

# FROM STRATEGY TO DEEDS

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## SELLING AND BUYING REAL ESTATE GUIDE IN 5 KEY STEPS

### Contents

THE 5 KEY STEPS IN SELLING AND  
BUYING REAL ESTATE

STEP 1 : THE DECISION TO SELL  
OR BUY

STEP 2 : THE PRE-CONTRACT

STEP 3 : BETWEEN THE PRE-  
CONTRACT AND THE SALE

STEP 4 : THE SIGNATURE OF  
THE SALE

STEP 5 : AFTER THE SIGNATURE

Buying or selling real estate is a major operation, which is developed and prepared in advance. This general rule is particularly true as buying or selling real estate has become extremely complex, due to the extensive and varied legislation, at the junction of different public (town planning operations, social diversity, credit control...) and private interests (ownership rights, tenant rights, building rights...).

To this we need to add the legislator's strong desire to provide the buyer with maximum protection, by structuring the sales process in binding procedures (period of reflection, handwritten statement of the Scrivener law...). Notary deeds are a testimony to these developments. At the beginning of the last century, sales deeds took up several pages. Today, the smallest deeds often exceed 100 pages if one adds the many appendices to them.

At a time when it is possible to purchase anything with 3 clicks on the Internet, "notaries' time" appears to be very long. However, securing one's real estate is clearly worth waiting a while, considering the importance of the matter.

The purpose of this guide is to enable you to follow the five key steps in the process of selling or purchasing real estate, finding the necessary documents to put forward and understanding the "notaries behind the scene proceedings" in relation to your deed.

## STEP 1

# THE DECISION TO SELL OR BUY

The so-called "pre-contractual" period will enable supply to be matched with demand. It begins with the real estate owner's decision to put his property up for sale and ends when a buyer decides to purchase it at a price that is agreed by both parties.

### THE "FAIR" VALUATION OF THE PROPERTY

The issue of valuation is obviously a key concern, both for the seller and the buyer. On one hand, a seller aims to maximise the selling price, without scaring off potential buyers. On the other hand, the buyer wants to minimise the purchase price, without seeing his offer rejected. Therefore, it is essential that both parties know about the property market at the time of the deal. Many tools are available: real estate advertisements (on paper and/or through subscriptions to email alerts), real estate market statistics provided by notaries, websites and of course advice from real estate professionals.

### FOR THE SELLER: ORGANISING THE SALE

#### Choosing how the property will be put on the market

While France is a country where direct sales between home owners are highly developed, the constraints

related to this choice should not be underestimated. Unless the seller is highly available and motivated, it is better to use an estate agent: writing and renewing ads, answering phone calls, having the property visited – occasionally several times by the same candidate – answering many different questions, sorting between the different serious (and less serious) offers, is indeed a real profession.

#### Forming a complete dossier to sell in both the best conditions and as quickly as possible

Eventhough many documents need to be included, these are essential to provide the relevant information to reassure the buyer and allow him to decide quickly. They cover both factors which enable the ownership to be materialised, as well as information on the property itself, in the form of technical diagnostics (see list on [www.althemis.fr](http://www.althemis.fr)).

However, such research may require time and reveal a need to regularize:

▶ You can no longer find your title deed (certified copy of your terms of purchase) and it is necessary to request a copy of this from the land registry.

▶ You have attached a common part with the permission of the joint owners, but nothing has been officially entered into the property data file. It is therefore necessary to anticipate and consult your notary as soon as possible so as to best prevent any unexpected difficulties, and therefore prevent the buyer trying to renegotiate the price thereafter, due to information that he has not been provided with when the offer was made.

#### Carrying out an initial assessment of capital gains tax

In the current state of legislation, any capital gain will be exempt from tax if it concerns the seller's main residence, or if the property has been owned for over 15 years. Otherwise, the capital gain will be taxed at a rate



## THE DIFFERENT TYPES OF MANDATE

The exclusive mandate gives the exclusive right to sell a property to a single estate agency, which is obviously more motivated. You may also sign a joint-

exclusivity mandate (two agencies) to diversify. Mandates without exclusivity clauses mean that you can give as many mandates as you wish.

