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Notaires de France

FROM STRATEGY TO DEEDS

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SELLING AND BUYING REAL ESTATE GUIDE IN 5 KEY STEPS

CONTENTS

Buying and selling real estate are important transactions in somebody's life, which require careful thought and planning. This general rule is all the more relevant as real estate transactions have become extremely complex, due to the very wide range of laws and regulations governing such transactions, with a combination of public interests (town planning, social diversity, credit controls, etc.) and private interests (property rights, tenant rights, construction rights, etc). In addition, the legislator's determination to grant buyers as much protection as possible is reflected in the formal, binding requirements applying to the sale process (cooling-off period, handwritten reference to Scrivener law, etc).

The ALUR law of 2014 has introduced even more constraints: it requires a large number of documents to be gathered at the pre-contract stage, and this can sometimes be a particularly daunting task. At the beginning of the last century, deeds of sale contained a handful of pages. Nowadays, the smallest such deed often runs to more than 200 pages, if the numerous appendices are included.

At a time when it is possible to purchase anything with 3 clicks online, the notarial procedure may seem very long. However, it is surely worth taking a little longer to ensure the legal certainty of a real estate transaction, considering what is at stake.

The purpose of this guide is to set out the 5 keys steps to be followed when selling and buying real estate, in other words what buyers and sellers need to know in order to be fully prepared and understand the work carried out "behind the scenes" by *Notaires* for the completion of the transaction.

STEP #1

THE DECISION TO SELL OR BUY

Supply and demand meet during the so-called pre-contractual period. This step begins with the owner's decision to put a property on the market and ends when the buyer's offer is accepted.

THE FAIR VALUATION OF THE PROPERTY

The question of the property's valuation is obviously a key concern for both the seller and the buyer. On the one hand, the seller's objective is to obtain the best possible price, without scaring off potential buyers, whereas the buyer wants to get the best possible deal, without having his or her offer rejected.

It is therefore essential that both parties are familiar with the real estate market at the time of the transaction. In this regard, there are numerous possibilities: real estate advertisements, real estate market statistics provided by *Notaires*, websites and, of course, advice from real estate professionals.

FOR THE SELLER: ORGANISING THE SALE

Choosing how to put the property on the market

While France is among the countries where there is still a very high proportion of direct sales between homeowners, the constraints in this type of choice should not be underestimated. Unless the seller has the necessary time and motivation, it is preferable to use the services of an estate agent: placing and renewing advertisements, answering phone calls, showing the property to potential buyers, involving sometimes several visits for the same person, answering a very wide range of questions, distinguishing between serious and less serious offers require genuine professional expertise.

Preparing a full file to sell the property as quickly as possible at the best possible price

Although a large number of documents are needed, they are essential in order to provide the buyer with all relevant information, thereby reassuring the buyer and speeding up the decision-making process. These documents include not only the documents related to the ownership, but also technical diagnostics.

This can take time and may involve obtaining copies or regularising certain matters. For example:

- You cannot find your title of ownership (authentic copy of the title deed) and you need to obtain a copy from the land registry
- You have acquired possessory title to a common area ("***partie commune***") with the consent of the co-owners, but the situation has not been regularised with the land registry.

It is therefore necessary to be proactive and consult your *Notaire* as soon as possible in order to anticipate any unexpected difficulties and avoid a situation where the buyer might try and renegotiate the price on the grounds of information not available at the time of his or her offer.

For the sale of property in co-ownership buildings, it is preferable to contact the *Notaire* before putting it up for sale, because of the constraints of the ALUR law.

THE DIFFERENT TYPES OF MANDATE

The exclusive mandate gives a single real estate agency the sole right to sell your property and, naturally, in such a case, the estate agency in question is more motivated.

You can also sign an exclusive shared mandate (2 agencies) for diversification purposes or give mandates without exclusivity clauses, in which case you can give as many mandates as you wish. However, be careful not to choose too many agencies since, from a commercial point of view, this may undermine the sale of the property and discourage agencies.

Whatever type of mandate you choose, you can also find a buyer directly by yourself, provided that you include this option in the contract.

Making an initial capital gain tax assessment

Any capital gain will, if applicable, be subject to flat-rate income tax and social security contributions. However, some exemptions are granted, in particular where the property is the seller's main residence, or in the case of property owned for a certain length of time.

