LE G AL G U ID E TO
French Property Transactions and French Inheritance Law

Efficient, expert advice

Ability to understand and acknowledge complex family issues

Fluent in French and English, a reliable, quality legal advice

In-depth understanding of the English implications of French property ownership
introduction

The guides contained here are intended to give an overview of some of the major issues relating to French property and inheritance matters. It may be important to consider your own situation in specific detail, and we would be happy to advise you accordingly.

Your specific French law concerns may not be mentioned within the content of these guides; this does not necessarily mean we cannot advise you, and we would invite you to contact us to establish if we can help. If we cannot advise you directly, we may be able to put you in touch with suitable professional advisers.

We make no reference in the guide to dealing with the administration of a deceased person’s estate where French assets are involved, or divorce when the married couple’s interests include a French property. However, we can help in such instances. We may also be able to assist in litigation matters. Please do not hesitate to contact our French Legal Services team; contact details can be found on the back page.
Buying French Property

in France. While all reasonable endeavours are taken to ensure that it is correct at the time of printing it does not purport to be an exhaustive analysis of the relevant laws as applicable to you. We trust that it will, however, provide you with sufficient background information on French law to help you in your purchase or sale, and will lead you to seek specific legal advice and guidance from us regarding your circumstances.

If you are looking to purchase a property in France, it is imperative that you give adequate consideration to the implications of French and UK inheritance law and tax as there can be a number of complications on either side of the Channel, depending upon your personal circumstances.

Furthermore, even at the time of purchase there are a number of points that you should bear in mind for the future, should you need to sell the property. Certain steps that you take now may assist the sale process, and especially the tax implications of a sale, so we would strongly recommend that you consider reading the section on selling a French property.

Finding your property

You may already have identified the property that is right for you. If not, we can put you in touch with Agents in your chosen area from within our network of contacts.

When you are looking to buy, you may give some thought to resale potential. This may be important in future years, especially if you would possibly anticipate selling to French or other international buyers whose tastes may differ.

When visiting a property through an Agent, it is common practice for them to accompany you on viewings. You may not be given the property address or details of the seller. Do however check that they have a valid mandate to sell this particular property. The only document you should be asked to sign at the point of visiting a property is a bon de visite, which is only to confirm that you saw a specific property through that Agent. This does not constitute any contract to purchase; you should be wary of any other document, and if in doubt, fax a copy to us for approval. A reputable Agent would not object to this step.

Their property details tend to be brief. We recommend that you ensure that the Agent belongs to the Fédération Nationale des Agents Immobiliers or “FNAIM”.

Finding your property

If you need to raise funds for the purchase, you can either mortgage your English home or the French property being purchased. Each method has its pros and cons, and again this depends on your preferences and circumstances.

French lenders may lend up to 80%, or occasionally more, of the purchase price.

Life assurance cover is usually required – and included in your monthly repayments – which must be assigned to the lender for the duration of the loan. It is advisable to apply for a mortgage at the outset and to declare your requirement for a mortgage in the purchase contract prior to signature.

You will need to ensure that you are fully aware of the terms of the mortgage, which we can discuss with you if required. There can, for example, be hidden costs such as a charge for obtaining clear title once the mortgage is paid off.

There are strict lending criteria in France, that restrict the amount of available finance – you cannot normally borrow more than an amount that would result in one-third of your gross monthly income going to debt repayment.

Currency exchange / funds transfer

You may find that it is prudent to discuss currency exchange through specialist money transfer companies. Such companies should be able to negotiate better rates of exchange between Sterling and Euro than may be offered by your bank. They will often be able to book rates to mature at a specified future date, or agree a rate at which a currency transfer can be made. Care does need to be taken in this respect, given that when you sign a French purchase contract, the exact completion date is unlikely to be fixed. We can recommend one or more such companies for you if required.

Care always needs to be taken here to ensure that the terms are suitable. Whether you contact such a currency house or not, you should anticipate that it will take several days to ensure funds transfer from your account to the notaire’s.

The purchase process

As in England and Wales, the purchase of French property is achieved in two main stages. The first contract is often prepared by the Agent and you may be asked to sign it very quickly following acceptance of your offer. A reputable seller or estate agent should allow you time to check the contract. In most instances, we can carry out this work at very short notice. This should also allow you time to organise a survey of the property – preferably prior to completion of the contract – and we can put you in touch with surveyors and property experts.

The second stage involves signature of an acte de vente or deed of sale, at which point ownership of the property is transferred to you as buyer and the full amount of the purchase price and notaire’s fees are paid. The exception to this is in relation to new build properties, when completion may take place well in advance of actual delivery of the property to the buyer and when only a proportion of the price is paid.

If you are selling your existing property and moving to France on a permanent basis you should bear in mind that it may be extremely difficult to synchronise the sale and purchase in two different jurisdictions. It is therefore generally advisable to have some form of contingency plan. This may be your ability to purchase the French property from other resources, or to rent a property between your sale and purchase.
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The initial contract

Some contracts include English translations, but these are not always accurate. If there were any future disputes as to the terms of the contract the French version would prevail. Therefore any translation can only ever be treated as a guide. Having French documents translated into English will not ensure that they contain all appropriate clauses. If a dispute arises, you may have to instruct an avocat to resolve any problems – a notaire would take no further part if the parties were not in agreement.

Types of contract

Contracts used for the sale of existing properties fall into three main categories: the promesse de vente, the promesse d’achat and the compromis de vente. You need to be careful that any documents you are invited to sign are suitable.

The most common form of contract is the compromis de vente, a bilateral contract which binds both parties to complete a purchase subject to the satisfaction of certain conditions beyond the control of buyer and seller, against the risk of sanctions for an unjustifiable failure to complete.

The promesse d’achat and the promesse de vente are unilateral contracts, rather like options, whereby you or your seller respectively enter into a commitment to sell or buy, but the other party is not bound. In the case of a promesse de vente, you may therefore be able to withdraw from the transaction before completion, although you may lose your deposit in doing so.

New-build contracts

Contracts for the sale of new properties that are as yet incomplete, or properties being sold on a ‘leaseback’ scheme, differ from those used for the sale of existing properties in that they are subject to strict laws for the protection of the consumer. Typically, you will be required to sign a reservation contract, and then a particular form of purchase deed known as a vente en l’état futur d’achèvement, or future completion sale. This is normally signed before the building work has finished. You take ownership of everything that has been built by then, and the remainder as work progresses. Various guarantees as to completion must be included in this form of transaction. Please see our separate guide on new build properties.
A French contract should contain **conditions suspensives**; special conditions which, if not satisfied, will render the contract null and void and entitle you to withdraw from the contract and recover your deposit. These include there being no adverse planning restrictions or third party rights which might materially affect your enjoyment of the property; no existing mortgages affecting the property; and no claims upon the property by the local authority or the French State. Furthermore, there can be a condition that you obtain a mortgage. Provided you satisfy certain formalities, if you do not receive a mortgage offer you can withdraw from the purchase and have your deposit refunded.

We will ensure appropriate **conditions suspensives** are included in the contract to enable you to be released from the contract without loss of your deposit if the stated conditions are not satisfied. The mortgage condition will normally include a time limit within which you must apply for your mortgage advance, and that so far as you are aware there is no reason for the loan to be refused. If you fail to do so the **condition suspensive** will be deemed to be satisfied and you could not subsequently rely upon it to withdraw from the transaction if for any reason you find yourself unable to raise the finance to proceed.

As mentioned above the contract will be completed subject to various conditions that must be satisfied prior to the sale being finalised. French law does not recognise the concept of “subject to contract” and, it is normal to sign the contract before any searches and enquiries are made by the **notaire**, or before a mortgage advance has been agreed.

It should not be necessary to pay a deposit before signing the contract, and it is not wise to pay any money direct to the seller. If you are convinced that you will lose a property if you do not show your good faith as a potential purchaser, a notaire may be prepared to act as stakeholder for a small deposit. Agents can receive deposit monies provided they hold a Carte Professionnelle or licence which is only issued by the local authority upon proof that the Agent holds minimum insurance cover. Whether held by the Agent or notaire, the deposit will not attract interest.

It is wise to obtain a structural survey from a qualified surveyor with an intimate knowledge of local property and building methods to warn you about possible problems. A proper survey may enable you to negotiate a reduction in price. We can provide details of various surveyors.

Your seller would not have to disclose any structural defects affecting the property that you will take in the condition in which it stands – although he is not entitled to actually hide them. This means that if, after signing a contract, you discover structural or other defects to the property or its services, you are still obliged to complete the purchase at the agreed price and cannot obtain compensation from your seller. It is therefore preferable to commission the survey prior to signature of the contract.

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As part of the purchase process, the seller is obliged to provide certain survey inspections, and these should always be checked prior to completion of the first contract. An infestation
survey *état parasitaire* is obligatory in some parts of France as are searches for lead-based paint that can potentially lead to lead-poisoning (*saturnisme*) and asbestos (*amiante*), inspections of certain gas and electrical installations, and an energy efficiency summary for the house. A report of any recent natural disasters such as flooding or landslides that may have affected the whole area, plus confirmation of whether there is a formal disaster prevention plan in place locally, is also to be provided.

