



LACAILLE, Lise
The Notary and Daily Life
Detail



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 cogent matter with serious consequences. Notaries are the acknowledged experts in real estate dealings; do not hesitate to consult one before signing a document for the purchase or sale of an immovable. They are trained to inform you on the precise nature of this document to avoid any unpleasant surprises and to ensure that a deed of sale is duly executed. At the time of signing, the notary will diligently point out the rights and obligations of the parties to the deed. They are duty-bound not to divulge the sale's price to the vendor until the final verifications have been made and all parties are fully protected.



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PROMISE TO SELL/PURCHASE

The promise to sell or purchase is the most frequent document signed by interested parties prior to a sale. Contrary to popular belief, its content cannot be disregarded after it is signed, as it is a preliminary contract that imposes certain obligations on the parties. Once the document is signed, it is often very difficult to alter its terms and be released from the obligations contracted thereunder.

Hence the importance of calling upon the expertise of a notary **before signing any document**, to avoid predicaments that are often irreparable.

You are invited to read the leaflet “The preliminary contract”, regarding the promise to purchase.

SELLING: THERE ARE RESTRICTIONS

Selling your immovable property to whom and when you please might seem to be an acquired right; however, in certain cases owners must obtain authorization to sell their property.

For example:

- The owner of a family residence must have the written consent of his or her spouse (by marriage or civil union) to sell.
- The tutor (guardian) of a minor might be required to obtain certain authorizations before selling 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 farmland.
- The sale of an immovable that forms part of a housing complex is subject to authorization by the Régie du logement

Prudence is therefore the watchword. If you sell without being entitled to do so, you jeopardize the sale and run the risk of civil action. Your notary can inform you on the authorization required and, if you so request, will undertake to obtain them.

SALE WITH LEGAL WARRANTY

The vendor and the purchaser of an immovable are held to certain mutual obligations. The purchaser must take possession of the property and pay the sale's price. The vendor must deliver the property and is bound by the legal warranty; in other words, the law obliges the vendor to guarantee certain things to the purchaser.

First, the vendor is bound by the **warranty of ownership**, and is obliged to 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 is not encumbered by any encroachment (an encroachment attributable to the vendor or attributable to the sale by a third party, with prior 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 diligent 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 will 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.**

TITLE SEARCH: A NECESSITY

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

First, the research 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,
- And so on.

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 compliance 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,
- And so on.

Finally, from the title search, your notary will be able to detect any charges or real rights likely to affect, limit or devalue your right of ownership, such as hypothecs, seizures, judgments and easements.

THE SALE'S PRICE

- Are you paying cash? You will be able to benefit from the administration of funds by the notary in his trust account. This is **for your own protection**, and funds will not be released until all final 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 prepared 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 with a comparison of the different types of financing available, and will examine the various options open to you... for the sake of your budget.

YOUR NEW HOME

You want to buy a new property without the nightmare of construction legal hypothecs (builder's mortgage)? A follow-up after the sale is required, since there are many players involved in the 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 pass up on it!**

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 or her work, making sure all the clauses essential for the protection of your rights are included in this document.

The notary also draws up all other deeds related to the deed of sale: hypothecary loan, servitude (easement), acquittance, co-ownership agreement, wills, 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, for your protection.

CO-OWNERSHIP

These days many couples, whether 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 a formal agreement. A notary is well positioned to advise the parties on the scope of the agreement and draw up the appropriate document.

Consult your notary: he leaves nothing to chance.