example, 7/12ths if the sale were to take place on the 1st of June. It is possible to provide for the payment of a fixed sum for such taxes at the time of the sale, taking as a basis the taxes of the previous year. No apportionment is made for occupation tax (taxe d’habitation), since this tax is due by the person occupying the residence on the 1st of January.

Delivery of title to the purchaser

The notaire is obliged to send the title deed to the purchaser. With the introduction of computerised registration of property sales, this

is now going to be done within two months at the most, reduced from three to four months.

Acquisition costs

The most significant part of the acquisition costs are for taxes and stamp duties to be paid to the French State. Transfer taxes amount to 5% of the purchase price for property, regardless of its use.

An additional levy of 2.5% of the departmental tax is paid to the state for collection costs, which takes the tax to 5.09%. The sale is subject to value added tax (VAT) if the property subject to sale is new or it is the first sale of the property within five years of completion. VAT is paid at a rate of 19.6% in 2008. When VAT is due, no transfer tax is due. A stamp duty is paid to the State in the amount of 3 euros per page of the deed of sale and the notarised copy of same. The fees of the mortgage registry must also be paid.

The notaire's fees

Sale of property - Notaires' fees VAT (19,6 %) non included			
from	to	%	Add
0	€6500	4	-
€6500	€17000	1.65	€152,750
€17000	€30000	1.1	€264,250
beyond		0.8257	€328,750

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*). When the purchaser takes out a loan, the notaire receives fees on the amount

borrowed, at a rate of approximately 0.55% of the amount borrowed. State-subsidised loans give rise to reduced rates : 0.2 to 0.5% depending on the type of loan. Fixed emoluments in small sums are paid to the notaire for each formality required in the deed of sale, such as requests for personal identification documents, the cadastral map, planning information, real estate filing, requests to the custody judge. VAT is due on notaire's emoluments at the rate of 19.60%.

Negotiation

When the notaire negotiates the sale, that is to say when he brings the buyer and seller together, he is paid negotiation emoluments. These fees are paid by the seller or purchaser, depending upon the agreement of the parties. The amount of the negotiation emoluments is equal to 5%, up to 45,735 euros, and 2.5% after that.



Interest on loans: tax credit for the purchase of the main residence

Since August 22, 2007 interest on loans taken out to buy a main residence attract a tax credit equal to 40% of their total in the first year and 20% in the four following years, to a maximum of 3,750 euros for a single person or 7,500 euros for a couple, increased by 500 euros per dependent. This is taken off your income tax.

VAT is added at a rate of 19.6%, which brings the total rate to 5.98 and 2.99%.

Detailed statement of costs

When the formalities are completed, the notaire 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 notaire's office. If your account shows a credit balance, a check to that amount will be sent with your deed of title. Otherwise, you are required to pay the remaining sums owing.

Capital gains

The seller may owe taxes on the capital gain* realised on the sale. The sale of the principal residence is exempt from such tax, as are other properties under certain conditions. The capital gain is equal to the difference between the sales price and the purchase price, or the declared value upon receipt of the property by gift or will.

The tax position

Capital gains are entirely free from taxation after the property has been owned for fifteen years. The gross capital gain is, in effect, reduced by 10 % per annum for each year as from the fifth year after the purchase.

In addition, a lump-sum allowance of €1,000 is applied to the gross capital gain realised on a transfer. Furthermore, properties whose sale price does not exceed €15,000 are completely free from capital gains tax.

On the other hand, for properties sold more than five years after purchase, the purchase price may be subject to a lump-sum increase of 15 % for work done, without supporting documents. It is possible to replace this 15 % lump-sum by actual expenditure, on condition of its being supported by company invoices.



→ *The main residence
is exempt
from capital gains
tax*

Payment of the tax

The tax corresponding to the capital gains made at the time of the sale is no longer payable with your other income taxes. The notaire is responsible, on registration at the Land Registry*, for payment of the appropriate sum to the tax authorities, based on the vendor's declaration.

The application of the rising income tax bands has been removed and replaced by a fixed taxation at 16%. To this have to be added social security levies – amounting to 11% in 2008 – taking the total to 27%.

For someone who is not tax-resident, the capital gain realised on the sale of property located in France is subject to a deduction of 33.33%. The declaration of a capital gain on real estate at the Land Registry must be made by the non-resident or by their representative. Usually, the notaire carries out this formality.

Be informed

From the beginning of the transaction until the end, the seller and the purchaser should stay informed. Both must know the prices on the market and the notaire may assist them in this regard, for example by using the real estate file (fichier immobilier).