To calculate the purchase price, you must take account of the costs incurred at the time of purchase (registration fees, notarial fees, estate agent's fees, etc.), as well as the cost of any improvement work carried out on the property. These amounts are therefore deducted from the gross capital gain calculation. See below the box on the sale of a property rented with furniture.

The amount of the taxable capital gain could be reduced at a rate which depends on the period of ownership.

If the amount of the taxable capital gain exceeds €50,000, an additional tax is payable on real estate capital gains. Its rate varies according to the amount of the taxable capital gain.

It should be noted that these rules apply only to sales made in France by French tax residents. For non-residents, each case is dealt specifically, depending in particular on the owner's tax domicile. For more information, please refer to our Le Point Sur devoted to the taxation of real estate capital gains on our website althemis.fr under Practical guides.

You can also access the real estate capital gains simulator of the Paris Chamber of Notaries via our website althemis.fr in the Links section.

FOR THE BUYER: THE CRUCIAL QUESTION OF FINANCING

Financing a property

From the buyer's viewpoint, the most important issue is that of financing: personal funds, borrowing capacity, family help in the form of a loan or gift.

→ Althémis advice

If you want to transfer part of your assets to your children, it may be appropriate to consider donating the property well in advance of the sale in order to eliminate the capital gains tax.

Obviously, a purchase involving several buyers (married couple, couple living together under a civil partnership or simply co-habiting, family purchase, etc.) requires special arrangements. See page 9 Origine of the funds in the event of a purchase by several parties.

The total budget needs to include the purchase price, plus registration fees (unless the property is subject to VAT), notarial fees and any borrowing and guarantee costs (mortgage or guarantee) and, of course, the estate agent's fees.

Simultaneous buying and selling or a bridging loan?

When you already own a property which you need to sell in order to finance your new acquisition, ideally you should try and coordinate the 2 transactions, but in practice that is often difficult.

This raises a dilemma: should you sell before buying, with the risk of finding yourself temporarily homeless, or should you wait until you have bought another property before selling? While there is no perfect solution, both options have definite pros and cons.

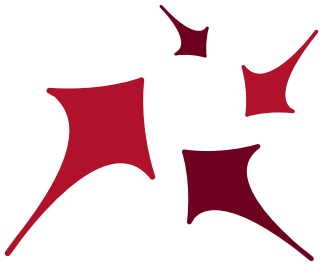
Selling before buying gives you price security, whereas if you opt for the other solution you need to buy time by taking out a bridging loan, which has certain inherent risks, especially in a difficult real estate market. In this regard, it is clear that the existence of an undertaking to sell in respect of the property to be sold will make it easier to get the bank's agreement. However, if the property is not sold before the agreed deadline, you will come under very strong pressure to reduce your selling price. If there are alternatives to sell the property (redeeming a life insurance policy, selling another property, etc.) this risk is reduced.

→ SALE OF A PROPERTY RENTED WITH FURNITURE

- **Professional furnished rental («LMP»): the business capital gains regime applies, rather than that for private individuals. You should consult your chartered accountant to analyse the tax impact of the sale**
- **Non-professional furnished rental («LMNP»): the finance act for 2025 requires depreciation to be taken into account, which increases the capital gain compared with the sale of a property that would have been let on a conventional basis**

STEP #2

THE PRE-CONTRACT



When the seller and buyer have reached an agreement on the property and its price, this agreement needs to be formalised by signing a pre-contract, which is a key part of the transaction. In essence it establishes the final framework for the transaction and that is why it is very important to call on the assistance and advice of a real estate professional for its drafting. We believe that a *Notaire* should be involved from the outset, especially when dealing with complex transactions: selling land for development, large properties, properties with specific legal difficulties, etc.

UNILATERAL UNDERTAKING TO SELL

There are 2 types of pre-contract: a contract containing unilateral undertaking to sell and a preliminary sale agreement. Although they are very different in philosophy, the 2 formulas have become very similar over time. Moreover, they both provide for a ten-day cooling-off period and the condition precedent of the buyer obtaining a loan.

