

PROCESS OF PURCHASING A PROPERTY IN FRANCE

So you have found the house of your dreams and you now need to think of the practicalities and legalities of the transaction.

As soon as your offer has been accepted, you should contact your legal adviser in the UK in charge of advising you in relation to your purchase. He/she will then get in touch with the agent or the Notaire before they start drafting the “Compromis de Vente” or “Promesse de Vente”, which are the initial sale contract. That way, they will be able to discuss which clauses are needed in the contract in order to protect your interests. If you intend to purchase with a mortgage, in particular, the relevant condition precedent must be inserted so that you can pull out of the transaction if your mortgage application is unsuccessful. Once the terms of the transaction have been discussed and agreed, the agent or the Notaire (depending on who will draft the contract) will send the draft contract to your adviser who will provide you with a full explanation of its terms.

The type of issues that your legal adviser will deal with includes the following:

- Establish the title to the property in order to ensure that the seller is the legal owner of the property. This is particularly important where there is more than one seller.
- Check the plan showing the extent of the property.
- Check the description of the property and in particular if the seller has carried out building works, whether they are of the type that required planning consent and building guarantees.
- Check if the property is subject to easements such as rights of way.
- Ensure that all relevant conditions precedent are inserted in the contract such as obtaining a mortgage.
- Check that the purchase price and deposit are correct.
- Advise on the best ownership structure for the buyer.

The “Compromis de Vente” or the “Promesse de Vente” are signed very early on in the transaction, which is why it is very important to have all relevant conditions precedent inserted in the contract. If these conditions are not fulfilled by a certain date, the buyer will be able to withdraw from the transaction and recover his deposit.

It is also important at that stage for the purchaser to discuss with his legal adviser how he wants to structure the ownership of the property. This is particularly relevant to couples or unmarried partners as the ownership structure will dictate how the property will pass on death. The main options to be considered include “indivision”, “tontine” or an SCI (“Société Civile Immobilière”). Although a final decision can be made at the stage of the “Acte de Vente”, which is the transfer deed, it is always advisable to address this issue early on as some difficult issues sometimes need to be addressed and the more time the purchasers have to think about them, the better.

The “Compromis” or “Promesse de Vente” can be signed in England and there is therefore no need to travel to France. Once the preliminary contract has been signed by both the seller and the purchaser, the agent or the Notaire will send a copy of the signed document to the purchaser by registered post. The purchaser will then have a period of 10 days to change his mind and withdraw from the transaction. If there is more than one purchaser, a copy must be sent to and signed by each one. The time when this 10 day cooling off starts running is very clear: it starts from the day after the purchaser has received the copy of the signed “Compromis” or “Promesse de Vente”, so if the purchaser receives it on a Monday, the cooling off period starts running from the Tuesday and expires at midnight on the following Thursday. It is not unusual to see purchasers receiving the contract already signed by the seller and asked to sign it themselves on the understanding that their cooling off period starts there and then. This is not correct. The only difference is when the contract is signed by both the seller and the purchaser in the Notaire’s of the agent’s office: the purchaser can receive the signed contract by hand after signing a note confirming that he has received it by hand. The cooling off period will then start running from the day after it has been handed to the purchaser.

If the purchaser is still keen to proceed with his purchase, he does not need to do anything. But if he changes his mind for whatever reason, he can do so by sending a letter explaining that he is withdrawing from the transaction (there is no need to explain why) by registered post to the Notaire or the agent. The seller is then released of his obligations and is free to sell to another person. If a deposit has been paid, the purchaser will recover it.

Generally speaking, the Notaire will not deal with the usual searches until after the purchaser’s cooling off period has expired. His searches will include dealing with the local Mairie in order to obtain a document known as “note d’urbanisme” or “certificat d’urbanisme”, which will give some general information about the property. It will not, however, reveal whether or not some major building works are planned in the local “commune” or its surroundings. The Notaire will also contact any party entitled to exercise pre-emption rights to purchase the property such as SAFER or the local authority. They need to be contacted so that they can advise whether or not they intend to exercise their rights to purchase. If they fail to respond within two months of the date of receipt of the Notaire’s letter, they are deemed to have waived their right to purchase the property.

When the Notaire has received the results of all searches and all conditions are met, he can draft the “Acte de Vente” (transfer deed) in readiness for completion. The signing of this contract can be done either in person at the Notaire’s office or by power of attorney. Completion can take place on the agreed date – provided that the Notaire has received the completion monies from the purchaser as shown on his completion statement.

You are then the proud owner of a bit of France!