You should ensure that you retain the certificates for the searches following completion of the purchase. If you are to rent out the property, whether to holiday makers or for longer tenancy purposes, it is sensible to ensure that all of the results are made available to your guests and tenants. It would be wise to leave a copy in an information folder to remain at the property. Similar requirements apply when you have contractors come to the property to carry out work, such as decorating or renovating.

This is of particular importance in relation to the searches for the presence of asbestos and lead-based paint. You should consider whether work should be carried out to clear such materials from the property.

If the inspections reveal anomalies in the electricity and gas installations, you will appreciate the importance of correcting such problems. You should also check whether such anomalies would have any impact on your property insurance, especially if you intend to rent the property out.

We can obtain an up-to-date registered plan or *plan cadastral* of the property, showing the extent and boundaries of the property.

It is important to check rights of way and other easements, rights or restrictions which might affect your use and enjoyment of the property. Check whether a planning or other consent was required and obtained for any construction or change to the property, including installation of a swimming pool or septic tank. The property may be a historic monument or in a classified area. If so, it may be an offence to make any alterations or improvements without first obtaining the correct permissions. If you are buying a property that is subject to an existing planning permission, you will need to ensure this is transferred into your name on completion; this is normally a formality with which we can assist.

Look at the surrounding area for potential nuisances such as smell etc. The property may be in an area which, though quiet when inspected, is susceptible to seasonal traffic or in a locality which attracts large crowds. To find out more about these, a personal visit to the local Town Hall to inspect the zoning plan or *Plan d’Occupation des Sols* (the

“POS”) may be advisable. Information about surrounding land and planning applications in adjoining property will not necessarily come automatically as part of the local authority enquiries.

If any furniture or other movables are to be left by the seller, make sure an inventory is included in the contract. This should include a cost for each item.

**“Cooling off” period**

There is a ten-day “cooling-off” period during which, as a prospective purchaser, you can consider whether you do indeed wish to proceed with the purchase. The period runs from the time you receive the contract. You cannot normally be required to pay the deposit before the end of this time. If you decide not to proceed you must notify the seller formally within seven days. The seller must receive the notice within that time, and there are strict rules as to how the notice must be served. If you have paid a deposit, this is to be returned within twenty-one days of service of a valid notice to cancel.

**Between contract and completion**

Once the contract is signed, the *notaire* will obtain the equivalent of a Land Registry search to disclose any restrictions on the seller’s right to convey title and the existence of mortgages. A *Certificat d’Urbanisme* is obtained, to confirm the permitted use of the land and administrative restrictions or requirements which apply. Depending on the drafting of the application submitted to the local authorities, the *certificat* may also give information on whether building is allowed, the density and other details of development. Note however that a *Certificat d’Urbanisme* is only valid for one year.

**Planning and construction**

Ensure that full enquiries are made into what development the seller may have carried out. If anything was done, were all necessary authorisations obtained? This may include authorisations from other agencies and organisations, such as the co-ownership committee for an apartment block, the AFB for historical properties, and so on. We will also look to see that all necessary time periods imposed under any planning permissions were respected, and that work was declared as completed correctly. You should also look to see whether any construction insurance cover was taken out, whether by the seller or its contractors, and whether you will be able to benefit from cover.

You may in the future wish to carry out your own development work. No development should be undertaken to your property unless written planning permission (*permis de construire*) or other suitable authorisation has first been obtained. It is always preferable to check with the mairie if you are anticipating any work to your property, to see whether you will need to submit a full planning application, or perhaps what is known as a *déclaration préalable*, which is a simple confirmation that you are carrying out certain work. Generally planning permission is not usually necessary for fences no higher than 2 metres; terraces no higher than 0.6 metres; certain posts and aerials; any work of less than 2m2 in area and 1.5 metres above ground; and other small works.

Be aware of the various construction insurances and if you intend to extend or build a property, planning consent may be necessary. Do bear in mind that there are time periods during which third parties may object, and there are strict rules relating to publishing a permission.

Work inside your property can usually be carried out without planning permission provided they conform to local building regulations. Demolition work is often subject to planning permission, but work such as the maintenance of *façades* or the construction of an outdoor swimming pool can usually be undertaken without planning permission by obtaining an exemption certificate one month before the work is due to start. The installation of septic tanks may also require
planning permission, and will almost certainly require an inspection to confirm conformity.

In all such cases it is worth checking carefully with the local authority and possibly with other agencies and organisations, as to what requirements will have to be satisfied before any work is commissioned. It may well be the case that the involvement of an architect is obligatory. Some organisations may need to give their prior consent to any works, and may themselves insist upon imposing their own architect – at your expense. We should be able to advise on such cases.

**Personal details**

The notaire will require evidence of your état civil or civil and marital status. Normally you will be required to provide birth certificates, marriage certificates and divorce Decree Absolute or Death Certificate of any previous spouse if relevant, and sometimes photocopies of passports. It is normal for women to be referred to by their maiden name, even if they are married.

**Completion**

The various search results will take about two months to come through to the notaire, who will then invite the parties to sign the purchase deed at his office. We will ask the notaire to send us a draft in advance of completion. In the case of a property forming part of a multiple development, the notaire will also provide a co-ownership agreement which is binding upon each property owner. If you are going to the notaire’s to sign the purchase deed it will be important to establish if your French, or the notaire’s English, is proficient, or if an interpreter will be required (at your expense). Even though we will have been able to consider the draft deed in advance of your meeting, such that you can understand its content, it is still important to ensure that there are no misunderstandings during the meeting itself.

It is generally preferable to visit the property before the completion meeting, and then attend the meeting. However we can often ensure that you can sign by power of attorney, if you do not intend to go to the notaire’s office for completion, although sometimes this may not be possible. This document may appoint a friend or (more usually) a member of the notaire’s own staff to sign on your behalf. The attorney can then sign the deed of sale on your behalf at a time convenient to the notaire and your seller. The power would normally need to be witnessed by a solicitor or notary public, and sometimes legalised with a certificate from the Foreign and Commonwealth Office, the effect of which is to certify the signature and details of the Notary Public or solicitor who witnessed the signature.

The notaire will ask you for the balance of the purchase price and legal fees which must be in cleared funds in his account before completion can take place. Make sure that the full purchase price will be available in good time before the date fixed for completion. Transfer of money between the United Kingdom and France can take longer than you think and often at least one week. In relation to transfer of funds we can put you in touch with organisations that should be able to negotiate a better rate of exchange, resulting in a substantial saving for you.

Once the acte de vente is executed, title to your property is registered by the notaire at the Bureau de Conservation des Hypothèques. Once registered, the acte de vente is kept in the notaire’s archives in perpetuity and only an official copy is provided as evidence of your title. If you require proof of ownership immediately after completion, the notaire can supply a statement or Attestation confirming that you are the owner. The registration process itself often takes many months to complete. The Attestation constitutes your proof of ownership during this period.

**Insurance**

The property needs to be insured on completion. French insurance coverage is similar to that given in the UK and should extend to damage or injury to neighbours and third parties. Householder’s comprehensive insurance protects you not only against damage or injury to third parties but also usually covers: fire, explosions, lightning, terrorist attacks, storms, hail, snow on roofs, natural disasters, flooding or freezing, legal expenses, household accidents, damage to electrical appliances, theft and vandalism. Naturally exclusions can apply, for example when the property is uninhabited, so the wording of the contract needs to be considered.

You may wish to take over your seller’s existing insurance policy and, if so, you should establish what cover he has in effect. We can provide further advice about French buildings and contents insurance requirements.

If you are buying a property in co-ownership, such as an apartment or a villa on certain forms of estates, you should pay extra attention to the cover that needs to be taken out. It is likely that the co-ownership will insure the buildings, although the extent of this buildings insurance can vary. You should obtain a copy of the co-ownership’s insurance certificate and provide this to your own insurer, to be certain that all risks are covered. There may for example be certain elements of the property or its fixtures that are not covered by the co-ownership’s policy.

**Legal expenses**

The buyer is solely responsible for the legal costs and expenses incurred in relation to the transfer of French property which must be paid to the notaire before completion takes place. These costs are generally about 7.5% plus a further amount of approximately 1% if you are taking a mortgage. These fees are fixed in accordance with set scales. Similarly, new build and leaseback property purchases will normally attract notaire’s fees of around 2.5% - 3%, excluding mortgage fees.

**Annual taxes**

Local taxes are payable in France each year. The taxe foncière or land tax is apportioned on a pro-rata basis and you will be required to reimburse your seller for the remaining part of the year. Owners of new properties are exempt from this tax for the first two years of structural completion. The taxe d’habitation is payable by the person occupying the property at 1st January and is not apportioned on sale. You will therefore not be required to pay this until 1st January following completion of your purchase.

In some parts of France, sundry taxes or taxes assimilés such as for the supply of snow sweeping or other amenities are also payable. These taxes are often apportioned between the seller and the purchaser at the date of completion of the purchase.

**Utilities**

It is up to you to arrange to connect to utilities such as electricity, gas, water and telephone. You may like to consider opening a French bank account from which to pay your accounts by direct debit. Never overdraft your French bank account beyond any specifically granted allowance, as the penalties for this are severe, and it is an offence to write a cheque for which funds are not available.