The contract containing unilateral undertaking to sell *("promesse unilatérale de vente")*

In the unilateral undertaking to sell, the seller gives an undertaking while the buyer has the option whether or not to buy until the expiry of the option. If the buyer decides not to complete the purchase, he or she must pay the seller the reservation deposit specified in the contract (generally between 5 and 10% of the price) in consideration for the seller agreeing to reserve the property for him or her during the period of the option.

The advantage of the unilateral undertaking to sell is that it is less constraining for both parties: for the buyer (who loses the reservation deposit, but who can never be compelled to buy if he or she chooses not to exercise the option) and for the seller who can find another buyer more quickly if the option to buy is not exercised.

The preliminary sale agreement *("compromis de vente")*

On the other hand, the preliminary sale agreement is a bilateral contract which is binding on both parties: moreover, the French Civil Code stipulates that a preliminary sale agreement has the effect of a sale.

The buyer is required to complete the purchase unless one of the conditions precedent has not been satisfied, and if the buyer refuses to complete the transaction he or she is liable for compensatory damages (which amount is set up in the contract on the basis of 5 to 10% of the price) as well as the judicial enforcement of the sale (with an obligation to pay the purchase price).

The criteria for deciding which type of pre-contract to choose

Both types of pre-contact have advantages and disadvantages. In general, estate agents use the preliminary sale agreement.

Regarding notarized pre-contracts, there is in general a geographical divide (partly linked to real estate prices) between, on the one hand, Parisian *Notaires,* who tend to favour the unilateral undertaking to sell and, on the other hand, *Notaires* in the provinces who often prefer the preliminary sale agreement.

ACQUISITION EXPENSES

When a property is sold, the buyer must pay the *Notaire* an amount (incorrectly called "notarial fees") corresponding to various taxes, amounts due to third parties (surveyor, property management firm) and the *Notaire*'s remuneration. The *Notaire*'s remuneration is established on the basis of a scale of charges set by the State and identical for all *Notaires*.

For example, for the sale of a property in Paris worth 1 million euros, the total amount of these expenses is around 7% of the selling price (84% of this amount goes to the Treasury). The remuneration paid to the *Notaire* is less than 1% of the total price.

The Paris Chamber of Notaries offers a tool for calculating the acquisition expenses paris.notaires.fr/fr/outils-et-services/calcul-de-frais-d-achat

DOCUMENTS REQUIRED FOR THE PRE-CONTRACT

The party drafting the undertaking to sell or the preliminary sale agreement needs a number of documents in order to have a good overview of the transaction. The list of documents required varies according to the nature of the property and its legal situation: title deed, civil status of the sellers and buyers (including any marriage contract) and compulsory technical diagnostics.

If the property is or has been rented: a copy of the lease, vacation notice sent by the tenant or notice to vacate constituting an offer for sale.

Other documents may include the last property tax notice, the co-ownership rules and/or the specifications of the sub-division as well as the minutes of the general assembly of co-owners for the previous 3 years and the current year.

If the property is owned by a property investment company, it is essential to provide a copy of the company's articles of association.

If work has been carried out on the property it will also be necessary to provide a copy of the planning permission (building permit or declaration of work) and a copy of the "structural damage" insurance policy in the case of construction work, extensions (including upwards extensions) or transformation work carried out within the last 10 years.

CONDITION PRECEDENT OF OBTAINING A LOAN

The French Consumer Code specifies that when a buyer intends to rely on one or more loans to finance an acquisition, the sale is agreed subject to the said loan(s) being obtained. In concrete terms, this means that if the loan is not obtained, the buyer may be released from the pre-contract without any penalty.

It is therefore understandable that this clause needs to be strictly regulated: description of the terms and conditions of the loan (duration, type, maximum rate of interest excluding insurance), with a deadline for obtaining the loan. The law provides for a minimum period of 30 days, but it is more realistic to allow for 45 days.

If the buyer does not intend to rely on a loan, this must be specified in the form of a handwritter note in the contract, in order to ensure that the buyer is aware of the effects of such a choice, if the deed is not notarized.

COOLING-OFF PERIOD

In the case of residential property (for use as the buyer's main or secondary residence or even for letting), the buyer has a period of 10 days (from the delivery by hand or notification by registered letter of the pre-contract) to exercise the option to withdraw from the transaction.

RESERVATION FEE OR SECURITY DEPOSIT

As part of the pre-contract commitments, the buyer will pay a reservation fee in the case of a unilateral undertaking to sell or provide a security deposit in the case of a preliminary sale agreement.

