

The Selling Process

If you are selling a property in France, you may decide to sell directly to a purchaser or use an estate agent or even a notaire. The purchaser will be responsible for the agent or notaire's commission fees.

If you are going through an agent or a notaire, you will be asked to sign a Mandate confirming your instructions to sell the property and the amount of commission due to them in the event of the sale which are payable by the buyer. The mandate will also confirm the net amount due to you as the base price. This means that you will not receive less than this amount. Any negotiation of the purchase price usually affects the fees the agent will receive rather than the base price.

Therefore one of the first steps you need to take once you have decided to sell the property is to obtain estimates from at least three different agents as to the correct value of the property. This will give you an idea of what the net selling price should be.

As a vendor, you are also required to produce a seller's pack which include a number of reports for the information of the purchaser. There is therefore an initial cost of approximately 600 euros for the preparation of these reports. If you are selling independently, you will need to settle this invoice directly with company dealing with the reports. If you have instructed an agent or a notaire, usually this disbursement will be settled once the sale has been completed from the sale proceeds.

The contract package will also contain any other relevant information such as guaranties for any works done to the property over the last 10 years, a copy of the plan cadastral, copy title deeds referring to incumbrances on the property such as rights of way etc.

Once the contract package is ready and a purchaser has been found, it is not uncommon for an offer of purchase to be signed. This is a binding document between the vendor and purchaser confirming the agreed sale price which would include the agents fees and any conditions relevant to the transaction. These conditions could include a clause suspensive relating to obtaining a mortgage on the French property. If applicable, the purchaser may also ask for a "certificat d'urbanisme pre-operationel" which would relate to renovation works the buyer may wish to carry out to the property.

Usually, a compromis de vente is signed once a buyer has been found so as to commit all parties to the transaction as soon as possible. The contract is usually signed first by the purchaser and then sent to the vendor for signature. The purchaser will be required to pay a deposit (usually 10% of the base price) on signature of the contract either to the agent or the Notaire.

Once the contract has been signed by all parties and the original is returned to the solicitor/agent or notaire, all parties will receive a signed copy and the purchaser will benefit from a 7 day cooling-off period during which he will be able to withdraw from the transaction without having to give any reasons. There may be special clauses incorporated in the contract such as one relating to a mortgage. These special clauses (clauses suspensives) will need to be observed and lapse before the final signature of the transfer deed can take place.

Once the 7 day cooling-off period has expired , the next stage of the transaction is the investigation of title and the preparation of the final transfer deed which has to be done by the notaire. Usually, it is the notaire who originally dealt with the purchase as he will have the original Title Deeds, although any notaire can be appointed and he doesn't have to be located in the same area as the property.

There is usually a period of two months between signature of the contract and actual completion.

When the Notaire is ready with all the supporting title documents and has prepared the transfer deed, an appointment will be made so that all parties can attend his office to sign the deed. If one or both parties cannot travel to France on the completion date, a power of attorney can be put in place for convenience at a nominal cost.

In order for completion to take place, the full balance of the purchase price as well as the notaire's fees and agents fees must be lodged at the Notaire's office the sale can proceed. If there is a Capital Gains Tax liability, then the amount due will be retained until a tax clearance certificate is obtained from the relevant authorities. If the value of the property is above 150,000 euros, then a tax agent must be appointed to deal with the CGT calculation. (see below for more information on CGT)

Please note that if you are selling to an English purchaser, his circumstances may be that the sale price can be agreed in pound sterling and the funds are kept in escrow in our client account in the UK pending completion so as to save money on foreign exchange transfers. We regularly work closely with notaires in such transactions so as to save clients money . Please contact us for further details.

In order to proceed as quickly as possible with the sale of the property, please ensure you provide us with the following documents:

- » Copy of the title deeds which should have been sent to you or the address of the French property if these cannot be found;
- » Certified copies of your passport and of a recent utility bill confirming your address in the UK. Identification documents such as passport and marriage certificate
- » Copies of your last utility bills
- » An inventory of any furniture (fixtures and fittings) included in the sale;
- » Any documents you may hold relating to works carried out to the property over the last 15 years. These may provide guaranties for the purchaser but may also be taken into account when calculating Capital Gains Tax. See enclosed booklet for further information;
- » Details of the property including rooms and facilities;
- » Base price agreed or to be marketed for;
- » Details of person who holds keys to the property so that expert can carry out surveys etc.

Capital Gains Tax

You are liable to pay Capital Gains Tax on your net profit following the sale of your property unless the property is your main or only place of residence, in which case it is CGT exempt. You are also exempt if you have owned the property for more than 15 years.

Your net profit is calculated by taking the figure you are selling for and deducting (i) the initial price for which you purchased the property, (ii) all costs and fees incurred in the initial purchase (ie: notaire and agent's fees, stamp duty and land registry fee etc.) and (iii) any repair/ improvements, constructions costs subject to proof of the work having been done. Please note that you cannot include works you have personally carried out nor the costs of materials you may have bought for the builders to use.

Only receipts of work done by French builders can be taken into account.

If you are not able to produce valid bills or receipts of works carried out, you may if you have owned the property for at least 5 years substitute a figure equal to 15% of the initial purchase price as a forfeit.

Please note that there is no longer indexation allowance applicable as a result of the Loi de Finances 2004. However, the tax that is due is reduced by 10% for each 12 months of ownership after the fifth year, thus reducing the tax bill to nil after 15 years of ownership.

In addition, if there is a tax liability there is a fixed relief of 1,000 euros which are deducted automatically and if you are non-resident in France but resident in a EU member state, the rate of tax is 16%. (The rate of tax increases to 33.5% if you are non EU-resident).

When the sale price of the property exceeds 150,000 euros, as a non-resident in France you will need to appoint a Tax Agent who will deal with the calculation of the Capital Gains Tax and payment of the same on your behalf. You will be liable for the costs of the appointment which are about 1% excluding VAT of the sale price. The Tax Agent must be appointed immediately on completion of the sale and will be dealt with by the notaire acting for you. The French Revenue has 4 years to review the CGT calculated by the notaire on your behalf and in the event of any increase, this will be borne by the Tax Agent.

Once the tax agent has dealt with the calculation and payment of the CGT, he will receive a clearance certificate and will release any balance of the sale proceeds to you. It is often the case that a large proportion of the sale proceeds is held back until the clearance has been granted as the tax agent does not want to be personally liable for any errors in the calculation. Therefore expect some delays in receiving the whole balance of the sale proceeds if the sale price exceeds 150,000 euros.

Please do not hesitate to contact us if you have any queries on the selling process or any other French legal matters.

I look forward to being of further assistance.

Mrs Lauren ANNICCHIAIRO

Solicitor-Principal.