

Law Guide

THE NOTARY

The notary's role

Selling or purchasing a property is not possible in France without the notary, a lawyer and the only authorized by the law to receive authenticated deeds. His intervention is compulsory for the near total of the real estate sales.

In order to hold the authentic form, the deed of sale (l'acte de vente) is compulsory signed before him and after the completion registered in the mortgage bureau to make the sale opposable to third parties in an authentic form by him.

Before and after the deed of sale completion, he's charged by the law to verify legal details and obtain the compulsory documents.

The notary is also authorized by the law to collect taxes, specifically registration fees and stamps charges.

The notary liability

The notary can be condemned by civil courts for the damage caused to you resulting from the faults he made in the performance of his duties. He has a duty of council: he must clarify you and the property seller and make all necessary to assure the validity and the efficiency of the deed.

The notary can be condemned by criminal courts in multiple cases. For example in the event of forgery, of destruction of parts, and swindle, passive corruption, illegal catch breach of trust of interest or complicity in the event of organization of insolvency, abuse social goods and tax evasion.

The notary's fees

The notary fees are in principle paid by the purchaser.

They represent about 6 to 8% of the purchasing price for the old and around 3% for the new.

THE PURCHASING PROCESS

The "compromis de vente" (the provisional agreement of sale)

The provisional agreement of sale is a preliminary contract between you and the property seller which freezes the property purchasing by another buyer for a few

months on which you make a commitment to purchase the property and the seller to sell it. The “compromis de vente” is signed for a limited period.

The deposit

When you sign and commit to the provisional agreement of sale, you must provide a security deposit of 10% of the purchasing price. It will be refunded if strict conditions are met.

The deadlines

We notify the compromise signed within 7 days by registered letter with notice of receipt to you. You then have 7 days from the following day of the first presentation of the registered letter to address to us a letter of revocation by letter registered with acknowledgement of receipt.

After this period, you are definitively obliged to sign the deed of sale. If you change your opinion after this 7 day period, you can be condemned by the civil court to pay damages to the seller.

From the signing of the compromis to that of the deed of sale, there is a period during which the notary undertakes formalities, verifies legal details, obtains authorisations and prepares all compulsory documents needed.

The “suspensive conditions”

Suspensive conditions are conditions envisaged in the compromise and they are necessary for the signature of the deed of sale.

The use of suspensive conditions is to obtain a loan. But it can also be: obtaining the permit of building if you buy a land; the absence of mortgage registration; purging a pre-emptive right of the Administration for example; any other non illegal condition: for example, to divorce.

If all the necessary suspensive conditions are fulfilled, we manage an appointment with the notary to sign the deed of sale.

The “acte de vente” (the deed of sale)

The deed of sale is the authenticated deed undertaken by the notary and that you’ll sign with the seller before the notary and which legally transfers the property to you.

The balance of the price

The payment of the price is made to the notary. The price includes the estate agent’s commission. On the top, you will have to pay the notary fees. The notary fees are fixed according to a scale fixed by the law. They depend on the transaction

amount and represent about 6 to 8% of the purchasing price for the old and around 3% for the new.

The day of the completion, you must pay the remaining sum of the purchasing price.

The property title transfer

After the signature of the « acte de vente », you must wait a few months before having the property title.

The deed of sale must first be registered and the registration fees and the land notification tax paid by the notary in the mortgage bureau (mostly included in the notary's fees).

But the notary gives you the keys and a certificate of property in order to enable you to for example, take out a subscription for electricity, water, telephone, insurance.

A copy of the deed, your property title, will be sent to you after formalities by the notary.

The release of the property price.

The price is transferred to the seller by the notary after he has made the notification of the deed of sale in the mortgage bureau and has obtained a document that mentions that there is no mortgage or privilege inscription at the date of deed of sale notification.

We can help you after the deed of sale completion

We undertake for you to carry out the change of owner by taking out the subscription for electricity, water, telephone, insurance if you want.

If you wish to carry out any work in your new property, we also help you and suggest a builder who works in partnership with us.

