


BUYING OR SELLING A HOME

The Notary's Mission

Table of Contents

<i>The reservation agreement</i>	p. 5
<i>Procedures and formalities (table)</i>	p. 8
<i>The property subject to sale</i>	p.10
<i>The purchase of a property in joint ownership</i>	p. 12
<i>The purchase of rented property</i>	p. 13
<i>The purchase price, purchase by loan</i>	p. 14
<i>The terms of purchase</i>	p. 16
<i>Preparation of the deed of sale</i>	p. 17
<i>The deed of sale</i>	p. 17
<i>Formalities to be performed after the sale</i>	p. 18
<i>Acquisition costs</i>	p. 20
<i>Capital gains.</i>	p. 21
<i>You should stay informed</i>	p. 21

© Conseils 2002 - 3^{ème} édition
All rights reserved

Paginating:  couleur garantie 06 07677835

Conseils par des Notaires
31, rue du Général-Foy 75008 Paris
Tél.: 0144903128

In the Mémos de Conseils par des Notaires collection

The transfer of the family enterprise
International marriages and the matrimonial regime
Gifts
The PACS and joint living arrangements
Wills and successions
Choose your pre-nuptial agreement
Adoption
Purchase or sell your home
The Civil Real Estate Company
French citizenship
Should you incorporate your business?
Divorce and alimony
Incorporation of an agricultural business
Sale and long term lease
Receipt of an inheritance
Gifts

3,50 € per copy – payment by check to the Order of Conseils par des Notaires
Information, orders: Conseils par des Notaires
31, rue du Général Foy – 75383 Paris CEDEX 08



***My notary
provides security to my transactions***

ISBN 2 - 906 250 - 75 - 9
Legal filing: 1st quarter 2002

Buying or Selling a Home

Buying or selling an apartment, house or any other piece of real estate is not a commonplace activity. The decisions made by each party concerned often involve significant sums of money. The real property involved may be the place where the buyer intends to live. The notary is there in order to assist you in taking the necessary precautions to avoid common and costly errors. His duty is to ensure that you perform 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 notary's office. Depending upon the region, this will be in the form of an agreement to purchase (compromis) – or a sale subject to condition precedent – or a promise to sell before the notary 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 performance of certain conditions, which are set forth in the reservation agree-

ment or provided by law: for example, the obtaining of a loan by the buyer.

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 notary will set forth 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 real property being sold, its description, its dimen-

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 real 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.

sions, related costs, such as mortgages, decisions taken by the co-tenancy (significant construction, repairs);

- a statement of the presence or absence of asbestos and possibly certain certifications regarding termites, lead, etc.;
- the terms of the planned sale; the date on which the offer will elapse and the conditions for taking up the option;
- the price and date of payments;
- the amount of the security deposit or reservation indemnity;
- the date for taking possession;

THE NOTARIES' REAL ESTATE REGISTER

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

- 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 made in regard to neighbouring properties, for example any rights of passage or zoning restrictions which could, in certain cases, be sufficiently burdensome to make you decide to renounce the purchase.

The notary's role

The terms of the reservation agreement are subtle in nature. The drafting of such an agreement can not be improvised; one must be familiar with the technique. Therefore, to avoid any mistakes, one should rely on the notary. If you are yourself looking for a real estate asset, you should also contact a notary. He 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 registration formalities of mortgages, which is mandatory, the notary 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 records of

birth which are less than three months old at the time of the transaction. For the same purpose, the notary must verify the legal capacity of the parties: that each one is an adult, and is not subject to court protection (i.e. custodianship), which in France is indicated in the civil records (Répertoire civil) of the person in the margin of the record of birth. A copy of the marriage certificate will enable the notary to verify whether a pre-nuptial agreement had been signed, and reference to same are indicated therein.

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 partner. Thus, a person having joint property rights with his/her spouse can not sell real property subject to the joint estate without the consent of his spouse. 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 the consent of his spouse. 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 13).

