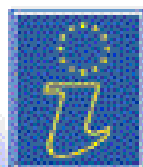


Buying a property in France



Le guide du consommateur européen



Centre européen
des consommateurs
France

Réseau européen
ECC-Net

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Introduction

This brochure will provide you with information on buying residential property in France. You will find practical advice and important legal information throughout the different steps leading to the purchase of a residential property. We have tried to include all the relevant information concerning the purchase of property in France however the information is not in all points extensive. We would like to invite to read this brochure before signing a contract. Additional information on the purchase of property can be obtained from specialists working in this area in France, such as notaries, real estate agents, public administrations, consumer protection agencies, banks, etc.

■ “When in Rome, do as the Roman law says.”

The purchase of a property is governed exclusively by the law of the country in which the property is located. Although the different national laws throughout the European Union align, the legal regulations can be very different from one country to another.

In France for example it is common practice to sign a legally binding preliminary contract without the help of a notary before signing the actual sales contract.

■ Freedom of establishment in another European member state

Every Union citizen of the old 15 member states has the right to move and reside freely within the territory of any member state (for the new member states there can be a transition period) but the right of residence for more than six months remains subject to certain conditions.

Until November 2003 Union citizens needed a residence permit (carte de séjour) if they wanted to reside in France for more than three months. However, law n° 2003-1119 dated November 26, 2003 has abolished the need for a residence permit for EU citizens. It is now only necessary in exceptional cases. A decree of the French State Council (Conseil d'État) will specify the conditions for the emission of a residence permit for those who may apply for it.

■ Buying a property in France

The purchase of property in France is a regulated two-step process: the conclusion of a preliminary contract and the conclusion of the final sales contract.

The vendor and the buyer can agree to handle the negotiations for the purchase of the property themselves, or they can hire a professional to take care of the whole purchasing process. At the very least you need to point a notary for the signature of the final contract.



A Professional vendors

In France, there are three categories of professionals in the sales of property business.

■ 1 - The vendors of lists of properties for sale (*marchands de listes*)

These professionals provide their clients with a list of properties for sale. They do not guarantee that a transaction will be signed between the parties. Therefore they do not intervene in the process. They only facilitate, for a fee, contact between the vendor and the potential buyer of a property.

If you decide to pay for this service, you should be aware that you have no guarantee whatsoever that the properties on these lists are valid and you will only have the opportunity to check them after you have paid for this service. You may be disappointed after you have paid your money and we would therefore advise you to be careful when doing business with the *marchands de listes*.

■ 2 - The real estate agent (*agent immobilier*)

The services of a real estate agent can be very helpful and valuable as they will be familiar with the place where you would like to buy your property. Please note that the real estate agent is not entitled to act on your behalf without receiving your written application first. Most of the French real estate agents are members of the *Fédération nationale des agents immobiliers (FNAIM)*.

Normally, the members of this association propose free of charge the following insurance coverage: if the buyer dies or becomes invalid after signing the preliminary contract and before signing the final contract, he will not have to face any loss. The insurance will cover all the costs, whether the final contract will be signed or not.

Please note that in some real estate transactions, the agent works for both the vendor and the buyer. It is important for you to know if an agent is working for you alone or working with you while acting as an agent of the vendor also.

■ The real estate agent's fee

The real estate agent's fee is freely negotiated between him and his clients, but it usually varies between 4 and 12 % of the purchase price (depending on the situation and value of the property). Real estate agents must make their current rates available to the public.

Please note that if you hire a French real estate agent and an agent from your own country, you will have to pay a fee for both agents! This also applies if you sign only the preliminary contract.

Important : A foreign real estate agent can only act in France if he has an official accreditation. If you want to hire an agent in your country, you should ask him for a copy of his *carte professionnelle* delivered by a French *préfecture*.



■ 3 - The notary (*notaire*)

Throughout the entire buying process the notary has a very important role to play. It is not unusual that a notary also acts as a real estate agent and proposes a certain number of properties for sale.

