

A Guide to Purchasing Property in France

**Original Version Available on
www.abafim.com**

September 2007

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Individual circumstances may vary and therefore you should obtain advice pertinent to your personal position.

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Introduction:

With a view to assist our customers throughout the purchase or the sale of a property in France we have prepared some practical step-by-step guidelines. We aim at offering our customers a clear understanding of what their options are. Of course, if need be further professional advice is also available on request.

Understanding the Role of a French Estate Agent

The role of an estate agent comprises of two main functions: that of an agent acting on behalf of a principal and that of a middleman. An agent acts on behalf of his clients under a contract of agency with a view to rent out or sell properties. His role is to see that landlords meet tenants and vendors meet purchasers.

Strict Professional Regulations

Unlike the United Kingdom, estate agents in France are firmly regulated by statutes like the "loi du 2 janvier 1970" known as Loi Hoguet which is much tougher than the Estate Agents Act, 1979, in the United Kingdom. It is compulsory for an estate agent to be registered with the local "Prefecture" (local police authority). After approval, "cartes professionnelles" are issued to agents. A "carte professionnelle" is a professional licence that every agent must hold to perform property management tasks and act as a middleman.

Furthermore, membership of a professional body is compulsory. The name of such professional bodies, the "barème" (scale of fees) and the details of the "carte professionnelle" must be clearly displayed in every agent's office.

Anyone wishing to become an estate agent must meet tight professional criteria in terms of ability and integrity. In addition, every agent is obliged to be covered by a financial guarantor and a professional insurer, the names of which must be also clearly displayed.

To recap, here is a list of the requirements a French estate agent must meet to obtain a "carte professionnelle":

Professional attitude and knowledge, ability and integrity, registration with the local trade register, membership of a professional association, financial guarantee, professional insurance, and registration with the local "Préfecture".

The estate agent plays the role of an intermediary between vendors and purchasers or landlords and tenants. The aim of an agent is to get every party to agree on a price and a property. The agent acts on behalf of a vendor under the terms of a "mandat" (agency agreement) which allow him or anyone he may substitute for himself, to arrange for property viewings and advertising, like for instance, installing for sale boards on properties, and putting ads in newspapers or websites.

An agent's portfolio of properties for sale should include accurate descriptions. Agents perform property searches based on prospective buyers' criteria throughout their portfolios. Where appropriate, agents may negotiate the terms of a sale agreement with a view to protect the interests of both parties.

Upon viewing a property, either to rent or to buy, prospective purchasers or prospective tenants are asked to sign a customary "bon de visite" (viewing agreement) which is an agreement between them and their agents. Such documents stipulate that clients have agreed to view a property via the estate agent instructed to sell it and that they will refrain from approaching the vendor or the landlord directly.

Home Buying in France

1) Home Buying Process:

First Stages:

First, the vendor and the purchaser have to reach an agreement on a price and a property. Then, French property laws stipulate a provisional sale agreement (a private deed often called a "compromis de vente" or "acte sous seings privés" and sometimes compared to a binding lock-out agreement) must be prepared. It is often prepared via a "notaire" (French solicitor). A notaire acts as a solicitor or a licensed conveyancer. However, unlike solicitors, notaires are compelled by law to a strict impartiality between the

parties. In fact, a notaire will act for both parties: the vendor and the purchaser.

Please note that "Compromis de vente" may also be drawn up by estate agents. The agent may charge the purchaser or the vendor for drafting the deed.

A "compromis de vente" sets forth every aspect of the transaction including any additional clause or any special provision.

A "compromis de vente" belongs to a type of agreement the French refer to as "acte sous seings privés" (private deeds). Typically, a "compromis de vente" is mutually binding and subject to conditions precedent, e.g. the obtention of a loan.

Upon signing a "compromis de vente" the purchaser has to put down a "dépôt de garantie" (usually it is a 9% deposit). Such deposits are payable to the notaire instructed for the conveyance and kept on an escrow account.

What matters is that once a "compromis de vente" is signed, vendors are compelled to sell. However, pursuant to French law (i.e. "loi SRU"), purchasers benefit from a "délai de réflexion" or "droit de rétractation" i.e. a seven day cooling-off period until the end of which purchasers may pull out off a "compromis de vente" at any time without incurring any financial penalty.

In addition, if a purchaser is refused a mortgage, he/she may also withdraw from the transaction without penalty.

Further Stages:

Two or three months after the signature of a provisional sale agreement, after completion of all the paperwork and once any pre-emption right has been expressly waived by every beneficiary of such rights, the parties must meet once more before their notaires in order to proceed with the conveyance and sign "l'acte définitif" (transfer deed). This stage is sometimes compared to an exchange of contracts.

A copy of the "acte final" (transfer deed) is then given to the purchaser, a copy is also sent to the local "Bureau de Conservation des Hypothèques" (Land Registry).

Original copies of transfer deeds are kept without limitation of time at notaires' offices.

At this stage, purchasers must transfer the outstanding balance of the total amount to be paid for the property they are buying into the notaire's escrow account.

Every document required by law is appended to the "acte définitif" (transfer deed). Vendors and purchasers must be present for the signing of such deeds. However, a power of attorney may be given to a representative for this purpose.

Local Authority Search

A local authority search must be carried out thoroughly and its results returned to the instructed notaire before final signings. Local authorities and, if the property for sale comes with a substantial plot of land, a special "land agency" called "SAFER" (the acronym stands for "Société d'Aménagement Foncier et d'Etablissement Rural"; its role is to decide whether agricultural land should remain in agricultural use) may exercise their pre-emption rights. Where such rights are exercised, notaires return deposits in full to purchasers.

