LEGAL GUIDE

heslop & platt
FRENCH LAW SPECIALISTS

Ashtons LEGAL

French Property Transactions and French Inheritance Law

EXPERT ADVICE | FLUENCY IN FRENCH | UNDERSTANDING OF FRENCH PROPERTY OWNERSHIP

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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.

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.

Ashtons Legal now incorporates the specialist French law firm Heslop & Platt.

Buying French Property

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. We therefore recommend that you read the French succession law and inheritance tax section.

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 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, forward 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*".

Funding the 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 85%, 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 an independent survey of the property – preferably prior to completion of the contract – and we can put you in touch with surveyors and property experts.

Please also note that you should be given a copy of all diagnostic surveys, drainage report and other ancillary documents prior to signature of the contract. If this is not provided, you should insist on receiving a copy.

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.

Purchasing

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.

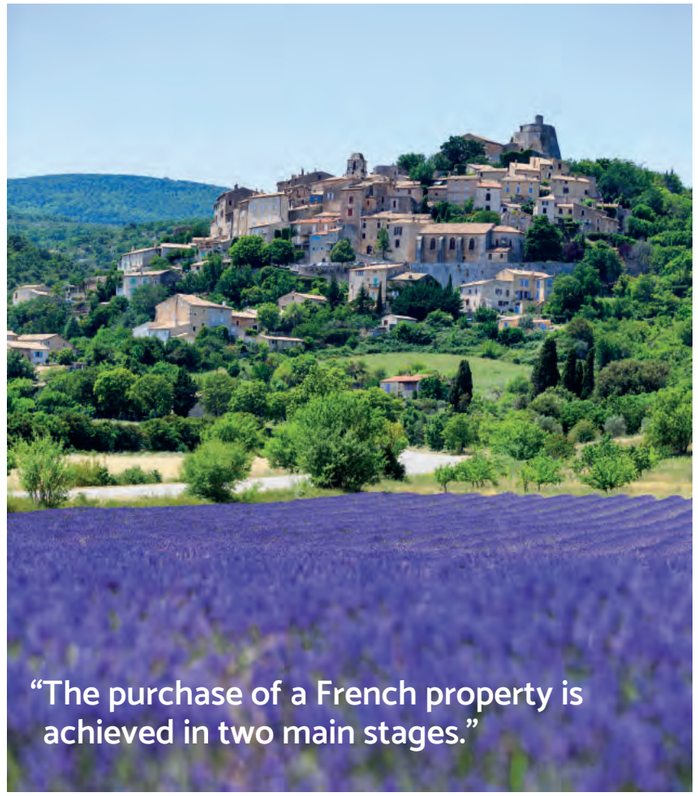
The most common form of contract is the *compromis de vente*, a bilateral contract which binds both parties to complete a purchase subject to the satisfaction of certain conditions beyond the control of buyer and seller, against the risk of sanctions for an unjustifiable failure to complete.

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 has the option not to proceed with the sale or purchase. In the case of a promesse de vente, you may therefore be able to withdraw from the transaction before completion, although you would 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.

"Some contracts include English translations, but these are not always accurate."



Contract conditions

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 or significantly reduce its value; 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.

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. For example, 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. An inspection for dry rot may be required in some instances. 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.

A report as to the drainage may be required. The buyer would need to rectify any anomalies with a year of purchase.

If you are buying an apartment, or a property in some estates, an inspection may be carried out to certify the overall internal habitable space of the property to be sold.

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.

You should also be alive to the fact that recent legislation has been introduced for the protection of the environment which means that it will no longer be possible to rent out properties that are too energy consuming or increase the rent.

We can obtain an up-to-date registered plan or *plan cadastral* 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 or conversion of a barn into habitable space. 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 as well as a total value which should not exceed 5% of the property price for tax reasons.

"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 day after you receive the contract. If you decide not to proceed you must notify the seller formally 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 18 months.

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 ABF 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.

"As part of the purchase process, the seller is obliged to provide certain survey inspections."

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 and that you do not change the use of the property. Demolition work is often subject to planning permission, but work such as the maintenance of *façades* 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. An energy audit may also be produced if depending on the property's energy gradings.

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* office 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 & Development Office, the effect of which is to certify the signature and details of the Notary Public or solicitor who witnessed the signature. However, some *Notaires* now also allow signature of the Power of Attorney by digital means in certain circumstances.

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 a*t 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. 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. You should in any event obtain your own 'apartment owners' insurance for the content.

Notaire's fees

The buyer is solely responsible for the *Notaire's* fees, consisting of the legal costs, *notaire's* remuneration and taxes 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.

If two *notaires* are acting in the same transaction, they split the *Notaire's* fees.

