

# French Legal Services

## Selling a property in France



This guide aims to highlight the key stages in the process of selling a property in France. Once you are ready to put your property on the market we recommend that you contact us for advice in relation to your particular situation. Once instructed we will prepare detailed Reports on both the preliminary contract and the draft final transfer deed, so that you are fully aware of the implications of the sale and of your obligations. Whilst the French Notary (“Notaire”) has a monopoly on drafting the conveyancing deeds and collecting the taxes to pay to the French authorities, we are here to specifically represent you and protect your interests.

### Instructing an Estate Agent

Unless you plan to market the property for private sale only, the first step in the process is to find one or more suitable Estate Agents (“Agents Immobiliers” or “Agents”) to market your property. You will need to decide whether you wish to instruct one Agent only, on an exclusive basis, or whether you prefer to instruct two or more Agents on a non-exclusive basis.

Whatever you decide, we recommend that you seek our advice before signing a mandate (“mandat”) authorising the Agent(s) to market the property on your behalf. We can then ensure that you are fully informed as to the terms and conditions of the mandate before committing yourself.

### Technical survey reports (“Dossier de Diagnostic Technique”)

Once you have found a buyer it is your responsibility to commission and pay for various technical survey reports, such as asbestos, lead, termites, electricity, gas, energy efficiency, statement of natural & technological risks, habitable surface area & drainage (although not all these reports will be required in every case).

You will need to arrange for a suitably qualified expert to visit the property and carry out the surveys, although if an Agent is marketing the property they should organise this for you. You will, of course, need to ensure that the Agent has at least one set of keys for the property.

### Certificate of UK tax residence

If you are tax resident in the UK, you will need to apply to HMRC for a certificate of UK tax residence. The Notaire and,

where relevant, the Fiscal Representative (“Représentant Fiscal” - see below) will require the original certificate before completion of the sale, as proof of which French Capital Gains Tax rate applies to you.

As this certificate can often take several weeks to come through, we recommend that you apply for it as soon as you have accepted an offer on a property.

### Other documentary evidence

In addition to your title deed to the property, the technical survey reports and the certificate of UK tax residence (if applicable), the Notaire will also require the following documents:

- ▶ All invoices and receipts for work to the property carried out by French registered contractors during your period of ownership. Such costs can usually be deducted from any capital gain and, if done in the last 10 years, may be relevant in respect of any 10 year structural defects guarantee owed by the builders.
- ▶ Copies of any planning permission, prior declarations of work, permission to demolish etc. that were passed on to you when you purchased the property or that you have obtained since then, together with copies of any declarations of completion and conformity.
- ▶ A copy of any insurance policy you have taken out to cover defects in structural works you have had done to the property in the last 10 years. Such insurance is known as “Assurance Dommages-Ouvrage” and there is a legal obligation on any property owner to take out a policy when having structural works done. It is commonplace for owners not to take out this insurance because it is costly

and they cannot be prosecuted for not having it (unless they are real estate professionals). However, if you are considering having structural work done to the property before selling it, you should consider taking out such a policy for your future buyer's peace of mind and the smooth-running of your future sale.

## Your obligations as seller

**Duty to provide information:** a seller of property in France has a duty to provide information to the buyer. So you must pass on to the buyer all the information in your possession concerning the property. The French Courts impose harsh penalties in this regard - if you fail to disclose significant information, the buyer can obtain a price reduction, the payment of damages and even, in the most serious cases, the cancellation of the sale.

The duty to provide information is very wide and includes such information as the existence of (1) any easements over the property (e.g. rights of way, rights of light, the rights of way for drainage pipes) and (2) any registered or other charges affecting the property (e.g. rights of preference and pre-emption).

It also includes the obligation to supply the "Dossier de Diagnostic Technique" or "DDT" (see above), containing up to date technical survey reports relating to the property. Where the property has an individual drainage system (such as a septic tank), rather than being connected to mains drainage, this duty includes the provision of a drainage report.

In addition to the DDT, the seller must supply proof of up to date payment of the co-ownership charges, where relevant, as well as certain other details relating to the co-owned Residence or the housing development.

