

Impulse buying a thing of the past

Purchasers of property in France for use as a second home can no longer be required to sign a contract for the purchase of the property minutes before leaving to catch the boat home at the end of a fortnight's holiday.

A new law (2000-1208 dated 13th December 2000 *Loi relative à la solidarité et au renouvellement urbain du 13 décembre 2000*) has been enacted which protects the Purchaser of a property for residential purposes by building into the contract a period of reflection during which time the Purchaser can withdraw from the contract without any penalty. It also applies to foreigners purchasing homes in France.

The new law will apply to all contracts (*promesse de vente/compromis de vente*) signed for the purchase of residential property after the 1st June 2001. The idea behind the new law is to extend further the protection already given to Purchasers in certain types of transaction (for example contracts for the purchase of new houses) and who are considered to be potentially the weaker party in a conveyancing transaction. The new law now encompasses all contracts for purchase. It will apply to all vendors and all non-professional Purchasers. This means that at the moment of signing a binding contract to purchase, an extracontrol is inserted which consists principally in giving the Purchaser sufficient time to back track if the purchase turns out after due reflection to be an expensive folly or otherwise inadvisable.

The strict legal situation differs slightly depending on the nature of the preliminary contract which is signed.

Any *acte sous seing privé* (for example *compromis de vente*) only becomes definitive after a seven day period has elapsed. During this waiting period the Purchaser can withdraw without penalty and any deposit paid must be returned.

If the preliminary contract is to take the form of an *acte authentique* (e.g. *promesse unilatérale authentique de vente*) then by way of contrast, this type of contract can only be signed in front of the Notaire after a period of seven days has elapsed after the Purchaser has received the draft *acte* for approval.

The seven day period runs from the day that the Purchaser is reputed to have had knowledge of the content of the contract which can be provided by registered post or handed to the person directly or received by fax or in the case of a draft *acte authentique*, by electronic mail.

For example, in the case of a purchase taking effect by an initial contract in the form of *promesse unilatérale authentique de vente*, if the draft text is given to the Purchaser on a Monday, then the final document can be signed in front of the Notaire the following Tuesday.

During the cooling off period, no deposit can be paid over by law except in the case where a professional person has been mandated to intervene in the sale (Estate Agent, Notaire,

Avocat, etc). In all cases if the contract is renounced, the deposit must be returned in a 21 day period following the decision not to proceed.

At the present time, the new provisions have yet to come into force. Unfortunately from a technical point of view it is not entirely clear if the new law is intended to have effect without exception as a matter of public order or not. Whilst we await further clarification on this point, Purchasers are advised not to agree to any proposal to renounce the benefit of their rights accorded by the new law and only to accept to sign a contract which becomes legally binding at the end of the cooling-off period allowed by law.

If, as it is widely supposed, the law is intended to be a public policy, the parties will not be free to do away with this right accorded to the Purchaser and in all circumstances a waiting period will have to elapse.

Purchasers of properties in France should therefore take full advantage of the seven day period allowed to them and if they have signed a contract in some haste and possibly under some persuasion prior to leaving France, they should do their utmost to take full legal advice on the content of the contract and their obligations under French law immediately so that the necessary steps can be taken to withdraw from the contract if it is deemed appropriate.

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