Similarly, new build and leaseback property purchases will normally attract *notaire's* fees of around 2.5% – 3%, excluding mortgage fees. Sellers will however remain responsible for the cost of the compulsory diagnostic surveys.

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 on second homes by the owner or 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.

French property owners are required to declare the occupancy status of their property between 1st January and 30th June the year following completion.

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 overdraw 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.

Special purchase types

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.

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

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 subject to payment 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.

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.

The EU Succession Regulation may also be of major importance and should be taken into account.

In addition, a law that came into force in late 2021 in France has potentially changed the situation by restricting - in certain circumstances - a person's ability to control the devolution of their estate.

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 *gîtes,* 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. We can advise on this if relevant.

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.

The energy efficiency rating of the property may need to be improved before you rent the property.

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 3% and 10% 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 20%) 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 and/or the end of it's exclusivity. 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 their 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 their 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*).

In addition, you should be aware that if you have any knowledge about the state of the property that would influence your buyer's decision to proceed, you must bring this to their attention.

Selling a property

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 (such as a tenant's right of pre-emption) . 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.

> "Only a French notaire practising in France can draw up the deed (*acte de vente*)."

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.

French estate agents may invite you to sign a standard form contract. It is important not to sign anything without legal advice. The estate agent cannot properly prepare a sale contract without sight of your registered title deed showing the correct legal description of your property.

You should ensure that the contract is independently verified prior to signature. Some contracts include English translations: these should only be taken as a guide. Having French documents translated into English is not enough. Verification of the legal content is also important. Once you have signed a contract, you are almost always bound to complete the sale. Before signing a contract, you should therefore ensure that it truly records what you have agreed and contains all the appropriate clauses for your protection.

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. especially, if the value of the furniture exceeds 5%.

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.

On selling your property, you will be expected to justify that you obtained all the relevant planning authorisations and provide details of the insurance taken out by you and/or your contractors in respect of works undertaken at the property. 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 and that they do not change the use of the property. 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 amicably 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. You may also be asked to pay a small fee to the *Notaire* for the preparation of seller's Power of Attorney if you are not planning to sign in person.

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.

However, some *Notaires* now allow for the Power of Attorney to be signed electronically under certain circumstances.

> "Article 1641 says that you are liable for latent defects (*vices cachés*)."

Taxation

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.

Since the UK's departure from the EU, the scenario in relation to capital gains tax has changed. The headline rate of tax is now greater.

In addition, where the sale price is greater than 150,000 euros, then it is now a requirement to have a French resident to stand as a fiscal guarantor. This requirement applies to sellers resident anywhere outside of the EU. If the seller comprises more than one person, then the 150,000 euros is per person, save in the case of a married couple or a couple in a civil partnership.

The guarantor remains personally liable for payment of any shortfall in capital gains tax for up to five years after the sale.

Private individuals can stand as a guarantor, although the responsibility is very burdensome, and any person would need to be expressly approved in advance.

There are companies that are already authorised to stand as guarantors, although inevitably their services do add a cost to the sale.

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

In addition to the capital gains tax itself, there may also be an obligation to contribute to French social charges or similar fund, even for non-French resident sellers. There is a scale of indexation for this part. However, it is likely that this contribution to social charges cannot be offset against any UK capital gains tax liability.

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.

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. Contractors should be registered in France,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 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 your own labour and, since 1 January 2004, you are no longer entitled to any allowance for materials. However, after five years, a standard allowance of 15% will be added to the purchase price in respect of work carried out without any requirement to provide evidence that any work has actually been done. Of course if you can produce suitable contractors' invoices for a greater amount this will be deducted.

"French capital gains tax must be taken into account if you make a gain from the disposal of your property."

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.

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 of receiving a reminder *(mise en demeure)*. The penalty increases to 40% thereafter and to 80% if you do not respond to a second reminder.

The *acte de vente* must contain a clause that the price stated in the conveyancing documents is the true price paid and received. If it is found that you have made that statement fraudulently, you can be subjected to a fine and 3 years' imprisonment. You may also face a further fine and an additional (not concurrent) term of 1 to 5 years' imprisonment if you are found guilty of fraudulent evasion 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.

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 them 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.

Sundry matters

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.

Taxe d'habitation is payable on second homes by the owner or 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.

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. 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 propertyi 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 lower than 1.8m high. 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.

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

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.

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, they 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 5% deposit. The reservation contract must be sent to the buyer who has ten 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 which the vendor would then have to rectify within one month. .

"Typically you will be required to sign a reservation contract, and then the purchase deed before the building work has finished."

Breach of contract

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.

'Leaseback' sales

Buying a new property on a leaseback arrangement may be an attractive and well 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.

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.

"French law does not recognise the concept of 'subject to contract'."