You need the assistance of the French notary, at the latest, to certify the contract of sale. But it is advisable to hire a French notary earlier in the process. In fact they can take charge of the negotiations with the vendor and, more importantly, draw the preliminary contract. Please note that the notaries do not have an exclusive territory, they can represent you throughout France.

The notary is more often hired by the vendor but they are not appointed to act on behalf of either party. The notary is a public official who ensures that the transaction is carried out according to the legal rules and procedures. This enables him to give absolute validity to the transaction.

It is not necessary for you to appoint a second notary to act on your behalf; however you may feel more comfortable having your own notary, especially if the vendor or the real estate agent tries to impose their own notary. You have always the right to choose your own notary who, if necessary, will work in collaboration with the vendor's. In fact, it is quite common to have two notaries working on the same transaction.

■ Notary fees

The fee for the notary is determined by a decree and is calculated from the sale price of the property. The fee is payable only after the final contract has been signed and the contract is certified by the notary. The notary also calculates the VAT and registration fees he will remit to the competent authorities for you.

Important : Both the commission for the real estate agent and the fee for the notary can be at the expense of either the vendor or the purchaser or at the expense of both parties. Therefore in the mandate you should record who is supposed to pay these fees.

B Things to check before entering into the contract

Once you have found a property you are interested in, you should conduct the following checks.

■ the vendor

You should always check if the vendor is really the owner of the property and is entitled to sign the contract alone.

For example if the vendor is married under the community of marital property, the signature of his spouse is mandatory.

■ the property

Are you purchasing a furnished property? Are there any tenants? If so, you should ask for a copy of their lease in order to verify their situation.

Important : If you are planning to buy for example an apartment for yourself and there are still tenants in the apartment when you start negotiating with the vendor, make sure that the vendor has noticed the termination of the contract in time to the actual tenant, that's to say six month before the end of the lease. Otherwise, you will not be able to use the apartment for yourself, until the tenant's lease expires.

You should also verify if the property is mortgaged and if so for what sum and if the property is affected by any requirements of the building authorities. The city hall of the town where the property is based will be able to clarify whether the property is located in a zone where the administration has a right of pre-emption on the property or if there are any servitudes on the real estate you want to buy.

If you buy immovable property, the constituents and accessories, fittings and fixtures for the normal use of the property are considered to be part of the property for sale. You should check with the vendor, if he possibly wants to keep some of the constituents or accessories. If so, make sure to note in the contract the parts he wants to keep.

If you buy a furnished property, you should enclose a list with the furniture and movable objects in the contract. It may be advantageous not to include the price of these objects in the total price for the property. If you pay for them separately this avoids the need to pay further fees and they do not need to be declared to the financial authorities as being part of the sale price.

It may be wise to commission a structural survey and valuation report to warn you about any possible problems with the property. This survey may enable you to negotiate a reduction in price. The seller does not usually have to disclose any structural defects affecting the property. This means that if, after signing a preliminary contract, you discover structural or other defects to the property and/or its services, you are still obliged to complete the purchase at the agreed price and cannot obtain compensation from the seller. Also if you are seeking finance, the lenders may require a survey for their own security.

You should also check the equipment within the property, especially the plumbing, heating, boilers, septic tanks, etc.

General information:

Once the property is yours you will need to apply to the French service providers for electricity, gas, water, telephone and any other supplies you may need. As soon as they have registered, you will be responsible for the payment of these bills from the date of completion. You should consider opening a (non-resident) French bank account.

C The buying process

Preliminary contract



1 - The preliminary contract

Even though you do not need a real estate agent or a notary for the drawing and signature of the preliminary contract, we would recommend you seek their assistance.

The preliminary contract is, for both parties, a legally binding document, so it should not be taken lightly. Make sure that you or your notary has carried out all the necessary inquiries and research before signing. If you intend to raise finance for the purchase of your property make sure that the preliminary contract includes a *clause suspensive* confirming that you will be seeking finance. This clause protects your interests as a purchaser in the event that the mortgage, loan or credit is subsequently declined; the sale will not proceed and your deposit will be returned.