Formalities done by the notary after the deed of sale completion

THE LAND NOTIFICATION

After the deed of sale completion, there is a compulsory procedure, the land notification, **publicité foncière** in French done for you by the notary.

That procedure consists of the deed of sale's registration in the mortgage bureau within two months after its completion in order to make the sale opposable to all parties concerned by this sale, such as the seller's creditors or the beneficiaries of rights affecting the property. The procedure is also done to forbid the registration of another charge on the property for the last property seller.

After that procedure, the registration fees and a land notification tax are paid for you by the notary.

THE NOTIFICATION TO THE INSURANCE COMPANIES

If you pay the price by means of a loan, the notification of the sale must be made to your insurance company because the French Insurance Code grants the creditors exercising a privilege or mortgage the right to compensation payable by the insurer in the event of a claim.

THE TRANSFER OF THE DEED OF OWNERSHIP TO THE BUYER

Within a period, which varies according to the mortgage bureau concerned, the notary will send you the deed of ownership stipulating the land notification in the mortgage register.

TAXES:

If I buy in France, which taxes do I have to pay?

It is, of course, vital that you make suitable changes to your financial arrangements to cover your new requirements and situation.

Inform the Tax offices, even if you are maintaining a bank account and an income from the UK, because if you are resident in France then that is where you should be paying your taxes. You needn't worry about paying twice, as there is a tax treaty that ensures that this will not happen. If you pay tax in Britain on your British interests, the French tax office will issue a tax credit for that amount so that you do not have to pay twice. You will require a French bank account, and this is relatively easy to set up.

Taxes in France

Taxes that will affect most people include TVA (similar to the British system of VAT, is French tax applied to most goods that you will purchase with a standard rate of 19.6%, tax on goods bought), taxe foncière (property owner's tax), taxe d'habitation (property occupier's tax), income tax, social taxes (social security and health care funding) and TV licence tax (if you have a TV, you must declare it and pay an annual tax). There is also, for those running certain businesses, tax professionnelle. Additional taxes you may have to face include wealth tax, inheritance tax and capital gains tax.

THE PERSONAL INCOME TAX (Impôt sur le Revenu)

a) The British residents' taxation in France

You're a resident if, according to the French law you have your financial

home in France.

When do I have to declare income?

When you have your main home in France or live in France for the major part of the year either have employment or a trade or business in France.

N.B: Renting a house permanently or receiving money from French properties are considered as receiving French income. As a consequence, they are taxable.

Your income taxable in France

- Your private pensions
- Your salaries and wages collected in France
- Your income from personal assets

Your income taxable in UK

- Your income from land for your property(ies) located in the UK
- Your pensions and remunerations paid by the State or Public Authorities.
- Your salaries and wages paid by private companies or firms for a job outside France.

The "Old Age Pension" case

The "OLD AGE Pension" is considered by the French tax law as a private pension and is taxable in France.

If you're an old age pay pensioner (British women over 60 and men over 65), you may get back the amount of the withholding tax deducted in the UK, if and when it was deducted.

The modes of taxation in France

- If you have only taxable income in France, your taxation is established according to the French system for the fiscal home.
- If you have income both taxable in France and in the UK, your taxation is fixed according to the real rate (special rate) system. This special rate takes into consideration, for the French taxation system, the income received in both countries by the fiscal household. It is used to fix your French taxation without penalizing you.

-For all your incomes taxable in France you're subjected to the CRDS such as all taxpayers in France (sort of social contribution).

The different tax returns forms you have to fill in

- In the case of the income in France only: the form n° 2042 in which you register all your income.

- In the case of income taxable both in France and in UK, 2 different forms are needed:

* The form n° 2047, on which you must mention all types of your income wherever they come from, in order to establish the real rate of taxation.

• The form n° 2042, on which you must mention the amounts entered on form 2047 in order to weigh up your French tax.

When do I have to declare my income?

This declaration is due in May, but it refers to a tax year which runs concurrently with the calendar year, unlike in the British system when the tax year runs from April to April. It is also possible to complete your tax return on-line, and this has a slightly later due date of June 12th (this is correct for the current year of 2007, though it may change in the future).

