

# Doing it by the book

Our resident legal expert **Graham Platt** reveals why cutting corners or using underhand tactics when dealing with *notaires* will land you in trouble



French law applies in France. It is remarkable that such a commonplace fact surprises many of my clients whose activities, innocent or otherwise, have brought them into contact with the law in France.

The charming driver of a black Porsche, pulled over at Ghyvelde, did not know that he had arrived in France from Belgium. He took the sharp French Frontier Police for idiots when he answered their questions. He said he was unemployed.

Searched as a result, police dog "Doris", heroine of many a drug smuggling dossier, sniffed out thousands of ecstasy tablets tucked away under the spare wheel.

I know that you will say that this is an inappropriate example to quote in this esteemed organ, and perhaps an insult to you as a reader. However, allow me to quote one more example before moving on. The trials that took place in France of many such cases were criticised angrily by relatives as well as the accused. "It's not done like this in England," they would complain. No judge in a wig or barristers similarly garbed – just a mêlée of spectators and accused, lawyers not showing any respect to the judge and vice versa. And a rapidity of sentencing that makes our legal system seem extraordinarily lethargic.

Alleged football hooligans in Marseille eight years ago were arrested, tried, convicted and deported within days of the match. Some even before the match had taken place.

## AVOIDING FRAUD IN FRANCE

Now, let me move nearer to the French property market and a different class of person. When building a house in France, the local planning rules must be obeyed. If you have permission to build 180m<sup>2</sup> of habitable space, that is what you must do. The builder and project manager, whose fees are a percentage of the value, may tell you that nobody really minds if you exceed the limit, that "everybody does it," and that "he has a friend in the planning office". So you agree to let him build you



a house of 250m<sup>2</sup> habitable area. Sadly, he dies just after completion. No certificate of conformity is granted and the planning department instructs the police. You are investigated by a *juge d'instruction*, summoned before the *Tribunal de Grand Instance*, and fined a daily rate of €1000 until you reduce the size of the house.

The phrase "everybody does it" occurs again and again when local agents are trying to persuade a buyer to pay some money "under the table". They talk of the myth of the brown envelope which changes hands when the notary excuses himself from the completion meeting for five minutes. Let me assure you that such a payment is just as illegal as the first instance I quoted above. It is a fraud on the revenue. The overpayment in cash is not recorded in the deed of sale, so that when the property is sold the Capital Gain is greater by that amount and taxable at the going rate. Unless, of course, you carry out the same trick on your purchaser which is another fraud on the revenue by under-declaring your Capital Gain.


## SUCCESSFUL SUCCESSIONS

Now, and on the same subject of respect for the law, to the point which arises in

Play it safe: do things by the book when you visit the *notaire's* office.

almost every purchase by my English clients in France: how to minimise the impact of the law of succession. This provides for a legal reserve on death of the owner of real property in France in favour of children and spouse. As you may be aware, on death the surviving spouse is entitled to a quarter of the deceased's estate and the children to one half (one child), one third each (two children) or three quarters (three or more children). "How can this be made to apply to us?" ask English buyers, "we are English and these bizarre Napoleonic laws are not meant for the likes of us!"

French lawyers are proud of their traditions and the Civil Code is the most important of them. When they come across lawyers like me trying to find ways around the "reserve", they have on occasions become very critical. They say that the English who buy in France must accept the law of France.

Which is where we came in. 

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