2) Costs:

Agency Fees

Prices displayed by estate agents are often "frais d'agence inclus (FAI)" i.e. prices are inclusive of agency fees regardless of whether such fees are payable by vendors or purchasers.

Notaires' Fees

Upon sale completion notaires levy stamp duty. Stamp duty is calculated according to a sliding scale of fees "le barème". Notaires then add their own fees. The bottom line is that combined with stamp duty the aggregate fee amounts to approximately 7% of the price of the building (i.e. notaires do not charge fees for the purchase of chattel or personal property).

Resorting to an "hypothèque" (mortgage) adds approximately another 1% extra to the overall amount.

Local Taxes on Property (rates, council tax etc.)

In France, two types of taxes are levied on real property

"Taxe d'habitation" (closest equivalent in the UK: council tax): This local tax is paid yearly by property occupiers (landlords or their tenants) on January 1st.

"Taxe Foncière" (land and improved land tax): Unlike the "taxe d'habitation" the "taxe foncière" is payable by landlords regardless of whether properties are rented out or not. Such tax applies to both land and buildings. It is shared between vendors and purchasers pro rata temporis i.e. according to the date of sale completion. It is usually paid in autumn.

3) Notes:

Public Utilities:

On request, the estate agent may arrange for connections to public utilities and water, electricity, gas and telephone subscriptions (including "adsl" aka broadband).

It should be borne in mind that new phone numbers may be given when there is a change in telephone contracts.

Insurance:

Buildings must be insured by purchasers. At the latest, buildings must be insured by purchasers on the day of sale completion (upon signing transfer deeds i.e. when keys are handed over).

General Points:

We recommend all money transfers be conducted via a body with a sound reputation like Swift Euro Transfer for instance.

Money should be transferred approximately one week before completion to ensure that funds are in the escrow account of the notaire instructed for the conveyance by the day of sale completion.

If buyers are refused their mortgages, they may withdraw from the transaction without any financial penalty.

Usually when signing a "mandat" (i.e. contract of agency) vendors are reminded they must provide:

- A building "diagnostic de performance énergétique (DPE)" i.e. an energy performance certificate. DPEs are mandatory when selling enclosed and covered buildings. A DPE is valid for 10 years.

- If the property sold is owned "en copropriété" (a form of ownership close to the commonhold in the UK) a Loi Carrez report (a document that describes accurately the living space of a unit) is mandatory. There is no limit of validity for such documents.

Before signing a "compromis de vente" (provisional sale agreement), vendors must also provide a home information pack.

- Where buildings were granted their planning consent before July 1st 1997 asbestos reports are mandatory. There is no limit of validity for such documents, unless additional work is carried out afterwards.

- Where residential buildings were granted their planning consent before January 1st 1949, "constats de risque d'exposition au plomb" (CREP) (reports concerning the risk of exposure to lead) are also mandatory. Such documents are only valid for one year.

Upon Signing a Transfer Deed:

Pursuant to local regulations issued by "préfectures" (local police authorities) an "état parasite" (timber infestation report) may be required. Although such surveys may not be obligatory we strongly recommend that they be carried out nonetheless. Such documents are only valid for 3 months.

Unlike Spain, purchasers in France are not liable for possible debts contracted by vendors.

Purchasers are free to choose their own notaires. It is therefore possible to instruct 2 notaires, i.e. the vendor's notaire and seller's notaire, to carry out the conveyance. This does not increase notaires' fees. Notaires' fees are simply shared between both notaires even when only one of them actually arranges for conveyancing.

It should also be borne in mind that French property laws forbid any form of gazumping or gazundering once a "compromis de vente" has been signed.

Administrative Documents

1) "Mandats" (agency agreements) Are Obligatory:

The Estate Agent Must Hold a "Mandat":

Pursuant to French law, prior to any negotiation and prior to engage himself in any transaction an estate agent must obtain written instructions from vendors, i.e. the agent must hold a "mandat" (agency agreement).

Such rules also apply to property management activities too (e.g. letting).

Under the "loi Hoguet" (French Estates' Agent Act) no commission, no payment whatsoever may be claimed by an estate agent without a valid agency agreement. To be valid an agency agreement must comply with the strict provisions set forth in the "loi Hoguet". Moreover, an agent engaged in a transaction without a valid agency agreement is liable to criminal charges.

Dual Commission:

It may happen that an agent has signed an agency agreement with both a purchaser (buyer-agency agreement) and a vendor (agency agreement). According to a ruling from the Cour de cassation (French Supreme Court of Appeal) agents who successfully complete their missions are entitled to both commissions.

French estate agents are compelled to issue agency agreements in a specific order:

A chronological number must be assigned to each agency agreement issued. Regardless of the transaction outcome such issuance numbers must then be copied out on a "registre des mandats" i.e. a paper or an electronic register that each estate agent must carefully keep for 10 year. A copy of each

agency agreement must be retained by the agent and filed in sequence along with every other agency agreement.

It is an obligation for an agent to follow such procedures on pain of being refused his/her fees.

2) "Le bon de visite" or Viewing Agreement:

A "bon de visite" (viewing agreement) is a customary document that prospective purchasers are required to sign before viewing a property. Estate agents use such documents as a proof that property viewings have been arranged via their agency.

Viewing agreements are essential to prevent purchasers from dealing directly with vendors and thus dodge agency fees. When signing a "bon de visite", prospective purchasers agree to view the property they are interested in with the assistance of the agent instructed for the sale.

A "bon de visite" (viewing agreement) must include three essential pieces of information:

- The identity of the prospective buyer (or the person who is going to view the property);
- The address of the property to be viewed and a brief description;
- The issuance number of the "mandat" (agency agreement) signed between the vendor of the property to be viewed and the agent he/she has instructed.