**Agency commission**

Although Agents’ fees are often at the expense of the seller, the contract may provide that these be paid by you in addition to the agreed price. It is important to check this point before you sign any document in France or England. Agents’ fees are usually between 3% and 10% of the purchase price.
Building your own property

Once you have secured a suitable plot of building land, you will need to find out about legal easements or other constraints and to obtain a *Certificat d’Urbanisme*. Once you are the owner of the land and the plans for the new property have been drafted, you must apply to the *Mairie* (Town Hall) for planning permission. When planning permission is granted, you have one year in which to start the proposed work, it being necessary to make a declaration to confirm the start of the building work.

There are two main forms of building contract.

The company contract or *contrat d’entreprise* is an agreement by which you enlist the services of one or more builders to whom you should give a copy of the plans. The contract outlines the price (fixed or subject to review), the timetable and the agreed payment schedule. With this contract it is your responsibility to supervise and coordinate the entire project.

The construction contract or *contrat de construction* is the most common form of building contract. You will deal with one professional only who will be responsible for the construction work. French law strictly governs the payment schedule and you have the advantage of various guarantees.

As mentioned above, if you are buying a property that already has a planning permission in place, this will need to be transferred into your name on completion of the purchase.

The vente en viager

Although relatively rare, you may be asked to buy a property *en viager*. This is a method whereby someone, generally an elderly person, sells property on an instalment basis. Possession may or may not be given to you on the date of completion. On that date the *acte de vente* is signed and you pay a small proportion of the purchase price.

The deed of sale provides that a monthly or quarterly sum shall be paid by you to your seller for so long as the seller lives, thus providing him with an income. Whether or not you obtain a good bargain depends upon how long the seller lives.

Commercial premises

If you are thinking of setting up a *gîte*, restaurant, hotel or other business in France, you will need expert advice to guide you through the procedures, laws and tax regulations. Before making a commitment of any kind, you should make sure that you will be allowed to carry on your intended business. In some cases, this will require licences and other permits. The purchase, creation or development of goodwill and the take-over of a company in France are direct investments and a special declaration to the French Ministry of Economy may be required for these transactions between EU Member States.

Agricultural property

If you are proposing to buy a farm or a rural property you may have to take into consideration additional factors. Various agricultural organisations may have the right to make a compulsory purchase of agricultural land at the same price as you have offered for the property. A sale cannot proceed until *SAFER* has confirmed it will not exercise this right.

It has up to two months following completion of the contract to announce if it wishes to exercise this right. An authorisation to farm the property may also have to be obtained from the local authorities.

When planning permission is granted, you have one year in which to start the proposed work

Various agricultural organisations may have the right to make a compulsory purchase
French inheritance law

It is imperative when buying a house in France – whether as a holiday home, permanent residence or otherwise – that you give adequate consideration to the implications of French and UK inheritance law and tax. There can be a number of complications on either side of the Channel, depending upon your personal circumstances.

We have a separate guide available that addresses such areas, and you should consider this as well. We believe it is important for you to seek detailed advice in this respect.

EU-wide Succession Regulations may also be of major importance and should be taken into account.

Tax

You should be aware that any business activity you may carry out in France, may give rise to an income or corporation tax liability in France, and also subsequently in the UK if you are UK resident. If you are French resident, then any income received worldwide is taxable in France.

Income from rental properties, including gites, is always taxable in France. If you are renting out your property you should consider registering your property with the local section of *Gîtes de France*.

There is wealth tax in France, which is imposed annually on all qualifying assets in excess of a specific threshold. What assets qualify depends firstly upon your tax residence: if you are not French resident, then only your house in France would be subject to the tax; if you are French resident then everything you own may be included in the calculation (even your house in the UK). There are nevertheless a number of allowances, such as for certain business and commercial assets, a proportion of the value of your main home if this is in France, certain antiques and so on.

There are tax treaties between the UK and France, which will normally mean that you do not have to pay taxes twice.

If you do not live in France you will have to declare this through the *Centre des Impôts des non-résidents* in Noisy-le-Grand. If you are French resident, then you will need to report to your local tax office.

Property rental

If you expect to rent out the property, whether for holiday lets or on a longer term basis, you will need to note that you must declare the revenue to French income tax. Presuming you remain UK resident, you will also need to include the income on your UK tax return, although you should be able to take into account the tax already paid in France, to ensure that you do not pay the same tax twice.

You should check that the terms of your insurance policy and mortgage, if you have one, allow you to rent the property.

You will also need to ensure that the various diagnostic searches (lead-paint, asbestos, electrical installation and so on) are made available to the tenant.

If you have a swimming pool, it must be protected by at least one form of duly authorised pool security.

You should also ensure that all security systems – burglar alarms, smoke / carbon monoxide alarms and so on – are all working.
Selling French Property

Even if you are only now purchasing your property in France, it is prudent to contemplate the procedures on a sale as some points will be useful to bear in mind if you ever do need to sell your property.

It is of course advisable to retain the services of a solicitor in the United Kingdom to advise on the implications of the sale. A French notaire must be instructed, as only a French notaire practising in France can draw up the deed (acte de vente), which formally transfers legal ownership of your property to your buyer.

In general, the buyer pays the notaire’s fees on a sale and purchase transaction, although there are certain disbursements and taxes that the seller may have to bear. You can choose a notaire although your buyer is entitled to appoint his own notaire and the two notaires will then share the statutory fee.

**Marketing the property**

There are increasing numbers of direct marketing opportunities, through property journals, the Press, exhibitions and the internet – there are several websites dedicated to French property matters. You can also of course use an estate agency. Many notaire’s are able to market and sell your property.

A reputable Agent will hold a licence (carte professionnelle). The licence will only be granted if the préfet is satisfied the Agent has the requisite skill; has negligence insurance; a bond to protect clients’ money; and meets other certain standards. French estate agents have to display at their premises, where it can be easily read, a notice showing the number of the licence, their name and address – trading name and registered office if a company – the amount of the bond and by whom it is granted, and details of their bankers.

French Agents usually charge commission on a percentage basis – usually between 4% and 8% of the sale price – as agreed in a mandat (written authority) signed and dated by you and usually expressed to be either ‘TVA comprise’ or ‘TTC’ (inclusive of French VAT at 19.6%) or exclusive of TVA (‘hors taxe’ or ‘HT’). The mandat should specify whether the commission is payable by you, your buyer or split.

The mandat may grant the Agent the exclusive right (mandat exclusif) to sell the property. In which case, you will be liable to pay the agreed commission even if you sell your property without the Agent’s help, whether directly or through another agent. The mandat should specify the minimum acceptable sale price and the commission.

You should ensure the mandat does not include a power for the Agent to sign a contract on your behalf at that price.

It would normally be expressed to be valid for one year, but if you do not strictly comply with all specified cancellation provisions, the mandat may automatically be renewed. Most mandats contain a provision permitting termination after the first 3 months. We would be happy to check through this document prior to your execution of it.

The sale price must be expressed and paid to the notaire in Euros. It is impossible to obtain any firm assurance of the time it will take for you to receive your sale proceeds – which in France do not earn you interest – from your notaire. In some cases, you may not receive all your sale proceeds for a long period following completion; this would generally depend upon taxation, and for this you should ensure that all capital gains tax issues are addressed well in advance of the actual sale.

If your buyer is UK domiciled, it may be possible – subject to payment of fees, taxes, commissions, mortgages and other matters – to avoid these problems and expenses by expressing the sale price to be the Sterling equivalent of the Euro price.

With the consent of your notaire, solicitors can then receive the purchase monies in Sterling from your buyer or his solicitors. It is always preferable where you are selling to a UK buyer that your buyer instructs his own solicitors. In any event, if you instruct us in the sale we will not be able to give your buyer any advice due to the solicitors’ rules on conflict of interests. However, this option can be a cause for concern – there can be problems if, for example there are fluctuations in exchange rates, and the actual point of agreement of an exchange rate needs to be clarified carefully.

**Your obligations as a seller**

The French Code Civil deals at length with the sale of goods and property. As a seller you have three main obligations. First, a duty of care to deliver what has been agreed to be sold; secondly to ensure that the buyer enjoys quiet possession free from any claims by third parties; and, thirdly, a liability in respect of undisclosed defects.

You must ensure that your property will correspond to its description and other details specified in the sale contract. You must attend the notaire’s office to sign the acte de vente, or at least complete a power of attorney (procuration) to authorise someone to attend on your behalf.

If your property is under construction, you must hand over the planning permission (permis de construire) and other relevant planning documentation. It is not possible for a permis to be sold as such; it is an incidental addition to the sale of a plot of land or a partly built house; however it is for the buyer to have this transferred into his name following completion.

You must be able to ensure that all registered charges are cancelled by producing vacating receipts and certificates of cancellation. If the sale contract is silent, the French courts will imply a duty of care on you to deal with this, and will permit a buyer who discovers charges on your property to refuse to hand over the purchase price until you have corrected the situation.

You have a duty to inform your buyer about your property, about easements and any charges affecting it and you must produce evidence of a thirty-year title.