However, be careful not to choose too many agencies as commercially, this may "undermine" the offer and discourage agencies. Whatever the type of mandate,

you also have the opportunity to reserve the right to find a buyer directly by yourself, provided you include this in the contract.

of 16% or 33% depending on your tax residency, and will be subject to social contributions at a rate of 12,1% (which does not apply if you are not a French tax resident). However, note that the capital gain is reduced by 10% per year of ownership beyond the fifth year. In order to calculate the purchase price, the costs incurred in acquiring the property must be taken into account (registration fees, notary fees, estate agents' fees):

► If the property has been acquired against payment, it is possible to deduct a fixed charge of 7,5% without proof, which will obviously be replaced by the real amount if this is higher (and if it can be justified).

► If the property has been received as a gift or as inheritance, it is the actual amount of fees and transfer taxes that will be taken into account, provided that the seller has borne these costs. In theory, the cost of works also needs to be taken into account. However, few charges are deductible for their real amount, as only improvement works, in the fiscal sense of the term, are considered (and not maintenance or repair works), provided that they have not already been taken into account in the calculation of income tax. If the property has been owned for over five years, it is often more advantageous to apply a fee equal to 15% of the purchase price, particularly as no evidence is required. However, be careful, as these rules only apply to



## Althémis' advice

If you are close to the anniversary date of your purchase, it might be worth waiting to sign at a later date, as this will enable you to benefit from an additional allowance of 10% on the capital gain.

sales made in France by French tax residents. For non-residents, each case needs to be treated in a specific way, in particular depending on the place of fiscal residence.

(unless the property is subject to VAT), notary fees and any costs of borrowing and collateral (mortgage or deposit) and of course estate agency commissions.

### FOR THE BUYER: THE CRUCIAL ISSUE OF FINANCING

#### Financing a property

From the buyer's viewpoint, the most important issue is that of financing: personal savings, borrowing capacity, family assistance in the form of loans or gifts. Of course, in the event of several buyers (married couple, couple living together under a civil partnership, or simply living together without legal ties, buying as a family, etc.), special arrangements will need to be taken

(See page 9 "Origin of money in the event of several parties buying").

Therefore, the overall budget to be considered includes the price of the property, plus registration fees



### Notaries' tools

For information on property statistics, valuing your property, calculating expenses and taxes relating to purchases, please visit our website [www.althemis.fr](http://www.althemis.fr), which will redirect you to sites of notaries in the "useful links" section under "property".

### Simultaneous buying and selling or bridge loan?

When you already own a property which needs to be sold to finance the new purchase, the ideal situation is to be able to coordinate the two transactions, although this often proves to be difficult. This raises a dilemma: should I sell before buying, with the risk of finding myself effectively "homeless" and to have to rent somewhere, or should I wait until I have bought somewhere else before selling? While there is no perfect solution, both options have distinct advantages and disadvantages. Selling before buying gives the seller a total guarantee, whereas doing the opposite means "time has to be bought" through a bridge loan, which automatically presents more

### Example for calculation of capital gain

<b>(1) SALES PRICE ON (01/12/2009)</b>	<b>€457.000</b>
(a) Purchase price on 26/12/1999	€300,000
(b) Purchasing fees (7,5% fixed fee)	€22,500
(c) Additional cost due to works (15%)	€45,000
<b>(2) Cost price (a + b + c)</b>	<b>€367,500</b>
<b>(3) Gross capital gain (1 - 2)</b>	<b>€89,500</b>
<b>(4) Allowance (10% x 4 ans)</b>	<b>40%</b>
<b>(5) Net capital gain after reduction (3 - 4)</b>	<b>€53,700</b>
<b>(d) General allowance</b>	<b>€1,000</b>
<b>(6) Taxable capital gain</b>	<b>€52,700</b>
<b>(7) TAXES AND LEVIES (28,1%)</b>	<b>€14,809</b>