3) Making an Offer:

In France a prospective purchaser may make an "offre d'achat" (a simple bid) or make a "promesse unilatérale d'achat" (in written) or offer to purchase.

A "promesse unilatérale d'achat" is a formal agreement whereby a prospective purchaser pledges to purchase a property at a fixed price.

4) "Compromis de vente" (mutually binding provisional sale agreement):

Once a vendor and a purchaser have reached an agreement on a property and its price the next step is to sign a "compromis de vente" (mutually binding provisional agreement).

Where properties are not sold off plan, "compromis de vente" have to be arranged. Under such agreements, properties are taken straight off the market for the sale duration i.e. they are off the market during the time needed by notaires to collect every document required for final signings.

"Compromis de vente" are usually drawn-up by notaires or, sometimes, by estate agents.

5) "Délai de rétractation" (Cooling-off Period):

Since June 1st 2001, non-professional purchasers are entitled to a 7 day cooling off period to think over their decision to buy:

- A cooling-off period begins once a "compromis de vente" or a "promesse unilatérale" has been signed. During this period purchasers may exercise their rights to terminate such agreements without incurring any penalty and get their deposit back.

Cooling-off periods apply regardless of whether a "compromis de vente" is signed as a private or a notarized deed.

Buying New Build Homes

1) Signing a "contrat de réservation" (reservation agreement):

Buying new build homes in France is quite similar to buying off plan in the UK. First, you need to pay a deposit and sign a "contrat de réservation" i.e. a reservation agreement. A reservation agreement is not a legal requirement but it is a necessary step. A reservation agreement is not binding as the purchaser has the right to pull out of the sale. However, in that case, pursuant to tight regulations in France, prospective purchasers are likely to lose their reservation deposits.

Contents:

On pain of being declared null and void, a reservation agreement must state:

- The approximate living space,
- The number of main rooms and the nature of every secondary room (outbuildings, utility rooms etc...)
- The particulars of the unit (i.e. floor, living space, lot number...) if the building is held "en copropriété" (commonhold).

-The estimated price of sale and the terms under which it may be reviewed.

-Technical facts regarding fixtures, fittings and the material to be used for the construction.

- Scheduled completion date.

-Any of the loans vendors may undertake to obtain on behalf of purchasers must be mentioned.

On top of these legal requirements, vendors may add additional clauses. Although these clauses may not always be stated in deeds of sale, they are enforceable afterwards.

This is why purchasers should press for additional written clauses regarding:

- Date of work completion
- Date of property handover
- A schedule of payment dates
- A firm price
- Particulars of requested loans

Purchasers should add to such agreements a "condition suspensive" (condition precedent) regarding their requested mortgages. It is advisable such conditions set out that where purchasers are refused their mortgages they automatically get their full deposits back.

2) Putting Down a Reservation Deposit:

The amount of a reservation deposit depends on the date of sale completion. When signing a reservation agreement, the further the completion date the cheaper the reservation deposit. Moreover, pursuant to French law the amount of a reservation deposit is capped.

- 5% of the total price if handover occurs within a year,
- 2% if handover takes place between one and two years,
- Beyond such time frames no deposit may be requested.

*** Should property developers go bankrupt, purchasers' deposits are not at risk. Their money is safely kept on their behalves on an escrow account held by a notaire or a bank.

3) Withdrawing from an Agreement:

Under French law, purchasers benefit from a 7 day cooling-off period i.e. a purchaser may terminate a reservation agreement by way of a registered letter at any time during the first 7 days following the signature thereof and get his/her full deposit back without incurring any penalty.

Once 7 days have expired, a purchaser may not terminate a reservation agreement without incurring the risk of losing his/her reservation deposit. Under tight French regulations purchasers pulling out of a reservation agreement are very likely to lose their deposit unless they manage to bring action against vendors for breach of contract including:

- Where purchasers are refused a loan vendors had undertaken to secure on their behalves.
- Where completion date is delayed beyond a specified date
- Where the final market value of a property is 10% (or more) less than expected owing for instance to a smaller living space, or a lower quality of building materials or fixtures.

***** Sections 1616 et seq., Code civil, stipulate that where purchasers establish that the "market value" of their new properties is 5% less than expected they may terminate their reservation agreement or claim a diminution in price. Such lawsuits are possible insofar as facts are established within one year from the date of handover. Recently, the "Cour de cassation" (the highest court in France) has ruled that property developers may not include any clause stipulating otherwise in a reservation agreement (ruling delivered on November 24th 1999).

- Where some of the facilities of areas held in common are not properly completed (lift, rubbish chute, gardens, etc.).
- Where the final sale price exceeds 5% of the projected price.

4) Contract of Sale:

A draft contract must be sent to purchasers one month ahead of scheduled final signings. Thus, purchasers benefit from a 1 month period to go through such documents. Purchasers must bear in mind that there will be no further opportunity to amend their contracts.

Such contracts of sale must include accurate and final property description, dimensioned property drawings and property particulars (surface area, facilities, etc.).

Where a property belongs to a grouping of buildings the exact positions of each building must be stated so that prospective buyers know what the surrounding area will look like upon development completion.

Prospective purchasers must be given a full commonhold community statement so that they learn about any clause that may restrict their property possession e.g. prohibited activities, regulations on pets etc.

5) Agreeing on a Final Price:

Sale agreements must stipulate property final prices along with methods and schedules of payment. Under French law, stage payments have to be made as work goes along.

