



The guide to buying property in France without too many surprises

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## **Buying and Selling in France**

**The buying process** in France is similar to that of Scotland.

When you make an offer for the property, if it is accepted, then you will immediately, probably on the day of acceptance, in the evening, be expected to sign the *Compromis de Vente*. Once signed this document is equally binding on the vendor and the purchaser.

**Once it is signed the vendor cannot 'gazump' you if they get a better offer. Equally the purchaser is committed to the buying the property or losing their deposit.**

If you make the offer verbally to the Estate Agent or Vendor then, if they accept, you will be required to sign the '*Compromis de Vente*' almost immediately.

The *Compromis de Vente* is a legal contract, normally drawn up on a pro forma document by the estate agent or possibly a Notaire. It is a very serious legal document and you need to make sure that all the purchasing details are correct before you sign.

You will be expected to transfer by bankers draft a deposit of between 5% & 10% within the next 48 hours to the Notaire who is handling the sale.

Even if a 5% deposit is accepted, failure to proceed with the purchase will incur a 10% fine. The same is true for the Vendor – if they fail to sell to you they are liable to hand you 10% of the agreed purchase price.

If you are buying without a mortgage then there will basically be no 'let out' clause in the *Compromis de Vente*.

You sign the *Compromis de Vente* agreeing the sale price, commission to the Estate Agent and the 'legal fees'. Put down a deposit of between 5% and 10%. To put down 5% deposit is considered normal. (If you fail to go ahead with the purchase you are liable to a forfeit of 10% of the total price.) Normally your deposit is paid to the Notaire that will be acting for you.

If you have a French bank account then sometimes the Notaire will agree to hold the cheque for a period without actually cashing it and paying it into their client account a few days before the completion of the sale. Completion always takes place in the Notaire office. After all the documents have been signed the Notaire hands a cheque to the vendor and a cheque to the estate agent. Whilst there are deeds – a packet of documents for the purchaser the title is registered at the town hall and is actually the legal proof of ownership.

Notaire all work on a fixed by law commission rate. The 'legal' charge you are obliged to pay of between 8-10% on top of the purchase price mainly goes to the French Government as a sort of house purchase tax. A proportion of this is retained by the Notaire for their fee.

**After signing the *Compromis de Vente***, normally in the Immobilier office, there is a seven day cooling off period, during which you can cancel the deal by sending, via recorded delivery, a letter stating you wish to cancel. It must be in letter form and it must be by recorded delivery and it needs to be with the vendor, agent or Notaire within the seven days.

**Within the *Compromis de Vente*** are various possible clauses which you may be inserted.

**If you need a mortgage** then you will be required to state how much exactly, to name normally three banks or mortgage institutions, which are probably going to supply the money.

You can get out of the purchase if all of the prospective mortgage suppliers state in writing that they refuse to provide a mortgage. This will get you out of the purchase but if any of the banks are willing to supply a mortgage on any terms, no matter how unfavourable, then you cannot escape the requirement to carry on with the purchase.

The *Compromis de Vente* will allow you 45 days to either raise the mortgage or permit the property to be re-marketed if you fail.

If you have a contract signed to sell your existing present property then you need to have stated in the *Compromis de Vente* that you can only go ahead with the purchase if your sale of existing property goes through.

There will be a completion date stated in the *Compromis de Vente* which you must abide by or lose your deposit. (There is an irritating exception to this rule that if the bank cannot complete its paper work and due diligence by the date, then the vendor just has to wait for the bank!) This does not apply to cash purchases.

**If you are selling be very careful.** The Estate agent is required to write to you by recorded delivery, to ask for an extension of time, if your buyer goes beyond the 45 days allowed to get their mortgage.

At that point the contract is no longer valid and you are entitled to put your property back on the market and seek another buyer. This is not to exclude the buyer you already have, but just remove that buyer's **exclusive** right to your property. The estate agents - Immobilier never want to write the letter in case they lose the sale. You are free to use other agents.

You should also be aware that the bank your buyer is using will make an offer of a mortgage 'in principle'. This is NOT a mortgage offer... It merely means that probably they will lend the money. The bank still has to do its due diligence and is not obliged to confirm the offer.