In this example, delaying the sale until 26 December enables the seller to benefit from an allowance of 50% instead of 40%, meaning a tax saving of €2,234

risks, particularly in a difficult real estate market. As such, it is clear that the signing of a sales promise on the property to be sold will facilitate the bank's agreement. However, if the property is not sold within the required time span, the downward pressure on prices becomes very heavy. If there are alternatives to selling the property (redemption of life insurance, sale of another property...) this risk is reduced. ■



## THE PURCHASING FEES

<p>On the sale of property, the buyer must pay the notary an amount (incorrectly called "notary fees"), which corresponds to levies and taxes, the payment of external parties (surveyor, condominium)</p>	<p>and the remuneration of the notary. The latter is set by the State, based on a fixed rate and is the same for all notaries. For the sale of property worth one million euros, these expenses total approximately 6,35%</p>	<p>of the property's selling price, 84% of which is due to the Treasury. In this example, the notary's fees represent less than 1% of the total price.</p>
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## STEP 2

# THE PRE-CONTRACT

**When the seller and the buyer have reached an agreement on the property and its price, this should be formalised by the signing of a pre-contract, which is the key part of the transaction, for which it virtually sets the final framework. This explains the great importance of having it drafted with the assistance and advice of a real estate professional either a broker or a notary. The notary should be associated from the outset, particularly when dealing with complex transactions: selling land to be built on, large properties, properties that have specific legal difficulties...**

### UNILATERAL PROMISE TO SELL AND RECIPROCAL SALES PROMISE

There are two types of pre-contract: the unilateral promise to sell and the reciprocal sales promise. Very different in their philosophy, they have nevertheless become more similar over time in their practical consequences. Moreover, the two formulas benefit from a cooling-off period of seven days and the condition precedent of obtaining a loan.

#### The unilateral promise to sell

In the unilateral sales agreement, the seller undertakes to sell, with the buyer having the option to purchase or not, until the exercise date of the option. Before this date, he remains free not to complete the acquisition, provided that he pays the compensation detailed in the contract to the vendor (usually set between 5% and

10% of the price) to remunerate him for holding the property for him over the period. The advantage of the unilateral promise to sell is that it is easier to leave, both for the buyer (who loses his reservation fee, but who will never be compelled to buy for as long as he has not exercised the option) and the seller, who may resell the property more quickly if the buyer does not exercise the option to buy.

#### The reciprocal sales promise

Conversely, the contract for sale and purchase is a synallagmatic contract, to which both parties are committed: furthermore, the Civil Code provides that the "contract for sale and purchase is as good as a sale". The buyer is obliged to buy "unless a condition precedent is not fulfilled" and in the event of refusal on his behalf, he is liable to pay damages (usually pro-

vided on a contractual basis of 5% to 10% of the price), as well as a judicial enforcement of the sale (with obligation of paying the price).

#### The selection criteria

The two pre-contracts have both advantages and disadvantages. In general, estate agents use the reciprocal sales promise. Regarding the notaries pre-contract, there is usually a geographical split (partly linked to real estate prices) between Parisian notaries, who usually use the unilateral promise to sell, and notaries in the provinces, which often prefer the reciprocal sales promise.

### DOCUMENTS REQUIRED FOR THE PRE-CONTRACT

The party drafting the sales agreement or contract for sale and purchase must have a number of



## Althémis' advice

If you are a seller, it is better not to accept a bid from the potential buyer (it represents a real commitment), but rather sign a pre-contract, which involves agreeing on other factors than the price alone.

documents to have a good overview of the dossier. This list is variable, depending on the nature of the property and their legal situation: title deed, civil status of the sellers and buyers (including their marriage contract), obligatory technical diagnostics. If the property is, or has been rented, a copy of the lease, release letter sent by the tenant, or notification of leave, serving as an offer for sale. To this we can add the last property tax notice, co-ownership rules (and/or the specifications of the sub-division), in addition to the three last minutes of joint owners' meetings. If the property is owned by a civil property company, a copy of the articles of association is essential. In the event that works has been carried out on the property, it will also be necessary to provide a

copy of the planning permission (building permit or statement of works) and a copy of the "renovation works" insurance policy if the construction, expansion, raising, or transformation works has occurred within the past 10 years.