Under French law, payments must not exceed:

- 35% once the foundation is completed (20% for a detached house),
- 70% once the roof is completed (45% for a detached house),
- 95% upon completion (85% for a detached house),

- Therefore 5% of the total sum payable to a property developer remains outstanding until sale completion (15% for a detached house).

*** Obviously, on condition that the above capping requirements are met property developers may request intermediary installments insofar that there is proof of work in progress.

The price written on a sale agreement is a firm price. However, it is partially index-linked to the "indice national du bâtiment" an index which measures variations in the cost of properties in France. Yet, this kind of index linking is becoming less and less frequent.

6) Date of Completion:

It is not obligatory to state a completion date in reservation agreements. However completion dates are mandatory in sales agreements even if pursuant to French law, a wide margin of error is allowed. For instance, a sale agreement may state "second half of 2010" instead of any precise date.

It is best to confirm as precise a date as possible and also include a penalty clause regarding any delays.

Of course, delivery deadlines may be postponed in case of adverse weather, strikes or acts of God.

At any rate, where prospective purchasers sustain losses they may bring action for damages.

7) Guarantee Granted to Purchasers:

Sales agreements must include a guarantee protecting purchasers. Such guarantees may come in various forms.

A "garantie de remboursement" (money-back guarantee) is granted by a financial institution. Where the building construction does not reach completion, sales agreements are deemed null and void. Purchasers receive back all monies paid.

An extrinsic "garantie d'achèvement" (guarantee of completion or performance bond) i.e. an independent financial institution undertakes to pay for work completion. Money goes to either purchasers or property developers. This is basically a financial guarantee.

An intrinsic guarantee is also granted. A Property developer must give proof of its financial strength. However, such documents do not guarantee any money back to investors. This kind of guarantee is granted when certain conditions are met. First, the foundation must be completed. Second, a property developer must fund at least 75% of the capital needed (via its equity, the sale proceedings and approved loans) or only 60% of the capital needed where its share of the overall investment amounts to 30 percent. Such guarantee may also be granted once buildings are "hors d'eau" i.e. when the roof is completed and where, up until that stage, property developers have not used any loan.

Making an Offer

Often, when negotiating the purchase of a property, an offer is made in written. It should be borne in mind that a written offer to purchase is more binding than most people realize.

Whereas it is sometimes best to move swiftly and engage in negotiations quickly, in most instances potential buyers make verbal offers to their agents or their property negotiators or directly to vendors. Usually, such offers are below the asking price.

Yet, the present trend is to make formal written offers to purchase with a view to strengthen the offer made to the vendor. A written offer to purchase may be more likely to be accepted where vendors live far away from their properties. Now, a study directed by the ADIL (French citizens' advice bureau for housing) has recently highlighted that written offers to purchase are more binding than prospective buyers commonly think.

1) Offers to Purchase:

As its name suggests, an offer to purchase conveys the idea that a prospective purchaser is willing to buy a property for sale at the asking price. An offer to purchase is somewhat the matching piece to French customary "promesses en vente". However, an offer to purchase is not as tight an agreement as a "promesses de vente" and this might bring about some legal issues if the sale does not complete.

Pursuant to section 1583, Code civil, « la vente est parfaite (...) dès que l'on a convenu de la chose et du prix » i.e. a sale is complete between the parties, and ownership is acquired as of right by the buyer with respect to the seller, as soon as the thing and the price have been agreed upon, although the thing has not been delivered yet or the price paid. As a consequence where vendors accept offers in writing the sale, theoretically, is complete, even if purchasers have not gone through all additional costs connected to the property yet (cost of renovation work, existence of rights of way or other easements, service charges etc.).

Prospective buyers are not legally bound to proceed with the deal where their offers to purchase are not accepted by vendors. Yet, purchasers remain liable once vendors have agreed on their offers. Vendors may then sue for damages.

The law "Solidarité et Renouvellement Urbain" became enforceable on 1st June 2001. Since then, prospective buyers may not be asked to put down any deposit whatsoever upon signing an "offre d'achat" on pain of nullity thereof.

2) Terminating an "offre d'achat":

On the other hand, prospective purchasers are free to terminate their offers to purchase where vendors make counter proposals. In this case the initial offer to purchase becomes null and void. Purchasers are freed from their commitment.

Where an offer contained a time clause purchasers can pull out if vendors do not accept their offers within the given time frame.

When no time clause is inserted in an offer to purchase, prospective purchasers may pull out at any time as long as their offers have not been accepted yet. And if a vendor does not respond favorably to an offer to purchase prospective purchasers can immediately pull out.

3) Precautions to Take:

Given the legal issues surrounding an "offre d'achat" in writing, it is arguably best to make a verbal offer and wait until all details regarding the sale become clear. If an agreement is reached, the sale will take place upon signature of a "compromis de vente" (a mutually binding provisional sale agreement).

However, it is sometimes wise to go through an "offre d'achat" when a quick move is needed. Here are a few precautions to take:

The most important is to allow only a short period for the offer (eight to fifteen days for instance). It is also important to insert a clause stipulating that vendors must notify their agreement via recorded mail or similar methods.

At any rate, an "offre d'achat" should set forth that the offer is subject to the obtention of a mortgage whose details are to be described later in a "compromis de vente".

An offer to purchase should indicate that sale may not take place before signing a "compromis de vente" subject to conditions precedent (i.e. the obtention of a mortgage)

It should state clearly that the offer may be revoked if vendors do not accept it within the agreed time frame.

What to Include in a Home Condition Report Before Selling?

Under French law a home condition report is required when selling a property i.e. vendors must provide many "états techniques" (technical reports).

The whole combination of reports is now known as "diagnostic technique immobilier (DTI)". DTIs are somewhat comparable to HCRs (home condition report) in the UK.

