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AFTER SIGNING THE PRELIMINARY AGREEMENT

- Have you made sure that your own lawyer is aware of your wishes in respect of ownership, inheritance, tax, currency transfer etc? There will usually be a circa 8 to 12 week period between signing the preliminary agreement and completion in which all of these issues will need to be resolved.
- Have you arranged for the draft purchase deed (“Acte authentique”) to be communicated to you well in advance? Many buyers first discover this document upon arriving at the office of the seller’s Notaire on completion. It will almost always only be available in French, and technical legal French. That said, if you have instructed English-speaking French lawyers, these and other issues should be dealt with well prior to the completion date.
- Have you ensured that the completion date suits you? If the vendor, the Estate Agent and the Notary have a 5 kilometre journey to the completion meeting, as opposed to a 1 000 kilometre journey for you, it would be a common courtesy to fix a date which is convenient to you.
- Have you made sure that the date and time are fully agreed and confirmed in writing by all concerned before you make travel bookings, accommodation, removals arrangements etc? The date set out in the preliminary contract is not the fixed date for completion, but instead the ostensible deadline or last date at which the completion should come about. However, the actual completion date can often be brought forward and even put back if, say, documents are not available.
- If you are not planning to attend completion personally, have you considered putting in place a formal power of attorney (“Procuration”) to enable the purchase documents to be signed on your behalf?
- Have you taken the appropriate steps regarding booking a removals company and made sure that this entity is aware of the completion date etc?
- Have you made sure that the mortgage funding is in place well in advance of completion? Have you asked a number of potential lenders for a quotation, both in France and in the UK?
- Have you made sure that the building and contents insurance policies are in place, and are appropriate to your type of property, its use and its occupiers? It will be necessary to ensure that the property is covered as from the date and time of the completion.

At the Completion Meeting

- Are you aware of everything that is happening? You might envisage paying for the services of your own interpreter, although if you have instructed your own English-speaking French lawyers they should have explained matters to you in advance.
- Have you made an effort to ensure that you have received all the keys etc as well as useful information from the seller on alarms, utilities, local authority waste removal etc.?

Post-Completion

- Have you been given a certificate showing that you are the new owner of the property? You will not normally be given a copy of the signed purchase deed (“acte authentique”) on the day of completion but instead it will be sent to you by post some weeks (or months) later together with a final financial statement from the Notaire.
- Have you informed the Water, Electricity, Gas, Telephone companies etc of the change of ownership? The Town hall and Tax people should normally be made aware automatically, but it is always advisable to check

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Buying property in France – a Check List

This is not an exhaustive list and is certainly no substitute for legal advice, but we do hope that it might prove useful to you in the period leading up to your deciding to buy a property in France.

Why not print this page and then simply tick the boxes as a gentle reminder to yourself that you have thought about the point raised. If you have any further questions, please feel free to contact us and we shall do our best to advise you on the legal aspects of your plans to buy in France.

Before finding a property:

This is the time to structure your anticipated transaction, so that when you do find just the right property for you, you can go ahead knowing that you have already taken steps to reduce the chances of any surprises, and to increase the likelihood of the transaction, and ownership of the property by you and ultimately your next-of-kin, proceeding as smoothly as possible.

Know and Communicate Your Reasons for purchase. You should be absolutely clear in your own mind why you are buying what you are buying in France.

- Is it an investment? Leaseback? Buy to let? What is your greater aim – capital appreciation or rental yield? How quickly do you want to see a return? Who will manage your investment and the property itself?
- Is it to be solely a holiday home for you and your family?
- Do you intend to retire to France immediately, or in a few years’ time?
- Will you be moving “lock, stock and barrel” on your own, or with children or a dependant relative?
- Do you intend to attempt to run a business from the property?
- How much time will you spend there, and during which seasons, in the year? This year? Next year?
- Are you selling up in the UK or Ireland now, going into rented accommodation in UK, Ireland or France, whilst you house hunt in France? On a practical note, now is the time to identify the international removals company that will not only put your contents into appropriate storage but also move it to France for you when the time comes.