Just because there is a 'in principle' mortgage offer it does not mean the bank actually will come up with the money... If you are selling, less reputable Estate Agents will try to persuade you that this in principle offer is in fact a mortgage offer. It is not and if the 45 days are exceeded you should immediately proceed to find another buyer whilst allowing your purchaser to try to get fixed and final offer from their bank.

**The Survey** as such, does not really exist in France. If you are getting a mortgage then the bank may well require some sort of survey partly to ensure the property really exists. The vendor is by law required to list any defects in the property and any planning problems that they are aware of. If they do not then they are liable for very severe penalties and reimbursement to the purchaser.

All defects, problems, local planning issues must be listed in the *Compromis de Vente*. If you have doubts about the structure then you should employ a local architect or surveyor to examine the building after the *Compromis de Vente* has been signed. If there are issues, not declared by the vendor then a re-negotiation of price or purchase is possible.

**Diagnostic Immobilier** is required by law before a *Compromis de Vente* can be signed. It consists of an 'expert diagnostic' being paid to diagnose the presence of lead in the paint, termites, asbestos, heat loss, insulation, gas regulations, electricity regulations etc etc. It all costs the vendor around €800-1000.

Frequently vendors do not want to have this done as it is expensive and some items within it are only valid for six months. Frequently it is only commissioned at the moment an offer is accepted. There are always diagnostic

companies that are willing to do the work at a few hours notice and supply the results immediately.

As surveys are normally only made or required by banks, frequently these documents give you diagnostic information about the property which can be useful. Estate agents appear to be loath to let you see the diagnostic before the signature of the *Compromis de Vente* in case you use it to re-negotiate the price.

You should insist on seeing the 'diagnostic' some hours before signing the *Compromis de Vente*. Part of the *Compromis de Vente* states you have seen and read the *Diagnostic Immobilier* and accept any problems that it has shown!

If you find something in the 'diagnostic' that worries you then you have every right to bail out... If you just change your mind then you also have every right to withdraw, without any penalty, at this stage, before the *Compromis de Vente* is signed.

**SCI** (Societies Civil Immobilier) If you are purchasing the property via this method or even en tontine, you need to have this information added to the *Compromis de Vente* as it means the purchase is being made by more than one person, so the legal obligations are widened.

(More details of SCI and Tontine on page 7)

Furniture, fixtures and fittings should all be listed on '*Compromis de Vente*'. Often the vendor requests an elevated value for these items. Be wary. When you come to sell one day, the capital gains tax will be based on the price for the property without the 'extras'. You will pay more tax.

Similarly vendors often ask for a part of the payment to be made in 'cash' on the side. (Normally via your cheque to be held by the estate agent until the sale is completed.) The problem again is that when you come to sell you must pay capital gains tax on this money and particularly for an ex-pat, this can be very expensive.

### **How French Estate agents work**

Originally all estate agent work was carried out by a Notaire and although that role has diminished many still offer property for sale. It's worth looking at their web sites, particularly for older properties.

**French estate agents** (Immobilier) charge a staggering 4-8% on top of the sale price, for finding a buyer and filling in and getting the appropriate signatures on a '*Compromis de Vente*' (legally binding contract to buy).

The vendor (Seller) of a property has probably had it valued by several estate agents - Immobilier and placed it with all of them at a set price for the vendor. There is little advantage, if any, in having a sole agent. You will find most properties are on at different asking prices with different agencies. This is because their commission varies and it is normally just added to the price the seller is asking for the property. In reality it is the buyer who is paying the commission to the agent.

When you view a property you will be asked by the estate agent to sign a '*bon de visit*'. This is to ensure that if you subsequently visit the same property again, possibly months or years later, with another agent, the first agent will get 50% of the commission.

Be aware that when you are negotiating to buy, you are negotiating with both the seller and the estate agent. The estate agent will always reduce their commission, particularly if it's in the 8% region, in order to get the sale. You need to beat the price down very hard indeed. The seller will always have an idea of the minimum they will accept and the estate agent will have a minimum commission they will take,

The average price of a family apartment/house in France is €250,000. There are wide variations, with property in the countryside, which few French people want to buy, being much cheaper and property in a fashionable part of Paris or Nice being vastly more expensive.