A "diagnostic technique immobilier" gathers every survey required by scattered rules and texts of law when selling a property. This is a new regulation that is gradually coming into force with the publication of implementing decrees. Basically, when selling a building or part of a building, a "diagnostic technique immobilier" must be prepared by the vendor and appended to the "promesse de vente" or, where there is no provisional sale agreement, to the "acte authentique" (transfer deed).

Where a property is sold via an auction a "diagnostic technique immobilier" must also be appended to the corresponding legal pack.

Pursuant to current French regulations a "diagnostic technique immobilier" includes 6 documents.

1) Lead Report:

"Constats de risque d'exposition au plomb (CREP)" are reports pertaining to risk of exposure to "saturnisme" (lead poisoning). They are established at vendors' expenses and they are valid for one year. A "constat de risque d'exposition au plomb" is required when selling a residential building or part of a residential building whose planning permission was granted before 1st January 1949.

It is important to bear in mind that occupiers of a building whose paint (or other coating) contains lead are exposed to lead poisoning.

Where the property sold is situated in a building held "en copropriété" (commonhold) a lead report is required only for the unit itself not the areas used in common.

Lead reports are valid for one year. However, a "constat de risque d'exposition au plomb" has a permanent validity provided it states that there is no lead or an acceptable level of lead (these levels are set by decrees) in the paint of a property. As a consequence, there is no need to establish a new lead report for the subsequent property transfers as long as the initial report is appended to the successive "diagnostics techniques immobiliers".

(Sections L1334-1 to 12 and R1334-1 to 13, Code de la Santé publique)

2) Asbestos Reports:

An asbestos report has an unlimited period of validity (unless work has been carried out on a property after the corresponding report has been published)

"Dossiers techniques amiante (DTA)", i.e. asbestos reports, are established at vendors' expenses. Asbestos reports apply to buildings whose planning permissions were granted before 1st July 1997. When selling a unit in a building in multiple occupation, DTAs apply only to the unit itself, not the areas in common use. However, a summary of the asbestos reports concerning the common parts of the building must be appended to the "diagnostic technique immobilier".

3) Timber Infestation Reports:

Timber infestation reports are valid for 3 months. "Etats parasitaires" are also established at vendors' expenses. They aimed at assessing the presence of termites in buildings located in areas deemed at risk of termite infestation by the local "préfecture" (local police authority).

It is advisable to approach the local "mairie" (town hall) to determine whether a property for sale is located in an at-risk zone. Obtaining such information is essential because a growing proportion of French buildings is infested by termites. An "état parasite" is required when selling a property located in infested area.

When selling commonhold units, "états parasitaires" are also required. However, no report is required regarding areas in common use.

French law does not advise on how a termite survey should be carried out. As a consequence, termite surveys should be carried out by a registered specialist. Moreover, regardless of whether the property for sale is located in an at-risk zone, a vendor who has not established a timber infestation report, may remain liable under the "garantie des vices cachés" (latent defects warranty) if termites are found after the sale.

4) Gas Installation Report:

"Etats de l'installation intérieure de gaz" (gas installation reports) are required when selling residential buildings or parts of residential buildings whose gas installations are more than 15 years old. In the event of the sale of a unit "en copropriété" (commonhold unit), the required "état de l'installation intérieure de gaz" applies only to the unit itself and not to the common parts of the building.

5) Natural and Technological Risk Report:

Natural and technological risk reports are valid for 6 months.

A "diagnostic technique immobilier" (home condition report) may include an "état des risques naturels et technologiques" too. Natural and technological risk reports are required when selling a property situated in areas deemed to be at risk. For instance there is a technological risk where there is an industrial plant nearby. There is a natural risk for instance where there is a seismic risk.

It may happen that a building located outside an at-risk area at the moment of signing a "compromis de vente" (provisional sale agreement) becomes included in such risk areas thereafter. In such cases, an "état des risques technologiques et naturels" updated in accordance with the information issued by the local "préfecture" (local police authority) must be appended to the corresponding home condition report prior to the signature of a transfer deed.

6) Energy Performance Certificate:

Energy performance certificates are valid for 10 years.

A Recent ruling requires that "diagnostics de performance énergétique" (very similar to energy performance certificates in the UK) be carried out when selling a property.

Such tests are valid for 10 years. When selling a building the corresponding "diagnostic de performance énergétique" must be made available on request to prospective purchasers.

7) Electrical Installation Reports:

"Etats de l'installation intérieure d'électricité" (electrical installation reports) will be compulsory as of 1st November 2007.

A 7th report is to become obligatory when selling a property as from 1st November 2007.

Such reports are to be appended to home condition reports. They must be issued by a competent person i.e. a person registered at the date of issuance via an authorized certification scheme

On December 18th 2007, full details about this new regulation will be made available by the "Ministère du Logement" (French Ministry of Housing).

Reminder of the provisions of section L. 134-7, Code de la construction et de l'habitation, (under law n° 2006-87213 July 2006 regarding public commitment to tackle housing issues in France):

"In the event of the sale of a residential building or part of a residential building whose electrics has been fitted more than 15 years ago, an "état de l'installation intérieure d'électricité" (an electrical installation report) must be issued with a view to assess the threat that electrical installations may pose to one's safety pursuant to the conditions and methods stipulated in sections L. 271-4 to L. 271-6."

8) Sanctions:

A latent defects warranty applies when selling a property. Where home condition reports issued upon signing an "acte authentique" (transfer deed) are not complete (with valid lead, asbestos, termite and gas reports) a non-professional vendor may be held liable should a defect or a risk arises from the property at a later date.

