

The purchase of an apartment or house (immoveable property) is probably the most important investment that any of us will make. It is imperative therefore that we should be aware of our rights and obligations at each stage of the transaction.

Buying a Flat/House in Luxembourg

Most people in Luxembourg use the services of an agency. Some people do, however, still sell privately. Selling privately often saves on agency fees. Even if you sell via an agent, your contract of sale (*compromis de vente*) is perhaps the foremost document in the whole transaction.

Preliminaries

Surveyors are not used as much in Luxembourg as they are in the UK. Banks do not appear as insistent on their preliminary reports. However, you should always insist that a survey be part of your contract for your own peace of mind. You want to ensure you are not buying what is tomorrow a pile of rubble.

There are two discrete stages in the sale/purchase transaction: the *compromis de vente* and the notarial deed.

Compromis de vente

This document is entered into between the buyer and the seller. It is usually done *sous seing privé* or by “private deed”. This means that no notary is involved at this stage. All contracts for the purchase and sale of immoveable property should be in writing and a copy given to each party. It should narrate aspects like a good description of the property, parties, price,

moving in date, and a guarantee of vacant possession (ie ensuring that there are no surprise tenants). Any other guarantees you wish from the seller (state of heating, boilers) should be inserted in the *compromis*. In Luxembourg, these contracts are often surprisingly short. This does not mean, however, that you should be afraid to extend them or insert clauses for your own comfort. What you will especially want to know is when precisely the property becomes yours. Unless the parties agree otherwise, a contract for sale is “perfected” when the parties decide on the price of what is being sold even though the price might not yet have been paid or the thing delivered. Agree otherwise if this is what you want. Most people do. A seller is likely to insist on postponing transfer of property unless he is being paid at the time of signing. It is therefore important to remember then that it is not when you sign the notarial deed or when the notary registers the property that the property becomes yours (as you might think from comparisons with your home jurisdiction) but rather on conclusion of the *compromis de vente*. That being said, however, remember, you have freedom of contract. You can stipulate in the *compromis de vente* that property will not pass until such and such a condition is fulfilled (often until you have been approved for a mortgage or a date that suits your moving).

Notarial Deed

A notary will record formally what you have agreed. A notary is a public officer and he should explain in the parties' presence the contents of the notarial deed. This process, however, is an administrative step or a *modalité*. This perhaps then begs the question of why have a notary at all. The reason is that although the contract is valid between the parties, it is not opposable towards third parties until recording. If you have a mortgage, banks will insist on a notarial recording. It is usually provided in the *compromis de vente* that a notary will record the transfer of property. Generally parties will have postponed the transfer of property until the date of going before the notary as if the property is being financed by way of mortgage, the money is deposited on the notary's bank account. Remember even if one party refuses to go before the notary, the principle is that property passes on signing of the *compromis de vente*. In theory, you could ask a court for damages or that they replace the notarial act with a court judgement affirming the sale.

Important Points

To sum up then, important points to remember are the following. First, have a survey done on property you are thinking of buying. Second, remember the effects of property passing by signing your *compromis de vente* and ensure clauses that suspend the passing of property are entered into your *compromis* especially if you are hoping to obtain a mortgage. Fourth, ensure your *compromis* describes accurately what you are buying, price, parties, moving in date and allocation of risk. Fifth, ensure you go before a notary later to record the transaction. If these points are covered, your transaction ought to run smoother.



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