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FRENCH PROPERTY PURCHASE GUIDE BY LAURENT BOUNET

1°) The "Compromis de vente"

Most purchasers of property in France will have already concluded the deal with the seller prior to meeting their "*notaire*", through the intermediary of an "*agent immobilier*" or estate agent.

The "*compromis de vente*" or agreement can also be drawn up by the "*notaire*" if the deal has been concluded directly between the seller and the buyer or if requested by the agency.

The binding nature of the "*Compromis de Vente*" which will be presented to you for signature is not always fully explained. Upon signature of such a "*compromis*" you are then legally bound by this contract to purchase the property.

Upon signature of the "*compromis*", you will also be asked to pay a "*depôt de garantie*", or deposit, of usually 10% of the purchase price.

A "*compromis de vente*" irrevocably binds the vendor **and** the purchaser, subject only to fulfilment of the conditions precedent. Should any one of the conditions precedent not be fulfilled, both parties are free to walk away from the contract. However, once all the conditions precedent are satisfied, the purchaser does not have the option to withdraw from the acquisition merely by forfeiting his deposit. The vendor can enforce the sale by taking legal proceedings.

The "*conditions precedent*" inserted in the "*compromis de vente*" protecting the interests of the purchaser, will include proof of good root of title and a satisfactory planning and land registry situation, freedom from any eventual rights of pre-emption, and the obtaining by the purchaser of any necessary loans.

2°) The "Notaire"

The French "*notaire*" can be compared to, but is not the direct equivalent of, a British conveyancing lawyer. Every French Deed of Conveyance must be witnessed by a "*notaire*" who is endowed, by the state, with certain public authority which gives any deed which he witnesses and signs an authority similar to that of a Court Decree.

The "*notaire*" is, therefore, a neutral legal advisor whose function is to ensure that the agreed contract between the two parties is correctly recorded in a valid legal document duly signed by both parties, or their representatives, and him.

Due to this neutral role, it is not unusual in a French property transaction to have one "*notaire*" acting for both the buyer and the seller (a strange concept for those familiar with the British system).

You are, obviously, at liberty to choose your own "*notaire*" especially where there are specific issues to be considered. The use of a second "*notaire*" will not increase the legal fees and expenses.

All monies concerning the sale (price and fees) will pass through the "notaire's" secured account. The deposit mentioned above will also have to be lodged on the "notaire's" account.

After signature of the "*compromis*", the "notaire" will then order the required local and personal searches, to ensure that the transaction can be concluded without any problem.

I would like to point out that the searches only concern legal matters and not the building conditions. However, certain searches and enquiries are carried out prior to signing the preliminary contract : to check the surface area, energy efficiency and for the presence of asbestos, termites, lead poisoning as well as any natural or technological risks in the area. Any gas and electrical installations have also to be checked.

As far as your personal details are concerned, please let me have a photocopy of your passport and birth and marriage certificates to allow me to draft the "*Acte de Vente*" or Deed of Sale.

Once the *compromis de vente* has been signed and you have received confirmation of this, the french process can take up to two months. During this time, searches and enquiries (analysis of technical documents, legal planning searches, land registry searches, root of title and any queries concerning estate planning and tax consequences) are carried out, to ensure that the transaction can be concluded without any problem, and the "notaire" has to wait for these official administrative documents to be returned.

A breakdown of the balance to be paid will then be sent to you, along with details of the transfer to be given to your bank with your instructions. Please make sure that you leave 8 clear working days for this transaction, and bear in mind that there are many, different bank holidays in France. I would like to add that the clients' and the "notaires'" accounts are non-interest-bearing, as the French "notaire" is not allowed to hold monies in an interest-bearing account.

3°) Signature of the "*Acte de Vente*"

I would like to highlight the fact that in a French sales deed it is legal practice that the spouse's maiden name be used.

The deed of sale must be signed in front of the "notaire", or one of his notarial assistants. This obviously creates problems for non-residents.

If you are unlikely to be in France at the time of signature, then a simple "*Procuration*" or Power of Attorney can be signed by you empowering one of the "notaire's" clerks to sign the deed on your behalf. This will empower the clerk to sign on your behalf for that specific transaction only.

The "notaire" cannot be empowered to sign on your behalf, as this would compromise his neutral position.

On completion, the balance of the purchase price, the taxes, registration costs, miscellaneous costs, disbursements and "notaire's" fees incurred in conveyancing must be credited to the "notaire's" account or the appointment will be cancelled.

He will then immediately credit the purchase price to the seller's account.

4°) Title to property

In order to register title at the appropriate land registry, the "notaire" will retain the original deed, carry out the required registration formalities, and it is only once these have been completed (4-6 months) that the official copy of the title deed (the "*copie authentique*") will be made available to the purchaser.

In the meantime, the "notaire" will provide the purchaser with certificates stating that he is the new owner of the property. These are sufficient for all dealings with French administrative authorities.

5°) **Insurance**

From the date of the purchase deed, the new owner bears the risk of any damage occurring to the property. It is therefore advisable to insure the property and contents with a French insurer from the date of purchase.

6°) **Taxes**

Residents' tax and land tax / "taxe foncière et taxe d'habitation"

Residential property is subject to two annual taxes: the land tax ("*taxe foncière*"), (also due on commercial property), charged to the owner of the property as at 1 January of the year in question and residents' tax ("*taxe d'habitation*") payable by the occupier of the property as at the same date. New properties are in principle exempt from property tax ("*taxe foncière*") for the first two years after completion of the construction works, provided that the appropriate form is submitted to the French tax authorities.

For the year of purchase, the residents' tax remains payable by the vendor, whereas it is custom for the land tax to be shared proportionately between vendor and purchaser on the basis of their respective months of ownership.

7°) **Succession law**

When considering whether or not French law is likely to apply to a particular probate situation, it is important to draw a distinction between tax law and other civil law provisions. The rules governing their application are not the same.

From a general civil law point of view and as may seem obvious, French inheritance rules only apply to assets within the deceased's estate, the administration of which upon death is governed by French law. Real estate situated in France falls within this category, however this is not the case for "moveable" assets (personal belongings, bank accounts, vehicles, shares of company), which are governed by the succession laws of the country of the deceased's last fixed domicile.

Unfortunately, French inheritance tax rules do not make the same distinction and apply to both moveables and immoveables. For example, inheritance tax would therefore be due on the value of furniture, vehicles and other assets situated in France at the time of death.

Finally, it should be noted that these rules obviously do not apply for real estate or moveable assets situated outside France.