French income tax depends on family size

In France, you are taxed as a family, not as individuals. The calculation takes a husband as one unit, a wife as another, the first two children as half a unit per child and subsequent children as a unit each. The size of the family thus determines the amount of tax as the net income is divided by the number of units in the household.

b) The British non residents' taxation in France

Link:

www.minefi.gouv.fr/poitoucharentes/p1_particulier/pdf/en_personne_fiscal.pdf

HOUSING TAX (Taxe d'habitation)

Housing tax is an annual tax you are subjected to as a resident of your main home (sometimes for your second home) as owner, tenant or occupant on purely free basis to the city or the grouping of cities or the department where your property is located, according to your situation at January the 1st of the year, to cover local services.

The buildings subjected are houses and flats with sufficient furnishing to allow the dwelling and their outbuildings located at less than 1 km of your home. Garages and car parks located at more than 1 km are not subjected to the tax.

The tax is established on the basis of the net rental value of your property (equal to the cadastral rental value of the room decreased by compulsory allowance, if it is your main home (for dependents) or optional (according to the income...)).

The tax is paid at the same time as **the licence fee**.

PROPERTY TAX (Taxe foncière)

You're subjected to the property tax if you're the owner or the tenant for life of a real estate building and subjected to the "built properties tax" (house, flat, block of flats, car parks, outbuildings, lands...). It's shared from the time of ownership.

For example, if the property tax is 300 € per year and if you complete the 1st of June, you'll have to pay : $300 * 7 / 12$.

When is it due?

The Taxe d'Habitation is payable in November each year.

N.B: This is the French tax which is levied on property. It is payable by anyone who owns a property in France, so if you are renting your home from someone it does not apply to you as it must be paid by the landlord. This tax is due in around mid October to mid November, and the amount varies from property to property and place to place, as it is basically a French local council tax.

Conclusion for the previous 2 taxes:

Taxe d'habitation applies to residents of the house/flat whereas Taxe foncière applies to the owner.

If you both own and live in your property you will, of course, be liable for both taxes. The tax is levied on residents of French property from January each year, so if you do not occupy your property until, for example, March, you will not be liable for that year.

HOUSES AND ROOMS FOR RENT

If you rent rooms for short or long stays (gîtes, chambres d'hôtes = B&B...) you are subjected to:

- income tax on the gain from this activity. The profits have to be

declared as **Trade and Industry Profits (BIC, Bénéfice Industriels et Commerciaux) FORMS N°2042 and 2047 (as explained above in the part "Income tax")**

- business rates (Taxe professionnelle)
- VAT sometimes (TVA)

- **Concerning the Income tax**, you are exempted from the trade and industry profits if the house rented is a part of your main home and the tenant's main home, or if not, the rent is less than 1830 € per year.

- **Concerning the VAT**, you are not subjected unless your furnished rental is accompanied by at least 3 of the hotel services such as: breakfast, cleaning, bed covers and towels, reception (for long stays in the countryside, bed and breakfast)

- **Concerning the business rates**, you are subjected if you rent residential units detached and especially equipped for rental purposes. But you are exempted for:

- the occasional rental of a part of your individual home,
- the rental of a part of your main home if it's the tenant's main home
- the rental of your personal house as Gîte or Tourism furnished, if the premises are detached and used by the owner when not rented
- Concerning the housing tax, you are not subjected to the housing tax if the rooms are rented and especially when they are equipped for renting and are not your main home.

- Concerning the property tax, you are subjected to

CRL: TAX ON RENTAL REVENUE (for houses built less than 15 years ago). If you are exempted for VAT or if VAT is suspended the rental is subject to CRL.

CSG: Social security contributions: (General Social Security Contribution), **CRDS** (Contribution for Reimbursement of the Social Debt), Social Security Contribution

Revenues of lessors of rooms are subject to **CSG (7,5 %)**, to **CRDS (0,5 %)** and the Social Security Contribution (2%)

N.B. If you buy in France a property newly built, your notary's fees will be reduced.

What happens if I sell my house?

I have to pay...

...CAPITAL GAINS TAX (PLUS VALUE)

Capital gains tax in France is called *impôt sur les plus values* and is payable on the sale of land or buildings, on shares, and certain other property.