Remember to tell the people from whom you request advice which of the above boxes you have ticked – for example French lawyers, financial and tax advisers, accountants, surveyors, architects and estate agents – it will very probably affect the advice that they give you.

Think about the currency exchange – if your purchase is to be in Euros, UK buyers might consider using a specialist Foreign Exchange (“FX”) Brokers as just a few percentage points on the /£ rate can make a huge difference.

- Do you need to fix the rate for the payment of a deposit, stage payments (for new builds), and the balance completion monies and Notaire’s fees? You can often fix the rate for up to 2 years ahead.

Legal Advice on Ownership and Inheritance.

Who is going to be the legal owner, and how they own the property, will determine who will inherit and who will not, and will set in motion a variety of inheritance tax consequences. For example, under French Law, all of one’s children from whatever previous relationship or marriage have statutory equal inheritance rights which cannot be modified by a will. It could be very expensive or impossible to change track after completion, and possibly even after signing a preliminary binding agreement such as a “compromis”.

- Who do you want to own the property, and who do you want to inherit the property? Do you know what the ownership, inheritance and tax outcome of your signing a “compromis” will be?
- Do you have children from a previous relationship? Will they inherit? Can they be disinherited?
- Do you need to consider a marital property settlement agreement (contrat de mariage) under French Law and relating solely to your French property?
- If you are not married, do you need a pacte civil de solidarité (pacs) or some other arrangement under French Law to establish who owns what?
- Have you thought about the advantages and pitfalls of owning your French property through a company?

Legal Advice if you wish modify the property

- Do you wish to alter the property (for example extend it, convert an attic, add a swimming pool, demolish and replace a building).
 – If so, do you know what authorisations are necessary?

Legal Advice if you wish to operate a business from the property

- Will you be able to obtain the appropriate authorisations for change of use, for example for part of the Property to be residential and part for your business?
 - If you intend to run a business, have you thought about French tax, employment law, health and safety rules, fire regulations, insurance etc?

Independent Financial and Tax Advisers specialising in UK and France

- Should you take a mortgage to assist your purchase, or perhaps limiting your capital input, and possibly reducing or eliminating your liability to Wealth Tax?
 - Should it be a sterling or a Euro mortgage (consider the interest rate, the term, and the effect of exchange rate fluctuations in particular)?
 - Should you remortgage your UK or Irish home (or second home) and buy in France outright?
 - To what extent can you set mortgage interest off against rental income to reduce tax?
 - What about pension policies and life policies? Will your UK pension be received in France gross or after deduction of UK Tax?

What about SIPP's?

- Are you aware of the inheritance tax consequences of your property ownership and your testamentary wishes?
 - What income tax and local taxes will you have to pay?
 - How will the French Wealth Tax affect you?
 - Where are you principally resident for Tax purposes and how will the double taxation treaties affect you?

Survey of the property

There is no such profession as a “Surveyor” in France and it is not the norm in transactions between French nationals for the property to be surveyed prior to purchase. However many UK and Irish purchasers often call upon English-speaking architects or even UK or Irish nationals practising in France under their home title as surveyors in some of the following circumstances.

- Is the property over 10 years’ old, or has it been modified or adapted in some way (e.g. barn conversion) or has a peculiar construction?
 - Are you aware of the physical condition of the property (stability, suitability, infestations and rot, drainage etc.)?
 - Are you able to prepare a budget for anticipated works, and obtain a valuation of the property “as is” and “after recommended works have been carried out”?
 - Are you sure of receiving your architect’s or surveyor’s report prior to signing a binding preliminary document?

Special Imports

- Do you intend to import pets, other livestock, cars, boats etc; - have you checked what restrictions, costs and requirements may apply?

FINDING A PROPERTY

Reconnaissance

Most of us are familiar with the various ways to this end: through estate agents (perhaps you have met them at Exhibitions or followed up one of their advertisements in the French Property press), through a Notaire, through web sites, through direct newspaper advertisements (“Particulier à Particulier), or through friends and contacts.