Purchasers may then bring action against vendors and claim either a reduction in price or a rescission of sale and the reimbursement in full of the selling price.

Where latent defects concern a common part of a multiple occupancy building the "syndicat des copropriétaires" (commonhold association) may be held liable, such liability being shared amongst unit holders.

Where a natural and technological risks report is not appended to an "acte authentique" (transfer deed) upon the signature thereof, purchasers may claim before a court either a reduction in price or a rescission of sale.

On the other hand, energy performance certificates are for information purpose only. Such reports may not be a ground for bringing a purchaser's action.

Where any of these reports is produced at the time of the signing of a "promesse de vente" (provisional agreement) but is no longer valid at the time of the final signing, a new and valid report has to be appended to the corresponding transfer deed.

9) Competent Persons:

Only a competent person may carry out such reports. A decree of the "Conseil d'Etat" (organ of the French government) will stipulate what skills are required to become a competent person.

Excepted for natural and technological risks reports, the aforesaid reports must be prepared by a competent person with adequate means.

A competent person is professionally liable and must be duly covered by an insurance policy.

A competent person's impartiality and independence shall not be biased by connections with vendors or agents that have hired him/her nor with contractors offering to carry out work on structures, installations and appliances that he/her may survey.

Step-by-Step Home Building Guidelines:

Here are the main administrative and technical stages of a home building process.

1) Administrative Steps:

- Planning a budget
- Obtaining and displaying a planning permission
- Acquiring a plot of land
- Taking out an "assurance dommage ouvrage".

Note: a "dommage ouvrage" policy is a very specific type of French policy that must not be mistaken with the developer's "garantie décennale" that can be compared with the 10-year buildmark warranty in the UK. In France, the owner of a newly built property or a renovation project is expected to take out a 10 year "dommage ouvrage" policy. It usually costs between 2 – 8 % of the overall construction budget. The guarantee insures the owner and any future owner against major structural damage resulting from poorly planned or executed building-work. Theoretically, this type of cover is a legal obligation. However, in practice, there are no sanctions for private individuals who do not insure. Home owners should however be aware that in the event of resale of the property within the 10 year period, the notaire representing the purchaser will require proof of cover, and will inform the vendor that the purchaser has a right to claim from the vendor for any damage that would normally have been covered by the guarantee. If the vendor is not able to provide proof of cover, this could prevent the sale from going through, or at least become a bargaining point for the purchaser.

In effect, a "dommage ouvrage" policy is an insurance against builders failing to pay up in the face of a claim for major structural faults. It was introduced because of the time it was taking for builders' insurance companies to settle claims and resolve arguments about responsibility. Home owners were being left for years without any compensation to pay for expensive and vital structural repairs to their property. The idea is that the "dommage ouvrage" policy pays up in the meantime.

2) Getting the Building Site Ready:

A 2 to 4 month notice is required once planning permission is granted in order to allow for third party claims and a possible revocation of planning permission.

- Appointing a "responsable du suivi des travaux" (construction manager)
- Completing the administrative formalities pertaining to the opening of a building site
- Arranging temporary public utility connections, access to the plot, "bornage" (demarcation), scrub clearing, and stump extraction.
- Formalities relating to permanent utility connections

3) Work schedule and stage payments:

On completion of each phase of work, a stage payment is due i.e. the builder will be expecting money upon:

- Opening the building site (layout and earthwork).
- Foundation completion.
- Structural work completion.
- Roof completion.

It is then advisable to take out a comprehensive home insurance cover

- Completion of partitions and external joinery and glazing
- Completion of fitting out.

Some changes are possible during the course of work, (plumbing, carpentry, heating, interior adjustments, fittings and fixtures) according to the specifications of both parties.

- Handing over completion certificate and keys.
- Setting permanent utility connections.

Rules Sellers Need to Abide By:

During property transfers, sellers need to abide by a certain number of rules.

Usually, property transactions go smoothly: both parties sign a provisional agreement (avant-contrat), purchasers put down their security deposits. Such deposits customarily amount to 10% of the selling price. Sales are deemed fulfilled later on upon signing transfer deeds (acte authentique) and purchasers may then take possession of their properties. However, problems may arise once a transaction is fulfilled. This is why vendors must abide by their obligations in order to stay on the safe side.

1) Conveyance:

From a legal standpoint, a sale is fulfilled as soon as "the thing and the price have been agreed upon" (section 1583, Code civil). In most cases, a sale is deemed fulfilled "although the thing has not been delivered yet or the price paid".

However, property transfers are effective against third parties only once transfer deeds have been duly registered at the local land registry office (Bureau de Conservation des Hypothèques).

From a legal viewpoint, risks pertaining to a property are transferred along with the ownership thereof (section 1138, Code civil). In principle vendors are liable where a property is damaged in between the date of signature and the day keys are handed over.

2) Obligation to Provide Information:

When selling their properties vendors may not withhold information pertaining to the transaction (i.e. pending tenancy agreements, leases, easements, court orders etc.).

Such obligation applies especially to property professionals who are required to collect information pertaining to the properties they are selling. In fact property professionals may not exonerate themselves from their liability on the pretext that they were not aware of a defect.

3) Obligation to Handover:

Vendors' first obligation is clearly to hand over properties i.e. to allow purchasers to take possession of their newly acquired properties or, if such properties are rented out, to allow purchasers to collect the rent thereof.

A vendor must not only hand over the property he has sold but also any item required for the use thereof e.g. title deeds to property, certificates, etc.

However, a vendor may not hand over interests attached to him/her. For instance, compensation for damage due to a vendor by his/her neighbors may not be transferred to purchasers.

Vendors are obliged to hand over properties that conform to specifications set out in the corresponding sale agreement.