VERIFICATION OF THE VENDOR

Certain questions should be asked before beginning negotiations with the seller of real 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 notary will ask for a copy of the minutes of the decision of the company authorizing the sale. If you are dealing with a merchant, an artisan, 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 notary shall check the record of birth, which may include such a reference.

Verification of Title

A promise to sell real property may not be given by just anyone. The notary 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.

Cooling Off Period

The purchaser of a property has a period of seven days to reflect before signing the notarised reservation

(continued on page 8)

Questions

Vérifications - Formalités

<p>Purchase of part of a joint ownership</p>	<p>Joint ownership rules, verifying the seller's situation as regards the joint tenancy and the amount of expenses and repair/construction voted by the joint tenancy (<i>see page 10</i>)</p>
<p>Reservation agreement</p>	<p>The terms of the sale should be established (<i>see page 4</i>)</p>
<p>Purchaser's capacity to sign the agreement</p>	<p>The purchaser may be married, a minor, or an adult subject to court protection (<i>see page 5</i>)</p>
<p>Seller's capacity to sell</p>	<p>For the sale of the family home or a joint asset both spouses must consent. If the seller is a minor or an adult subject to legal protection then certain formalities must be performed (<i>see page 5</i>)</p>
<p>Notification of vacancy for sale (congé) given to any tenants.</p>	<p>Registered letter with return receipt requested or service by bailiff (<i>see page 8</i>)</p>
<p>Tenant's pre-emptive rights</p>	<p>The notification of vacancy for sale (congé) 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 10</i>)</p>
<p>Municipality's pre-emptive rights</p>	<p>Delivery to the municipality of a declaration of intention to sell (déclaration d'intention d'aliéner) stating the price and conditions of sale (<i>see page 8</i>)</p>
<p>Taxes</p>	<p>The sale of real property for use as a dwelling is subject to transfer tax at a rate of 4.80% (<i>see page 15</i>)</p>
<p>Necessary formalities for sale of real property</p>	<p>Identification of the parties (état civil), cadastral map, zoning and urban planning information, mortgage status, questionnaire to managing agent of the co-ownership, asbestos, lead, etc. (<i>see pages 5 and 13</i>)</p>

AND FORMALITIES

Questions

Vérifications - Formalités

Fees for purchase	Most of the fees comprise duties paid to the State: 7 to 8% in transfer taxes, stamp duties, etc. The notary's fees equal approximately 1% (<i>see page 16</i>)
Determination of lots (lotissements)	Verification of recurrent expenses (<i>see page 10</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 9</i>)
Obtaining a loan	The obtaining of a loan as a condition precedent 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, the conditions of purchase must be considered (<i>see page 12</i>)
Surface area of the lot subject to joint tenancy	The exact surface area of the lot subject to joint tenancy must be established in the reservation agreement and in the deed of sale (<i>see page 9</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 page 11</i>)

KNOW HOW TO LOOK

Look carefully at the immediate surroundings: the proximity of an industrial site. A shopping complex or factory can be a serious nuisance for the area's inhabitants.

agreement or to retract after having signed a deed. This rule applies to non-professional purchasers of real estate for use as a dwelling and to certain transactions of a similar nature, for example credit leasing (location-accession) of such assets.

Notification of the draft deed of sale

The seven day cooling off period runs from the date on which the notary notifies the potential purchaser of a draft deed of sale or gives him a copy in return for a signed receipt. The deed of sale may not be signed before the expiration of this period. When the reservation agreement is a private, bilateral signed contract, it may be

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 notary 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.

signed immediately, in which case the cooling off period runs from the day after notification of the reservation agreement by registered letter 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 title to the property.

Sometimes, one should indicate which fixtures and fittings that the seller reserves for or gives to the purchaser, such as decoration, objects in the kitchen, curtains, etc.

The cadastral map

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

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

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 real 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; see page 15), and does not inform the purchaser of such defects, then the agreement may potentially be rescinded and the seller may be liable for damages.

Generally, no guarantee is given regarding the exact surface area of the property, except in the case of apartments in joint ownership, where the price is often determined according to surface area.