Important : The *conditions suspensives* are special terms or conditions which, if not satisfied, will render the contract null and void and entitle you to withdraw from the contract and recover any deposit paid.

If French is not your first language, ask for a bilingual contract.

Please note that no commission or fee should be paid before the signature of the preliminary contract.

Also French real estate agents can only receive deposit monies if they hold a *carte professionnelle*, a special licence which is only issued by the local authority upon proof that the agent holds minimum insurance cover. So before paying a deposit you should always check the licence of your agent.

There are three different types of preliminary contract:

■ the offer to purchase (*offre d'achat*)

In this case, an interested person will make an offer to the owner of a property that may not be for sale yet. The owner can decide freely if he wants to accept this offer.

The purchaser should make a very precise offer as he will be bound by it if the owner decides to accept it; the contract will be automatically concluded with this acceptance.

If afterwards you do not respect your commitment, the owner can claim damages. You should therefore at the very least include a time period during which the offer is binding, so that once the period expires, the offer is not enforceable.

The vendor cannot oblige you to pay a certain amount of the purchase price. If he does, the contract becomes invalid.

■ the unilateral promise to sell (*promesse unilatérale de vente*)

By signing such a promise to sell, the vendor commits himself to reserve the property to the purchaser for a certain price and he is not allowed to sell the property to anyone else within the stated time period, usually 3 months. The purchaser is free to buy the property or to refuse it at the end of the stated time period. Usually the purchaser will pay a deposit of between 5% and 10% of the property's price. If he decides to purchase the property, this deposit will lower the purchase price. If finally he decides not to purchase, the deposit will not be returned. So if you need finance for your project, do not forget the *clause suspensive* in the promise (see above)!

■ a mutual agreement to sell (*compromis de vente* or *contrat sous seing privé*)

With this contract the purchaser agrees to definitely buy the property and the vendor commits to sell it. If drawn by the real estate agent or between the parties only, this document is called a contract under private signature (*contrat sous seing privé*), if drawn by a notary this contract is called a compromise agreement to sell (*compromis de vente*). In both cases once it is signed by both parties, this is a binding contract; all parties to the contract are legally obliged to respect the given commitment or entitled to claim for damages if it is breached.

At this stage of the purchasing process, the purchaser will have to pay a deposit of at least 10% of the purchase price (*dépôt de garantie*) to a special account held by the notary. This sum remains blocked until the final contract is signed or the project aborted.

Some contracts may contain a “*clause de dédit*” which allows the purchaser to change his mind and to decide not to buy the property. In this case he has to pay a lump sum fixed in the contract. Without such a clause, the vendor can force the purchaser to buy the house as foreseen.

If you intend to raise finance, do not forget the *clause suspensive* in case you don't get the finance (see above)!

content of the preliminary contract

The following points should be included in the contract:

- identity of the vendor and the purchaser
- purchase price and means of payment
- precise description of the property
- total space and floor space
- equipment
- does a third party have any rights on this property? Make sure that there are no adverse planning restrictions; no third party rights of way or easements which might affect your enjoyment of the property; no existing mortgages or charges affecting the property; and no claims upon the property by the local authority or the French State. You should ask for a copy of the cadastral register (*livre foncier, conservation des hypothèques*)
- final date when the contract must be signed and the property transferred
- are there any *conditions suspensives*? e.g. obtaining finance or a building permit
- is the property affected by any requirements of the building authorities? A land use certificate (*certificat d'urbanisme*) should be of help.
- date for completion, conditions for withdrawal by either side, and an estimate of the registration costs (notary's fees and expenses as well as the property transfer taxes)

During the next six to eight weeks after the *compromis de vente* is signed the purchaser will be required to ensure the financing for the purchase, before the definitive contract will be signed. Please note that for this last step you must appoint a notary!



