

## **THE PRELIMINARY CONTRACT**

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The purchase of a house

So you've found your dream house and want to buy it...Be prudent and don't sign anything yet. Did you know, for example, the difference between an offer to purchase and a promise to purchase? Are you in a position to assess the legal effects of either one? See your notary before signing any document for the purchase of an immovable property. He can verify the contents of the document, and tell you exactly what you are getting into. He will advise you and help you avoid nasty surprises. Let the notary guide you to a successfully completed purchase. As the old saying goes: an ounce of prevention is worth a pound of cure...

The various types of proposals to purchase

The proposal to purchase a house may take on several forms:

- the offer to purchase
- the counter-offer
- the unilateral promise to purchase (i.e. option)

The offer to purchase differs in many ways from the promise to purchase, in particular with respect to the right in principle to revoke it before receipt of the acceptance (if the offer does not have a deadline) and the liability that applies in the event that it is breached. Where a proposal to purchase is validly accepted, it generally becomes a bilateral contract binding both parties. As the name implies, it presupposes that another contract, the sale, will follow. Already, at the stage of the preliminary contract, the purchaser must buy and the vendor must sell in accordance with the terms and conditions of the preliminary contract. Be careful when confronted with the many forms available. If you do not fully understand all the niceties, you could find yourself:

- paying a non-refundable deposit;
- undertaking to respect absolute deadlines;
- renouncing warranties.

### **CAN THIS PRELIMINARY CONTRACT BE CANCELLED?**

Unless both parties decide together to cancel the contract, it is irrevocable except for certain causes recognized under the law. You are generally bound by the preliminary contract. The other party may oblige you, through judicial procedures, to execute the obligations you have undertaken. According to the circumstances, the court may force you to execute the deed or may simply award damages; it may sometimes do both. Each party has legal recourses to force the other to follow up on the agreement. The injured party may also sue for damages.

Unless, of course, you change your mind within three days? or even ten? Not true! If the preliminary contract does not provide for a period of grace, or at least provide for "earnest money" your agreement is in principle irrevocable.

## **EXCEPTION FOR NEW HOUSES?**

Yes, but in certain circumstances only.

The law does provide for a ten-day period of grace in favour of a promisor who is a natural person, subject to the payment of certain costs, if the vendor is the builder or promoter and the property is a new residential immovable acquired for occupation by the promisor.

## **THE CONTENTS OF A GOOD PROPOSAL?**

The notary is well aware of the importance of a good proposal. He sees to the protection of the interests of both the purchaser and the vendor. He will take care to include in the proposal all the elements required for the sale, including:

- prerequisites for the sale
- the precise description of the property and a list of the other property included in the sale
- the obligations of the purchaser and the vendor
- the sale price and method of payment
- the amount of deposit to be kept in trust
- the conditions of sale and warranty
- the documents that must be provided
- dates and deadlines for
  - a building inspection
  - the signature of a deed of hypothec
  - the execution of the deed of sale
  - occupation
- costs assumed by each party
- etc.

## **THE NOTARY**

Your notary knows the serious problems that may result from a proposal that is incomplete, poorly drafted or misunderstood. Meet with him to discuss your plans. The notary is the contract legal advisor and the specialist in immovable property transactions.

For the contract to succeed, you must start off on the right foot.

## **CO-OWNERSHIP: A SPECIAL CASE**

Before becoming involved in the purchase of any form of co-ownership, protect yourself by first consulting your notary.

**Consult your notary: he leaves nothing to chance.**



**Chambre  
des notaires  
du Québec**

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