

International Relationships: Cross-border asset issues for couples

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By PrimeResi

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Lawyer Véronique Cardon runs us through the real estate issues facing couples with assets in other countries...

More and more Brits are buying holiday homes in continental Europe, and most recently France has been chosen as the target destination. This summer's chaos in Dover and 14 hours of traffic jams proved just how popular France is as a home away from home.

Victoria and David Beckham are the latest high-profile English couple to be selling their Cote d'Azur holiday home. Whether a couple is separating or simply unable to find the time to benefit from their retreat, the process for a British couple selling a property in France is often not straight forward and can be very stressful (without including the complex case of a British minor selling the share received in a French property).

For those who end up buying a second home in France there is a time where the sale or the transfer of the property to the other one is envisaged. This can be complex and expensive and advice should be obtained.

The first step would usually be for the seller(s) to appoint an estate agent and to choose the right mandate (exclusive or non-exclusive) corresponding to one's situation/ objectives. The advice of an expert is useful as in France a Vendor could be bound to sell to a purchaser under certain circumstances even without having signed the preliminary contract. The necessary technical reports (asbestos, lead, electricity...) should then be carried out by the Vendor(s) for the purchasers' information. Should an issue be revealed by the reports, it should be reflected on how best to deal with the issue prior to entering into a formal agreement with the purchasers.

Appointing a recommended Notaire is advisable as he will draft the declarations the Vendors will be making in the contract. These declarations should be correct. The Vendor(s) will need to provide to the Notaire numerous documents for drafting the initial contract and notably invoices and proof of payments for the calculation of the French capital gains tax (CGT) as applicable. It is important to bear in mind that part of the taxes payable for French CGT (the 15.5% which are in addition to the 19% due) are unlikely to be deductible from the CGT payable in UK. The Brexit may affect sales as French CGT rate applicable to British people may change.

Alternatively, if a couple separates and one intends to keep the property, they would need to sign a deed called " *licitation*" in front of the Notaire, to buy the share of the other one out and provide a valuation which cannot be challenged. It seems very easy at first sight but it is likely to be expensive and could be tricky in practice notably if a mortgage is registered against the property. For a brief overview in terms of costs, the main tax payable is the " *droit de partage*" of 2.5 %. The tax applies to the total value of the property and not only to the share transferred! In most cases no French CGT will be payable in France but CGT may be payable in UK under certain circumstances. This is even more complex when a divorce occurs in the UK.

It is very important if a couple is divorcing that detailed advice on a French situation is obtained before reaching final agreement in the UK.

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