It is customary to pay 10% of the price, but for large amounts it is becoming increasingly common for the parties to agree on the payment of only 5% at the time of the precontract.

This amount is paid to the *Notaire* and placed on an escrow account. If the sale is completed, the amount paid is deducted from the selling price. If, on the contrary, the sale falls through, everything depends on the reason:

- If the buyer cannot complete because his or her loan application has been rejected or a condition precedent has not been satisfied, the amount is returned to the buyer
- If the buyer is at fault, the contract provides that the agreed amount must be paid to the seller (who must ask the buyer for the payment of the balance if only a fraction of the amount was paid at the outset).

→ Althémis advice

If you are a seller, rather than accepting an offer from a potential buyer (it represents a real commitment), it is preferable to sign a pre-contract which involves agreeing on aspects other than simply the price.

→ SETTING UP A FRENCH REAL ESTATE COMPANY TO MAKE A PURCHASE

If you want to set up a French real estate company (called an SCI) to make your purchase, you need to include a right of substitution in the precontract. Furthermore, if bank financing is used, the bank must be informed rapidly of the formation of such an acquisition vehicle. A copy of the company's draft articles of association must also be sent to the bank.

As regards the loan, there are 2 possible solutions: either the bank lends to the SCI or it lends to the shareholders who in turn make a contribution in cash to the SCI, either via the shareholders current account or as capital, in order to finance the acquisition. This type of company can be used to meet a number of objectives: to avoid joint ownership, to separate ownership and control, to optimise the transmission of the property, to provide the spouse with better protection, etc.

However, it is important to note that if the SCI lets the property purchased on a furnished basis (even temporarily), it will be subject to corporation tax, with all the relevant tax consequences.

STEP #3

BETWEEN THE PRE-CONTRACT AND THE SALE

During this period, the parties must take a certain number of steps to ensure that the transaction is successfully completed. The *Notaire* analyses and processes the elements that are necessary for the signature of the deed of sale.

STEPS TO BE TAKEN BY THE BUYER

The buyer must take the necessary steps to ensure that the conditions precedent applying to his or her purchase are fulfilled. These mainly relate to obtaining financing or any town planning approvals needed for his or her project.

Obtaining financing

The buyer must comply with the deadline specified in the precontract for obtaining financing. If, on the agreed date, the loan application has not been approved, there are 2 possible scenarios:

- Either the buyer's loan application has been rejected, and in such a case the law stipulates that the contract signed between the parties is void. The buyer then recovers his or her reservation fee or security deposit, while the seller becomes free to sell the property to another person
- Or the bank has not yet notified its decision, in which case the seller may ask for the contract to be declared void. However, if the buyer so wishes, and with the seller's agreement, the deadline may be extended until the bank has given its decision.

It is possible to provide in the contract for a third-party substitute buyer. In such a case, where obtaining financing is a condition precedent, it is advisable to anticipate this substitution possibility as early as the pre-contract stage in order to enable the third party to prepare a loan application in a timely manner.

Obtaining a building permit or authorisation

If completion of the transaction is contingent on the buyer obtaining a building permit (or other town planning authorisation), the period between the undertaking and the sale enables the buyer to:

- File his or her application for a permit
- Obtain a response from the competent authorities (depending on the circumstances, this can take between 3 and 5 months)
- Take account of the time limits allowed for third-party appeals (2 months) and for the authorities to withdraw the permit (3 months). The time limit for third-party appeals (2 months) runs from the date on which the building permit is displayed on the land. The permit must be displayed continuously on the land throughout the 2 months period. The best solution in this regard is to have an affidavit drawn up by a bailiff at the beginning, in the middle and at the end of this period.

CHOOSING A *NOTAIRE*

Both the buyer and seller are free to choose their *Notaire* (no territorial exclusivity). They are not required to use the same *Notaire*.

However, when there are 2 *Notaires*, this raises the question of who drafts the contract, in other words who draws up the pre-contract and the deed of sale. This is determined according to the rules of the notarial profession, which vary between chambers of *Notaires* and are sometimes fairly complex.