Under section 1614, Code civil, buildings must be handed over in the condition that was theirs at the time of sale. From the date of signature until the day keys are handed over vendors have the obligation to keep properties in their original condition. Vendors are obliged to watch over properties.

However, except where vendors are in breach of their obligation to watch over properties, the risk of loss or deterioration thereof is borne by purchasers.

Section 1616, Code civil, sets out the rules applying to surface area calculation. Theoretically, where a surface area is 5% less than what is stated in the corresponding transfer deed, purchasers may ask for a proportionate reduction in price. Conversely, where a surface area is 5% more than what is mentioned in the corresponding deed of sale, purchasers may have to pay an extra proportionate sum of money or pull out of the sale.

However, actions of this kind have to be brought within a year from the date of signature of the corresponding transfer deed.

Luckily, such lawsuits remain unlikely insofar as sale agreements almost always include a clause designed to exonerate vendors from their surface area calculation liability except of course where there is gross negligence or fraud.

At any rate, courts may not accept to exonerate property professional vendors from their liability where they deal with non-professional purchasers.

It should be borne in mind that under the Loi Carrez (a French property law relevant to the sale of commonhold units), sale agreements pertaining to commonhold units must state their surface areas accurately. Where the actual surface area of a commonhold unit is 5% less than what is stated in the corresponding transfer deed purchasers may claim a proportionate reduction in price insofar as their claims are filed within a year from the date of signature.

4) Failing to Handover:

Where vendors are in breach of the obligation to hand over their property, purchasers may bring action and claim for rescission or compulsory execution of sale.

- For instance, courts may order that keys be handed over and that a daily penalty for delay be paid.

- Where a court rules that a sale be rescinded vendors must refund the money paid for the property, purchasers must return the property and vendors may not claim from purchasers any compensation for occupation.

Retroactively, mortgage agreements, if any, are also to be cancelled.

Purchasers may choose to sue for damages to make up for the loss personally suffered i.e. removal costs etc.

However, courts do not have authority to order a reduction in price.

Vendors have the right to postpone the handover of their property where the price of sale thereof has not been paid in full yet and purchasers are under judicial arrangements or are insolvent (section 1613, Code civil).

Vendors may also invoke force majeure to postpone or cancel their obligation to hand over their property. A force majeure is an unforeseeable event that cannot be controlled by the parties to a contract and prevents said parties from complying with the provisions of their agreement). Courts rule on this matter on a case-by-case basis.

5) Obligation of Guarantee:

Reports:

Vendors must have 3 different types of reports prepared at their expense:

-A timber infestation report pertaining to the presence of termites in areas deemed at risk by local "préfectures" (local police authorities).

-A lead report pertaining to the presence of lead in paint in buildings whose planning consents were granted before 1948 and that are situated in areas deemed to be at risk by local "préfectures".

-An asbestos report in buildings whose planning permissions were granted before July 1st 1997.

The omission of one of these reports may not entail rescission of sale. However, where the presence of termite or lead or asbestos in a property is recorded after sale completion, purchasers may bring action for reduction in price or rescission of sale.

Guarantee against Eviction:

Vendors owe purchasers the guarantee of peaceful possession of the thing sold (section 1625, Code civil). In other words vendors cannot engage in any action that could limit the purchasers' rights and possession of their property.

Likewise, vendors are liable where a third party disputes the rights of the purchasers.

Such liability may only apply under the two following conditions:

- Purchasers must have acted in good faith i.e. they were not cognizant of any risk of dispute at the time of sale.
- Trouble must arise from vendors' fault and not from outside events.

Sale agreements may include a clause designed to limit such liability except where vendors are property professionals or where there is gross negligence or fraud.

Latent Defects Warranty:

Under section 1641, Code civil, a latent defect is a defect that renders a thing sold unfit for the use for which it was intended, or a defect that impairs such use to such extent that buyers would not have acquired it, or would only have given a lesser price for it, if they had been cognizant of it.

Two conditions must be satisfied for the latent defects guarantee to apply:

1- Sellers are not liable where purchasers could ascertain defects for themselves at the time of sale

- Sellers are not liable where defects are patent or where purchasers are cognizant of such defects.
- Purchasers are bound to a basic duty of vigilance in accordance with their technical knowledge. However, expert knowledge may not be expected from a layman.
- In principle, professional purchasers and professional vendors share a same level of technical knowledge and thus are expected to be cognizant of possible defects at the time of sale.

2- A defect may be deemed a latent defect only where such defect exists prior to the sale of a property. The onus of the proof of such anteriority is on purchasers.

There are two types of procedures a purchaser may follow upon discovering a latent defect:

1-Purchasers may engage in an action for valuation of loss suffered from a latent defect ("action estimatoire") and claim a proportionate reduction in price. Such claims are subject to court approval.

2-Purchasers may also engage in an action for "redhibitory vice" that may entail retroactive rescission of sale and a restitution of both property and monies paid (including legal fees).

Moreover, purchasers may claim compensation for the loss personally suffered. Yet, the onus to prove that vendors have not acted in good faith i.e. vendors were cognizant of a latent defect at the time of sale is on purchasers.

It should be borne in mind that, as a rule, professional vendors are deemed liable unless it is otherwise proven.

Action against latent defects must be brought shortly after their discovery. In practice courts grant a 6 month/one year time limit to bring action.

Sales agreement may include provisions designed to limit such vendors' liability. Yet, courts tend to interpret such provisions in a restrictive manner. They tend to rule out such provisions where vendors have not acted in good faith or when they are guilty of gross negligence.

