

INFORMATION AND ADVICE ON FRENCH INHERITANCE LAW & TAX

My name is Barbara Heslop. I am a UK based solicitor and French Law specialist.

I am Principal of Heslop & Platt Solicitors in Leeds, West Yorkshire (www.heslop-platt.co.uk).

Together with my team of experienced solicitors and French Law specialists, we provide legal advice and assistance to English speaking clients throughout the UK and in France.

Regardless of whether you are resident in the UK or in France, it is extremely important that as owners of property (real estate) in France you are aware of and understand how French law will apply to your property and your other French assets in the event of your death.

For those who are resident in France, and for whom the French house is their main residence it is especially important that you understand the legal and tax consequences which would arise if you or your partner / spouse were to die.

Once the current position has been clarified and is understood by you, it is then useful to explore what options may exist to improve the legal and tax position so as to give greater protection to the surviving partner or spouse and / or so as to reduce the tax burden which may arise on your death.

My firm is regularly asked to advise English speaking clients about French inheritance law and tax and we often find that clients don't actually know or understand the precise way in which the ownership of their French house was organised when they bought it. Moreover, very often, they did not receive specific advice when they purchased the property and so have not taken advantage of what we lawyers refer to as "estate planning tools" which could ultimately give greater security and protection to the surviving partner or spouse.

The starting point when we are advising our clients is for us to obtain a copy of the title deed for the French house. This is the document which you will have signed on completion at the notary's office when you received the keys. It is called the "acte de vente" or the "acte authentique" and is generally at least 20 pages long. Somewhat unhelpfully, some notaries do not actually put either of the above titles on the front of the document so we often have clients sending us a copy of the initial contract (le compromis de vente) instead. This will rarely give us the information we need.

However, once you have provided us with a copy of your title deed we will very quickly be able to tell you how your purchase has been organised. If you bought the property jointly with your partner or spouse or with other family members or friends, we can confirm whether the property is owned in equal shares "en indivision" or in unequal shares and whether you have full ownership or just a life interest for example.

We will also be able to identify whether or not the famous "tontine" clause is included in the deed or not. Clients sometimes tell us they asked for a tontine but are not sure whether ultimately the notary included it or not! The reality is that in some of the cases we have seen, the tontine is included and sometimes it is not. As you may know, a tontine clause cannot be added after the purchase and so if it is missing from the deed it is now too late to rectify this. There may however be something else you can do to achieve the same or a similar result as the tontine but this will depend entirely on your family circumstances.

Having clarified and confirmed the current ownership structure, we then explain the legal and tax consequences which would arise on your death or on the death of a partner, spouse or other joint owner.

We will advise you as to what extent French law already protects the surviving spouse or a partner who has concluded a PACS and whether there would be an automatic right for the survivor to remain in occupation of the property.

We then look at what possibilities exist to improve on the current position – such as creating a life interest for the surviving partner or spouse so as to enable him or her to continue living at the property in France or so as to postpone the interests of your children so they cannot claim their “reserved rights” until the death of the second parent.

Given the diverse composition of the modern day family, many of our clients have complex requirements and it can be quite a challenge to find a solution which satisfies their wishes. French succession law is much stricter than UK law and for UK nationals who are resident and tax domiciled in France, their worldwide assets will be subject to French law, with the exception of any property (real estate) situated outside France.

Having said that, since various new laws were introduced in 2007, there is now greater flexibility and with forward planning, it is generally easier to organise things so that on your death, your property and other assets pass in accordance with your wishes. It is however difficult to disinherit your natural or adopted children and any gift to a stepchild remains subject to heavy taxation in France.

We will explore a variety of estate planning options with you and these may include:

- For married couples - the adoption of a French marriage regime known as universal community so as to ensure that on the death of the first spouse, the assets of the marriage pass in their entirety to the surviving spouse
- For unmarried couples - the signing of a PACS – a form of Civil Partnership Agreement which in France is available to both same sex and to heterosexual couples.
- For couples with no children - the drawing up of French Wills to disinherit specific family members such as living parents, spouses or siblings
- A family pact whereby specific provisions are put in place so that a beneficiary can renounce his or her entitlement to receive an inheritance thereby allowing the person who owns the asset currently to give a greater share in the asset to another family member or other 3rd party. This is useful where grandparents wish to leave property direct to their grandchildren and their children are happy to renounce their reserved rights during lifetime of their own parents so as to facilitate this.
- The drawing up of a French Will to give a life interest to a spouse, partner, family member or unrelated friend given that a life interest is not automatically available to a surviving spouse if the deceased spouse had children from a previous marriage or earlier relationship.

So, there is invariably a great deal to consider and expert advice from UK based lawyers who are specialists in French law is advisable. We will provide clear advice in your mother tongue and the risk of explanations being lost in translation is therefore eliminated.

For an initial discussion and for information about our fees, please contact Barbara Heslop

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