Many English speaking people buy large properties at very low prices in the countryside, which are not much in demand by the French, Frequently they are very difficult to sell on, except to other Brits or ex pats. If it is a permanent home then most folks end up selling after a few years and buying in a town where there are decent facilities and life is less lonely with better facilities.

Frequently the Immobilier sales staffs are on virtually a 'commission only' employment deal. Legally they have to be paid minimum wage but that is deducted from the first sales commission each month. This makes them very, very keen to do a deal. (They also get a commission on the sale if they introduced the property for sale to their agency.) Therefore there are some properties on which they will get double commission. Be wary if they are trying persuading you one property is better than another. It may be true or it may be a double commission for them.

The majority of Estate agencies are 'franchise' operations and combine to run the web sites and share properties for sale. Orpi & La Forêt for example. Both are good professional agents who see their 'franchise' operations people are properly trained. You will find their web sites are in both English and French and almost every office will have a sales person who speaks English...

Some agents employ local British people to sell for them. French Immobilier - Estate Agents are much like British Estate agents. Some good, some bad, some honest and some not so.... Be wary. They are all charming and helpful but not always that professional after the *Compromis de Vente* has been signed and you are committed.

Some will offer the service of finding good artisans to help you make what ever alterations - changes - repairs you may want to make to your property... Again be wary - sometimes the hard pressed sales personnel are on a commission from the artisans who recover this by sticking it onto your bill at the end of the job!

**Capital Gains Tax.** Be aware that if the property you are purchasing is your 2nd home - holiday home - not your main residence, you will pay up to 70% capital gains tax when you eventually come to sell it. Provided you keep all the bills, any work you have done on the property to improve it, may be deducted from this tax but only if it is done by professionals. DIY work will probably not be allowed. It is worth remembering that work done in 'the black' for cash will not be deductible for CGT.

If you move to France and it is your main home, then you will not have to pay CGT. To prove it is your main home you will need to have 'clocked' into the system and be paying tax in France.

If you are non resident in the UK (because you live in France permanently) but you still receive payments (pensions, investments etc) in the UK will almost certainly pay UK tax on that income but none the less you should declare it to the French tax authorities even though you will not be taxed on it again. As far as I can see there is no cross boarder check on this but in the age of computers you never know, (Post Brexit this may change)

It is very important to be in the French Income Tax system if you are to avoid Capital Gains Tax when eventually, you sell.

If you let your property in France you will have to pay tax on the rental income, French Resident or not. You should take professional advice if your tax situation is not a simple and straightforward.

## **NOTAIRES AND INHERITANCE LAW**

In a similar way to UK solicitor the Notaire function is to make sure that the property actually belongs to the person wishing to sell it, ascertain what loans or mortgages are outstanding on it, offer it first to the 'Marie' (town hall) at the price the purchaser has agreed - normally just a formality.

They also check out that a motorway is not going to be built through the land in the near future. All this takes at least two months and normally it is three months between the signing of the *Compromis de Vente* and the final act of purchase.

The Notaire will write to you giving a date for the final signature - *act definitive* at which stage you need to transfer the funds for the purchase to his account or if you are getting a loan, ask the bank to do so. The total money together with the tax and fees should be in the Notaire account 4 days before the date he has set for the signature.

You should be aware that 'property' in French 'Napoleonic' Law is considered as being part of the family inheritance - follows the blood line. Most marriages in the UK are of a legal type that ensures in France, on the death of one or the other parent the property and bank funds will all go directly to the children bypassing the spouse.

**Even if you have left a will, in either France or the UK, the French property and money will all go to your children when you die and NOT to your wife or husband** but directly to any children, grandchildren or failing that, your brothers and sisters, following the blood line.

Unless it is your intention that your kids get the lot when you die, you need to make arrangements to purchase the property in a way that enables your wife / husband / partner to inherit your part of the property and thus keep their home, if anything happens to you.

There are basically 3 legal solutions to this problem but in the end it is impossible to completely disinherit your children even if you want to. Eventually any surviving blood relative will get the lot when you go toes up! You cannot disinherit them and leave it all to the gamekeeper or au pair.

Even if you make gifts during your life time your children - grandchildren etc can still challenge those gifts after you are gone and eventually reclaim them.