You must be able to ensure freedom from eviction, roughly the right for peaceful possession free from any claim by any third party. This arises from Article 1626 of the Code Civil under which you guarantee your buyer’s freedom from eviction and from charges affecting your property not previously disclosed at the time of sale.

This guarantee relates both to interference with one’s rights in connection both with fact (troubles de fait) as well as law (troubles de droit).
Examples of troubles de fait are where a seller, who retained adjoining land, built too high a wall and deprived the buyer’s property of direct sunlight; or who diverted a stream which watered the buyer’s land. It may be summarised as action by the seller which abnormally affects the use of property bought by the buyer. Troubles de droit could include undisclosed rights of pre-emption affecting the property sold. Third party actions include claims by mortgagees or others who believe that they have an interest in your property.

Undisclosed defects

Article 1642 of the Code Civil states that you are not liable for apparent defects, which your buyer could discover for himself.

Article 1641 says that you are liable for latent defects (vices cachés) which render your property unfit for their intended use or which so substantially diminish such use that your buyer would not have bought your property, or would have paid a lower price, had he known of them.

The sale process

There are two main legal stages involved in your sale, the first contract and the actual transfer of title, which takes place on signature of the Acte de Vente.

The first stage is signature of the sale agreement. This is normally signed at an earlier stage than is common in England. The agreement will usually be conditional on matters such as the receipt by your buyer of a mortgage offer in a specified amount, investigation of title by the notaire, and other pre-completion searches and checks.

There are two main forms of contract. The more common is a compromis de vente which is an agreement signed by both parties. Instead, you may grant your buyer a unilateral right or option to purchase (promesse de vente) for a maximum duration of 6 months. This agreement binds you but leaves your buyer the option whether to proceed with the purchase and is subject to certain additional formalities such as registration. During the option period the seller is prevented from attempting to sell or lease to another party hence the necessity for registration. If the buyer decides not to proceed, the contract is cancelled but you can keep the deposit. In some areas, such as Paris, the initial contract is often referred to as a promesse de vente, yet it is signed by both parties and in general simply reflects the terms of a compromis de vente. Agents in various areas will tend to use different terms for this initial contract, all of which may appear confusing; it is wise, therefore, to ask us to verify the draft paperwork before completion.

The contract should deal with apparent defects and may make the sale conditional on a survey, but unless the contract expressly states otherwise, you give a 30 year implied warranty that your property is free from latent defects, even if you are not aware of them.
Fixtures and fittings

You and your buyer must be clear about which items are included in the sale. If any items of furniture are to be included, an inventory signed by all parties should be attached to the contract, and their value included in the sale. Since the value of furniture, if declared, in the contract, can work to reduce your capital gains tax and the buyer’s stamp duty liability, then an itemised inventory is required with a price put to each item as this may be scrutinised by the tax authorities.

Planning matters

No development should have been undertaken to your property unless written planning permission (permis de construire) or other suitable authorisation had first been obtained. It is always preferable to check with the mairie if you are anticipating any work to your property, to see whether you will need to submit a full planning application, or perhaps what is known as a déclaration préalable, which is a simple confirmation that you are carrying out certain work. Generally planning permission is not usually necessary for fences no higher than 2 metres; terraces no higher than 0.6 metres; certain posts and aerials; any work of less than 2m2 in area and 1.5 metres above ground; and other small works.

Work inside your property can usually be carried out without planning permission provided they conform to local building regulations. Demolition work is often subject to planning permission, but work such as the maintenance of façades or the construction of an outdoor swimming pool can usually be undertaken without planning permission by obtaining an exemption certificate one month before the work is due to start. The installation of septic tanks may also require planning permission, and will almost certainly require an inspection to confirm conformity.

In all such cases it is worth checking carefully with the local authority and possibly with other agencies and organisations, as to what requirements will have to be satisfied before any work is commissioned. It may well be the case that the involvement of an architect is obligatory. Some organisations may need to give their prior consent to any works, and may themselves insist upon imposing their own architect – at your expense. We should be able to advise on such cases.

The deposit

When the contract has been signed by the buyer a deposit, normally 10% of the purchase price, is payable. This is deposited with the notaire or the estate agent if so authorised. The deposit is a part payment of the purchase price if the contract is completed, but may be forfeited if your buyer withdraws from the contract. The contract will usually contain conditions, such as the availability of finance to the buyer; if these conditions are not fulfilled the deposit is refundable. You must usually pay the buyer the same amount in damages (as well as refunding the deposit) if you withdraw from the contract. If you want to forfeit the deposit but your buyer disputes your claim, the notaire will not release the deposit unless either you have settled the matter amically with your buyer or the French courts have determined the matter.

In practice, a buyer’s failure to complete may lead to extended negotiations before a deposit can be forfeited, often through the intervention of an avocat for either party.

Searches

While as seller you are not obliged to pay the notaire’s fees, there are a number of expenses that you will be liable to pay, including the cost of the various obligatory searches, such as inspections for termites, lead, asbestos, compliance of swimming pool regulations, the electricity and gas installations and so on.

Completion

Once the notaire has completed the searches and other preparatory work, which normally takes around two months, you will be able to complete. The notaire is personally liable for the registration taxes and the buyer (invariably) must pay these, together with his costs and the purchase price, before completion.

Just as when you purchased your property you may have had to attend at the notaire’s office to sign the acte de vente, so signature in person is generally required on a sale. If you are unable to travel to France to sign the acte de vente, then you will need to give a power of attorney (procuration) to someone to sign before the notaire on your behalf. This person can be a friend who lives locally or more commonly the notaire’s clerk. The power of attorney (procuration) drafted in French may need to be forwarded to the Foreign & Commonwealth Office for legalisation by having a certificate called a ‘Hague Apostille’ endorsed. This will enable the document signed in the UK to have full effect in France.
Taxation

Under Article 1593 of the French Code Civil, all the legal costs of and incidental to an acte de vente are payable by the buyer unless otherwise agreed. This is the case even if you and your buyer are represented by separate notaires.

Capital gains tax

French capital gains tax must be taken into account if you make a gain from the disposal of your property and other assets situated in France. If you are tax resident in the UK then you will also have to bear in mind the potential for UK capital gains tax (CGT).

You should be exempt from capital gains tax in France if your property is your principal residence and you have been resident for tax purposes in France for one year. It is important therefore to complete your tax return in France. There are also circumstances where you may be able to claim an exemption if you have been tax resident in France in the past but are not so now. A careful analysis of your personal situation should establish whether you can claim such an exemption. EU residents who are not domiciled in France can be subject to exemption from the tax provided that they have been tax resident in France, at some point, for at least two years. This exemption is available for the first two sales with effect from 2006, even if the seller concerned has previously benefited from a similar exemption under earlier regulations.

French capital gains tax arises on gains realised from the sale of all or part of your property. Your notaire will probably not complete your sale and pay you the sale proceeds until he has obtained agreement from the fisc to the amount of any French capital gains tax, which he must deduct from those proceeds.

French capital gains tax will generally apply at a flat rate of 19% of any net gain for non-French residents who are residents of another EU country. Tax residence in the EU country will need to be evidenced by a certificate from the seller’s local tax office in that country. You should seek this certificate for each seller as soon as possible in the process, as it may take some while to arrive.

A French contract should contain conditions suspensives

It is preferable to check with the mairie if you are anticipating any work to your property.

French capital gains tax must be taken into account if you make a gain from the disposal of your property.
There are certain allowances to the tax in France, including:

- the costs associated with the purchase set at 7.5% of the purchase price but you can itemise your costs if they were greater
- the costs of certain repairs, improvements, renewals and extensions, but not painting or decorating
- you are also entitled to a general annual allowance from all of your gains arising in the French tax year (1 January to 31 December). This allowance is presently 1000€.

In relation to the cost of works, the French tax office (the fisc) will require sight of all original receipted invoices (receipted estimates are never accepted) in connection with work carried out by artisans or other tradesmen to your property. If you use British contractors located in the UK, their invoices must expressly state that they appertain to your property; otherwise they will not be taken into account. The invoices should be in French and in euros.

Invoices should also be in the name of the seller and may need to be supported by bank statements proving that you have paid them. If you own the property through a company, then all invoices for works would have to be drawn up in the name of that company, and proof of payment by the company produced. If the works have not been carried out by tradesmen you cannot make any charge for the cost of painting or decorating under English and French law and must not evidently such activity constitutes a tax fraud fraudulently, you can be subjected to a fine and 3 years’ imprisonment under CGI Article 1741.

UK capital gains tax

British residents selling property in France are liable to capital gains in the UK following the declaration made in France. The fisc are likely to pass on to the Inland Revenue any information they have, either about your sale or other French tax affairs. The Inland Revenue calculate any chargeable gains on the basis of the Sterling equivalent of the consideration paid on acquisition and disposal. Any resulting taxable gain will be taxed in the UK at usual UK rates as an additional slice of income after taking into account your annual exemption and any other relief that may be available.

In accordance with Article 24(a) of the 1968 Anglo-French Double Tax Treaty you can offset against the gain the amount of any French capital gains tax.