Obligations of the Purchasers

1) Taking possession:

Purchasers take possession of a property when keys are handed over, usually upon transfer deed signature or, where the premises are rented out, when rent is collected.

Taxes pertaining to a property are payable by purchasers as from the date they take possession thereof. Such date is mentioned in the corresponding transfer deed. Usually, where a sale relates to the bare ownership of a property ("nue-propriété"), i.e. a third party benefits from the usufruct of the property, purchasers take possession of the property on the day of sale.

2) Arranging for Payment:

The main obligation of a purchaser is obviously to pay the price stipulated in the sale agreement.

Such obligation also involves to pay for stamp duty and other conveyance fees that are payable by purchasers under section 1593, Code civil.

However, both parties may also agree on sharing such fees.

It should be borne in mind that such agreements are not effective against third parties.

As a principle, purchasers are not liable to property taxes i.e. "taxe foncière" and "taxe d'habitation" which are respectively and annually payable by landlords and occupiers on January first. However, sale agreements usually stipulate that property taxes be broken down on a pro rata temporis basis in accordance with the date of purchase.

3) Methods of Payment:

Of course, the price of sale is payable by purchasers. However, such obligation could be passed onto sub-buyers, with vendors' agreement.

Where purchasers die before payment is made, the obligation of payment is passed onto their heirs.

In practice notaires have payments made into their hands so that possible creditors may benefit from sureties (mortgages, etc.). In this event, notaires are required to pay creditors by drawing money from the price of sale prior to transferring the outstanding amount to vendors' accounts.

In principle, "the main obligation of the buyer is to pay the price on the day and at the place stipulated on the sale agreement" (section 1650, code Civil). It is therefore up to the parties concerned to decide upon the method of payment at the time of signing their provisional agreements. Failing that, pursuant to section 1651, Code civil, payment must be made « at the place and time of handover », i.e. when keys are handed over.

Purchasing a Property in the Name of a Property Holding Company (Société Civile Immobilière)

French Property Holding Company (Société Civile Immobilière or SCI)

The acronym SCI stands for "société civile immobilière" and also often for "société civile immobilière de location" i.e. property management company or "société civile immobilière de gestion patrimoniale" i.e. wealth management company.

In France, property holding companies are non trading-companies that are mainly used as a vehicle for purchasing properties or constructing buildings and then managing real estate.

A customary pattern is to raise funds, mostly through a loan, in order to build an income property or to acquire it outright.

SCI are an efficient way to hold real estate where there are many owners. It also facilitates real estate transfers: shares (personal property) are easier to transfer than immovable property.

Pros

-A property holding company is a sensible solution to avoid an "indivision" deadlock, i.e. avoid issues arising from a tenancy in common. In fact, a SCI may still be run properly by its manager regardless of possible disagreements between shareholders.

-A property holding company is also useful when it comes to real estate transactions because a stamp duty rebate may be granted when shares are transferred instead of direct real property ownership.

-A property holding company is also useful when it comes to wealth management because, unlike real estate that may not be transferred gradually, a SCI may be transferred gradually through company share donations. Under French law, provided that such procedure lasts long enough it entails tax rebates pertaining to donations made during donors' lifetime.

-Moreover, French law is very flexible regarding articles of association of a SCI. For instance, a donor who has kept just a few shares for himself/herself may retain nonetheless a full control over his property holding company.

Cons

-It is essential to bear in mind that shareholders of a SCI are indefinitely and personally liable to its debts.

-Theoretically shareholders are not jointly and severally liable.

However, it is customary for creditors to bring action against well-to-do shareholders in order to get their money back. Unfortunately, as a result such shareholders often end up suing the others to make up for their losses.

-Tax rebates are only efficient when a SCI meets tight criteria in terms of accounting, tax and legal procedure including annual meetings etc. Meeting such requirements has financial consequences.

-Resorting to property holding company must be done carefully with a clear understanding of the whole operation and certainly not without seeking professional advice.

A SCI may prove very useful insofar as it is created with expertise and clear goals.

It should also be borne in mind that prior to the creation of a SCI it is essential to set out the conditions under which it may be wound up at a later time.

The apparent legal simplicity surrounding the creation of a SCI may be deceptive.

Taxation:

As to taxation, it is worth noting that in almost every case, property holding company managers choose to pay the "impôt sur le revenu" (personal income tax) rather than the "impôt sur les sociétés" (corporate income tax).

Thus, this guide only refers to the category of SCIs whose shares are held by natural persons (see below).

Such companies are deemed "fiscally transparent", i.e. their income is not taxed through corporate income tax but through a personal income tax proportionate to the amount of shares held and in accordance with French tax regulations (Code général des impôts).

Profits arising from shares held by natural persons are assessed according to the real estate revenue tax system and are subject to land/property income tax.

On top of the income tax, a shareholder's (natural person) share of profit is subject to an 11% social contribution usually payable on October 15th.

Public Auction Sale, a Purchaser's Guide

Taking Part in an Auction:

Before an auction, it is important to gather information about the properties up for sale, view the properties that are of interest, consult the corresponding legal packs and sort out finances.

On the day of sale, prospective purchasers have to leave a deposit cheque with the notaire or the solicitor who is instructed to handle the auction and get in return authorization to bid and a badge. Then prospective purchasers may during the course of the auction make their own bids. Property auctions in France are traditionally called "vente à la bougie" or "candle auction" i.e. a candle is lit towards the end of the auction and when it goes off, the last and highest bid makes the successful bidder.

After an auction, auction fees, stamp duty and the amount bid are payable within 45 days by successful bidders. However, during the 10 days following an auction a higher bid may still be made.

When this 10 day period is over, the sale is deemed fulfilled and ownership transfer may take place.