

PARIS NOTAIRES INFOS



The Deed of Sale



CHAMBRE DES NOTAIRES DE PARIS
SEINE-SAINT-DENIS • VAL-DE-MARNE

Any property sale must be recorded by a notarised deed. After the preliminary contract has been signed, the notaire undertakes the formalities, obtains the authorisations and assembles the requisite documents to ensure that the deed of sale is fully effective and cannot be disputed or annulled. Some formalities are undertaken before the sale; others after the deed has been signed.

SOME PRELIMINARY FORMALITIES

- **The purge of pre-emptive rights**

A pre-emptive right makes it possible for the beneficiary to replace the buyer.

Notaires must ensure that there are no pre-emptive rights of any kind applicable to the intended transaction. Should such a right exist, the notaire must ensure that it is 'purged' (i.e., make a proposal to the holder of the right to exercise his or her priority to purchase the property).

The main pre-emptive rights are as follows:

- the tenant's pre-emptive right
- the urban pre-emptive right.

- **Tenant's pre-emptive right:** an owner wishing to sell accommodation which has already been leased must enable his or her tenant(s) (and their spouse) to exercise their pre-emptive rights as stipulated by law, but only under two conditions:
 - for the first time the accommodation placed under joint ownership is put up for sale (article 10-I of the law dated 31 December 1975)
 - sales release (article 15 II of the law dated 6 July 1989).
- **Urban pre-emptive right:** the urban pre-emptive right (DPU) makes it possible for a local authority to have priority in purchasing specific property up for sale in areas which have been defined beforehand by the town council.

The aim of this procedure is to carry out general interest operations (*for example, communal facilities*).

Some property and some operations must be excluded (*for example, donations*).

If the property is located in an area subject to the pre-emptive right, the notaire sends the mayor of the local authority a declaration of intent to dispose of the property (known as a DIA) stating the price and conditions of sale. This declaration constitutes a sales offer.

The town authorities have two months with effect from receipt of the DIA to issue their response.

The municipality may:

- **not respond** (the municipality is then deemed to have waived its pre-emptive right by failing to answer) or a formal waiver of the right; the property can then be sold to the buyer at the price stated in the DIA
- **accept the proposed price:** the sale is then concluded. The deed of sale must be signed within three months of the response. The price must be paid within six months. In the absence of such, the seller can retrieve his or her property and sell it without restriction to a third party
- **make a counter proposal:** the owner then has two months to waive the sale (silence from the owner is deemed a waiver) or accept the counter-proposal. In the absence of an understanding, the price is set by the courts.

- Obtaining urban development documents

The notaire must obtain several urban development documents including:

- the urban development certificate or information note. This is an administrative document intended to provide information on urban development measures

or administrative limitations to property rights. The 'ordinary' certificate makes no statement about whether specific land can be built upon

- the individual alignment certificate with the public highway
- the quarry certificate. This certificate provides information about the property's position with regard to soil and underground risks (former quarries, the type of support work involved, etc.)
- the hazard-free certificate
- an extract from the land register table which identifies the property and the owner.

- Requesting mortgage information

The notaire checks the proprietor status of the seller and reviews his or her property deed. The notaire also checks the provenance of ownership over the last thirty years.

This conveyancing is important because only the owner of property can legally sell it.

For example, if the notaire discovers that the property is jointly held, approval from all the joint owners must be obtained.

To carry out this conveyancing task, the notaire requests a mortgage statement known as the "hors formalité" [no formalities] statement.

Obtaining this document is also the only means for the notaire to find out about the guarantees (known as 'inscriptions') taken out on the property.

If the seller purchased the property by means of a guaranteed loan which has not yet been reimbursed in full, the inscription by the bank still applies.

The inscription entitles the bank to receive the proportion of the price corresponding to the balance of the loan outstanding once the property is resold.

There may be other inscriptions (for example, made out to the Treasury). The notaire carries out the requisite verifications to ensure that the buyer is not required to pay the seller's debts.

It is therefore preferable not pay the price directly to the seller.

- **The work damage guarantee**

If the sold building was built less than ten years previously, the deed must stipulate the presence or absence of work damage insurance.

This information is vital for the buyer and tells him or her who to contact in the event of a claim.

- **The compliance certificate**

When buying housing which has recently been built or modified and which required extensive work, the compliance certificate issued by the local authority certifies that work has been carried out in compliance with the building permit.

PAYING THE PRICE

The main obligation faced by the buyer is to pay the price on the day and location stipulated by the sale.

The price may be paid in various ways:

- **In full when signing the deed of sale.** Any payment in France must be made in Euros. The seller issues a receipt for the price. Payment of the price is noted in the accounts of the notaire. The notaire asks the buyer to hand over a bank cheque ["chèque de banque"].