Sale at undervalue

French capital gains tax can be avoided and French stamp duty/Land Registry and other notarial fees payable by your buyer, can be significantly reduced if you privately agree to declare a lower (not the true) purchase price in the acte de vente and receive the balance in cash from your buyer on completion. Self-evidently such activity constitutes a tax fraud under English and French law and must not be entertained. Article 1840 of the French Tax Code states that any side agreements are void and you cannot sue your buyer for the balance if he only pays the lower value quoted in the acte.

Under Article L17 of the Livre de Procédure Fiscale the fisc can – within 3 years of the sale – replace an undervaluation by what it considers to be the true market price. The onus is then on you to disprove the revised assessment. Interest on overdue tax is charged at 0.4% per month and there is a penalty of 10% if you fail to pay the tax assessment within 30 days or receiving a reminder (mise en demeure). The penalty increases to 40% thereafter and to 80% if you do not respond to a second reminder.

No further deductions can be applied if you sell your property within 5 years of purchase. But if you sell your property after more than 5 years after purchase the gross amount of the gain is then reduced by a small amount for each complete year of ownership after the fifth year. In other words French capital gains tax does not arise if you have owned your property for more than a certain number of years, even if you realise a significant gain. The actual time frame over which the gain is cleared in France tends to be subject to regular amendment, and it is prudent therefore to consider this point in detail at the time the property is to go on the market. We will be able to clarify the regime at the time.

If the French property is owned through a non-French company, then a fiscal representative will be necessary, whatever the value of the property being sold. The capital gains tax would be calculated at corporate tax rates.

Redeeming a mortgage

If you have a mortgage on your property, this must be redeemed on completion of your sale. The penalty under French law for early repayment cannot exceed six months’ interest subject to a cap consisting of 3% of the outstanding capital owed on the mortgage immediately or prior to the repayment. It is common to let any mortgages lapse automatically at the French Land Registry two years after repayment. However, your buyer, the notaire or your lender may insist that you obtain and register a release (mainlevée), which will usually result in an extra cost to you. It is standard practice for a mortgage to be cleared on the sale.

Proceeds of sale

Just as it can be done on a purchase of the property, the transfer of funds from France to the UK will give rise to an exchange of currency. The notaire will carry this out automatically, unless you instruct him to forward the Euros to a currency house for negotiation of a preferable rate of exchange. We can put you in touch with a currency house.
Please also note that the notaire will not always forward the proceeds of sale immediately on completion of the transaction; there may be a number of delays in this, although we can work to ensure these are minimised.

Cancelling your buildings and contents insurance policies

The notaire will not usually assist with such matters. A French buildings and contents insurance policy is automatically continued for a period of at least 12 months unless you or your buyer expressly give written notice by registered post to the insurance company to the contrary. If you do not cancel in time (usually three months before the policy is due to expire, by registered letter with confirmation of delivery, but please check the policy conditions) you will usually be responsible for the payment of the next year’s premium, even though the property no longer belongs to you. To avoid this situation, you should carefully check the terms of your insurance contract, and follow exactly the formal procedures necessary for the termination of the contract. It is advisable to arrange with your buyer that your insurance will continue until the acte de vente is signed and that your buyer will take out his own insurance from then.

Discharging utility bills and rates

The right course normally is for the meters to be read before completion and for you to produce evidence of having settled the relevant bills. You ought to discuss with your purchasers if they want to continue with your utility contracts. If they do not want to, you need to check the terms of your contract, and fully observe the formal procedures necessary for termination. If your purchasers want to continue with the contracts, you ought to contact your utility providers well in advance in order to provide them with details of your purchasers, and anticipated date of completion, so that the contracts can be transferred into their name as soon as completion takes place.

Selling a property en copropriété

If your property comprises a flat or other property en copropriété, your buyer will require your règlement de copropriété, a certified copy of which you should have. If not, the syndic (managing Agent) of the copropriété and/or your notaire should be able to supply you with a copy – although this may take several weeks to obtain.

Before completion the notaire must by law confirm with the syndic in writing that you are up to date with your service charge payments. Any works of repair or improvement to the copropriété in which your property is situated which are voted on and carried out, before the date of completion of your sale, will be your liability. The position as to works already voted but not yet carried out on that date will depend on the terms of the sale contract.

Taxe d’habitation is payable by the person in occupation on 1 January for the whole of the forthcoming year. You cannot apportion the amount already paid by you with your buyer. However, taxe foncière can be apportioned with your buyer and most sale contracts will expressly require this. It is the seller’s responsibility to pay this tax for the year in which the sale takes place. Depending on the point in the year when the sale actually takes place, it may be possible to make a specific demand upon completion for a proportionate contribution to the bill. It may also be an option to take an estimate based on the previous year’s bill. Otherwise the seller can seek a contribution from the buyer directly once the bill for the current year has been received, although this may be some time after completion.

If the French property is owned through a non-French company, then a fiscal representative will be necessary

British residents selling property in France are liable to capital gains in the UK

The notaire will not always forward the proceeds of sale immediately
The **syndic** has a lien on the whole of your proceeds of sale and the **notaire** cannot therefore release these to you until outstanding service charges to the date of completion have been agreed and paid.

Under the **loi Carrez** of 18 December 1996, you must specify as soon as a sale contract is signed the exact surface area of your property. If this is not indicated in the **acte de vente** your buyer will be able to declare the **acte** null and void within a month of the signature. The law indicates that the surface area does not include cellars, garages, parking spaces etc or anything which is less than 8m². If in doubt your buyer has 12 months to verify the surface indicated in the **acte de vente** and can sue in order to obtain a reduction in the purchase price.

The sale contract should indicate the exact internal habitable surface area of the property and this measurement must be calculated by a **géomètre-expert** whose fees are usually payable by you.

**Post-completion**

You can seek to annul your sale contract at any time up to two years after completion if you discover that the price at which your property was sold was too low. That is to say that if your buyer then goes on to sell at a much better price, without having for example carried out any work, then you may have the basis of a challenge.

Under Article 1674 of the **Code Civil** if you discover that you have been prejudiced to the extent of more than seven-twelfths of the price, you have the right to call for the sale contract to be rescinded, even though you may have expressly foregone that right by a term in the sale contract.

To find out if you have made a poor bargain, you can inspect the public records of the **conservation des hypothèques** to see details of **actes de vente**, their parties and dates, and also the price paid. If for example you discover that the property you once owned has quickly been resold at a considerably higher price within 2 years of your sale, you can demand that your original sale be rescinded, provided that you can prove you have suffered a loss, known as **lésion**.

In the absence of extrinsic evidence, the French court will require a valuation by 3 valuers, either agreed by the parties or nominated by the court in default. French legal textbooks suggest that the judges do not have to accept the advice of the 3 expert valuers.

If **lésion** is proved, Article 1681 of the **Code Civil** gives the buyer the opportunity of making good the difference in order to preserve ‘his’ property. If he cannot raise the money, the sale is rescinded and the buyer must hand back the property to the aggrieved seller together with its fixtures and fittings and any additions.

He must also pay over any income or profit received. The seller, in turn, must repay the purchase price and interest and anything which the buyer expended on the property. If **lésion** arises after a judgement, that must be registered at the local Land Registry.
New Build
French Property

Buying a property off-plan is a popular option for many people. Contracts for the sale of incomplete properties are different from those used for the sale of existing properties and are subject to strict laws for the protection of the consumer which largely dictate their format. Two notaires will then share the statutory fee.

The three main types of “new-build” transaction are:

- single house construction
- purchase of a property on a development under construction, (perhaps an apartment or a house on an estate)
- purchase of a property which, upon completion, is to be leased to a tenant company that will use it for holiday lets, with rent being paid to the owner – generally known as a leaseback purchase.

Whatever type of property purchase you choose, new-build or otherwise, it is important to consider the taxation and estate planning implications.

Single house construction

A single house construction is when you purchase land and then have your own house built upon it. There are a number of companies that specialise in such transactions, often offering to build one of a set of house styles for you, or you can of course contact your own architect and have a house built to your own specification.

Generally an agreement for the purchase of land is completed along with a separate contract with a builder for construction of the property on that land. This second contract is known as a contrat pour la construction d’une maison individuelle (CCMI). The two contracts must work together properly, so careful drafting is required.

As with other types of new-build property there are strict requirements as to the information which such contracts must contain. Larger builders and developers are likely to have their own standard forms of contract which comply with the requirements, although again care should be taken to ensure that they are in fact suitable.

The land purchase contract may need certain special clauses added, including for example a condition for planning permission. The construction contract would itself be dependent on the land purchase contract being completed. In this way, provided that the land can be purchased, and planning permission granted, then the construction contract can take effect; on the other hand there should not be a situation in which the construction contract is binding, without land or permission to build.

Lotissement

A lotissement is a particular case of single house construction. A developer divides an area of land and then sells it by lots to different purchasers. The developer has to obtain a specific permit and must build in particular the road, and any community facilities. Once the developer has this permission, he will be able to sign an offer of sale. When he has finished the road works, you will be able to apply for the written planning permission and then to sign a sale deed. You sign a sale deed before the completion of the road works.

Once you have obtained planning permission, the construction of your home can begin. Your plans will have to respect certain building specifications (le cahier des charges) which impose some rules of construction to ensure a similar appearance between the different houses in the lotissement.