### WITHDRAWAL PERIOD

When the building will be used for residential purposes (for use as the buyer's primary or secondary residence, or even for the housing of a tenant), the buyer has a period of 7 days (from the personal hand delivery against receipt or notification made to him of the pre-contract) to cancel the agreement.

### CONDITION PRECEDENT FOR OBTAINING A LOAN

The Code of consumption states that

when the buyer intends to pay the purchase price using one or more loans, the sale is made under the condition precedent of obtaining them. Specifically, if the loan is not obtained, the buyer may be released from the pre-contract without any penalties. It is therefore understandable that this clause should be strictly controlled: description of the loan conditions (length, type, maximum rate of interest excluding insurance), with deadlines set to make requests and to obtain the loan. The law provides for a minimum of 30 days, although it is more realistic to expect 45 days. If the buyer says that he will not take on a loan, he will have to state this in the deed, in the form of a handwritten note, with the latter aimed at making him aware of the consequences of this choice.

### RESERVATION FEE (OR SECURITY DEPOSIT)

As part of the pre-contract, the buyer will show his commitment by paying a sum, called a reservation fee for the unilateral promise to sell or security deposit for reciprocal sales promise. It is customary to pay 10% of the price, but for large amounts it is becoming increasingly common for parties to agree to pay only 5% on the signing. This sum is collected by the notary and deposited on an escrow account. If the sale goes ahead, the amount paid shall be subtracted from the sale



## SINGLE DWELLING

### The importance of the issue of sanitation

Regarding sanitation, it is important that the seller gives the most accurate information possible about the property's access to the public drinking water supply and sewer systems. Eventually, it will be mandatory in all towns to

have a separate connection for rainwater and wastewater. In order to best inform the buyer, it is desirable to produce a certificate issued by the management service or the town to determine if the connection meets re-

quirements or not. When there is no link to the collective network, this may either result from the absence of a publicly accessible network, or from a connection dispensation. In this case, you should

know that the buyer may be forced to connect the property, at his own expense, within two years after the installation of the network.

(Article L 1331-1 of the Public Health Code).

price, but if it does not go ahead, everything depends on why it has not:

▶ If the buyer cannot sign because his loan has been refused or a condition precedent has not been fulfilled, the sum is then returned to him.

▶ If the buyer is at fault, the contract provides that the agreed sum be paid to the seller (who will ask the buyer for the payment of the supplement only if a fraction has been paid at the outset). ■



### Setting up a French real estate holding company ("SCI") to purchase

If you wish to set up an "SCI" to make your purchase, a right of substitution should be included in the pre-contract. Furthermore, if bank funding is used, the bank must promptly be informed of this purchase scheme, as well as being provided with copies of the draft of

the by laws (i.e memorandum and articles of association) With regard to the loan, there are two possible solutions: either the bank lends to the real estate holding company, or the bank lends to the partners. In turn, they make a contribution in cash onto the holding com-

pany, either in what is called a "shareholders' current account". or in capital, in order to fund the acquisition. This company can meet a number of objectives: to avoid joint ownership, separating "the asset and the power", optimising the transmission, better protecting the spouse, etc.

## STEP 3

# BETWEEN THE PRE-CONTRACT AND THE SALE

**During this period, the parties must take a number of steps to ensure the transaction is successfully completed. The notary himself analyses and processes the items that are necessary at the signing of the sale agreement.**

### STEPS TO BE TAKEN BY THE BUYER

The buyer must take the steps that are necessary to remove conditions precedent that have been set in his favour. These mainly concern the obtaining of funding or town planning approvals that are necessary for his project.

