

They can also propose appropriate legal and tax solutions for changing in family circumstances or changes in family estates, taking into consideration the following:

- increase of civil unions
- increase of divorces
- geographic mobility
- mutual support mechanisms within families
- insolvency

The work of the notaire is not limited to dealing with family events such as divorce, death or a disabling accident. They are also advisors that families may consult at any time of their lives, e.g. to prepare the transfer of their property, or change the structure of their estate, according to their current and foreseeable needs (housing, retirement pension supplement).

“As legal and financial advisors to families, notaires also help to prevent conflicts and, consequently, help to minimise the number of lawsuits...”

For further information on the role of the notaire, contact:



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Information contained in this leaflet is taken from factsheets published by Notaires de France in November 2007. This leaflet is intended to assist you with your understanding of the role of the notaire within the French legal system and in particular his role in the process of buying a property in France. This leaflet is neither a definitive guide or detailed enough for you to make your purchasing decision solely based upon its contents herein.

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Notaires



Properties in France

“The notaire is subject to strict rules and rigorous controls; he is legally and financially liable for the deeds that he drafts...”

The notaire is a legal professional with a public authority mission responsible for preparing contracts in authentic form. The notaire is also a public officer whose duties cover all fields of law: family, real estate, inheritance, business, rural affairs, local authorities, etc.

Acting on behalf of the State and appointed by the Minister of Justice, the notaire guarantees the reliability and authenticity of the deeds he produces. Consequently, certain deeds/contracts, due to their importance, are the exclusive prerogative of the notaire. Such is the case for property transfer deeds that can only be prepared and signed at a notaries' office.

The notaire has the power to authenticate these deeds through his seal and signature. He therefore must officially confirm the wishes of the persons who sign the deeds and he is personally accountable for the content and date of the deed, which then has the same force as a final judgment in non-litigious legal matters. The notaire guarantees the fairness of the contract.

While the notaire acts as a public authority, he is an independent professional, thereby providing a public service without any cost to the State, since he assumes full financial responsibility for his office. The notaire is paid by his clients according to a price schedule set by the State.

“There are 8595 notaires and 4503 notarial offices in France, according to Notaires de France (July 2007)...”

With offices located throughout France, according to a distribution determined by the Minister of Justice, to meet the needs of the population, this spread of notarial offices is based on a number of key principles:

- maintaining a public legal service at a local level
- keeping up with geographic and demographic changes

WHAT DO YOU PAY WHEN YOU SEE A NOTAIRE?

When buying property, the amounts paid to the Notaire, commonly and inaccurately referred to as “notaire’s fees”, comprises:

- The *taxes* that go to the State and the local authorities (approximately 8/10ths of the fees). This is the sum that the notaire must receive and pay on behalf of his client. They vary according to the type of service and the nature of the property.
- The *payments* (1/10th). These are the sums paid by the notaire on behalf of his client and used to remunerate the various service providers and/or pay for the cost of the various documents, and to pay any extraordinary costs incurred at the request of the client.
- The notaire’s *remuneration* (1/10th). Because they perform a function serving the public interest, these payments to notaries are strictly regulated. They are subject to a rate card fixed by the State. Furthermore, the amounts that the clients must

“When buying a property in France, the notaire oversees all the legal aspects of the sale. He has the sole responsibility for the preparation, the signing and the execution of the final deed or ACTE AUTHENTIQUE...”

lodge with the notaire to set up their dossier must be paid into a public financial establishment such as the *Caisse des Dépôts* (French state-owned bank) or *Trésorerie Public*.

In France, all property sales completions must be processed by a notaire. As a public officer, he sees to the proper execution of the contract and, in addition to confidentiality, ensures legal security. The notaire gathers the required documents beforehand, thereby greatly reducing the risk of any subsequent dispute.

“The deed of sale must be drafted by and signed by a notaire, who, as a public officer, must guarantee the efficiency of this contract and give to both parties an absolute security...”

For example, the notaire will:

- search for and request the identity of the parties to the contract, as well as their marital status
- check the seller's title of ownership
- clear the pre-emptive rights
- check that the compulsory pre-sales diagnostic inspections have been carried out before the completion of the sale.

Through in-depth legal knowledge and awareness of the continuing changes in the laws, the notaire offers a strong guarantee that you should have no “unpleasant surprises”. Once the title deed is signed, it must go through the important legal publication formality of recording it in the mortgage registry. The purpose of this record is to keep track of existing ownership rights and any mortgages (loans) taken out against the property. As public officers, only notaires have access to this file.

Lastly, the notaire guarantees the preservation of the title deed by keeping it in his office for a period of 100 years. After that period, the deeds are kept in the national archives.

THE NOTAIRE AS FAMILY ADVISORS

Like English solicitors, French notaries do undertake probate work, handle divorce settlements and estate planning. However, the major difference is that they do not plead before Courts, as this is the role of an advocat.

Generally, French notaries provide the answers to families' questions on legal, tax, and estate issues such as:

- pre-nuptial agreements
- gifts (between spouses, parents and children, etc.)
- wills
- joint ownership agreements
- family-owned non-trading companies
- estate settlements