This payment is for:

- the buyer's personal contribution
- expenses
- the amount of the loan(s) which are not noted in the deed.

Payment of the price through the offices of the notaire's accounts makes it possible to preclude any of the seller's creditors (who may or may not have guarantee).

It is also useful in terms of proof of payment.

- **In full by means of a loan**

- **Payment in the future.** Exceptionally, all or part of the price may be stipulated as payment in the future, i.e., within a specific term laid down by the contracting parties to the deed of sale.

This form of payment includes a number of agreements. The contracting parties must in particular make provision for:

- the date of payment of the remainder of the price (a single date or schedule of dates)
- any interest accruing from the amounts to be paid (date at which interest is accrued, rate of interest, etc.)
- causes for forfeiting the term: for example, the contracting parties may stipulate that payment terms are terminated in the event that the purchased property is resold

- guarantees of the seller: the “seller’s privilege” guarantees payment of what is payable for the price. This is an inscription for the entire sold property which must be listed as a mortgage within two months of signing the deed of sale.

The effect of the seller’s privilege begins from the date of sale. The seller who has not been paid will be paid off first after sale of the property unless the seller wishes the sale to be settled by the courts, i.e., a retroactive cancellation of the sale.

- **Annuity.** If a property is sold in return for a life annuity, all or part of the price takes the form of an annuity with a proportion paid immediately known as the ‘bouquet’.

The buyer (annuity creditor) receives from the seller (annuity debtor) a property in return for the commitment taken to make payments (monthly instalments) of the annuity.

The annuity is therefore merely a term of payment of the price or part of the price of the sale.

HANDING OVER THE KEYS

If the property is sold without restrictions, the main obligation facing the seller is to transfer the property to the buyer at the date stipulated in the deed.

The seller must hand over the keys and vacate the premises to enable the buyer to take possession of the property (article 1604 of the French Civil code).

Handing over the keys marks the start of ownership or use of the property by the buyer, usually at the date of signature of the deed of sale.

FORMALITIES AFTER THE DEED OF SALE HAS BEEN SIGNED

The notaire must undertake various formalities after signing the deed of sale.

- “Publicité foncière” [land notification]

The notaire must notify the deed of sale in the mortgage bureau within no more than two months after the deed has been signed. This is a vital formality.

Notification makes the sale opposable to third parties (creditors of the seller, beneficiaries of rights affecting the property, etc.). Once the deed of sale has been notified, no other charge (such as a mortgage, etc.) can be registered against the name of the previous owner of the sold property.

Registration fees and a land notification tax are paid when this formality is carried out.

Where applicable, guarantees may be requested for the sale by the seller or the bank and are registered by the notaire.

- Notification to the managing agent

In the event of the sale of property located in a joint property, the seller must give the notaire a certificate less than one month old stating that the seller does not owe any money to the joint property managing agent.

In the absence of such, the notaire must inform the managing agent of the change by means of a registered letter with acknowledgement of receipt within fifteen days of the sale.

The managing agent is required to oppose the payment of funds by the notaire to the seller within fifteen days of receipt of notification by means of an extra-judiciary instrument (such as a bailiff's order).

Furthermore, and independently of the preliminary notification, the notaire must inform the managing agent of any transfer of ownership of property or a fraction of such.

Notification is intended to make the sale opposable to the managing agent. The buyer is then deemed one of the joint owners.

- **Notification to insurance companies**

When the price is paid by means of a loan, notification of the sale is made to the insurance company of the buyer and the joint property managing agent.

The French Insurance code grants creditors exercising a privilege or mortgage the right to compensation payable by the insurer in the event of a claim.

- **Transfer of the deed of ownership to the buyer**

Within a period, which varies according to the mortgage bureau concerned, the notaire must send the buyer the deed of ownership stipulating land notification in the mortgage register. The notaire also sends the buyer a final account statement.

- **Release of the price**

The notaire is not required to transfer the price to the seller on the day the deed of sale is signed.

The price can only be transferred to the seller once the deed has been notified in the mortgage register and the notaire has obtained a statement (known as the "état sur formalités" or statement of formalities) noting the absence of any mortgage or privilege inscription on the date of notification of the deed of sale.

If there are any inscriptions, the creditors must first be paid.

Prior to any transfer of the price to the seller, the notaire will have paid the amount into a bank where required and the managing agent for the joint owners and settled any gains.

If the sale concerns a building shared by spouses, the price may not be handed over to one of the spouses without the approval of the other. In practice, consent is issued in the deed.

The information in this notice
is intended to draw your attention
to the most important issues
concerning the subject
of interest to you.

For more information,
please consult your notaire.

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