To simplify matters, we can say the national principle is that the seller's *Notaire* draws up the deed of sale. However, there are exceptions. The *Notaire* of the department in which the property is located draws up the deed of sale if the other *Notaire* is based in another department. Regional councils may also adopt rules specific to the *Notaires* within their jurisdiction that depart from the national rule.

The notarial fees are borne by the buyer and are shared between the seller's *Notaire* and the buyer's *Notaire*. Therefore, the use of 2 *Notaires* does not create any additional cost.

Althémis advice

Allowing the buyer to take early possession of the property in order to live there or carry out work is very risky for the seller and buyer alike. Between the undertaking and the sale, many things can happen and compromise the transaction: the exercise of a pre-emption right by the municipality, failure to obtain a loan, death of the seller or buyer, fire, etc.

PREPARATION OF THE FILE BY THE SELLER'S *NOTAIRE*

In order to finalise the sale, it is necessary to collect a number of documents which are examined by the *Notaire*.

Mortgage checks

The aim is to check whether the property is encumbered with a current mortgage. If so, it is necessary to contact the creditor to arrange for the mortgage to be released, with the cost being borne by the seller. E.g. the simplified release of a mortgage corresponding to an original loan of €500,000 costs around €1,400.

If the mortgage is not released, the property will continue to be encumbered despite the change of owner. If there is still an outstanding amount to be settled, the creditor will give its consent, subject to repayment in full of the amount in question.

In practice, any such amount is settled by the *Notaire* who deducts it from the selling price.

Obtaining information from the land registry and urban planning information

The aim is to provide the buyer with general information on the property with regard to planning regulations (easements, the possible existence of pre-emption rights, absence of a dangerous structure notice, information on quarries, etc.). For this purpose, the *Notaire* usually appoints a surveyor.

However, the buyer may only withdraw from the transaction if this information reveals previously undisclosed defects or easements which would prevent the property from being used for its intended purpose or which would have a significant adverse effect on its market value: expropriation, the property has been declared dangerous or unfit for occupation, it is in a reserved area, infringement of public highway specifications, etc.

The information which is provided when the sale takes place is very general. If the buyer has a specific project, he or she should contact the local town planning department in order to ensure that the project is feasible.

Furthermore, the information provided relates to the actual site and not its environment. Here too the buyer should contact the competent authorities directly if he or she wants more detailed information on potential projects near the property (building of a new road, new public facilities, etc.).

Pre-emption rights

The law provides for various pre-emption rights which enable the right-holder to acquire a property instead of the original buyer: the municipality's urban pre-emption right, the SAFER's pre-emption right in rural areas, the tenant's pre-emption right (if the tenant has been given notice to vacate for the sale of the property or if it is the first sale after the creation of a co-ownership property), right of co-owners, etc. There may also be contractual rights of pre-emption, between family members or neighbours for example.

The formalities that need to be completed to ensure that no such rights will be exercised are sometimes complicated (for example, the need to "eliminate" several cumulative rights) and often long.

MORTGAGE OR MUTUAL GUARANTEE

For property lending, banks generally require a guarantee, which may take several forms.

The first is a mortgage. In the case of property financing, this takes the form of a lien benefiting the lander ("*hypothèque légale de prêteur de deniers*"). It allows the bank, if the borrower defaults, to seize the property and use the proceeds of the sale to reimburse the loan.

The other solution is to ask a specialised mutual guarantee company, which will charge a fee for its services, to act as guarantor. In the event of a default, the said company will reimburse the bank and then take action to seize the debtor's assets in order to recover the amount disbursed by it.

Both solutions have advantages and disadvantages which should be discussed with the lender and the *Notaire*.

Thus, municipalities have 2 months in which to respond with regard to urban pre-emption rights. Moreover, since the ALUR law, this 2-month period may even be dependent on the production of additional documents, or even require an inspection by the municipality's services.

These formalities are nevertheless indispensable to ensure the legal certainty of the sale and cannot be neglected, otherwise the sale may be void.

Checks regarding the parties to the deed of sale

The *Notaire* gathers the necessary documents from the municipal authorities in order to check the civil status and legal relationship of the parties (civil partnership, marriage, etc.) and to ensure that there is no entry in the civil register limiting the capacity of any of the parties (opening of a guardianship procedure for example). If the property to be sold was acquired by way of a gift, the agreement of the donors and the other children will generally be required in order to avoid the risk of the sale being challenged subsequently on the grounds of an infringement of the rights of forced heirs.