#### Obtaining funding

The buyer must meet the deadlines set in the pre-contract, first to deposit his loan offer, and then to prove that he has obtained the credit. If on the agreed date the loan application has not been approved, two situations need to be distinguished between:

▶ Either the buyer is denied the loan; in this case the law provides that the contract is void. He then recovers the

amounts paid as the reservation fee or the security deposit. Meanwhile, the seller becomes free again to sell the property to another person.

▶ Or the bank has not yet responded, in which case the seller has the opportunity of asking the contract to become null and void. If the buyer wants, and the seller accepts, an additional delay may be agreed, waiting until the bank gives its response.

#### Obtaining a license or building permit

If the buyer has subjected the completion of the sale to obtaining a building permit (or other planning permission), the period between the sales promise and the sale enables him:

▶ to file his application for a building permit,

▶ to obtain the response from the competent authorities (depending on the case, this takes between 3 and 5 months),

▶ to serve the time for third parties to recourse (2 months) and the authorities' right to withdraw (3 months), the time limit for third parties to recourse runs from the display of the building permit on the land and must remain throughout the duration of the time limit for third parties to appeal (two months).

The best solution would be to have an affidavit drawn up by a bailiff at the beginning, in the middle and at the end of the period.

## COMPLETION OF THE DOSSIER BY THE SELLER'S NOTARY

In order to finalise the sale, it is necessary to collect and analyse a number of documents, most of which are requested by the notary.

### Control of the mortgage situation

This aims to check if the property is attached to a registration of mortgages that is still outstanding. If this is so, then the creditor should be approached to conduct a release of the registration, the cost of which is borne by the seller (e.g. the simplified release of a mortgage corresponding to an original loan of €500,000 is accompanied by a cost of around €1,400). In fact, in the absence of a release, the mortgage would remain attached to the property, even though it would have changed ownership. If there is still an outstanding amount, the creditor will give his agreement, but will demand a full reimbursement. In practice, the settlement is carried out by the notary in the form of a levy on the selling price.

### Obtaining information from the land survey register and urban planning

This concerns giving the buyer general information on the property's situation in terms of planning regulations (planning constraint, whether or not there is a pre-emptive right, no dangerous structure notice,



## Althémis' advice

An early entry of the buyer in the property, either to live there, or to carry out works, is highly risky, both for the seller and buyer. Between the promise and the sale, many things can still happen and compromise the transaction: pre-emption of the property by the town, failure to obtain the loan, death of the seller or buyer, fire...

information on quarries...). In order to establish this part of the dossier, the notary is usually required to appoint a surveyor. However, the buyer may only abandon the sale if the information reveals defects or constraints that have not already been pointed out and which prevent the use of the property for its intended use, or which cause significant detriment to its market value: expropriation, decree regarding danger or an unsafe property, classification in a reserved spot or other, aligning with a public road etc.

The information which is provided when the sale takes place remains very general. If the buyer has a particular project, he should directly approach the town's urban planning

services to ensure its feasibility. Furthermore, the information provided concerns the site itself, and not its surroundings. Once again, the buyer must directly contact the public services if he wishes to have specifications on potential projects near the property (building of a new road, new public facilities...).

### Pre-emption rights

The law provides a number of pre-emption rights which enable their beneficiary to buy the property instead of the original buyer: urban pre-emption right benefiting towns, the SAFER pre-emption right in rural areas, pre-emption right for the tenant (if he has been given a notification of intent to sell, or even if it



## MORTGAGE OR MUTUAL GUARANTEE:

For mortgage lending, banks usually require a guarantee, which may take several forms. The first is a mortgage (if the funding is to acquire property it takes the form

of a privilege of a fund lender). In the event of default, this enables the bank to seize the property and have its credit reimbursed from the sale of the property.

The other solution is to ask a specialised agency (subject to its remuneration) to act as a guarantor. In the event of default, the guarantor agency reimburses the bank and

then turns against the debtor to sell its assets to ensure the repayment. Both solutions have advantages and disadvantages which need to be discussed with the lender.