Zoning and Urban Planning

You may of course want to be sure that you can build on the land for which you are negotiating. The zoning

certificate (certificate 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, and/or electricity power lines.

If you purchase an apartment or home which you do not intend to improve or modify, the notary will ask for a mere note on zoning restrictions from the township. This document may indicate whatever public servitudes may exist on the property, such as any road widening schemes.

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 parcel 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.

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. This mortgage registration gives the bank a priority right on the price 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 notary shall perform all of the verifications 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 notary has accomplished his mission.

Purchase of a property in joint ownership

Dimensions of the property being sold

If you are selling a parcel in joint ownership that is larger than 8 square meters, whether an apartment, a shop,

professional premises or both personal and professional in nature, or an individual house on land of common ownership, the surface area must be precisely stated in the deed of sale and the reservation agreement (the "Carrez" law of December 18, 1996, Article 46 of the law of July 10, 1965). 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. However, the agreement may not be annulled if the notarised deed of sale states the dimensions of the property. The notary will see to it. The purchaser is guaranteed by the statement 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.

The joint ownership bylaws

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

You will acquire a proportional percentage of the joint property and all associated costs: general maintenance, elevator, gardening, etc. You will be

THE CARREZ LAW IN QUESTION

Application of the Carrez Law requiring the indication of the surface area of lots in joint ownership, involves numerous proceedings. Be careful!

able to determine the acknowledged purpose of the building: is it entirely destined for lodgings? Can a professional activity be performed there?

Building obligations in joint ownership

The notary will request a certificate from the joint ownership syndicate as provided under Article 5 of the Decree of March 17, 1967. The purpose of this document is to furnish the notary, drafter of the deed of sale, 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 joint tenancy, and the prior decisions of the assembly of joint owners regarding building, those which have not been completed and those which have been but which have not been completely paid for.

The notary will ensure, prior to delivering the price to the seller, that there are no outstanding debts. He shall state in the reservation agreement the date on which the decisions of the joint tenancy 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 syndicate, as well as the technical diagnostic

PURCHASE INTO A JOINT OWNERSHIP

If you purchase a lodging in a joint ownership, 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.

which was made prior to the establishing of any joint ownership property that had been built in the last fifteen years. The notary will show the purchaser this document in two cases: 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 diagnostic.

Asbestos

In buildings holding at least two properties and therefore in all joint tenancies, the owners are obligated to investigate the presence of products or materials which contain asbestos. These rules apply to buildings constructed before a certain date between 1980 and 1997, depending upon the type of construction. The results must be indicated in a document which is annexed to the deed of sale.

Purchase of rented property

The sale of the property free of rentals
If the seller wishes to sell the property free of rentals, he must inform the

OTHER COSTS

The purchaser must pay other miscellaneous costs, in particular related to obtaining certain documents (cadastral map, mortgage status, etc.) plus notary's charges (émoluments) (see page 16). The purchase price is also increased, as the case may be, by the real estate agent's commission.

tenant that he must vacate the premises by notice given at least six months prior to the expiration of the 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 he is interested in the sale. In the absence of a reply or in the event that he waives such right, he is required to vacate the premises, at the latest at the end of the notice period. The tenant may also accept the offer to purchase the property he occupies, pursuant to his priority rights. In this case, he has two additional months (four months if he requires recourse to a loan) to sign the deed of sale at the notary's office.

● **The offer to sell under more favourable conditions.** When the tenant did not accept the offer to sell, and since such notification the sale is envisaged under conditions more favourable to the purchaser, the tenant must be notified of these new terms and shall once again have a priority right to purchase under these new terms.

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

The sale of an occupied property

If the property to be sold is subject to rental, 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 of 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.

The price to be paid

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 purchase price: registration taxes (4.80% since 1999) or value added tax (VAT) if the sale is subject to such tax, which generally applies to the sale of real property in the course of construction, new buildings and for the resale within five years after comple-

tion. Be careful! For real property in the course of construction, the price is generally stated "before tax"; however, for other transactions, the price is stated "tax included" and the seller must pay the VAT, deducting the VAT he paid on acquisition and construction realised before the sale.