If you are selling building land, you must specify whether or not the boundaries have been formally marked out, what planning regulations apply to the land and the possibilities for building on the land.

**Quiet enjoyment:** there are two aspects to your obligation to ensure that the buyer has quiet enjoyment of the property.

Firstly, you must hand over the property to the buyer. This means that you must hand over the keys and your title deeds and must give vacant possession of the property on completion (i.e. unless the property is sold as a rented property, you must ensure that all occupants have vacated the property and that all items not included in the sale have been removed).

The property must be handed over in the state it is in on the completion date and must conform to the terms of the preliminary contract.

Secondly, you must be able to guarantee that the buyer will not be evicted from the property and so will have quiet enjoyment of it. This includes your obligation to inform the buyer of any easements over the property (see above) and any leases which are to continue after completion of the sale.

**Guarantee against latent defects:** as the seller, you are obliged to provide a guarantee to the buyer against any latent defects ( i.e. defects which prevent the property from being used as intended or which significantly reduce its value) in relation to which the buyer would not have bought the property if he had known about them.

A latent defect, therefore, is one which the buyer did not know about and could not have discovered from a routine examination of the property (e.g. a house fitted with taps and pipes which turns out not to have any running water).

The deed of sale ("Acte de Vente") may contain a clause exonerating you from this guarantee, but such a clause will not be valid if you are a real estate professional, if you were aware of the existence of the defect or if you had the property built less than ten years ago.

## The sale process

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

- ▶ Once you accept an offer from a prospective buyer, either the Agent or the Notaire will draw up the preliminary sale & purchase contract. The contract most commonly takes the form of a "compromis de vente", which is binding on both parties. However, sometimes a "promesse de vente" is prepared instead and this is binding on the seller only, although if your buyer decides not to proceed the Notaire will transfer his deposit to you.

Whichever form of contract is used, because it is signed at an early stage before the Notaire has carried out any searches and before the buyer has applied for a mortgage, it will contain various conditions precedent ("conditions suspensives") for the buyer's protection. If any of the conditions precedent are not fulfilled by the date specified in the contract, and your buyer can prove that he was not responsible for the non-fulfilment of the condition(s) in question, he can elect to be released from the contract and will be able to recover his deposit.

You and the buyer will need to agree on the amount of the deposit to be included in the contract. Usually the parties will agree on a 10% deposit, although sometimes 5% may be acceptable.

If any items of furniture or contents are being sold with the property, the contract will need to include an itemised

list of such items, together with their individual prices. To avoid the risk of investigation by the French tax authorities, the prices must be reasonable. Assuming this to be the case, it will result in a slightly lower capital gain for you (and slightly reduced Notaire's fees for the buyer).

In certain cases, where both the seller and the buyer are resident in the UK, the Notaire may agree to the sale price being paid in sterling via our Client Account. However, as the sale price must be expressed in Euros in the contract and transfer deed, an exchange rate must be agreed by the parties and documented in the contract and deed. In addition, any French Capital Gains Tax due must be transferred to the Notaire's account in Euros. For further advice, please contact us.

- ▶ Once you have taken legal advice on the terms of the contract and it has been approved by both parties, you can sign it in person (at home if you wish). No witnesses are required.
- ▶ As soon as the contract has been signed you should, if relevant, inform your mortgage company of the forthcoming sale and request a mortgage redemption statement. You should also inform the property insurers of the pending sale and check the procedure for cancelling your policy (with effect from the completion date).
- ▶ After your buyer's 7 day cooling off period has expired and he has paid his deposit to the Notaire or Agent, the Notaire will commence the local searches and also the Land Registry search. He will also contact your mortgage company, if applicable.
- ▶ At this point, assuming the property you are selling is not your principal residence, if you are not resident in France and the sale price exceeds 150,000 Euros you must appoint a Fiscal Representative in France to calculate and guarantee your French Capital Gains Tax liability. Unless you know of a French tax resident person who is prepared to take on this role, you will need to appoint one of the French companies that have been specifically set up for this purpose. This is something we can arrange for you, either directly or via the Notaire.