## INDIVIDUAL ENTREPRENEURS: consider the declaration of non-seizability

For individual entrepreneurs (excluding those acting through a company), the law provides the possibility of protecting private property from claims from future trade creditors. It suffices to make a declaration of non-

seizability by deed, especially when the property is bought, so as to benefit from this protection, to which it is possible to waive for all or part of the property, possibly to the benefit of certain creditors only.

The concept of private property concerns the main residence, as well as other properties that are not used by the entrepreneur for his professional use, held directly (no civil property company).

### Information from the co-ownership association

When the property is jointly owned, the notary must ask the co-ownership association, using a questionnaire entitled "dated statement" ("état daté"), which provides information on the jointly-owned property's situation (unpaid charges, works, procedures, amount of working capital or insurance to be reimbursed by the buyer to the seller, asbestos, etc.).

The information provided gives rise to a remuneration of the co-ownership association. This remuneration is determined at the general meeting of joint owners and varies between €250 and €450, depending on the co-ownership associations.

The law considers that this cost is to be borne by the seller and that its settlement is usually made by the notary from the sale price, so as to avoid early transfers of cash.

If there is a general meeting between the pre-contract and the sale, it is often provided that the works that have been voted are the responsibility of the buyer, provided that the latter has been able to participate in the said meeting and that he may vote at it, using a power that has been transferred to him by the seller. Failing this, the work remains the responsibility of the seller. ■

concerns a first sale after creating a co-ownership), right of joint owner... contractual pre-emption rights, provided in a family or neighbourhood may also be added...

The "removal" of these different rights may give rise to formalities that are sometimes tricky (need to serve several pre-emption rights that accumulate...) and often long (towns are allowed a period of two months to answer urban pre-emptive rights). Nevertheless, this is essential for the sale to go through properly, and cannot be avoided, under penalty of annulment.

### Verification regarding the parties in the sales contract

The notary gathers the necessary documents from town halls to validate civil statuses and legal ties (civil partnership, marriage...) and ensure that there is no civil recording that may affect the parties' ability (opening of guardianship proceedings for example...). If the sold property has been acquired following a donation, the agreement of donors and of other children will generally be required to prevent a later questioning of the sale in the event of interference with the part of the legacy which cannot be withheld from the rightful heirs.



## WHICH NOTARY TO SELL OR BUY?

There is a free choice of notaries (no territorial exclusivity) and both the seller and buyer may choose their own notary. In the presence of two notaries, the question arises as to who "holds the pen", i.e. who drafts the pre-contract and the deed of sale. The determination

of the notary that will draft the documents depends on the rules of the notaries profession, which vary according to notary chambers and which at times may be quite complex. Simplifying, we can say that it is usually the buyer's notary who drafts the deed of sale, while the seller's notary

then provides him with an "information pack," including the items that are necessary for the property sale. When the seller's notary is found to be in the same area of jurisdiction as the property being sold, while the buyer's notary is found in another jurisdiction, then the seller's notary drafts

the deed. The notary's fees are to be paid by the buyer and are shared between the seller's notary and the buyer's notary.

.....  
As such, there is no additional cost relating to the intervention of two notaries.  
.....

## STEP N°4:

# THE SIGNING OF THE SALE AGREEMENT

**Completion of the property's acquisition, the signing of the sales deed records the payment of the price and the transfer of ownership.**

### FINANCIAL ITEMS

#### Payment of the price

On the day of the sale, the buyer must ensure that he can provide a cashier's cheque (a cheque that is signed by the bank itself), which is payable to the notary who has drafted the deed. A cashier's cheque must be issued: apart from the fact that the notaries' profession has made this a professional standard, only the provision of a cashier's cheque will enable the seller to receive the price on the same day as this type of cheque guarantees the underlying provisions. The only alternative is to provide a bank transfer directly onto the account of the Caisse des Depots et Consignation of the notary. In this case, it will be necessary to make the transfer early enough so that the funds have actually been credited to the notary's account on the day of the sale.