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 forth in that document. Sometimes, the price is paid within a fixed period of time or by paying a rent under a long term rental agreement (see *mémo de Conseils, La vente en viager*).

Financing the purchase of a property by loan

Protection of the purchaser

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 signed subject to the condition precedent that the loan or loans required to finance the purchase will be obtained (French consumer code, Art. 312-16). The sale is conditional on the performance of this clause or condition precedent, provided in the reservation agreement as a pre-

ventive measure. 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 in the given term for obtaining a loan, no loan is obtained, the reservation agreement will be rescinded without giving rise to any penalty or damages. 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 does not perform what is necessary to obtain the loans in a reasonable period of time, or if he provides false information to the lender.

SELL 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 condition precedent of the sale of your current lodging. Such a clause is valid in accordance with a ruling of the Court of Cassation (3rd civil division, 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.

Terms of purchase

Now that the status of the seller and the property have been reviewed, it must now be considered how the acquisition should be performed. Most often, this will not pose a problem. Thus, when a husband and wife, having no pre-nuptial agreement purchase a house with their savings, the property is jointly owned by them without any need to make any specific provisions therefor. For couples married under a joint estate comprising only property acquired after their marriage, this also poses no difficulty. Unless the purchase price comes from assets of the individual spouses (received by gift or will), each of the spouses has identical rights (at least in terms of value) to the property purchaser, regardless of which spouse is the purchaser on the deed of sale (see *mémo de Conseils*, Choose your marriage contract).

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

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 exclusive and partially collectively owned, then the property purchased can not be exclusive unless the more than half of the price is financed by cash (French Civil Code, Art. 1436).

Married couples having signed pre-nuptial agreements

The more delicate problem to resolve presents itself when the purchasers are not married in joint ownership, having signed pre-nuptial agreements, or under the regime of couples married under a joint estate comprising only property acquired after their marriage. In these cases, no rule establishes their financial relationship, except for the contribution to the joint expenses of the marriage, and that does not provide a real solution to the issue of ownership between them of a property.

Generally, the spouses are purchasers in proportion to their respective financial contribution to the purchase.

Cohabitants and PACS partners

When the purchasers live together unmarried, they purchase in the proportion of the financing made by each, for example half and half or any other

NOTARY'S CERTIFICATION

This is a certification by which the notary 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.

proportion, such as 1/3 and 2/3 or 1/4 and 3/4. It is wise to maintain a trace of the payments made by each of them. It is common that the unmarried couple wishes to protect the surviving individual. This is often not easy to accomplish, especially due to estate tax consequences. The unmarried partners who have not entered into a civil solidarity pact (pacte civil de solidarité) are like persons not having children: gifts and testamentary dispositions are subject to a 60% tax (see memo de Conseils, Cohabitants and PACS partners).

When the unmarried couple enters into a civil solidarity pact, they are undivided owners of the assets acquired by one or the other. A clause to the contrary may nevertheless be inserted in the deed of sale.

The preparation of the deed of sale

As soon as the reservation agreement is signed, the final deed of sale shall be prepared. If he has not already asked for them, the notary will ask you for certain documents. He will perform various verifications with the administrations, which can take several weeks. Ask him to provide you with a probable date of signing of the deed of sale. The maximum deadline will be stated in the reservation agreement.

READ THE DRAFT OF THE DEED

Take the time to read the document which you are shown. Ask the notary 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.

Personal information and origin of ownership

The purchaser and the seller must produce their family book (livret de famille) and, if applicable, their marriage contract. The seller delivers his title documents to the notary, so that the notary can perform the necessary verifications (see page 6).