Moreover, pursuant to the ALUR law, *Notaires* handling the sale of residential property are required to consult the national criminal records in order to check whether the buyer has been convicted by a court of a "slum landlord" offence. If such a conviction exists, the sale cannot be completed unless the buyer certifies that he or she is purchasing the property as owner-occupier.

Information from the property management company

When the property is in a co-ownership building, the *Notaire* must contact the property management company, using a questionnaire called a co-ownership account statement ("***état daté***"), to obtain information on the co-ownership situation: unpaid charges, work, procedures, amount of working capital or insurance to be reimbursed by the buyer to the seller, etc.

A fee is paid to the property manager ("***syndic***") in consideration of this information. The amount is set by the general assembly of co-owners and is capped at €380.

The law considers that this cost is to be borne by the seller and the amount is generally deducted by the *Notaire* from the selling price in order to avoid the need for any disbursement in this regard before the completion of the sale.

This dated statement also provides information on any ongoing co-ownership legal proceedings. The deed of sale generally provides in such a case for a subrogation of the buyer. This means that the buyer, as a new co-owner, must replace the seller in such proceedings: pay the lawyer's fees, bear the cost of any contributions, but also participate, if applicable, in any compensatory damages received.

Since 1st January 2017, co-ownerships have to set up a repair work fund. The money paid to this account is attached to the co-ownership unit, not to the owner. However, a reimbursement can be provided from the buyer to the seller, for the money that has not yet been used for repair works. It is advisable for the buyer to enquire about, in order to include this reimbursement in his or her financial plan.

If a general assembly is held between the pre-contract date and the sale, it is generally accepted that the buyer will contribute to cost of any work approved by the said assembly, provided that the buyer was in a position to participate in and vote at the said assembly under a power of attorney granted by the seller. Otherwise, the seller will remain liable for the cost of the work.

Moreover, *Notaires* now have an obligation, prior to the completion of a sale, to ensure that the buyers are not already co-owners in the building and, if they are, that they are up-to-date with the payment of their charges. If the buyer is a legal entity, this information duty concerns all the shareholders and their spouses.

→ INDIVIDUAL ENTREPRENEURS: THE DECLARATION OF EXEMPTION FROM SEIZURE

The law allows the individual entrepreneurs (which excludes those acting via a company) to protect their private real estate assets from claims from future trade creditors.

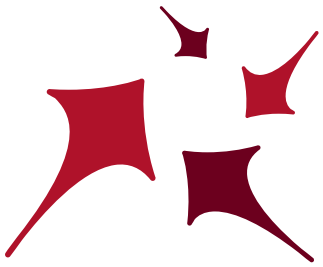
For debts contracted since 8th August 2015, the main residence is automatically protected. The other real estate assets that are not used by the entrepreneur for his or her work activity can be protected by a declaration of exemption from seizure by French authentic notarial deed, in particular when acquiring such property.

The protection is effective only for the real estate properties owned directly, i.e. not owned through a real estate company.

An entrepreneur may waive all or part of this protection at any time in favour of one or more of his or her creditors.

STEP #4

THE SIGNATURE OF THE DEED OF SALE



The signature of the deed of sale -the completion of the property acquisition, records the payment of the price and the transfer of ownership.

THE FINANCIAL ASPECTS

Payment of the price

For real estate transactions, *Notaires* may only make or receive payments by credit transfer when the global operation exceeds €3,000.

Therefore, a buyer must pay the reservation fee (or security deposit), his or her personal contribution, or the amount of fees and costs relating to the deed of sale by credit transfer. All payments must be made in good time to ensure that the funds are in the *Notaire*'s bank account on the day of completion of the sale. Thus, the amounts paid must be credited at least 24 hours before the scheduled signature date. Otherwise, there is a risk of completion being delayed.

The origin of the funds transferred must be proved by a bank certificate, since it is important that the funds are transferred from an account in the buyer's name.

If the price is paid using a loan, secured by a mortgage (notarized loan), the *Notaire* will handle the release of the loan funds. On the other hand, if the loan is not secured by a mortgage (by private deed) it is for the buyer to contact his or her bank to ensure that the loan is released, by providing, if applicable, a copy of the letter from the *Notaire* confirming the meeting for the signature of the deed of sale.