■ 2 - Time to reconsider or to revoke

- **If you signed the preliminary contract without the help of a notary**, you should receive from the vendor the signed *avant-contrat* via registered mail with advice of receipt (or by any other means permitting to prove the date of receipt). Starting from the day after receipt of this letter, you have a 7 day period to revoke the contract (*délai de rétractation*) if you decide not to purchase. If the time period expires on a public holiday, the expiry date will be the next working day. You should send your withdrawal from the contract via registered letter with advice of receipt (or any other means allowing to prove the date of sending) directly to the vendor. If you signed the contract with the help of a real estate agent, it is possible that you already paid a part of the sales price. This sum must be reimbursed to you within 21 days. In the case of a preliminary contract signed directly between the vendor and the purchaser (without intervention of a third party) no payment can be made at the moment of the signature of the preliminary contract.
- **If you signed the preliminary contract with the help of a notary**, you should have benefit from a 7 day time period to reconsider (*délai de réflexion*) before signing the preliminary contract. Indeed, the notary must send you a copy of the project for the contract and he cannot ask you to sign this project before the expiry of the 7 day period which starts with the notification of the project. As no payment can be taken from you before signing the contract, all you have to do is to inform the notary and the vendor of your decision not to purchase.
- **If you have purchased a building plot**, you can only withdraw from the contract if the plot is located in a housing estate (*lotissement*).

■ 3 - If the purchaser does not obtain the credit needed...

The French law “Loi Scrivener” requires every contract to be conditional upon purchaser being granted finance or a loan to purchase the property, unless they expressly state in the contract, in their own handwriting, that they do not require a loan.

The preliminary contract is always signed under the condition that the purchaser obtains the finance necessary for the realisation of the purchase. If the purchaser cannot get finance, the contract will be void and all payments made must be refunded to the purchaser.

If the preliminary contract doesn't state if the price should be paid in cash or by credit, and it does not include other handwritten indications, the contract is presumed to have been concluded under the condition of obtaining finance.

In order to guarantee a prompt reimbursement, the French law determines that interest will be paid on the money owed starting from the 15th day after your demand of reimbursement.

4 - Verifications to conduct before signing the final contract

In order to avoid any conflict between vendor and purchaser when the final contract must be signed, you should check the following

■ **tax burden:**

The person who occupies the property on January 1st of the taxable year, has to pay the local taxes: *taxe d'habitation* and *taxe foncière*. Both taxes are property taxes applied to property and land. These are particularly difficult to estimate as they vary from region to region and are calculated in reference to numerous criteria. There can also be exemptions in certain cases (for example for pensioners). In order to get an idea on the total taxes you will have to pay in the future for your property, you should ask the vendor for a copy of the tax receipts of the previous years. You can also get more information on the local taxes at the city hall or the financial authorities of the town where the property is located. If a property is sold within the tax year, the vendor and the purchaser can decide to share the tax burden, but this point has to be clarified in the contract.

■ **insurance:**

From the signing of the final contract the purchaser is responsible for the insurance of the property. You should already have information on the obligatory *assurance multirisque habitation*. Normally the buyer will be offered the possibility to take over the vendor's insurance but if you do not want this, you should write this down in the final contract. Otherwise it will automatically be transferred on to you and you won't be able to cancel it before it expires.

This *multirisque* protects you in case of damage or injury to third parties but also usually covers fire, explosions, lightning and terrorist attacks, storms, hail and the weight of snow on roofs, natural disasters, damage to installations due to flooding or freezing, legal expenses, breakage of glass and mirrors, household accidents and damage to electrical appliances, theft and acts of vandalism.

■ **succession and fiscal law**

Early advice should also be sought from the notary or any other competent person in order to understand fully the complexity of French succession and fiscal law. According to French law, which will be applicable to your property, you can not exclude all your family members from your wish and the inheritance tax rate can be quite important. Also, if you want to donate your property later on or if you decide to sell it, it is advisable to get the information and to take the necessary steps before the purchase is complete in order to find the best form of ownership depending on your family circumstances.

D The final steps



1 - The final contract

Before signing the final contract (acte de vente) at the notary's office, the purchaser will have to pay the balance of the purchase price to the notary who will later transfer the money to the vendor.