**Communaute Universal or Entre Epouse.** If you are a married couple you may ask the Notaire to organise your purchase in this way so that if either one of you dies then the property goes in its entirety to the surviving spouse. Very similar to English law.

The big difference is that when the surviving spouse dies all the property goes automatically to the children or closest blood relatives. Not to a new partner. No way around that.

This system of purchase works well for married couples with no children from other marriages and wishing eventually to leave it all to their offspring. If that is what you want you must inform the Notaire early on, producing passports, birth and married certificates for all concerned. This method of securing the home/property for the surviving spouse is gaining popularity in France amongst modern French married couples.

**En Tontine** is a method of two people who are married or not married jointly purchasing a property. Each of them is considered to own the property in its entirety, from the outset, so there is no question of children inheriting the half of the person who dies. (This does not stop you having to pay death duties on the half you inherit) It is system that is mainly used in civil partnerships or joint investments with people other than your immediate family. It is not always known or understood by Notaire as the French do not use the system very often but is much favoured by non French people.

You may need to allow the Notaire some time to investigate how it will work in your particular case, but for unmarried people or married people with children by previous relationships; it is an excellent way of seeing your 'partner' does not loose their home.

**SCI** (Societies Civil Immobilier) is a fairly straight forward way of setting up a private limited company which owns the property.

There are 100 shares in the property and they can be divided up between several people. Normally it is 50% between couples. Frequently the main owner keeps between 51 and 55% of the share for themselves. They can then divide the remaining shares between others, but the others do not have the right to 'force' a sale because they own less than 50%. Like joint tenants in the UK, the property passes automatically to the reaming share holders.

You still have to pay death duty on the share the deceased owns.

If you are living in the UK it does mean you can leave the company (and the property) to anybody you like, as the law of the land of the owners residence, takes priority over French Law. You can give your shares to anybody you like in your will.

You still have to pay death duty.

There are disadvantages in that like any company you may have to make annual returns. It varies with which department you are living in and the local tax authority. If you rent the property out it must be rented unfurnished.

If you live in the property yourself there is a chance the local tax office will invent a theoretical rent for the property and require the 'company' to pay tax on that money even though it actually has never received it from you and you own the company.... Normally this does not happen

This system does not avoid death duties. Like all other property in France if the owner dies then the portion of the property owned by the deceased is liable to death duties – albeit under different names.

You should discuss the best way to purchase the property with a Notaire. If you are in any doubt then take specialist advice beforehand.

Notaire are basically tax collectors for the state. It is their function to see that the paperwork and documentation before a sale is completed is correct and that all the monies are in place.

It is always the buyer that pays all the Notaire fees and there is no reason why you have to use the Notaire of the seller although it is safe and frequently done. It is perfectly normal to appoint a Notaire to represent you (even sign the final documents on your behalf if you cannot be present) but in the end their main loyalty is to the state tax collectors and the law and not to you...

### **WARNING ABOUT INHERITANCE.**

As stated before it is impossible to disinherit your children in France under French Napoleonic Law.

If you are a resident of France and one or other of a couple dies, then all the money / bonds / stocks and shares / premium bonds etc the couple possess in **both** France and their home country - **everything**, except property outside France (immovable objects) will, on the death of one or the other, go directly and immediately to the children or grandchildren, whatever your English or French wills might say to the contrary.

Buying via a **SCI** (Societies Civil Immobilier) avoids this immediate inheritance by your children as does buying **En Tontine** as a couple.

If you are resident in France, when you come to 'prove' an English will, the UK will insist you follow French Law and all your 'financial stuff' will go directly to your children whatever your wills might say!!! Even if you have both UK and French wills saying that everything goes to your spouse this will not happen! It will all bypass the surviving spouse and go to the children and or grandchildren. All the survivor will be left with is 'immovable' property' - houses etc.

You need to have a lot of trust in your children and their partners that they will return all the money (which they now rightfully and legally own) to you! Be very aware that the UK, because of its EU membership, will follow French law when one member of a married couple dies.....

What happens after Brexit who knows, but the UK parliament is transferring all EU law to UK law, so I suspect nothing will change much except perhaps taxes for ex-pats living in France.



