

# French Legal Services

## Buying a property in France



This guide aims to highlight the key points in the process of buying a property in France. At Buckles we can provide expert advice in all aspects of French property law. Our specialist French property lawyer can provide bilingual assistance in relation to all aspects of buying, owning and selling property in France, whether you are a non-French speaking client or more familiar with France and its legal system.

### Property search and finance

There are many different ways to search for your ideal French property, including estate agents' and private owners' websites, French property magazines and French Notaries' websites. If visiting a property with an estate agent you will be required to sign a document confirming that you have visited the property with them. We recommend, however, that you do not sign any purchase offer document ("offre d'achat") or preliminary sale & purchase contract (most commonly known as a "compromis de vente") until we have checked it first and explained the legal consequences to you.

Once your offer has been accepted, remember to let us know straight away so that we can establish contact with the estate agent ("agent immobilier" or "agent") and/or French Notary ("Notaire") from the start.

Whether it is to be a cash purchase or a purchase with the aid of a mortgage, you will need to transfer the deposit plus all or part of the balance of the purchase price and the Notaire's fees to his account in Euros.

We advise you to use a reputable currency dealer (rather than your own bank) as such a dealer is likely to obtain a better exchange rate and will be experienced in transferring funds quickly and efficiently. We can recommend some currency dealer companies to you if required.

If you require a French mortgage, it is advisable to obtain a decision in principle before making an offer on a property. If required we can recommend a mortgage broker specialising in French mortgages.

### The process of buying an existing property

Although the French purchase process has some similarities with the process in England and Wales, it also has many

differences - the main one being that in France a preliminary sale & purchase contract is signed early on in the process before any local search results or mortgage offers have been obtained.

The main steps in the purchase process can be summarised as follows:

- ▶ Once you are ready to make an offer on a property, you may either sign a formal purchase offer ("offre d'achat") supplied by the agent or simply make an offer by e-mail or letter. We recommend that you send any proposed purchase offer document to us for prior approval.
- ▶ When your offer has been accepted, the agent or Notaire will draw up a preliminary sale & purchase contract for signature by the parties. If you have instructed us to represent you, we will ask the agent or Notaire to send the contract to us for checking, together with a set of technical reports relating to such matters as asbestos and lead on the property, infestation by termites, gas and electricity reports & energy performance, amongst others.
- ▶ We will then prepare a detailed Report on Contract and negotiate any additional clauses that may need to be inserted to protect your interests. When you are buying an existing property (as opposed to a new build), we always recommend that you commission a full structural survey of the property. We can recommend a bilingual surveyor working in France. As it is not commonplace in France to make a contract conditional upon a satisfactory survey, it is advisable to obtain the survey report before signing the preliminary contract (or before expiry of your 10 day cooling off period at the very latest – see below).
- ▶ In most cases the contract can be signed by you at home, without the need for any witnesses. Once it has been signed by both parties the agent or Notaire will send a

copy to you by registered post. You, as the buyer, will then benefit from a 10 day cooling off period during which you can withdraw from the purchase without having to give a reason, should you have second thoughts. If you do exercise your right to withdraw and have already paid a deposit, it must be returned to you within 21 days.