Purchase of a property in construction – ‘vente en l’état futur d’achèvement’

This is when you purchase a house or apartment on a development under construction, a system generally known in the UK as “off-plan” sales. In France these transactions are known as vente en l’état futur d’achèvement, (VEFA) which describes the fact that the sale deed – the Acte de Vente – is signed well in advance of the property actually reaching completion (achèvement).

Typically you will be required to sign a reservation contract, and then the purchase deed before the building work has finished. You take ownership of everything that has been built by then, and the remainder as work progresses.

Ownership of the property transfers to you, (the buyer), well before you are able to occupy it. In general the notaire will look to transfer title when foundations are completed, when normally about 35% of the purchase price is payable. This does mean that if you are buying a third floor apartment, no part of the work for your particular apartment may even have commenced. Nevertheless, various guarantees as to completion must be included in this form of transaction. There must be ample protection for the buyer, to ensure that the property being purchased will actually be completed.

A variation on the VEFA is the vente en l’état futur de rénovation which, as the name implies is the sale of a property which is in the process of being renovated. This is not a very common form of transaction but is sometimes found when, for example, an older apartment block is undergoing a major renovation.

As mentioned under co-ownership below, where you are buying an apartment, or a house on certain estates, you will not only be the absolute owner of that property, but you will also take a proportionate ownership of all of the common parts – that is the land upon which the building is situated, the structure and common areas of the buildings and so on.
property in construction

The process relating to this kind of sale will normally be as follows:

1) The reservation contract

The reservation contract is the seller’s commitment to reserve the property for the purchaser in exchange for the payment of a deposit. The reservation contract must be sent to the buyer who has seven days after the receipt of the letter to retract, by way of a cooling off period. If the buyer withdraws his offer, the deposit will be refunded to him, provided that the withdrawal fulfils certain criteria.

The reservation contract must contain certain clauses and in particular:

• a detailed description of the future property
• a technical summary of the siting of the property within the development and of the materials used
• the anticipated date of signature of the sale deed
• the provisional date of completion of the construction
• the amount of the deposit.

2) The sale deed

A draft of the sale deed has to be sent to the buyer at least one month before the date of completion.

If one of the party refuses to sign the sale deed, then in the case of the purchaser’s refusal, the deposit is refundable only if there is a difference between the reservation contract and the final deed of sale. The buyer could refuse to sign the completion documents on the grounds of unreasonable delay in completion of the building work or because the price is 10% higher than the agreed price.

It may, however, be difficult to prove unreasonable delay on the part of the developer, not least because various potential delaying factors will be anticipated within the reservation contract and developer’s liability excluded in that respect. The reservation contract should be carefully scrutinised. If the seller refuses to sign, he has to refund the deposit and he could be sued for damages. It is at this point that the notaire’s fees are payable by the buyer - these are normally in the region of 2% - 3% of the purchase price, plus a further 1% if a mortgage is secured against the property.

It is important to note that transfer of ownership may take place well before a property is ready for occupation. You should separate the point of legal completion from the moment when delivery takes place.

3) Delivery of the property

The delivery of the property is a very important stage in the process, which will take place a good while after the actual legal transfer of title has taken place, as referred to above.

The seller gives you the keys of your home. You have to declare all the apparent defects you can see in a snagging list (liste de réserves) that both you and the vendor will date and sign.
marketed method of reducing your purchase costs, especially when you are looking to buy a second home in popular holiday destinations such as ski resorts. While it can offer a good way of structuring your purchase, it is actually highly complex and should not be entered into lightly.

As a rule of thumb, it is probably prudent to think of such purchases as very long-term investments (although this is a subjective and general comment and not intended to be made by way of investment advice; you may be happy to treat it otherwise).

The situation is commonly that a developer will obtain permission to develop a resort, and as part of this, separate properties (typically apartments in a block or chalets on a private estate) are pre-sold to buyers. At the same time, those buyers agree that once the property is delivered to them, they will immediately enter into a lease with a holiday company who will look to rent out the property as short-term holiday lets.

The benefit to the owner is initially a government incentive to develop tourism – the **TVA** (French VAT) applicable on new developments is not charged. **TVA** is currently 20%, and this results in a discount of the purchase price (although see under Taxation below for a further discussion on this point).

Where the intention is to occupy a property for only a limited time each year, or even not at all, leaseback ownership can offer a regular rental income, without the burden of having to market the property personally, or employ local Agents to do this. Inevitably this will depend on the popularity of a particular resort, and it is important to research such issues before signing up.

**If the flat or the house does not conform to its description in the sale deed, you may be able to seek remedy for breach of contract and some damages, or to compel the builder to comply with the contract.**

The buyer has one month after the delivery to declare any apparent defects in the building. After that, the buyer will be able to rely on the builder’s liability for all structural defects during a period of ten years. The **garantie décennale** protects the buyer against certain latent defects during the ten years following the delivery of the property.

There are three kinds of guarantees that the seller can choose from:

- The **garantie extrinsèque** given by a bank or an insurance company which protects the buyer against the insolvency of the builder
- The **garantie intrinsèque** given by the builder who promises the completion of the property. This guarantee is only recommended when the risk of non-completion or insolvency is low
- The **garantie de remboursement** which allows the buyer to be reimbursed in the case of non-completion of the construction.

Once one of the above guarantees is in place, you will either get your money back, or construction is assured. We can advise you about these different guarantees, and it is wise to be fully aware of their implications.

**‘Leaseback’ sales**

Buying a new property on a leaseback arrangement may be an attractive and well-
While such schemes normally offer a regular rental stream, it is commonly the case that the amount of the rent is lower than may be obtained for a similar property if offered directly, although this is probably the counterbalance for not having the burden of marketing the property, cleaning it, managing guests and so on.

Indeed this is a relevant point: it is a requirement of such leaseback schemes that in addition to the provision of rooms to holiday makers, other ‘quasi-hotel’ services must be available, generally including linen services, cleaning, food and beverage, bar, leisure facilities and so on. The normal position is that these services are generally available to property owners as well as holiday makers.

It is also important to be aware of the manner in which the lease anticipates payment of rent. Some leases agree a fixed rent, while others split the profits declared by the tenant company between the whole pool of property owners as a dividend. In this case you must bear in mind the possibility of profit not being declared.

It may be wise to seek some assurance about the viability of the development, the strength of the holiday company, and the sustainable level of rent. It is also important to establish exactly how the lease could be terminated, if at all, and whether any penalties would be payable for such a termination.

If the rental income is to be used to cover mortgage payments, give thought to what will happen if a variable rental income produces less than the monthly instalment. What if the tenant company becomes unable to pay the mortgage at all – perhaps because of insolvency?

It can be seen from the points raised above that a leaseback can be an attractive option for some, but there are a number of potential pitfalls and a thorough understanding of the implications for you is highly desirable. History has shown us that leasebacks have in the past been sold as something like ‘free properties’ – where the buyer can obtain an 80% mortgage, for which the repayments are covered by the rental income, and the remaining 20% just about covered by the monthly instalment. Some have failed, and the greater aggregate amount of tax is payable, so you may be required to make a balancing payment of UK tax if your marginal rate in the UK is higher than in France. On the other hand if your taxation is higher in France, then you would not be entitled to a rebate in the UK.

Co-ownership

In many purchases in multi-occupancy developments, such as apartments or houses on an estate, you will be acquiring not only the freehold of your own unit but also rights in the communal areas. These rights are expressed as a fraction and determine your proportion of voting rights with regard to the running of the co-ownership committee and also your responsibility to contribute to the running costs and the costs of any agreed works.

The building or development is run by a committee of the owners, known as the syndicat de copropriétaires who appoint a person or company known as a syndic to act as a managing agent to administer its day to day running. The syndic must hold an annual meeting and all co-owners must receive advance notice of this.

The co-ownership is governed by a set of rules and regulations binding upon all co-owners and anyone using a property. The rules set out how each property can be used (generally to ensure no disturbance of neighbours), and sets out the constitution of the management committee and voting capacity of each co-owner in meetings.

Taxation

Taxation is an important area to consider when purchasing new-build properties. There are a number of issues that may arise, especially insofar as new properties on leaseback arrangements, and selling new properties, are concerned. The main points to bear in mind – generally income tax and TVA – are summarised below; it is however imperative that a full and in depth analysis of this subject be addressed.

Local taxes

It is normal for new property developments to be exempted from the local land tax known as the taxe foncière for the first two years following construction. This will not always apply, and when it does it may not be a total exoneration, since the local authority will often reserve the right to charge at least a part of it. Nevertheless it does offer a small discount. It is the responsibility of the property owner to claim the exoneration.

Income tax

Just as is the case when buying any property in France, French income tax is applicable on rental income derived from the property. This is the case even if you are not resident in France.

It is the owner’s responsibility to register for the tax at the relevant tax office.

If you are UK resident, then you must also declare the income on your UK tax return, although you are able to take into account the amount of tax already paid in France, by virtue of the double taxation treaties in force. These have the effect of ensuring that the greatest aggregate amount of tax is payable, so you may be required to make a balancing payment of UK tax if your marginal rate in the UK is higher than in France. On the other hand if your taxation is higher in France, then you would not be entitled to a rebate in the UK.