A Fiscal Representative company's fees are likely to be in the region of 1% of the sale price but are deductible from the capital gain before calculating the tax due. Since both the method of calculating French Capital Gains Tax and the tax rates themselves change quite frequently, we recommend you contact us for the up to date position.

- ▶ In good time before completion of the sale, you will also need to organise the removal from the property of any furniture and items not included in the sale.

- ▶ Once you have agreed a completion date with the buyer and the Notaire – which is likely to be approximately 2-3 months after signature of the preliminary contract – you will need to either book your travel to France if you are going to attend completion in person at the Notaire's office or arrange for the Notaire to prepare a Power of Attorney ("procuration") for you to sign and return to him, to authorise one of his clerks to sign the final deed of sale on your behalf. The Power of Attorney will usually need to be witnessed by a 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. We can oversee this process for you and provide an English summary of the Power of Attorney.
- ▶ Just before completion of the purchase, you should take meter readings at the property and inform your utility companies.
- ▶ You will need to provide your bank details to the Notaire so that he can transfer the net sale proceeds to you in due course. Be aware that this is unlikely to be immediate and, particularly if there is French Capital Gains Tax to be paid and/or outstanding co-ownership charges, it may be a few days or even weeks before you receive your money. We will, however, liaise with the Notaire to minimise the delay between completion and payment.

If you want to fix an exchange rate with a currency dealer for converting the Euro sale proceeds back into sterling, you will need either to contact a currency dealer to arrange this once you know the agreed completion date and what the net sale proceeds will be (in which case you will need to send the Notaire the currency dealer's account details), or send the Notaire your French bank account details and then arrange for a currency dealer to purchase sterling and transfer the funds to the UK in due course. The latter course of action is, of course, less risky as you will have the funds in your account before entering into a contract with your currency dealer.

- ▶ Shortly after completion, the Notaire will complete a French Capital Gains Tax return on your behalf and pay any Capital Gains Tax due.

If you are tax resident in the UK, you will also have to declare any capital gain on your UK tax return. However, due to the terms of the UK-France Double Tax Treaty you should get a tax credit in the UK for any tax paid in France.

- ▶ As regards the local property taxes ("taxe d'habitation" and "taxe foncière"), the occupant of the property on 1<sup>st</sup> January of the year of sale is responsible for paying the taxe d'habitation. This responsibility will therefore fall on you (or, where applicable, your tenant). However, the

taxe foncière is routinely apportioned between seller and buyer, so that although you might well receive the bill for the year of sale, the buyer must reimburse you on completion for his share of the tax.

## The process of selling a property in France

Instruct one or more Estate Agents or market the property for private sale

Instruct specialist bilingual Solicitor – initially to explain terms & conditions of Agent’s Mandate before you sign

Arrange technical surveys of the property

If UK tax resident, obtain a Certificate of UK Tax Residence from HMRC

Provide Notaire/Agent with your title deed, invoices & receipts for any work done, copies of any planning documents & structural defects insurance

Provide Notaire/Agent with itemised list of any furniture included in the sale

Agree form of sale contract and both parties sign

Buyer pays deposit into Notaire’s / Agent’s account, as stipulated in contract

Where relevant, inform your mortgage company of the sale & request a redemption statement

Inform your property insurers of the sale

Notaire carries out local searches

Notaire appoints a Fiscal Representative, where relevant, to calculate your French Capital Gains Tax (CGT) liability

Organise removal from property of items not included in sale

Agree on a completion date

Arrange travel to France if attending completion in person or sign a Power of Attorney authorising Notaire’s clerk to complete on your behalf

Take meter readings at the property or arrange for Agent to do so

Provide your bank details or currency dealer’s details (as appropriate) to Notaire for receipt of net sale proceeds

Liaise with currency dealer, if desired, to arrange conversion of sale proceeds to sterling & transfer to you

Receive net sale proceeds from Notaire (or via currency dealer, where appropriate), after payment of any French CGT by Notaire

Declare any capital gain on your UK tax return and apply for tax credit re CGT already paid in France

## Key contact



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