- ▶ After expiry of the cooling off period, assuming you wish to continue with the purchase and have not already paid a deposit on signature of the contract, you will be required to pay a 10% (or sometimes 5%) deposit to the agent or Notaire.
- ▶ Once the cooling off period has expired you will be legally bound into the purchase. However, the contract will contain certain conditions precedent (“conditions suspensives”) for your protection. If through no fault of your own any of them are not fulfilled by the date specified in the contract, you will be released from the contract and will be able to recover your deposit. But beware – strict conditions apply! We will have informed you of these in our Report on Contract.
- ▶ If the agent drafted the preliminary contract, he will pass the file over to the Notaire once your cooling off period has expired. However, the Notaire will already have the file if he drafted the preliminary contract himself. The Notaire will then carry out the local searches and the Land Registry searches, as well as notifying any person or body that may have a right of pre-emption over the sale. If you are applying for a French mortgage, it is at this point that you must make a full mortgage application and obtain a mortgage offer by the date specified in the contract. It is vital that you or your broker keep track of the mortgage process and let us know as soon as possible if it looks like your application may be refused or that you may need to ask the seller for an extension of time to obtain a mortgage offer.
- ▶ In the meantime we will prepare a Succession Report, setting out the options for structuring your ownership of the property in your particular circumstances. Our detailed report will take into account French/EU succession law and the French inheritance tax consequences. Once you have made a decision on your preferred method of ownership, we will inform the Notaire so that the necessary documentation can be prepared in advance of completion.
- ▶ Completion of the purchase generally takes place approximately 2-3 months after signature of the preliminary contract, once all the conditions precedent have been fulfilled. A latest completion date will have been inserted in the preliminary contract, but this should not be seen as a fixed completion date.

- ▶ The parties and the Notaire (together with the bank if you are buying with the aid of a mortgage) will agree on a completion date. At this point, we will request a draft transfer deed from the Notaire in order to check that all the conditions precedent contained in the preliminary contract have been fulfilled. We will prepare a Report on Deed, so that you know in advance what you will be signing.
- ▶ At this point you will need to transfer the balance of the purchase price, plus the Notaire’s fees, to his account so that the monies arrive at least the day before completion. Note that in France the buyer pays all the Notaire’s fees, which include stamp duty and generally amount to approximately 7-8% of the purchase price. If you are buying with the aid of a mortgage, you will also be required to pay additional fees amounting to approximately 1% of the mortgage, to cover the cost of preparation of the mortgage deed and its subsequent registration at the French Land Registry.
- ▶ Completion will then take place in the Notaire’s office by signature of the final transfer deed (“Acte de Vente”). The parties may either sign the transfer deed in person on completion or, if unable to attend completion, they may sign a Power of Attorney (“Procuration”) in advance of completion, authorising a third party (usually the Notaire’s clerk) to sign the transfer deed on their behalf. The Power of Attorney will usually need to be witnessed by a Solicitor or Notary Public in the UK and sent to the Foreign & Commonwealth Office to receive an official stamp (“Apostille”) making it valid for use in France.
- ▶ Bear in mind that you will be responsible for insuring the property from completion. We can recommend bilingual insurance brokers if required.
- ▶ You will also be responsible for payment of the local property taxes (“taxe foncière” and “taxe d’habitation”) from completion, although custom has it that the person who was in occupation of the property on 1<sup>st</sup> January of the year in question will pay the “taxe d’habitation” for that entire calendar year. The “taxe foncière”, on the other hand, is generally apportioned between seller and buyer, with the buyer being responsible for paying what is due from the completion date to 31<sup>st</sup> December of the year in question.

### New build or “off plan” purchases

If you are buying a new build property, sometimes referred to as an “off plan” property (known in France as a “Vente en l’Etat Futur d’Achèvement” or a “VEFA” for short), the purchase process follows a different course.

Once your offer has been accepted, the first stage is the

signature of a Reservation Contract (“Contrat de Réservation”).

Strict consumer protection laws dictate what information the contract must contain. The buyer is required to pay a deposit (of up to 5%, depending on when the final transfer deed is due to be signed) and in return the seller reserves the property for the buyer.

The reservation contract will contain, amongst other things, a schedule of stage payments specifying when each subsequent instalment of the price must be paid.

Once the foundations of the property have been completed (or sometimes at a later stage in the build process), the buyer attends the Notaire’s office to sign the transfer deed and pay the next instalment of the price (plus Notaire’s fees which are lower than for an existing property, this time amounting to around 2-3% of the price).

Once again, we can usually arrange for you to sign a Power of Attorney in the UK, if you are unable to attend legal completion of the purchase in person.

