

You've found the perfect property and are ready to sign. Ensure you are prepared for the completion meeting with the *notaire* using this guide from **David Anderson** and **Olga Tabenko**

The finishing line

French *notaires* are obliged to ensure that all parties understand the deed they are signing. *Notaires* are referred to in France as 'judges of the non-contentious' and as such they are representatives of the French state and like a judge have a strict obligation to uphold the law.

This means that when a deed of sale is signed, the *notaires* are confirming that all parties understand the document and agree freely to sell and buy. This goes far beyond what a solicitor has to do as he or she is acting only for his client and is not appointed by the state.

Completion formalities

English buyers are often surprised at the formality involved in purchasing a property in France. The *notaire* usually wants the buyer and seller to be present on completion to sign the deed of sale. If the two parties are not present at the signing, a power of attorney is usually acceptable but it has to be legalised to confirm that the people involved have been identified.

At completion meetings the

notaire usually reads the deed out to all the parties which British buyers may find tedious. The *notaire*, as a judge, should always do this to satisfy himself that the parties understand the deed. Sale of property deeds are very detailed and all the relevant points should be included.

The *notaire* also signs the deed which amounts to a court order

Notaires should insist that foreign buyers have an interpreter on completion. Having written confirmation from the buyer that they refuse to use an interpreter is unlikely to be satisfactory

by him that the sale is validly concluded. French lawyers make a great deal of this and contrast it with the Anglo-Saxon approach of separate solicitors which is seen as not offering clients sufficient protection in its more adversarial approach.

Recent court case

In a recent decision of the *Cour de Cassation*, the French Supreme

Court ruled that the *notaire* had a responsibility not only to ensure that the client had legal capacity to sign the document in question but also that he was able to understand the terms and implications of the document.

The document in question was a personal guarantee. A French company borrowed €500,000 from a French bank. Mr Y, who

notaire failed to tell him he should be assisted by an interpreter. The *notaire* argued that he was not required to communicate to Mr Y something that he already knew, and that it was in fact Mr Y who was at fault as he had negotiated the deal with the bank.

The court, however, disagreed and ordered the *notaire's* office to pay the full €500,000 to the bank. Mr Y paid nothing. The court said that it was not appropriate to apportion liability in these circumstances even though there may have been some fault on Mr Y's part as well.

The approach of a UK court would have been different. It would be logical to assume that a party to a contract who actively negotiated the terms in advance and knew exactly what he was signing would be bound by the contract. It would be difficult for him to argue that because the final document was not in a language he spoke fluently he could have no liability because he was not told to have it translated. This shows the fundamental difference between the UK and French legal systems.

Notaire responsibilities

Any sensible *notaire* will ensure that he reads the final deed of sale through carefully to all the parties and if appropriate tells them to retain a translator. If they do not want a translator present then the *notaire* may be wise to decline to complete the sale.

There are some *notaires* who do not read the full deed out, which is a lazy and indeed dangerous thing to do.

Some also have clerks who handle the completion meeting and read the deed out; the *notaire* only appears at the last minute when the deed is signed. In the eyes of the law this is akin to a judge who does not read all the court papers or who gets a court clerk to hear the case.

This gives buyers, especially non-French-speaking buyers, a get-out-of-jail card if they have a problem later on and wish to make a claim. For example, if there is a structural defect, a restriction on the use of the property or a third party right

over the property which is dealt with in the sale deed by providing that the seller is not liable, then if the *notaire* does not verbally spell this out to the buyer it is likely the buyer will have a claim against the *notaire*. The *notaire* will be in particular difficulty if he did not read the deed out to the parties on completion or was not present.

The sale deed often contains numerous annexures, such as the energy certificate and the diagnostic tests which are typically not read out or gone through by the *notaire*.

In fact, in my experience, this has been the case at every French completion meeting I have attended, of which there have been many. Again, this is dangerous as if there is a material

adverse entry the buyer will be able to say the *notaire* should have pointed this out to him.

Notaires are paid a generous and fixed fee with limited competition. Any *notaire* who cuts corners at completion meetings undermines the whole *raison d'être* of his profession and will get little sympathy from the courts or indeed other *notaires*.

How this affects buyers

Notaires should insist that foreign buyers have an interpreter on completion. Having written confirmation from

the buyer that they refuse to use an interpreter is unlikely to be satisfactory. The *notaire* will want to ensure that they have protected themselves from any risk.

If the *notaire* has not read out

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the sale deed to you and you then suffer a loss, you may be able to sue the *notaire*. *Notaire's* clerks who read the sale deed in place of the *notaire* will expose the *notaire* to a claim.

Where the transaction is complex and involves high-value properties, *notaires* should insist on a bilingual lawyer being present to explain the terms of the deed to you and confirm to the *notaire* that you understand what you are signing.

Notaires should include a declaration in the transfer deed that this has been done and get the bilingual lawyer to sign the deed of sale. In the Dutch case mentioned, the *notaire* should have insisted on a bilingual Dutch lawyer confirming that the guarantor understood the French deed of guarantee. ■

David Anderson is a solicitor advocate and chartered tax adviser and Olga Tabenko is a solicitor at Sykes Anderson Perry Limited Tel: 020 3178 3773 saplav.co.uk