If you are UK resident you will need to declare your French income at the Centre des Impôts des non-résidents in Noisy Le Grand. You may well benefit from contacting a French accountant to address this.

TVA (French VAT)

There are a number of ways in which TVA is applicable on new-build properties. The rate of TVA is 20%. TVA is applied on the development of a new house – but not the land if this was purchased separately. In the case of a vente en l’état futur d’achèvement, the TVA applies to the whole sale price.

Where properties under a leaseback scheme will not be subjected to TVA at the time of purchase, it is possible that some or all of this TVA allowance can be claimed back by the French state, in certain circumstances.
There have been many changes to French and European-wide inheritance rules over the past few years. The information below sets out the main concepts that are likely to be relevant.

Subject to limited restrictions, English law allows you to leave your estate to anyone of your choice. In France, protected heirs – normally your children – will have a fixed right to at least a minimum interest in your estate. Your surviving spouse is a protected heir to a certain extent. Other relatives or unmarried partners are not protected heirs. Thus you cannot cut your children (which includes adopted children and those from previous relationships) out of your estate under French law. The age of the children is of no relevance. Step-children are not protected heirs.

If at the date of your death you live in France, all of your worldwide assets (except land and buildings outside France) are subject to the rights of protected heirs. If you are not domiciled in France, then the position may be different. What constitutes ‘domicile’ for these purposes is an issue that needs to be addressed on a case by case basis – not least because the English definition of the word ‘domicile’ differs from the French definition. Certain other jurisdictions, such as Spain, do not make the same distinction between land and buildings and other assets, so again a more detailed analysis would apply if you live in Spain.

The minimum amount due to protected heirs is known as the legal reserve, the remainder being the disposable portion. If a child predeceases, having left children of his own, those children would share the amount that would have passed to their parent had they survived. The legal reserve must go to the protected heirs, regardless of the wishes of the deceased. This is as follows:

- **One child:** the reserved portion is half of the estate
- **Two children:** the reserved portion is two-thirds of the estate divided equally
- **Three or more:** it is three-quarters of the estate divided equally between them.

If a child predeceases leaving no children of his own, he is treated as not having existed, and his share is distributed between the surviving children of the deceased. If there are no children, but there is a surviving spouse, then the spouse is able to take all of the deceased’s estate, in preference to the deceased’s parents.

There are circumstances where people can renounce future interests. There are various possibilities, including the right to enter into a formal agreement with the family under which you can, as a potential beneficiary, forego any inheritance to which you may have an entitlement in the future (for example in favour of your own children). Any steps to renounce are very burdensome.

There are specific formalities to address for such issues, and as such it would be important to consider carefully the procedures as well as the aim, to establish if such an option would be suitable.

Another area of concern is where a couple buy’s a property in France, and one or both of them dies leaving minor children domiciled in England. For various technical reasons, it can prove difficult to sell, mortgage, let or otherwise dispose of the property until the youngest child turns 18. It would be necessary to apply to the English court to obtain authority to dispose of the property.

Another difficulty is where a couple remarries, having children from previous marriages who do not get on with their new stepfather or stepmother. On the death of the first spouse, the survivor ends up owning the property together with the children of the partner’s former marriage. Possible methods of avoiding these difficulties include purchase en tontine and purchase via a French company. If a property is owned en tontine the entire property will pass to the survivor, as if it were owned in the survivor’s sole name from the moment of purchase. None of these methods will necessarily give an absolute guarantee that the survivor will inherit all in place of the children – there may often be situations where those children could challenge on the grounds that they have been disinherited and not accorded the rights granted to them by French law.

**Lifetime gifts**

For the purposes of calculating the disposable and reserved portions, all gifts can be added back into the estate regardless of how long before death the gifts were made, and regardless of the intention of the gifts. Having calculated the reserved portion, if the value of the estate is inadequate, then a clawback claim can be made against the gifts. The claim is made against the most recent gift first, and so on. Gifts could include gifts made into trust. In other words, gifts made years before the donor dies could be reclaimed under French law.

**Matrimonial property rights**

Under French law a marrying couple enter into a matrimonial contract which will affect the way their property is owned. Different forms of contract exist, making the position unlike that in the UK.

**Separation of assets (séparation de biens)**

Under this system, any asset registered in one spouse’s name is considered to be owned by that spouse. Any assets registered in joint names are considered to be owned equally. A couple married in the UK (or in most other common-law countries such as the Republic of Ireland) are considered to be married under this regime in French law in default of a specific marriage contract. It means that on the death of one spouse, the protected heirs can make a valid claim against all assets registered in the name of the deceased spouse; and 50% of many assets registered in joint names. Nevertheless, various guarantees as to completion must be included in this form of transaction. There must be ample protection for the buyer, to ensure that the property being purchased will actually be completed.

**Universal community (communauté universelle)**

This system involves all of the assets belonging to the couple (usually with the exception of certain personal items such as clothing) being placed in community ownership. A British married couple can...
Ownership enter into such a contract in relation to their French property. They may also choose to include a special clause which allows all French assets to pass on the first death to the surviving spouse without the payment of French inheritance taxes, thus effectively avoiding French succession law. It should be noted that a change of matrimonial regime is not effective against the rights of children of previous relationships.

There are various other forms of matrimonial regime in France. The two referred to above are those most commonly relevant to UK nationals with property in France.

Joint ownership of property

There are two ways to own French property jointly:

- **en indivision** (tenancy in common); and
- **en tontine** (similar to a joint tenancy under English law)

It is very important to appreciate the significant differences of these methods of ownership.

Ownership en indivision

You each own your half (or other specified amount) of the house, which on your death devolves according to French succession law. This is how most French lawyers put your property into joint names in default of specific instructions to the contrary, although it can have major disadvantages. If a couple owned property **en indivision** and the deceased had children from a different relationship, the survivor would end up owning jointly with step-children. This may of course be entirely what you wanted – for example where each had two children from previous relationships, then on the death of both of them the French house could – with suitable estate planning – be held jointly between the four in equal shares.

Ownership en tontine

A **tontine** clause works to ensure that the survivor of joint owners will own the house absolutely. It can only be inserted at the time of purchase and cannot be added in afterwards. This is rarely used in France other than by British couples, and you may have to be very insistent with the **notaire** who may regard it as a fraud against your children, even though it is perfectly legal. In general, if tontine ownership is the most suitable option for you we will be able to reassure the notaire that we have explained all of the advantages and disadvantages of owning property in this way. Under a **tontine**, the surviving spouse is deemed to have owned all the property from the beginning and takes it all. The survivor then has complete freedom to dispose of the property as he or she wishes.

However the sale of a property when both parties to the **tontine** clause are alive is only possible if both consent; if one declines to sell, the other cannot force the sale. In the event of a matrimonial dispute, a court can have difficulty making an order in relation to the property because so long as both parties to the **tontine** are living, there is uncertainty as to who is the owner. A court could therefore only order a sale by both parties.

As to the French inheritance tax position, if there is a large difference in the ages of the parties to the **tontine**, (or if there are other reasons whereby one party has a reduced life expectancy, or if the parties contribute unequal shares of the purchase price), the French tax authorities might try to classify the **tontine** as a gift and tax accordingly. The children of the first to die may also use such a difference in life expectancy as a reason to challenge the tontine structure.

On the death of the second spouse the children of that spouse will inherit. If they are children of both spouses they will, in effect, have “lost out” as they will receive their tax-
free allowance (abattement) only in the estate of the second parent to die instead of receiving an allowance in the estate of each parent. This point is unlikely to be of concern if the property in France is only of a moderate value.

If the second person to die had no children of their own, and intended simply to leave everything back to the children of the first to die, then they will have been substantially disadvantaged – had they inherited from their natural parent, then preferential tax rates would have applied, yet by inheriting from their step-parent they would have to pay French inheritance tax at 60%.

The situation is not the same with an unmarried couple: while the tontine would still work to pass the property to the survivor, the inheritance tax position would not be as for a surviving spouse.

Unmarried couples

Unmarried couples have the major problem of inheritance tax being applied at a rate of 60% with the minimum tax-free allowance on anything that the survivor inherits from the deceased.

PACS and CPA

The pacte civil de solidarité, or PACS, is a cohabitation agreement for unmarried couples, whether a same-sex or heterosexual couple. It has been in force since 1999.

There is no inheritance tax on the survivor of a couple in a PACS; they will be allowed to succeed to a tenancy in the name of the partner where that partner dies or deserts the home; they can be jointly liable for debts incurred by either of them for their daily and household needs; they can have a joint entitlement to French Social Security and other benefits.

It should be noted that the PACS does not confer any additional inheritance rights on the surviving partner and other steps such as tontine ownership will still need to be taken to ensure that the property passes to the survivor on the first death. Only French residents or French nationals can complete a PACS.

Up until recently, France has not recognised an English Civil Partnership Act agreement (CPA), and therefore a same sex couple having completed a CPA in the UK would have suffered substantial discrimination in relation to assets in France or passing under French law. This position has now changed, such that no inheritance tax will be applied to any assets passing under French law between partners having completed a CPA.

