

## **Buying a French property in a rising market**

*Please note that property law is a complex subject and you should not rely on these notes without professional advice on the facts of your case.*

We have noticed that the property market in the more desirable parts of the Cote d'Azur, the Alps and Paris has started to move in favour of sellers. This means that buyers are being put under more pressure to make up their minds quickly than was the case say 6 months ago. Buyers should however still be cautious about entering into binding commitments and ensure that the necessary checks are carried out beforehand and not be pressured into signing by estate agents.

### **"Offre d'achat"**

As the market improves buyers are sometimes asked to enter into an "*offre d'achat*" which is an offer to buy. This is usually a short document under which the property is identified, a price is stated with a deposit and in which there can be some suspensive conditions or let out clauses. The suspensive conditions may include obtaining mortgage finance or obtaining planning permission to develop the property. The seller is usually given a specified time by which he can accept the offer. It is important to appreciate that the "*offre d'achat*" is usually a binding contract. So that if you sign an "*offre d'achat*" which is sent to the seller and he accepts it within the stipulated time period then you have a binding contract. This means that the seller can sue you for the agreed deposit and indeed possibly for damages if you do not go through with the purchase. It is important to realise that in France there is no equivalent of the English "subject to contract" under which heads of agreement can be drawn up which are the intentions of the parties but not binding on them.

Once an "*offre d'achat*" has been signed the next stage is usually to move to a formal "*compromis*" which is similar to an English contract. The "*compromis*" will recite the main terms of the "*offre d'achat*" and may contain some additional clauses but it has to follow the basic terms of the "*offre d'achat*". After the "*compromis*" is signed, and assuming that the various suspensive conditions have been fulfilled then the final transfer or "*Acte Authentique*" is prepared by the notaire.

Under an “*Offre d’achat*” provided you are purchasing as an individual (not as a company) and the property you are purchasing is a residential property you will still have the 7 day cooling off period from receipt of the formal notices to this effect. However buyers should be aware that if you are purchasing development land or a commercial property then the 7 day cooling off period does not apply. If you are purchasing using a company then the 7 day cooling off period will generally not apply. In these circumstances once the “*offre d’achat*” is accepted by the seller you are bound.

### “Caves”

Another problem we have seen arising with purchases concluded very quickly is difficulties over cellars and ski boxes. Typically the description of the property normally includes reference to a cellar or “*cave*” or to ski boxes or other storage areas. In practice it is often very difficult to locate where these are situated in the building and in some cases the seller may have informally sold them off or rented them out. This can cause considerable difficulties shortly before completion. Accordingly we recommend that when you agree to purchase a property you insist upon inspecting any cellars or ski boxes or such like and ensure that the storage areas are opened and that only the belonging of the seller are therein.

In some cases the storage areas have been communal areas which have been boxed off and made into de facto private areas. In such cases it will be unlikely that the position will have been formally documented. It is possible that the seller may have obtained good title to the storage spaces provided it has been used by them or their predecessors exclusively for at least 30 years. Often this is difficult to prove and we recommend that the notaire is asked to put a declaration in the Purchase Deed that the seller warrants that they and their predecessors in title have occupied the storage area uninterrupted for at least 30 years.

Even if this is included in the Sale Deed it is difficult to have the matter formalised. This is because if you wish to take property which is part of the common parts and incorporate it into your own personal title then you require the agreement of all the members of the co-property. This is the equivalent in England of getting all the

leaseholders in a building agree that the common parts can be registered as your personal property. In practice we have never seen this achieved.

At a practical level before completion you should check that the storage area is empty. If not insist on a letter from the seller confirming that the contents belong to him and you can dispose of them.

### **Cooling off notices**

Care needs to be taken with regard to the 7 day cooling off notices. We have seen instances of estate agents on larger transactions insisting that they travel to England and sign the contract with the buyer although this is not necessary as the contract or "*compromis*" is not a notarised document. The main reason for doing this appears to be to hand the buyer the 7 day cooling off notice so that 7 days after signing the contract the estate agent knows that the contract has been entered into and the buyer cannot cancel it. The alternative is for the notaire to send a notice by recorded delivery from France although obviously there are the usual postal delays. Apart from putting pressure on the buyer this is probably ineffective as there is recent case law in France which states that simply handing the notices to the buyer is not sufficient and that they must be served by recorded delivery through the post.

### **Power of Attorney**

Most notaires will ask you to sign a power of attorney so that any clerk in their office can sign for you at completion. This is not sensible. You should be present at completion as we regularly see changes being made in the final deed which can prejudice buyers. The documentation is generally treated as subject to changes right up to final signing and some notaires adopt a flexible attitude to ensure that matters complete. You will have no recourse against either the notaire or your seller because the power of attorney is viewed as giving the notaire wide discretion to make amendments to the final deed of sale.

### **Conclusion**

The main point purchasers should take from all this is not to sign documentation which is presented to them shortly after they view the property. Even in a market which is now turning and starting to rise it has to be sensible to at least carry out some

basic checks on the property and to make sure that you understand what you are signing and understand when you are bound by the contract and potentially liable to pay a deposit or damages if you decide to withdraw.

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