With this final contract the property passes on to the purchaser. In order to have a complete view of your commitment and your future rights on the property, you may ask the notary to send you, before the meeting, a copy of the contract. This way it will be easier to look at it in detail so that you can ask the notary all the questions arising from this contract before signing.

After the signature of the final contract the notary pays the vendor the balance of the purchase price, the agents their commission and all property transfer taxes and legal fees. **If you do not want to travel to France purely for the signature of the contract, you can ask the notary to prepare a procuration or power of attorney for signature. Please ask your notary for the legal requirements of this procuration.**

documents needed

In order to draw a valid acte de vente it is necessary to provide the notary with a copy of

- a birth certificate for both vendor and buyer
- and, if applicable, a copy of a marriage certificate

Both documents should be translated into French.

- The notary will also need from the vendor: a *titre de propriété* (an official document attesting the ownership) and the history of the title to the property
- an extract from the cadastral register
- a mortgage certificate
- as well as a certificat d'urbanisme

content of the final contract

The final contract will contain at least the following indications:

- identification of the parties: name, profession, date and place of birth, marriage date and place, maiden name (where relevant) of all the parties
- statement that the vendor is selling and the buyer accepting the property
- price and means of payment
- detailed description of the property sold including the land registry parcel number and areas. Obtain an up-to-date registered plan or *plan cadastral* of the property, initialled by your seller, showing the extent and boundaries of the property. Then carry out a physical check of the actual boundaries of the plot to avoid that boundaries are moved later. Take care to agree on a written list of accessories, fittings and fixtures included in the price. Note, however, that furniture and loose fittings should be subject of separate purchase, to avoid tax and fees on their value (see above).
- nature of the vendor's title to the property sold, detailed history of previous ownership, statement of freedom from encumbrances, tenancies, etc, and when possession will be available

- any easements, rights of passage over, drainage across, etc. the property
- statement about the *certificat d'urbanisme*: planning, highways, public health conditions and utilities, and permissible land uses.
- check whether planning permission (*permis de construire*) or some other consent was required and obtained for any construction or change to the outside aspect or established use of the property and the installation of swimming pools and septic tanks. In some cases, planning permission is also required for internal works.
- general conditions of sale
- mortgage situation of the property sold
- It is important to specify in the agreement under what conditions the deposit is to be retrieved by the buyer should the transaction be aborted.

■ 2 - Time to reconsider or to revoke

If you never signed a preliminary contract before (which is unlike), you have a 7 day time period to reconsider before signing the final contract.

■ 3 - Land registry

Within three months after the signature of the final contract the notary registers the new owner's title to the property, name and address at the land charges registry (*livre foncier, conservation des hypothèques*).

The notary eventually sends the new owner a copy of the final contract stamped to show that it has been registered.

E Fees and taxes



First of all please note that if you want to bring money in cash form to France, you have to respect the customs' regulations. If you bring more then 7.600 € to France you have to declare to the customs the valuables and cash you are bringing.

Please note also that the French notaries are not allowed to take foreign checks. Therefore all payments must be made via bank transfer or French bank check (if the sum does not exceed 50.000 €)

According to the French civil law (*Code civil*), the purchaser has to pay all the fees related to the purchase of the property:

- fees for the drawing of the deed
- fees for the notary and/or the real estate agent if the parties didn't decide otherwise
- the VAT of 19,6% included in the total purchase price. The VAT is due for new constructions (finished within the last 5 years) when the property is transferred for the first time.

Otherwise tax on purchase of real estate (4,89% of the purchase price)
Unlike the VAT this tax has to be added to the total purchase price.

- fees for the cadastral registry (0,615% of the purchase price)
- and of course the fees related to a mortgage or property finance

The notary will calculate all these costs for you. You will pay them to the notary who will then transfer them to the competent financial authorities.

The vendor takes charge of the fees for the mortgage.

On every property sold during the 15 years after purchase, the vendor of a property has to pay the Capital Gains Tax (CGT) of 16% of the sales revenue (if he is a resident of the EU, otherwise he will have to pay 33,3%). The sales revenue is only exempt from taxes if the real estate was exclusively used by the vendor himself, if his main residence is in France and if he pays in France his income tax.