Each step in the process should be made with your eyes open : the reservation agreement, whose provisions are vital, the formalities required to perform the transaction, the signature of the deed of sale, which is a time to obtain additional explanations, and finally, the delivery of the title deed.

The acquisition of property is also a time when one should reflect upon the family situation. One should ask whether the spouse's interests are protected and whether the marital regime is best adapted to the situation of the married couple.

Raymond Willmann
Jean-Fran ois Pillebout

Procedures and formalities

Questions	Procedures, formalities
Purchase of part of a joint ownership	Joint ownership rules, verifying the seller's situation as regards the joint tenancy and the amount of expenses and repair/construction voted by the co-owners (<i>see page 8</i>)
Reservation agreement	The terms of the sale should be established (<i>see page 3</i>)
Purchaser's capacity to sign the agreement	The purchaser can be married, in a PACS (French civil partnership), a minor, or an adult subject to legal protection.
Seller's capacity to sell	For the sale of the family home or a joint asset both spouses must consent. If the seller is a minor, adult subject to legal protection or a PACS partner then certain formalities must be observed (<i>see page 4</i>)
Notification of vacancy for sale (<i>congé</i>) given to any tenants.	Registered letter with return receipt requested or service by bailiff (<i>see page 14</i>)
Tenant's pre-emptive rights	The notification of vacancy for sale (<i>congé</i>) is deemed to be an offer to sell to him. In the event of a sale to a third party on more advantageous terms, a new notification is required (<i>see page 14</i>)
Municipality's pre-emptive rights	Delivery to the municipality of a declaration of intention to sell (<i>déclaration d'intention d'aliéner</i>) stating the price and conditions of sale (<i>see page 7</i>)
Taxes	The sale of property for use as a dwelling is subject to transfer tax at a rate of 4.80% or 5.09% (<i>see page 19</i>)
Necessary formalities for sale of property	Identification of the parties (<i>état civil</i>), cadastral map, zoning and urban planning information, mortgage status, questionnaire to managing agent of the co-ownership, asbestos, lead, etc.

Questions	Procedures, formalities
Fees for purchase	Most of the fees comprise duties paid to the state: 5.09% in transfer taxes etc. The notaire's fees equal approximately 1% (<i>see page 19</i>)
Determination of lots (lotissements)	Verification of recurrent expenses (<i>see page 9</i>)
Obtaining a zoning certificate	Request is made in 4 copies by registered letter to the municipality where the transaction is planned (<i>see page 7</i>)
Obtaining a loan	The obtaining of a loan as a prior condition must be set forth in the reservation agreement (<i>see page 11</i>)
Payment of the purchase price	The price is generally paid in full. If payment delays are granted to the purchaser or if the price is paid under a long term rental agreement (<i>rente viagère</i>), financial guarantees should be given to the seller (<i>see page 11</i>)
Marital status and regime	This should be verified to determine whether the seller may validly sell the property (<i>see page 5</i>); when the purchaser is married, a PACS partner or living together with a partner without a marriage or PACS, the conditions of purchase must be considered (<i>see p.12</i>)
Surface area of the property	In a co-ownership property, the exact surface area of the apartment must be established in the reservation agreement and in the deed of sale (<i>see p. 8</i>)
Value added tax (VAT)	The sale is subject to VAT for new buildings or when the sale constitutes the first sale of the asset after completion (<i>see p. 20</i>)

Capital gain (plus-value)

In terms of taxation, it is the difference between the sale price and the purchase price. The sale of a principal residence and of certain lodgings (accommodation) is exempt from capital gains tax.

Housing development (lotissement)

Land divided into several plots for building purposes. The dwellings erected on each plot benefit from shared equipment.

Land Registry (Conservation des hypothèques)

Registry of building transfers and mortgage registrations or liens relating thereto.

Marital regime (régime matrimonial)

There are three types of matrimonial property regime in France: the legal regime known as community of marital property, the regime of separate ownership of property (English legal regime) and the regime of universal joint ownership. The last two regimes require the making of a marriage contract to bring them into effect.

Reservation agreement (compromis de vente)

Document of sale, usually by simple contract and subject to conditions precedent (in default of complying with which the sale will fall through). It is confirmed by signature of the notarial deed.

Right of pre-emption (droit de préemption)

When the property for sale is occupied, the tenant is entitled to first refusal on its purchase. He has two months from notice to quit to make known his response. Failure to do so will be construed as a refusal.

Servitude (or easement)

Charge attaching to a building. It is passed on to each owner of the property. It may in particular relate to a neighbour's right of access to his residence.