If the price is paid using a loan, coupled with a mortgage guarantee (notarized loan), the notary will proceed to deal with the release of the loan amount. However, if the loan is not secured by a collateral security mortgage (under private seal) it is the buyer's responsibility to contact his bank to ensure that the loan is released, by providing him with an appropriate copy of the letter confirming the meeting sent by the notary.

#### Origin of funds in the event of purchase by several parties

If two persons who are married under a community regime settlement decide to acquire a property, it may be important to make a state-



### Althémis' advice

In the event of the purchase of property by people who are bound by a pact of civil solidarity or who cohabit, it is crucial to determine what will happen to the property in the event of the death of either partner. When one party wishes for his/her share of the property to be returned to the other, a will has to be written, as neither the cohabiter, nor the partner of a pact of civil solidarity are heirs by law.

ment of reinvestment, assuming that one of the spouses primarily finances the purchase with his/her own funds, or which come from the disposal of one of his/her assets (assets owned before marriage, or received during marriage by gift or inheritance). In any case, a reminder of the origin of the money will enable the informa-

tion on the funding to be kept. If the spouses are married under the regime of separation of property (or the contribution to jointly acquired property regime), the proportion in which they buy must match their respective contributions. Otherwise, the funding by one spouse of all or part of the share registered in the



### THE SALE IN FUTURE STATE OF COMPLETION (VEFA)

This type of sale (for buildings under construction) is very heavily regulated when it concerns property for residential use, with the aim being to provide a maximum

protection of the buyer. The payment is based on a grid set by law. Similarly, the property developer is obliged to provide guarantees or completion; either as repayment should he

encounter difficulties in completing the construction. Finally, a number of compulsory statements must be included in the deed; if not, it is void.



## Althémis' advice

So as to avoid unpleasant surprises (property still occupied, furniture not moved or water damage) it may be advisable for the buyer to ask to revisit the property the day before signing and take advantage of this to read electricity and water meters.

name of the other spouse might be a source of difficulty in the event of divorce or death. If it is a loan, a donation (in theory taxable as a gift) or even remuneration (when the spouse is a volunteer in the company or when he/she does not work to devote him/herself to bringing up children)? All interpretations are possible and represent endless sources of conflicts.

### Property tax refund

Property tax (taxes foncières) is payable by the owner on January 1st. In the event of a purchase during the year, it is generally accepted that the buyer reimburses the seller the proportion of property tax (prorata temporis), corresponding to the amount on the day of the sale until 31 December. The reimbursement is made at the time of the sale and the calculation is compared to the last known amount, which is sometimes lower

than what the seller must actually pay. Nevertheless, the fact that the issue is solved in advance has the major advantage of avoiding having to contact the subsequent buyer once again for a refund. Regarding the habitation tax (taxe d'habitation), no prorata temporis is made and each party bears the cost for their principal residence on January 1st of the current year.

### THE EFFECTS OF THE TRANSFER OF OWNERSHIP

#### Transfer of risks

The transfer of ownership also entails the transfer of risks to the benefit of the buyer. It is therefore necessary to be assured from the day of the sale to be compensated in the event of a disaster. If a mortgage has been taken on, an insurance certificate will need to be provided to the notary so that it can notify the insurance company about the existence of

a mortgage. Indeed, in this case, the insurance compensation will not be paid to the owner but rather to the bank which holds the mortgage.

#### Transfer of leases

If the property is sold already leased, the law provides that the buyer takes the place of the seller vis-à-vis the tenant. The amount of rent of the current period can usually be recovered on a pro-rata temporis basis. Similarly, the seller must pay the buyer the amount of the security deposit.

