

# Take Note of the Notaire

*In his first property column for Provincial Living, solicitor MICHAEL BULA gives us an insight into the complex world of the notaire – the person at the helm whenever property is bought and sold in France.*

**D**espite currency fluctuations against the Australian dollar, the time has never been better to purchase property in France. French property prices have flattened in areas outside of Paris, as well as in certain regional centres and the hotspots of Provence and the Côte-d'Azur. I always say you cannot buy a garage in Melbourne's Fitzroy for the price of a beautiful property in some parts of France.

"Can Australians buy French property?" I hear you ask. The good news is that France has no foreign investment board-like restrictions preventing non-French citizens or residents from acquiring French residential property. However, unlike common law countries such as Australia, France is a civil law jurisdiction. The civil code of France is very different to the statutes, judicial precedent and equity of common law countries. The conveyancing process of France cannot compare to Australian State practice, let alone the conflict of laws between the two countries. However, with the right professional guidance, the differences may be smoothly transacted.

## **Notaire or notary**

The French system makes the engagement of a notary compulsory to perfect all real property transactions (purchase, sale, mortgage, and a number of other property dealings). The reason for this monopoly is not always evident. It stems from the requirements of the French Civil Code and a delegation from the State, whereby this profession alone can authenticate property operations, from the identity of the parties, their understanding of the terms and conditions and secure property title to name a few.

The profession and office of the civil law notary, or French *notaire* in our case, comprises highly qualified post-graduate degree lawyers, who form part of a *numerus clausus* (closed number in Latin) – that is, a limited number specialist legal profession regulated and appointed by the *Garde des Sceaux* (Minister of Justice) in France.

Work typically carried out for a property acquisition is drafting contracts, powers of attorney, sale deeds at settlement, property due diligence and certificate searches, advice, transaction accounting, taxation, mortgage and many other aspects.

There are nearly 10,000 notaries in France, with about 4,500 main offices and 1,330 branch offices. Notarial offices employ more than 57,000 notarial employees. The average age of French notaries is 48, and female notaries make up about 35% of the profession.

Each year, notaries receive more than 20 million clients, deal with €600 billion worth of capital, prepare more than 4 million authentic deeds (a special form public notarial act, which is conferred maximum probative and executory force under French law) and realise a fee turnover of €6.2 billion.

The division of notarial activities comprises 49% for the real property and building matters, 14% for credit instruments, 26% for family deeds and successions, 4% for real property sale negotiations (see below), and 7% for company law advice, valuation, and Estate planning works.

A notary cannot appear in court, but under the civil code system, is the sole public ministerial officer who can authenticate particular transactions of which real property operations form part in France.

They intervene on a wide range of other matters, including notarial acts for matrimonial regimes, divorces, successions, leases, and other areas, including non-exclusive ones such as company formation, taxation, etc.

Unlike Australian lawyers, they play the neutral role of advisor, mediator, and authenticator-certifier. Hence, they can act for both vendors and purchasers.

In France, generally, purchasers pay the notarial legal costs and government registration charges. I always recommend that vendors and purchasers appoint their own separate notaries, sharing the same cost the purchaser bears in France – where two

heads are certainly better than one. This is a value-added option, which provides better objectivity and representation.

In dealings with my own boutique specialist network of notaires and other lawyers (*avocats*) throughout France, I have established an eclectic group of practitioners around France, which has the advantage of Australian-focused legal knowledge and interface offering its own intrinsic value in what is, after all, a private international legal operation.

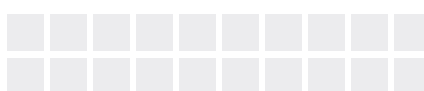
Notaries are authorised to market properties under their authority and receive a negotiation fee.

In summary, they provide full professional assistance, advice, and, of course, competence in property transactions and are responsible for the final notarial deed – the *acte de vente* and post-settlement formalities and beyond. ♣

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