



LEGALESE

with our resident lawyer and notary Michael Bula

HOW DO YOU ACHIEVE A JOINT TENANCY SURVIVORSHIP FOR A FRENCH PROPERTY PURCHASE?

This is a question often raised by clients who may be married, in a de facto relationship or same-sex couples. Subject to a number of French succession rules which protect children of previous marriages and some other considerations, it can be generally stated that a married couple without children from a prior relationship can change their matrimonial regime solely for French assets to the *communauté universelle* or universal community of assets in France by a notarial deed, so that the survivor automatically inherits all French assets from the predeceasing spouse. This presupposes the couple is married. In any other case, the tontine can achieve a similar result, where in effect the predeceasing partner is treated as if he/she never owned the property and it passes directly to the survivor. There are, however, a number of caveats to be investigated on a case-by-case basis.

WHICH COUNTRY'S SUCCESSION RULES APPLY IF I DIE OWNING FRENCH PROPERTY?

To answer this question, it must be presumed that the party is a non-resident in France and usually domiciled in Australia owning real property in France. Generally, *lex situs* or the law where the real property is located – the jurisdiction of France – will alone determine succession devolution rules. This is irrespective of an Australian State or Territory Will, as it may be in conflict with French law. It is wise to obtain specialist wills and succession advice prior to entering into a French contract.

HOW DO I EXECUTE A FRENCH POWER OF ATTORNEY [PROCURATION] IN AUSTRALIA?

You must attend before an Australian notary for him/her to certify and authenticate your signature and identity. In my case, I prepare a notarial attestation in French, which is acceptable to French notaires. I have intervened after some Australian notaries have poorly completed these notarial deeds, so you should certainly enquire for any notary you chose, if he/she can competently complete the work. You will come across a procuration for purchase or sale of real property and even for obtaining a French mortgage loan. If a company purchaser is involved, a special Power of Attorney authorising the Attorneys under power to bind the company is also necessary. I have also developed a form of e-notarisation using Skype videoconferencing and identity proofs for clients all over Australia and the world, which means deeds can be notarised through this medium.



Michael Bula Solicitors
MBS International Lawyers

FRENCH PROPERTY SERVICES

- All legal aspects of buying and selling property in France
- International legal, notarial and NAATI professional translation services
- Recognised in France and Australia
- Legal Counsel to the French Embassy and Consulate General

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