#### Guarantees of the seller

In theory, the buyer takes the property in its current state: he has visited it and is assumed to accept it with both its defects and qualities. Thus, unless the seller is a real estate professional, the buyer does not benefit from the guarantee of hidden defects. However, if the property is bought new or if any substantial works were completed on it within the past 10 years, in some cases the buyer benefits from the liability of the builders. Regarding the surface, only if the property belongs to a condominium then a measurement procedure called "Carrez law" is mandatory. If it turns out that the surface is over 1/20th less than that mentioned in this certificate, then a proportionate discount may be requested by the buyer. However, the seller may never claim anything if the surface area is higher. ■



## SPECIFICITIES OF THE SALE OF A CO-OWNERSHIP PROPERTY:

If the property is part of a jointly owned building, it is generally accepted that the buyer reimburses the following amounts to the seller on the day of the sale:

- ▶ Charges for the current quarter, from the day of the sale until the end

of the quarter

- ▶ Working capital (sometimes some co-ownership associations plan to reimburse the seller directly and request the working capital from the buyer). Out of this amount, we need to deduct the amount of work that

the seller has to pay for which has not yet been subject to a call for funds at the time of the sale. In the event of proceedings being underway, a subrogation of the buyer is generally provided. Likewise, it is provided that the settlements made directly between the parties

on the day are irrevocable. Any difference between the provisional budget that has been used as the basis for settlement and the final budget will not be subject to any adjustments, which will result in a potential gain or even loss for the buyer and vice versa for the seller.

## STEP 5:

# AFTER THE SIGNING

**During this period, the notary will perform many formalities which will lead to the delivery of the title deed and the balance of his account.**

### FORMALITIES COMPLETED BY THE NOTARY

There are many formalities to be completed by the notary. Amongst the most important we should note:

#### Publication of the deed to the land registry

The notary is responsible for publishing the deed at the land registry of the place where the property is found. This actually means modifying the property file to make the sale binding on third parties and to guarantee that no new mortgage on the property has been entered by the buyer. If a mortgage has been signed by the buyer, the notary then ensures that the new mortgage is entered on the property.

The publication of the deed will also have the effect of informing the tax authorities, which will charge the local taxes to the new owner.

An increasing number of deeds are published by the notary in electronic format.

#### Payment of registration fees or VAT

The notary is also mandated to pay the taxes that are owed by the buyer. These are mainly transfer duties, which total 5.09%. The land registrar's remuneration also needs to be paid (0.10%). Inheritance tax does not concern movable property. If the furniture is sold with the house or apartment, it may be advisable to detail the value of this furniture relative to the value of the property: this enables the buyer to save 5.09% on their value, provided, of course,

that this is justifiable. However, beware: in general, banks do not finance the cost of furniture.

If this is the first sale after completion within 5 years, the seller may be liable to pay VAT instead of registration fees.

#### Payment of capital gains tax

The notary is also responsible for calculating and directly collecting the capital gains tax due by the seller from the selling price (or the tax on the disposal of land that has become suitable for building).

See pages 2 and 3.

#### Notification of sale to the managing office (syndic de co-propriété)

The notary must inform the managing office about the sale and pay the balance due out of the sale price (failing this, the managing office has the right to oppose to the payment of the proceeds of the sale). From the receipt of such notification, the managing office will send all charges to the new joint-owner.

#### DISPATCH OF TITLE DEED AND ACCOUNT BALANCE

When all formalities have been completed (which in some cases may take several months) the notary shall send the buyer his "title deed". This is actually an authentic copy of the deed, with the original kept by the notary who wrote them. He also provides his client with a detailed statement of all the sums that have been paid for his account and those which have already been paid. If the account is in debit, a supplement

will need to be paid (rare). The credit balance is obviously returned to the buyer. The original deed is retained by the notary for 100 years. Beyond this date, it is filed with the departmental archives. The conservation of the deed is a guarantee of the legal certainty of ownership of the property, particularly in the event of the buyer losing the title deed. ■



### Tax Reduction:

#### FOR MAIN RESIDENCE:

If you buy your main residence using credit you can receive a tax reduction: take this into account in your financing.

For more details, see our website [www.althemis.fr](http://www.althemis.fr), tab "useful links," section "property"

#### FOR A BUY-TO-LET INVESTMENT:

This needs to be considered case by case (Scellier, Malraux laws, etc.).

# NOTARIAL NETWORK

## 65 NOTARIES AND COLLABORATORS



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*de la stratégie aux actes*

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