



The Finer Details

Solicitor MICHAEL BULA guides us through the most common preliminary contracts for the purchase of French property.

Types of contract

The preliminary contract or *avant-contrat* is usually the first document signed in a purchase transaction of French property some months prior to the *acte authentique de vente* or sale deed at settlement. This is indeed a formal contract which binds and engages the obligations of the two parties and embodies the formal terms and conditions of the sale and agreement. The most typical forms are the *promesse de vente* or *compromis de vente*, both of which have very different legal consequences for the purchaser and vendor.

Promesse de vente

The vendor (the “promissor”) agrees with the purchaser (the beneficiary) that he/she is bound to sell the property for a fixed price under terms and conditions. This effectively amounts to an exclusive option to purchase for the purchaser to exercise for

a limited period, which is on average from two to four months from the date of signature. The vendor cannot sell the property to another purchaser during this period. Usually a deposit of ten percent of the sale price is paid by the purchaser.

If the purchaser elects to proceed with the purchase, the deposit is retained as part of the proceeds of the purchase. However, if the purchaser renounces the purchase or does not accept the purchase transaction within the period specified, the deposit remains the property of the vendor by way of damages.

To be valid, the *promesse de vente* must be registered with the tax office within ten days following signature if by way of private deed (contract drawn by an agent) or within one month if by way of a notarial deed. Registration duties are payable by the purchaser.

Paris notaries favour this type of contract.

Compromis de vente

This form of contract is more akin to those in Australia where both parties are immediately legally bound to the transaction by way of contract. This is the most secure method of purchase of French property for a purchaser.

If one of the parties renounce, the other may seek specific performance in the courts and seek costs and damages. The signed *compromis* is accompanied by the payment of a deposit of between five and ten percent of the sale price. Usually there is a *clause pénale* or penalty clause which fixes the amount of damages if a purchaser does not proceed with an unconditional contract.

Unlike the *promesse de vente*, the *compromis de vente* does not require registration with the tax office.

Offer to purchase or offre d'achat

Often presented to purchasers by real estate agents, this document must be treated with extreme caution as it can bind the purchaser but not the vendor. Acceptance of the offer by the vendor is usually by registered mail with return receipt card or, less commonly, by a bailiff's act (*huissier de justice*). The purchaser has a cooling-off period of ten days (see next page).

As a minimum, special conditions or even conditions precedent such as "subject to finance" or other contractual requirements must be drafted in this document. The vendor should be given little time, such as one to two weeks for acceptance of the offer, failing which the offer is null and void. Legal advice should be sought to carefully draft or review this document and its conditions, including refund of any holding deposit or fee.

Special conditions or conditions precedent

Whether the *promesse de vente* or *compromis de vente* is involved, the parties can elect to insert such conditions. Their legal effect is to render the contract null and void if certain events occur or do not occur prior to a specific date or settlement itself. Conditions may benefit one or other or both of the parties. In the case of a condition not met, the deposit moneys are simply refunded to the purchaser.

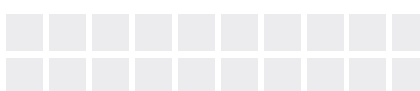
Another common clause which should not be confused with special conditions is the penalty clause or *clause pénale* (see previous page).

Who should draft the preliminary contract?

I recommend that only the notary in France should draft this document with the assistance of an international lawyer and notary for the Australian interface (for reasons of law, company matters, conflicts issues, succession etc.). Real estate agents are not equipped or trained to draft these documents especially where foreign Australian purchaser parties are involved.

Cooling-off period

Upon receipt of a copy of a preliminary contract signed by both parties, a purchaser has seven days to cool off and withdraw from the day after the date of receipt. Such withdrawal must be notified in writing by registered letter with return receipt card, where the postal stamp, when forwarded, must bear a date within ten days from the date of receipt of the copy contract, either in person in France or on the receipt by registered mail and return receipt card signature in Australia (Loi Macron from 8 August 2015 – previously seven days). ♣



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