This tax is payable on holiday home. If the property has been occupied by you on a regular basis (you declared it as your principal residence when you moved in) up to the time of the sale, then you do not have to pay capital gains tax.

Residents of France are mostly subject to fixed rates of capital gains tax, plus social charges of 11 percent. Property gains are taxed at 16 percent (plus 11 percent for French residents but non applicable for non French residents) and gains on shares at 18 percent (plus 11 percent for French residents).

Non-residents pay tax on French property gains at 16 percent if resident in the EU, Norway or Iceland, with no social charges. Non-residents are exempt from French capital gains tax on most shareholdings although certain business or property company shareholdings are taxable.

Note: The gain is the difference between the sales proceeds and the cost price.

Principal residence in France?

In order to qualify taxes, the property must have been occupied by you on an habitual basis up to the time of the sale, although you need not actually be occupying it at the time of sale.

This concession may be available for up to a year but you will need proper reasons.

Moreover, the law does not state how long you need to have occupied the property for it to be considered as your principal home.

The tax authority will likewise normally expect you to have made an income tax declaration at the address and that you are able to you **produce a *taxe d'habitation*** in your name, in order for it to be considered to have been your principal residence.

If you live in two properties in the year, then you will similarly need to supply a copy of the *taxe d'habitation* in order to demonstrate residence. It may well also be preferable to have previously notified the tax office which of the two properties you consider your principal residence.

Fifteen year rule

If the property has been owned by you for fifteen years or more, then no capital

gains tax is payable on sale, even though it is not, and may never have been, your principal home.

Between six and fifteen years an allowance of 10% per year of the gain is granted, so that, by the end of the fifteen years, complete exoneration arises.

Thus, if you sell a property after having owned it for a full 10 years, you will be granted an allowance of 50% against your liability to capital gains tax.

If I sell my house...

...I have to pay and ask specialized companies to execute...

...PROPERTY'S CONTROLS

– Asbestos control:

To identify all products containing asbestos, in accordance with legal requirements, in all properties built prior to 1st July 1997.

– Lead control:

To identify the presence of lead on interior surfaces of buildings constructed in areas classified as high risk by local government and build before 1948.

– Confirmation of surface and habitable area:

To determine precisely the private surface area by means of a telemeter laser. The company supplies the certificate which defines the dimensions conforming to regulations, as well as other undefined areas.

– Parasites:

To find visible traces of infestation or deterioration caused by parasites within buildings.

– Water control:

To check the drainage of waste water.

I have to pay...

VAT: if my house has less than 5 years.

Immobilière de la Côte d'Opale

- REAL ESTATE AGENCY -

The real estate agent is a professional intermediary who connects the buyers and the sellers of real estates or businesses in a real estate agency.

In order to work legally, he must have a professional card, a professional insurance and a financial guarantee.

To have the professional card, he must have either diplomas required by the law, or a minimal professional experiment, the professional capacity. The professional card is a sort of registration before the Administration, issued by the Prefecture to those who can work as real estate agents in France.

He must also have a financial guarantee to ensure the funds held for the customers. This financial guarantee depends on the preceding exercise of the estate agency. The minimum of the guarantee depends on whether the estate agent cashes funds or not.

If the estate agent cashes funds, the guarantee minimum to be subscribed is of 110.000 €. If he doesn't, the guarantee minimum is of 30.000 €. It increases, then, by section of 20.000 euros.

The estate agent must also subscribe a compulsory professional insurance to cover financial consequences of the civil professional liability (for example to pay damages).

The estate agent should not be struck of a legal incapacity or a prohibition to exert.

The estate agent must display some documents in the agency, especially, his professional card number, the amount of his financial guarantee, the name, the address and the telephone number the guarantee company, the rate and the methods of calculation of his fees.

The estate agent represents his customers. But to do it, he must hold a written mandate which authorizes him to negotiate or to promise for the account of his customer.

The estate agent also advises his customers. He must thus check that information transmitted by him to the customer is exact. He must so make sure that the buyer is creditworthy, i.e. that he can indeed pay the property.