Origin of the funds in the event of a purchase by several parties

If 2 people married under the regime of community of property decide to acquire a property, it may be advisable to make a declaration of reinvestment ("***déclaration de remploi***"), assuming that the purchase if primarily financed by one of the spouses with his or her own capital funds or using funds from the sale of property owned by him or her (property owned before marriage or received during marriage as a gift or an inheritance). In all cases, a reminder of the origin of the funds will enable a record of the financing information to be kept.

If the spouses are married under the regime of "***séparation de biens***" or "***participation aux acquêts***", their ownership proportions must match their respective contributions. Otherwise, the funding by one spouse of all or part of the proportion registered in the name of the other spouse could lead to complexities in the event of divorce or death. Is it a loan, a gift (subject in principle to gift tax), a contribution to household expenses, or even a form of remuneration (when the spouse does unpaid work in the company or gives up work in order to bring up the children)? All these interpretations are possible and represent endless sources of conflict.

Althémis advice

To avoid any unpleasant surprises (not-vacated property, furniture left on the property or water damage), it may be advisable for the buyer to ask to revisit the property the day before signing and take the opportunity to agree the electricity and water meter readings with the seller.

"OFF-PLAN" PROPERTY SALES

This type of sale (for buildings under construction) is very tightly regulated when it concerns residential property in order to offer buyers as much protection as possible.

Payments are made according to the progress of work in accordance with a schedule laid down in law. Similarly, property developers are required to provide guarantees of completion or repayment in the event of difficulties in completing the construction.

Lastly, a number of compulsory statements must be included in the deed, otherwise it may be declared void.

Althémis advice

If the property is purchased by partners who have entered into a civil partnership ("PACS") or are co-habiting, when one partner wants his or her share of the property to pass to the other partner, it is indispensable to draw up a will.

Reimbursement of property tax

Property tax ("*taxe foncière*") is payable by the owner on 1st January. In the case of a purchase made during the year, it is generally accepted that the buyer reimburses pro rata temporis to the seller the proportion of property tax corresponding to the amount from the day of the sale up to 31 December.

Reimbursement is made at the time of the sale and is calculated on the basis of the last known amount, which is sometimes lower than the amount which the seller actually has to pay. Nevertheless, the main advantage of settling this matter in advance is that it avoids the need for the seller to re-contact the buyer afterwards in order to obtain reimbursement.

THE EFFECTS OF THE TRANSFER OF OWNERSHIP

Transfer of risks

The transfer of ownership also entails the transfer of risk to the buyer. It is therefore necessary for the buyer to be insured from the day of the sale in the event of any damage to the property.

If a mortgage loan has been taken out it will be necessary to provide an insurance certificate to the *Notaire* so that he or she can inform the insurance company of the existence of a mortgage, since in the event of an insurance claim any insurance pay-out will be made to the bank which holds the mortgage rather than to the owner.

Transfer of leases

In the case of the sale of tenanted property the law provides for the buyer to replace the seller vis-à-vis the tenant.

The amount of rent for the current period is generally reimbursed on a pro rata temporis basis. Similarly, the seller must transfer to the buyer the amount of the tenant's security deposit.

The seller's guarantees

In principle, the buyer acquires the property in its current state: he or she has visited the property and is deemed to accept it with its advantages and disadvantages.

Therefore, unless the seller is a real estate professional, the buyer is not covered against hidden defects.

However, if the property is bought new or if major work has been carried out in the last 10 years, the buyer may in some cases be able to invoke the liability of the builders.

Regarding the surface area, the so-called "Carrez law" measurement certificate is only mandatory in the case of co-ownership. If it transpires after the sale that the surface is more than 1/20th less than that indicated in this certificate, the buyer is entitled to claim a proportional reduction in the price.

On the other hand, the seller has no such right if the surface area is bigger.

SPECIFIC CHARACTERISTICS OF THE SALE OF CO-OWNERSHIP PROPERTY

If the property is in a co-ownership building, it is generally accepted that the buyer will reimburse the following amounts to the seller on the day of the sale:

- **Charges for the current quarter, from the day of the sale up to the end of the quarter**
- **Working capital.**

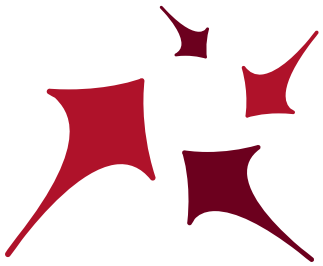
However, some property management companies choose to reimburse the seller directly and claim an amount for working capital from the buyer. The cost of work, where such cost is to be borne by the seller, and which has not yet been the subject of a call for funds at the time of the sale, is deducted from this amount.