Signature of the transfer deed constitutes legal completion of the purchase but does not signify physical completion and handover of the property to you. Instead it means that legal title to what has been built so far is transferred to you. You will become the legal owner of the remainder of the property in stages, once each specified stage of the buildings works has been completed and the corresponding instalment of the price has been paid.

The transfer deed will specify which type of legal completion or reimbursement guarantee is being provided by the seller.

The seller is also legally obliged to give you a 10 year guarantee against structural defects, known as a “garantie décennale”, full details of which should be set out in the transfer deed.

Once the property has been physically completed, the seller will invite you to attend a handover meeting on site. At the meeting the parties will draw up a list of snagging items which you agree must be made good by the seller by a specified date. You must pay the final instalment of the price to the seller and in return the keys of the property will be handed over to you.

### Leaseback purchases

A leaseback purchase is a particular kind of purchase of a new build property, which relates typically to properties that form part of a holiday resort, known as a “Résidence de Tourisme”.

The buyer agrees with the seller that on handover of the completed property, the buyer will sign a commercial lease (“bail commercial”) with a management company which, in turn, will rent out your property for short periods to holiday makers.

To encourage people to invest in such properties, French VAT (“TVA”) - which is normally applicable to new build purchases - is not charged on the sale price, but in return you must account for the VAT you receive from the management company on the rental payments.

Whilst the purchase and build process is the same as for standard non-leaseback new build properties, the commercial lease between you and the management company is an element particular to leaseback purchases and should be examined in detail. Of particular importance is the nature of the rental payments and also your potential exit strategy from the leaseback scheme. You should also consider how many weeks’ occupation of the property you wish to have and whether this corresponds to the number of weeks you are entitled to under the scheme in question.

It is also advisable to look into the reputation and trading history of the management company to whom you will be leasing your property.

Leaseback investments may be suitable for some people but certainly not for all and full legal advice should be sought before committing yourself to such a purchase.

### Properties in a Co-Owned Residence or Housing Development

If you are considering purchasing an apartment in a co-owned Residence (known as a “Copropriété”), or a house which is part of a housing development (known as a “Lotissement”), there are additional considerations to bear in mind.

In particular, note that you will not only be purchasing the apartment or house in question, but also a share of the ownership of the common parts of the Residence or development (such as the communal areas of the building in which your particular apartment, garage or cellar is situated, any green areas, any swimming pool or tennis courts etc).

Your share of ownership of the common parts will be specified in the purchase deed and is in direct correlation to your voting rights with regard to how the Residence or development is run, as well as to the proportion you must contribute to the running costs and the cost of any agreed works.

In 2014 a new law came into force ('Loi ALUR') in relation to the sales of apartments in co-owned Residences, to the effect that the seller now has to provide the buyer with much more paperwork to review before signature of the preliminary contract – including, amongst others, the Minutes of the last 3 years' Annual General Meetings of the Co-owners, a document regarding the financial health of the co-owned Residence and the Co-ownership Regulations ("Règlement de Copropriété – Etat Descriptif de Division") setting out the division between the privately owned and the common parts of the Residence as well as each owner's voting rights and the method of contribution to the costs of the Residence.

If you are buying a property on a housing development, there will be a similar document which is binding on all members of the residents' association (i.e. all owners of property on the development), which is usually entitled "Statuts de l'Association Syndicale" or something similar.

As part of our purchase service, we will review these documents and report to you on the key points.

## The process of purchasing an existing property

### Property Search

Obtain "in principle" mortgage offer, where relevant

Open an account with a currency dealer

Make purchase offer

Once offer accepted, instruct a specialist bi-lingual Solicitor

Arrange a structural survey

Sign purchase contract & pay deposit

Apply for mortgage, where relevant

Notaire carries out local searches

Decide on ownership structure

Agree on a completion date

Transfer balance of purchase price and fees to Notaire

Arrange property insurance to be on risk from completion

Attend completion in person in Notaire's office OR sign a Power of Attorney authorising the Notaire's clerk to complete on your behalf

## Key contact



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