

Buyers Market – negotiate a better deal as an “Acte en Main”



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Please note that French law is a complex subject and you should not rely on this article without professional advice on the facts of your case.

Normally, when purchasing a property in France the buyer pays for the notaire’s fees and the seller pays the estate agents commission. In some cases the buyer pays both the notaire’s fees and the estate agents fees when the property is sold on the basis that agent’s commission is “*non compris*”. In both these scenarios, the seller will immediately know what he will receive net, although the buyer will generally be unsure as to the exact amount he has to pay because of possible variations in the notaire’s fees as well as the additional disbursements he may be asked to pay.

A much less used way of purchasing a property in France is known as *Acte en Main* which favours buyers. Under this arrangement, the seller is responsible for all the costs i.e. the estate agents commission and the notaire’s fees and disbursement. The buyer, for instance, will agree to pay a total amount of say €400,000 and will have this amount fixed whereas the seller will have to ascertain what his net amount is after payment of the agent’s commission and the notaire’s fees and disbursements. This can be a useful tactic for a buyer in a market which is difficult for seller for a number of reasons.

Firstly, the buyer has certainty as to the amount of money he is committed to spend. Accordingly, in any negotiations it is difficult for the seller to seek to add on additional amounts if the buyer’s maximum total budget including all costs is specified at the beginning. From a negotiating point of view, you can only negotiate down from a fixed global amount a buyer is prepared to pay rather than up from a first offer. It is generally effective if a buyer tells all agents he visits in the area his same total budget figure as the agents are likely to end up talking to each other and this reinforces the belief there is a maximum figure the buyer will pay in all the agents minds. A buyer who takes the consistent line in negotiations that he will agree with what the seller suggests provided he pays no more than his initial global price should end up in a stronger negotiating position.

Secondly psychologically, the seller is always in a position of having to work out his net position because he will have to ask the notaire to calculate the fees payable on the total sale price. In other words, if the buyer says his budget is €400,000 all included then the seller will have to subtract the agent’s commission from the €400,000 say €20,000 leaving €380,000. From this €380,000 the notaire will then need to compute what net amount the property has to be sold for to come to €380,000 including all his costs and disbursements.

The third advantage is that all the costs are down to the seller. In other words, any additional payments for disbursements will have to be billed by the notaire to the seller. This will include any disbursements incurred by the notaire in any abortive transaction. As such, if there is likely to be any difficulty with the property, the risk is then on the seller to pay the abortive costs rather than the buyer which improves the buyer's negotiating position from the outset.

It also means that if the seller knows there are complications with the property, he will be reluctant to go down this route and have abortive costs which immediately flags up any problem with the property to the buyer. It also means that there will be pressure on the agent to reduce his fees from the seller which is likely to be far more effective than the buyer asking for the fees to be reduced. An agent who wants to achieve a sale in a slow market and who is pressurised by a seller seeking to increase his net sale proceeds is likely to reduce his commission below the amount agreed in the *mandat* after he has shown a property to a buyer who at the outset has a fixed stated global budget.

In these scenarios, it is normal for the buyer to use the seller's notaire who at the outset should be informed the sale is *acte en main*. In some cases, notaires can use a procedure known as "Article 4" in which they can increase their fees if transactions become complex or they need to employ say a translator or have additional work. They may also seek to increase their fees if for instance the buyer wants a power of attorney or a marriage contract prepared. If, however, the matter has been agreed on an *Acte en Main* basis, with all the above included at the outset, then it will be much harder for the notaire to increase his fees. If he does so, the effect will be to reduce the money the (usually French) seller receives, which puts the notaire in a very difficult position again if he knows the buyer has a fixed budget. In an *Acte en Main* sale the buyer's notaire's costs for registering any mortgage are however excluded from the transaction (though there is no legal reason why you could not at the outset agree they must be included). In other words, in a normal *acte en main sale* any notaire's costs resulting from registration of a mortgage will be payable by the buyer and not by the seller.

Thirdly there is a small advantage in that the *Acte en Main* procedure results in a lower purchase prices for stamp duty, as the seller is paying the costs which reduces the overall price. It does, however, mean that on a resale for capital gains tax purposes the new owner will start with a lower base costs, though this is likely to be viewed as academic by most buyers at the time of purchase.

It is likely that making an offer "Acte en Main" is more likely to be considered by sellers in a flat or falling market rather than in buoyant market. In an improving market sellers will not want to negotiate on this basis.

March 2010

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