Furthermore, it should be stressed that just as for the position under a PACS, the surviving partner under a CPA does not take any automatic rights of inheritance from his or her deceased partner. Thus specific measures will need to be anticipated to allow for the surviving partner to inherit, such as Wills, inclusion of a tontine clause in the purchase deed, constitution of a company or such other options as may be suitable. Given the advent of same sex marriages, it is likely that CPA agreements will be less relevant.
Wills

If you die without an English or a French Will, your estate devolves under the French laws of intestacy. If you leave children or grandchildren, they will receive all of your assets, except that your spouse has a life interest (and can use the income) in one quarter of the estate, or may take one-quarter absolutely, depending on the circumstances. If there are no children, then the assets will pass to a surviving spouse, parents, grandparents, brothers, sisters, aunts etc. The rights of a surviving spouse do not apply if the couple are divorced or legally separated.

By virtue of certain international legislation, British Wills are valid in France, although it may be preferable to complete a separate French Will for your French estate (and again this may be your whole estate if you move to France permanently). It is usually advisable to have two Wills if you have assets in the UK and in France. Trying to prove a French Will in the UK, or an English Will in France may mean that the process will be slower and more expensive. The concept of probate does not exist in French law and property passes ‘automatically’ on death to the heirs. Nor does France recognise trusts, so as well as translation of the document into English, the notaire may require clarification of the actual effect of the Will.

You should always use lawyers experienced in French law and English Law to make your French Will; do not try to make a homemade document. Consequently, in limited circumstances an English Will in France may mean that the succession process will be slower and more expensive. It is important that the two Wills do not overlap, and that one does not revoke the other. You should always use lawyers experienced in preparing French and UK Wills, and indeed are happy to work alongside your existing UK solicitors if you would rather they keep your UK Wills. We would of course also be delighted to prepare both your English and French Wills for you.

The succession process

If there is an inheritance tax liability a ‘déclaration de succession’ must be filed within 6 months of the death (12 months if the deceased died outside France) to avoid possible tax penalties.

If the deceased was deemed UK domiciled on death, then the notaire will require a Grant of Probate, which itself would need to be translated for use in France.

Company purchase

Shares are not classed as real property, even if the company owns real property. Consequently, in limited circumstances it may be preferable to avoid the rules of French succession law applying to the estate of a non-French domiciliary is to place all French real property into a corporate structure. However there are potential disadvantages to this form of ownership of which you may need to take account. You should therefore only consider this form of ownership structure with full advice beforehand to ensure it is the most suitable option. There can be a number of potential tax problems arising from such structuring.

If you own shares in a company which owns a French house, you do not own a house in France, the company does. All you own are the shares in the company. Therefore, when you die, the ownership of the house does not change; it is the shares which change ownership, and succession law applies to these shares as items of personal property, so that they will pass in accordance with the succession law rules of the country where you are domiciled, or permanently resident up to the time of your death.

However it is important to note that while the strict French inheritance rules can normally be avoided, so that the shares can be left to anyone, French inheritance tax is still payable on them as if there were a legacy of French real property to that beneficiary. Thus if the beneficiary is not related to the deceased he or she will have to pay inheritance tax at 60% against the value of the proportion of the property that the shares represent.

Purchasing through a non-French company

Rarely will it be suitable to buy a French property through a UK company. There are many tax disadvantages, including the fact that a UK company cannot be ‘fiscally transparent’ and so will always be subject to corporation tax. There are often adverse capital gains tax consequences when the property is sold. Care must be taken to avoid the imposition of an annual 3% tax charge, calculated by reference to the value of the French asset. You will also be subjecting the company to dual accounting and tax declaration obligations.

Shareholders who have the use of the property may be liable to tax on the “benefit in kind”.

UK resident purchasing in a French company

The use of a commercial company, which will be subject to French corporation tax, will have consequences similar to those for a UK company. There are however a number of French forms of company that are not treated as commercial trading companies. Most commonly known among these is the SCI (société civile immobilière), which is fiscally transparent, so that liability for tax on the company’s income and gains falls on the shareholders. The main advantages of using an SCI, if a company has to be used at all, are that:

- French succession law is avoided if the shareholder dies domiciled in the UK
- the company is not subject to the annual minimum payment of French corporation tax and the shareholders benefit from the favourable tax treatment of capital gains realised by individuals.

However care needs to be taken from a UK perspective – the shareholders should check with their local tax office in the UK to establish how any revenue would be assessed to UK tax.
French inheritance tax is paid by each beneficiary (not by the deceased’s estate) by reference to the value received after deduction of all liabilities. Rates and allowances vary between each class of beneficiary. This means that where a deceased’s estate is split between say, surviving spouse and children, or perhaps children and step-children, then the amount each party would inherit may vary substantially, as the levels of the tax-free allowance and the rates of tax applicable can be completely different.

If you die domiciled in France, French inheritance tax is payable by each beneficiary on their share of your worldwide assets.

If you die domiciled outside France, then only your assets in France are liable to French inheritance tax.

A transfer on death between spouses and members of a PACS or a CPA is exempt from inheritance tax.

French inheritance tax is due on the registration of the declaration de succession. But delays or payment by instalments can be obtained from the French Revenue, if necessary, although interest will be charged. French inheritance tax varies from 5% to 60%, depending on the proximity of relationship between the deceased and beneficiary. The tax is personal to each beneficiary, and the rates and allowances vary between different classes of beneficiary.

The current tax tables are maintained on our website: www.ashtonkcj.co.uk/france

Surviving children and parents

The rates of French inheritance tax payable by surviving children or surviving parents will vary between 5% and 40%, the calculation being made on a stepped scale by reference to the value of the legacy each beneficiary inherits.

The thresholds for the tax bands, along with the amount of the initial tax-free allowances which are also reviewed annually.

This information is kept up to date on our website: www.ashtonkcj.co.uk/france

It should be noted that children and step-children are not treated in the same way. Unless the step-children have been adopted by the deceased parent (which is not always possible, and we can discuss this with you) then any legacy they may take would otherwise be subjected to the maximum rate of inheritance tax in France, as they would be considered strangers in blood.

Other beneficiaries

After an initial tax free allowance (which is substantially lower than that offered to surviving children) brothers and sisters are currently taxed at a rate of 35% on the first band of an inheritance, and 45% on the remainder. Relatives to the fourth degree are charged at a flat rate of 55% with a tax-free allowance that is again lower than that offered to siblings. Relatives above the fourth degree or other beneficiaries who are not related to the deceased by blood or marriage pay a maximum rate of 60% with a minimum level of tax-free allowance.

Lifetime gifts

Lifetime gifts may be a tax-efficient way of disposing of your assets. Rates of tax and allowances are generally the same as for inheritance except certain allowances (such as that available to brothers and sisters), and there are certain other allowances depending upon the relationship between donor and donee. Furthermore, in the event of a lifetime gift, there is a tax liability on a surviving spouse or the survivor of a couple having completed a PACS, which differs from the position on death.

EU succession rules

The European Union has been working to simplify inheritance regulations across the EU, given the ever-increasing numbers of people who have estates spread over multiple jurisdictions.

Eelecting to apply for English law (or the law of some other country of which a person is a natural – Scottish law, for example, is completely different in this area) to a person’s estate in France would go much further than just allowing one to avoid French succession rules. Application of English rules for administration of estates might well prove complex for some notaires. The regulation does not apply to gifts made during a person’s lifetime. Nor does it have any impact on the tax position: if 60% inheritance tax would have applied on a legacy made outside of the EU Succession Regulation, so it will under it.

There are limited circumstances in which the Regulation can offer an option for French estate planning purposes. It is not, though, a panacea.
Ashton KCJ office locations

**Bury St Edmunds**
Beacon House, Kempson Way
Suffolk Business Park
Bury St Edmunds
Suffolk IP32 7AR
E: enquiries.bury@ashtonkcj.co.uk
T: 01284 761233
F: 01284 702225

**Felixstowe**
York House
2-4 York Road
Felixstowe
Suffolk IP11 7QG
E: lawyers@ashtonkcj.co.uk
T: 0800 587 0093
F: 01394 670726

**Thetford**
Fairstead House
7 Bury Road
Thetford
Norfolk IP24 3PL
E: enquiries.thetford@ashtonkcj.co.uk
T: 01842 752401
F: 01842 753555

**Bury St Edmunds**
81 Guildhall Street
Bury St Edmunds
Suffolk IP33 1PZ
E: enquiries.bury@ashtonkcj.co.uk
T: 0800 587 0093
F: 01284 764214

**Ipswich**
Waterfront House, Wherry Quay
Ipswich
Suffolk IP4 1AS
E: lawyers@ashtonkcj.co.uk
T: 0800 587 0093
F: 01473 230505

**Cambridge**
Chequers House
77-81 Newmarket Road
Cambridge CB5 8EU
E: enquiries.cambridge@ashtonkcj.co.uk
T: 01223 363111
F: 01223 323370

**Norwich**
Trafalgar House, Meridian Way
Norwich
Norfolk NR7 0TA
E: enquiries.norwich@ashtonkcj.co.uk
T: 01603 703070
F: 01603 703075

For further information on how we can help you, please call us today:

**0800 917 0291**

E: france@ashtonkcj.co.uk
www.ashtonkcj.co.uk/france