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 TVA reduction. Such talk – if it still persists – gives credence to the maxim that if something sounds too good to be true then it probably is.

A leaseback purchase may be ideal for you, but you must be careful where you buy, and be fully aware of all the terms of the contracts. The contract documentation for such transactions is generally quite burdensome. In reality leaseback purchase are quite complex and need to be considered in detail prior to signing any contracts.

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 *syndicat* 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.

"Co-ownership is governed by a set of rules and regulations."

Sundry matters

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 your Will, in so far as this conforms to the relevant French 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 and French law were to apply, the survivor would end up owning jointly with stepchildren. 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 French law is applying). 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 tax 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 or Wills 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.

France will recognise the right of a same sex couple having completed a CPA (Civil Partner Agreement) in the UK, such that no inheritance tax will be applied to any assets passing upon death between partners having completed a CPA.

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.

Company purchase

Shares are not classed as real property, even if the company owns real property. Consequently in limited circumstances a possible way 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.

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; although as noted above this can also now be achieved under the Regulation

- 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.
- for the purpose of French wealth tax, the shares of the SCI would be regarded as immovable assets and therefore taken into account.

However care needs to be taken from a UK perspective – the shareholders should check with HMRC or your accountant in the UK to establish how any revenue would be assessed to UK tax.

"Unmarried couples have the major problem of inheritance tax being applied at a rate of 60%."

French Succession Law and Inheritance Tax

There have been many changes to French and European-wide inheritance rules over the past few years. An important development has been the entry into force of the EU Succession Regulation, known as Brussels IV, on 17 August 2015. Even though the UK is not a party to the EU Succession Regulation ("the Regulation") and is not a member of the European Union, the rules do have a major impact on how a person's EU-sited assets will be treated on death. Below you will find an overview of the French inheritance rules, the effect of the Regulation, and information about a law that came into force in France in November 2021 that affects the application of the Regulation in certain cases.

French inheritance rules

The French inheritance rules incorporate forced heirship provisions under which protected heirs – normally your children – have a fixed right to a minimum interest in your estate. Thus you cannot disinherit your children under French law. This includes adopted children and those from previous relationships, even if estranged, but not step-children. The age of the children or their financial needs is of no relevance. This portion of your estate is known as the legal reserve, the remainder being the disposable portion

The legal reserve must go to the protected heirs under French law, 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, having left children of their own, those children would share the amount that would have passed to their parent had they survived. If a child predeceases leaving no children of their own, their share is distributed between the surviving children of the deceased.

If the deceased leaves a spouse and children, then the spouse can benefit from enhanced rights, over and above the disposable portion. This may include a form of life interest over the assets.

If there are no children, but there is a surviving spouse, then the spouse is entitled to a minimum of one quarter of the estate, but provision can be made in the deceased's Will for the spouse to take all of the deceased's estate.

For the purposes of calculating the disposable and reserved portions, all lifetime 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 by the protected heirs against the gifts. The claim is made against the most recent gift first, and so on. Gifts could include those made into trust. In other words, gifts made years before the donor dies could be reclaimed under French law.

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.

The EU Succession Regulation

The aim of the Regulation is to simplify and harmonise inheritance regulations across the EU, given the ever-increasing numbers of people who have estates spread over multiple jurisdictions.

It is now possible under the Regulation for individuals who own assets in EU member states which have ratified the Regulation (which includes France), to elect for the law of their nationality to apply to their succession.

A British national most connected to England and Wales is therefore generally able to elect for English inheritance rules to apply to their French assets, thereby avoiding French forced heirship rules.

Where an individual wishes to elect for the law of their nationality to apply to their succession, this should be done expressly within their Will(s). Although it can be possible in certain circumstances to imply a choice, an express election is preferable for clarity.

The application of English law to a person's estate in France goes further than just allowing the avoidance of French succession rules. It includes applying English estate administration rules which in certain estates can prove complex for some *notaires*.

There are circumstances in which the Regulation can offer an option for French estate planning purposes. It is not, though, a panacea. It is important to note that the Regulation does not apply to gifts made during a person's lifetime and nor does it have any impact on the French inheritance tax position: if 60% inheritance tax would have applied on a legacy made outside of the Regulation, so it will under it.

As part of the process of advising you on the implications of French inheritance law and tax, we will consider how, if at all, the Regulation will affect you and what estate planning options may be available to you under its rules.

New French Law limiting the effect of the Regulation

The French legislator passed a law that came into force on 1 November 2021. In brief summary, this potentially changes how the Regulation can apply, in particular where the law applicable under the Regulation does not grant reserved inheritance rights to children, such as English law.