- Have you decided upon a particular town, village, county (département) or even local district (canton or arrondissement)?
 - Have you considered lining up in advance an inspection trip enabling you to view over a few days a selection that nearest meets your requirements?
 - Is the Estate Agent reputable and duly registered with the French authorities?
 - Have you looked in the local Notaire’s window - (the Notaire’s office will usually be in the very centre of the town or village)?
 - Have you checked Estate Agents’ websites which are local to the area you are interested in?
 - Have you checked whether the property appears to be manifestly overpriced compared to French prices in the local area?

Find, But Don't Sign Yet

- Have you been asked to sign anything other than the “bon de visite” proffered by the estate agent? Be careful, because a “compromis” is a binding document and once the 7 day cooling-off period is over, you could be obliged to go ahead with the completion of the purchase the property.

Visit the property and area carefully yourself, and with a map

- Have you visited the property several times – twice is good, more than twice is better?
 - In France, “what you see is what you get”, therefore have you brought up all your questions with the seller or the Estate Agent (who under French Law is usually acting for the vendor)
 - Have you envisaged having the property surveyed if there is something of particular concern?
 - Have you checked the position of the property on a reliable local map yourself? Do the boundaries appear to tally? What is that stream or pond, and who has rights in connection with it? Is there a large tree on the boundary? Why is there a right of way at the back, going up the hill? How near is the river? How easy is it to access the main road, and who owns the track to that point? What is that large building two streets away?
 - Have you taken a good walk around the village/area, ideally both in the daytime and safely at night?

Draft of the compromis, or other preliminary contract

- Have you asked for a draft of the “compromis”, well in advance of the date of its signature? Although this document is often called a “preliminary contract”, it is generally a binding document committing you to complete the purchase with very limited exit routes.
 - Are you being put under pressure to sign the “compromis” on the spot - it is much safer to take it away with you and talk to an English-speaking French lawyer. Remember, this document is usually viewed as a binding contract and hence not “subject to contract” – so once it is signed you are usually committed to purchasing by the date set down in this agreement if the other conditions in it are met.
 - Are you aware of the type of sale proposed, and its ramifications, do you fully understand what many English-speakers refer to as “leaseback” or the French expressions, “usufruit” “nu-propriété”, “résidence de tourisme”, vente en état futur d’achèvement, “en copropriété” etc.?
 - Have you made clear to the vendor’s Notary which form of ownership is required by you?
 - If the vendor’s Notary does not speak English – have you asked your own English-speaking French lawyer to ensure that your interests are protected?

Intermediaries who have a financial interest

- If you are under pressure to sign from an intermediary who has a financial interest, would you agree that it sometimes better to be prepared to lose a property than to sign up to commitments that you do not understand?
 - Are you aware that it is often difficult in practice to make use of the 7 day cooling-off period if one is resident in the UK or Ireland? Sometimes prospective buyers are told by Estate Agents that “if they do not sign the compromis at once they will lose the property” but “that there is no risk because they may withdraw within the statutory 7 day cooling-off period”. However, the required letters can often take a number of days to reach you (even when there is no postal strike or holiday period) and a further number of days for your required written reply to reach the vendor’s Notary. If you are not able to show that you exercised your right to withdraw within this 7 day period, following all of the procedures, you will be bound to go ahead with the completion when the other conditions (if there are any) in the preliminary document are met.

Payment of deposits etc.

- Have you checked the standing of the person to whom you are being asked to hand a deposit? The usual deposit amount payable upon signing the preliminary agreement would be somewhere between 5% and 10%. This should normally be held by a Notaire and would be deducted from the purchase price on completion. It would usually not be advisable to hand deposit amounts to any other intermediary.
 - Having signed the “compromis” and paid the deposit amount, are you aware that if you fail to complete at the agreed date, Court proceedings could be commenced to force you to purchase the property or at the least, you could risk losing the deposit as well as possibly having to pay damages.
 - Have you therefore taken the appropriate legal advice before signing the preliminary agreement? For example, does the document contain all the usual clauses? Are there any odd clauses? Does the contract protect you as far as possible? Does it take into account your intentions for the property e.g. will the seller agree to making it conditional upon the grant of planning permission for your planned extension?
 - Have you thought about adding a “substitution clause” to the preliminary agreement, which will allow the completion of the purchase to be undertaken by, say, you and your spouse, you and your partner, a company etc?