

THE PURCHASE AND SALE OF A PROPERTY

PURCHASING A PROPERTY MEANS, ABOVE ALL, CONSULTING AN EXPERT

The purchase or sale of an immovable property is not to be taken lightly. It is a serious act full of consequences. The notary is the acknowledged expert in the law of immovables. Do not hesitate to consult your notary before signing any document for the purchase or sale of an immovable. He will know how to inform you on the precise nature of the document to avoid nasty surprises and ensure that the deed of sale is signed in harmony. At the time of signature, the notary explains the rights and obligations of the parties to the deed. He is duty-bound not to remit the sale price to the vendor until the necessary verifications have been completed and all parties are fully protected.

PROMISE TO SELL/PURCHASE

The promise to sell or purchase is the most common document signed by all interested parties prior to a sale. Contrary to popular belief, such a document is not one that can be easily disposed of after signature. It is a preliminary contract that imposes obligations on the parties. Once the promise is signed, it becomes extremely difficult to alter its terms and withdraw from the obligations thereby contracted. Hence the importance of consulting a notary before signing any document, to avoid difficult and often irreparable situations.

You are invited to read the leaflet called “The preliminary contract”, on the subject of the promise to purchase.

SELLING: THERE ARE RESTRICTIONS

Selling your immovable property to whom and when you please appears to be an acquired right; however, sometimes, an owner must be authorized to sell his property.

For example:

- The owner of a family residence must have the written consent of his or her spouse to sell
- A tutor to minor child shall often obtain certain authorizations to sell an immovable owned by the minor child
- The owner of classified cultural property must, in well-defined circumstances, obtain authorization to sell; the same is often true for the owner of agricultural property
- The sale of an immovable that forms part of a housing complex is subject to authorization by the Régie du logement

Prudence is therefore recommended. If you sell without right, you jeopardize the sale and expose yourself to civil action. The notary can inform you about the authorizations required and, if you so request, will undertake to obtain them.

THE SALE WITH LEGAL WARRANTY

The vendor and the purchaser of an immovable have certain obligations towards one another. The purchaser must take possession of the property and pay the sale price. The vendor must deliver

the property and is bound by the legal warranty, that is, the law obliges him to guarantee certain things to the purchaser.

First, the vendor is bound by the warranty of ownership. He must guarantee to the purchaser that the immovable has no title defects and is free of all charges, except those declared at the time of sale. The vendor must also guarantee that the immovable does not suffer from encroachments (an encroachment on his part or an encroachment caused before the sale by a third person with his knowledge) and, within the confines of the law, does not contravene public law restrictions (for example, the vendor guarantees that the immovable complies with zoning regulations). The warranty of compliance with public law restrictions is, however, not absolute: the purchaser must remain vigilant.

Second, the vendor is bound by the warranty of quality, that is, the warranty against hidden defects. But be careful! The warranty of quality covers only major defects that existed at the time of the sale, that were unknown to the purchaser, and that a prudent and careful purchaser would not have discovered.

Easy you say?

To the extent permitted by law, the parties may add to or reduce the legal warranty. The notary is well-equipped to inform you on the subject and to include in the deed of sale a clause that **extends or limits liability to reflect the wishes of the parties while complying with the law.**

THE TITLE SEARCH: A NECESSITY

After carrying out the necessary title search, your notary is in a position to guarantee that title to the property will not be contested.

First, his search consists of verifying whether:

- The vendor is the true owner of the property
- The vendor has the right and capacity to sell it
- The vendor's spouse or other persons must consent to the sale
- Etc.

With the aid of a certificate of location, your notary then verifies whether:

- The dimensions of the lot are correct
- The buildings have been properly erected on the lot to be sold
- The dwelling has been built in conformity with municipal by-laws and zoning regulations
- The neighbour's property encroaches on the lot
- The windows conform to legal standards
- There exist rights of way
- Etc.

Finally, from his title search, your notary will be able to detect any charges or real rights likely to affect or limit your right of ownership, such as hypothecs, seizures, judgements, servitudes, etc.

THE SALE PRICE

- Are you paying cash? You will have the benefit of the administration of funds by the notary in his trust account. The funds will not be released until all verifications have been made.
- The assumption of your hypothec by the purchaser may save you from paying a penalty to your creditor, but are you ready to remain liable to the creditor in the event that the purchaser fails to pay? Consult your notary first concerning possible alternatives and consequences.
- Balance of sale or new hypothec? The notary can assist you in comparing the different types of financing available and will examine your options with you... for the sake of your budget.

THE NEW HOUSE

You want to buy a new house without the horrors of construction legal hypothecs? A follow-up after the sale is required, since there are many players involved in construction, who can claim sums your builder fails to pay, sums that can be considerable.

Your notary can offer you legal hypothec insurance. **Don't deprive yourself!**

THE NOTARIAL DEED OF SALE: A VALUABLE DOCUMENT

Your notary drafts the deed of sale with the care and attention to detail that characterize all his work, putting into this document all the clauses essential for the protection of your rights.

The notary also draws up all other deeds related to the deed of sale: hypothecary loan, servitude, acquittance, co-ownership agreement, will, etc.

The notarial deed is proof of its contents. You will be given an authentic copy of the original, which is numbered, recorded and kept in the office of the notary... the whole, for your protection.

CO-OWNERSHIP

These days many couples, whether or not they are married or in a civil union, decide to buy their house jointly. It is commonly said that the house "is in both names". As a precaution, when they decide to buy a house together, undivided co-owners should set down the rules which will govern them, in an agreement. The notary is well placed to advise the parties on the scope of the agreement and to draw up the appropriate document.

Consult your notary: he leaves nothing to chance.