Clearance of priority rights

For any sale of real property, the notary must confirm that the municipality (township, county, coastal register, etc.) where the property is located has no priority rights on the sale. In the event that such a right does exist, this priority right may be cleared by sending a statement of intent to sell (déclaration d'intention d'aliéner). The beneficiary of the priority 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 priority, then the sale may proceed. The notary must also clear the existing tenant's priority rights (see page 13).

If the purchaser resorts to a loan

The notary contacts the bank to find out the conditions of the loan. Before the sale, the bank will receive a draft deed for which the notary will ask its agreement. If the answer is affirmative, the notary 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 notary 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 notary's office.

Signature of the deed of sale

Prior to signing, the notary or the clerk given power therefor 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 check

On the date of signing, the purchaser shall give the notary a check for the purchase price (less the reservation indemnity or security deposit) and costs related to the purchase. The notary shall give the purchaser a certification of sale, so that the purchaser may thereafter provide evidence of ownership when dealing with certain

entities, such as EDF-GDF, France Télécom, etc.

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 notary'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 notary 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, notaries do their best, while taking some risks in so doing, to deliver the purchase price to the seller as soon as possible, and sometimes on the actual date of signature of the deed of sale. Of course, the amounts which may be due to the managing agent (syndic) of the co-ownership, or to financial institutions, etc., shall first be deducted from the purchase price.

Publication of the sale

The notary will publish the deed of sale at the mortgage registry where the real property is located. This formality is accomplished within two months of signature of the deed of sale. This publication makes the sale binding against third parties, such as creditors, neighbouring landowners, etc.

Notification to the managing agent of the co-ownership

If the property sold is a co-ownership lot, the notary will notify the managing agent of the building 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 notary 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 that supplements 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 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 notary, 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

Within a period that varies between three and eight months, depending upon how updated the mortgage register is, the notary will send the purchaser his certificate of title.

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 4.80% of the purchase price for real property, regardless of its use. An additional withholding tax of 2.50% of the county

TERMITES, LEAD POISONING

If you are selling property located in a contaminated region, such as in the West or South, or recently, Ile de France, you should request a certificate stating the absence or presence of termites.

Some municipalities make this a legal obligation. The reservation agreement is signed subject to the condition precedent of the delivery of a certificate from a professional approved by the Technical Centre for Wood and Furnishings (Centre technique du bois et de l'ameublement) guaranteeing the absence of termites.

A similar formality is required in zones where there is a risk of lead poisoning (French Code of Public Health, Article L. 32-5).

tax is paid to the State for collection costs.

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%. 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 notary's fees

The notary'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 below). When the purchaser takes out a loan, the notary 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 notary for each formality required in the deed of sale, such as requests for personal identification documents, the cadastral map, zoning and urban planning information, real estate filing, requests to the custody judge. VAT is due on notaries's emoluments at the rate of 19.60%.

Negotiation

When the notary negotiated the sale, that is to say when he brought 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 46,000 euros, and 2.5% after that. 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 notary 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 notary'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.

Sale of real property			
Notaries' fees			
<i>VAT at 19.60% included</i>			
from	to	%	Add (€)
0	3050	5,98	
3050	6100	3,9468	62,013
6100	16770	1,9734	182,390
au-delà		0,9867	347,860

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 purchase price or original value, increased by acquisition fees (except for estate or gift taxes) and expenses for work completed (under certain cases), is revalued according to a monetary erosion coefficient published by the French State. The gross capital gain is reduced by a percentage of 5% per year after the second year since acquisition. Therefore, there is complete exoneration of the tax after 22 years.

Taxed as income

The amount of the capital gain is added to the income of the taxpayer, after a reduction of 915 euros. When the sale is the first sale of a secondary residence held for at least five years, another reduction is added. Its amount will vary depending upon the family situation of the taxpayer (6,100 euros for two spouses and 1,525 euros per child).

The quotient

To limit the amount of additional tax, the calculation of tax owing is done according to a quotient system. The

capital gain is divided by five, and then added to the other revenues of the taxpayer. The amount of additional tax is then multiplied by five. The tax is therefore less significant.

You should stay 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 notary 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 real 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-François Pillebout
Honorary notary