These amounts, paid directly between the parties on the day of the sale, are considered as final settlement. No adjustments will be made subsequently for any difference between the estimated budget used as the basis for the payments made and the final budget. Therefore, there is a risk of a potential gain or loss for the buyer and vice versa for the seller.

In the case of individual water meter with charges called by the building manager: in the absence of a specific agreement between the parties, the expenses are billed to the co-owner in place at the time of the call for funds, including consumption by the previous owner.

STEP #5

AFTER THE SIGNATURE



During this period, the *Notaire* will accomplish a large number of formalities in order to enable the client to receive the title deed and settle the closing account balance.

FORMALITIES ACCOMPLISHED BY THE *NOTAIRE*

The *Notaire* completes numerous formalities, including in particular:

Publication of the deed with the land registry

The *Notaire* is responsible for publishing the deed with the land registry of the district where the property is located. This actually involves amending the property file to make the sale binding on third parties and ensuring that no new mortgages have been registered on the property in the meantime by the seller's creditors.

While expecting the completion of the formalities, certificates are provided to the parties on the day of the sale: certificates of ownership for the buyer, and sale certificates for the seller.

If the buyer has taken out a mortgage, the *Notaire* will register this new mortgage over the property. The publication of the deed will also constitute notification of a change of ownership to the tax authorities which will thereafter levy local taxes on the new owner.

Most deeds are now published electronically by *Notaires*.

Payment of registration fees or VAT

The *Notaire* is also responsible for paying the taxes owed by the buyer.

These involve mainly transfer duties which total 5.81%, except in a few departments where the rate is lower (and except in the case of an acquisition accompanied by an undertaking to resell or build by a VAT taxable person). This rate may also be higher in the departments that have voted for it, temporarily until 2028, except for first-time buyers.

It is also necessary to pay the land registry's fees (0.10%).

The region Ile-de-France collects an additional tax when properties sold are used as professional places (offices, commercial spaces and storage rooms). Its rate is 0.60% of the sale price.

Transfer taxes are not payable on movable property. If furniture is sold with the house or apartment, it may be advisable to detail the value of the furniture in relation to the value of the property: this enables the buyer to avoid paying transfer taxes on this amount, provided of course that this can be justified. However, you should be aware that, in general, banks do not finance the cost of furniture.

Moreover, VAT may be payable by the seller if the latter is liable to VAT.

Payment of capital gain tax

The *Notaire* is also responsible for calculating and withholding from the sale price the capital gains tax due by the seller and, if applicable, the tax on the disposal of construction land.

The net amount of real estate capital gains must be included in the seller's income tax return.

The capital gains tax is always payable at the time of the sale but its amount is taken into consideration in the taxable base and may in some cases give rise to an additional tax payment in respect of the "*contribution exceptionnelle sur les hauts revenus*".

Notification of the sale of the property management company

The *Notaire* must inform the property management company of the sale and pay any outstanding balance by deducting it from the selling price (otherwise the property management company is legally entitled to oppose the payment of the proceeds of the sale).

From receipt of this notification, the property management company will bill all charges to the new co-owner.

TRANSMISSION OF THE TITLE DEED AND CLOSING ACCOUNT BALANCE

When all the formalities have been completed (which in some cases may take several months) the *Notaire* sends the title deed to the buyer. In practice, this is an authentic copy of the deed, since the original is kept by the *Notaire* who executed it.

The *Notaire* also provides the client with a detailed statement of all the amounts paid on his or her behalf and those already credited to him or her. If the account has a debit balance, an additional amount will have to be paid. Any credit balance is obviously returned to the buyer.

The original deed is kept by the *Notaire* for 75 years. After that, it is filed in the departmental archives. The safe-keeping of this deed is a guarantee of legal certainty of ownership of the property in the event in particular of the buyer losing the title deed.

Althémis
de la stratégie aux actes

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