Because of this CGT some vendors may think of embezzeling a part of the purchase price by finding an arrangement with the buyer. But in practice this is risky and can have serious consequences for both vendor and buyer. The buyer will be penalised later on when he has to sell the property himself, as the difference between purchase price and sales price and for consequence the amount of the CGT will be more important. If the vendor and the purchaser agree on a price lower then the market price, the fiscal authorities can by comparison to other real estate objects suspect a fraud and claim supplementary taxes based on a sales price estimated by their services.

If you are not a French resident for tax purposes you should register your ownership of the property by April 30th the year after purchase or completion at the fiscal authority for non-residents in Paris (address below)



F Guarantees

- The vendor has to guarantee the floor space or area determined in the contract.
- On construction and renovation works you have a 10 year guarantee (*garantie décennale*) on material defects.
- There is also a two year guarantee on newly installed equipment (*garantie de bon fonctionnement*) e.g. heating.
- If in the case of apparent faults you want to assert the one-year guarantee of perfect completion (*garantie de parfait achèvement*), you need to send a written complaint to the building contractor.
- If you discover hidden faults after buying your property or after the completion of construction, e.g. cracks in the walls, you should immediately inform the vendor/constructor. You can then claim in court for the cancellation of the contract, a replacement for your property or a reduction of the sales price.
- The final contract should also contain details of any guarantees available to the new owners by passing from the vendor to the buyer.

In case of a dispute between you and the vendor or you and the contractor, you may find information and assistance at the European Consumer Centres.

■ Sale of property for future completion (*“vente en l’état futur d’achèvement” VEFA*)

This type of sale’s agreement applies to properties which are in the process of being constructed or not yet constructed.

The deposit payable under the VEFA agreement is usually 5% of the estimated purchase price for the property, which will then be deducted from the final price. The buyer will lose his deposit if he decides not to proceed with the sale, except if the appropriate suspensive condition is inserted in the contract ([see above](#)).

As the regulation for these VEFA is subject to strict laws for consumer protection we advise you to seek qualified council.

Useful contacts

❖ The European Consumer Centres Network (ECC-Net)

provides information on European consumer protection and assistance in case of cross-border consumer disputes. Please note that not all national centres are competent for property purchase and selling

http://europa.eu.int/comm/consumers/redress/ecc_network/index_en.htm

❖ Conseil supérieur du notariat

Notaires de France
31 rue du Général Foy
F-75383 Paris Cedex 08
Tel: 0033-1-44 90 30 00
or 0033-1-42 93 98 39

<http://www.notaires.fr>

❖ Centre des impôts des non-résidents

9 rue d'Uzès
F-75094 Paris Cedex 02

❖ Association nationale pour l'information sur le logement ANIL

2 boulevard Saint-Martin
F-75010 Paris
Tel: 0033-1-42 02 05 50

www.anil.org

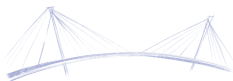
❖ The International Real Estate Federation FIABCI

Fédération internationale des professions immobilières FIABCI
Secrétariat général
23 avenue Bousquet
F-75007 Paris
Tel: 0033-1-45 50 45 49

<http://www.fiabci.com>

Thanks to the precious help of our colleagues from the European Consumer Centre Luxembourg, who provided us with their brochure "*Achat d'un bien immobilier en France*" and from the European Consumer Centre Dublin, who corrected our English, we were able to write this comprehensive brochure. We hope that this cooperation will allow all readers to get a first overview of the complex property buying procedures in France. For further information or in case of a cross border consumer dispute do not hesitate to contact us or our colleagues from the European Consumer Centres.

Whilst every effort is made to ensure accuracy, the European Consumer Centre cannot be held responsible for matters arising from any errors or omissions contained in this publication.



EURO-INFO-CONSUMMATEURS



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Conseil régional d'Alsace, Conseil général du Bas-Rhin, Communauté urbaine de Strasbourg