It applies to French successions where an election of English law has been made and where the deceased, or any of their children, hold EU nationality (including dual nationality) or are resident anywhere in the EU at the time of the deceased's death. In these circumstances, the notaire dealing with the succession will be obliged to contact all protected heirs who have not been provided for and who would have had a right to inherit under French inheritance law rules.

The implementation of the law is still subject to a fair amount of scrutiny, but it is clear that it will have a major influence on how a person may plan for the succession of their estate on their death, if that estate includes assets in France and they meet the criteria set out above.

Succession Process and Inheritance Tax

The succession process

A *notaire* will need to be instructed in most cases to prepare the two main succession deeds. Alongside these, an inheritance tax return known as a *déclaration de succession* must be filed, and this must be done within six months of the date of death (12 months if the deceased died outside France) to avoid possible tax penalties.

Where English law applies to the succession by way of an election in a Will, the *notaire* may require an official copy of the Grant of Probate and a *certificat de coutume* (declaration of foreign law), which we can prepare, confirming the validity of the Will in France and setting out the relevant provisions of English law which are involved. Our involvement will therefore assist the *notaire* in completing the succession in France. One positive consequence of the Regulation is that there is now increased collaboration between lawyers across jurisdictions.

Inheritance tax

French inheritance tax is payable by each beneficiary (rather than by the deceased's estate as is the case in the UK) by reference to the value received after deduction of all liabilities. French inheritance tax varies from 5% to 60% depending upon the proximity of relationship between the deceased and the beneficiary. The tax-free allowances available also vary between different classes 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 ultimately receive may vary substantially, as the levels of the tax-free allowances and the rates of tax applicable can be completely different. For the avoidance of doubt, a transfer on death between spouses and members of a PACS or a Civil Partnership Agreement is exempt from inheritance tax.

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 certain assets in France are liable to French inheritance tax. The UK/France Double Tax Treaty governs the taxation rights of each country and offers tax reliefs where assets would otherwise be taxable in both countries.

French inheritance tax is due on submission of the *déclaration de succession*. Agreement to delays or payment by instalments can sometimes be obtained from the French tax office, if necessary, although interest will be charged.

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, where this is above the available tax-free allowance.

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, but we can discuss this with you) then any legacy they may take would otherwise be subjected to the maximum inheritance tax rate in France of 60%, as they would be considered non-blood relations.

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 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 grandchildren and siblings), 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 between spouses, civil partners and couples having completed a PACS, which differs from the position on death.

Wills and Matrimonial Property

Wills

One of the primary questions which must be addressed is which type or types of Will(s) should be prepared – an English Will, a French Will, or both.

There are a number of conflicting legal arguments about whether a person should have one single Will covering their worldwide assets or separate Wills for assets in each jurisdiction. There is no absolute answer to this, and we would consider in each case what the most suitable arrangement would be.

By virtue of international legislation, English Wills can be validly applied in France. Nevertheless, in certain circumstances 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). Even if you prepare a French Will for your French estate, it is still open to you to include within it an election for English law under the Regulation.

You should always use lawyers experienced in French law and English law to make a Will covering French assets; do not try to make a home-made Will as such documents often turn out to be defective.

If you are making a French Will covering only your French assets to sit alongside an existing English Will, this must be made crystal clear in the new Will; otherwise it may read as being your "last will and testament" covering all assets worldwide. It is important to consider various points of French, English and international law when your Wills are being prepared, to ensure that they will be not only valid but also effective: indeed depending on their form and content, issues such as how they are written, whether they are witnessed and where you are when they are completed, can have an impact on whether they are valid.

If you make French and English Wills, it is also important that the two Wills do not overlap, and that one does not revoke the other. We have extensive experience in advising on, and preparing, both French and English Wills. We are also happy to work alongside your own existing UK solicitors if you would rather they kept your English Wills.

If you die without a Will covering your French estate then it will devolve in accordance with intestacy rules, and your particular circumstances will need to be analysed in order to establish which jurisdiction's intestacy rules apply.

Where French intestacy rules apply, and you leave children or grandchildren, they will receive all of your assets, except that your spouse may take one-quarter absolutely or, depending upon the circumstances, a life interest over the whole of the estate (meaning they can use the income from the assets). If there are no children, then the assets will pass to a surviving spouse, parents, grandparents, brothers, sisters, aunts etc, with their shares depending on which class of beneficiary stands to inherit. The rights of a surviving spouse do not apply if the couple are divorced or legally separated.

Matrimonial property rights

Under French law a couple can 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. A couple whose matrimonial domicile is in the UK (or in most other common law countries such as the Republic of Ireland) is treated in France as if they were married under a separation of assets *(séparation de biens)* matrimonial property regime.

There are certain circumstances in which a change of regime may be beneficial, though consideration would need to be given to your particular circumstances.

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