

What are 'Clauses Suspensives'?

At this point, it would be sensible to briefly recap on the buying process...

Having taken into account the points to bear in mind when purchasing and having found the property you want to purchase what comes next?

As in England and Wales there are two main documents to be signed. The first is the contract which sets out the terms upon which you will purchase (*Compromis de vente*). The second is the Conveyance (*Acte Authentique*) which incorporates the terms of contract and actually transfers the property to you.

But you have to bear in mind that signing the contract takes place much more quickly in France than in England for example because all relevant enquiries and searches are made after contract and before completion. Searches and mortgage applications are not completed prior to an exchange of contracts.

This is why a certain minimum amount of information should be incorporated in the contract before committing yourself to the purchase. If you have any doubt on the seller's answers to your enquiries make certain that the contract contains "*clauses suspensives*" other than the standard ones to cover your special worries. These clauses are an important element of the contract because until they become unconditional (within a stipulated time limit) the contract is unenforceable, and as a buyer you have your get-out clause.

The minimum level of information when the contract is signed before a Notaire is usually provided by him (e.g : description of property; right of ownership; surface area). He will be responsible for checking the content of the seller's title and any available papers before signature. In doing so before exchange of contracts he will check that no major problems would arise before completion.

When you have agreed upon the price; mortgage; time limit for completion; you should be able to obtain from the seller or the Estate Agent or Notaire a copy of the following documents:

1. tax and service bills (avis de taxes foncière et d'habitation)
2. condominium annual general meeting reports for the last three years (if it is a flat)
3. copy of your seller's title (titre de propriété)

In addition to this information you can:

1. make any contacts with local people who may have background knowledge of the property (this should be the first step before agreeing on any points). They will provide you with general information which may lead to specific problems but not with any certificate which will have to be obtained by the Notaire before completion.
2. call the building managing agent or syndicate.

3. call on the "*Service de l'Urbanisme*" at the Town Hall
4. call the DDE "*Direction Departementale de l'Equipement*"

Any special requirement should lead to a special "*clause suspensive*" which will need to be accepted by the seller. The statutory "*clause suspensive*" relating to the purchaser's finance is fairly standard but you may have other "*clauses suspensives*" to cover:

1. the possibility of further building work at the property (e.g : extension) : you will have as "*clause suspensive*" the obtaining of a "*Certificat d'Urbanisme Positif*" (You may ask for a minimum surface area of the extension to be covered by the certificate).
2. if you already have ideas of what improvements you want to make to the building you will have as a "*clause suspensive*" the obtaining of planning permission but it means your seller will probably insist on a short time limit for you to make an application to the planning department.
3. more simply if you just want to change the windows, build an outdoor swimming pool or conservatory you may just need to ask for an "*autorisation préalable de travaux*" as a "*clause suspensive*". This is a much less formal application than a "*Certificat d'Urbanisme Positif*"

But the French Notaire may on behalf of the seller **refuse** a clause suspensive e.g : the sale of your own house if you are not bound legally by a Compromis. Moreover if you are selling your English property it is unlikely that a clause suspensive would be accepted that the purchase has to be conditional on the sale of the English property.

Because of the necessity to fulfill the "*clauses suspensives*" the time limit for signing the final deed may have to be extended. The seller may not accept this and the final choice will be his.

Due to his professional responsibility the Notaire should give you any available information before signing. He should not be able to prepare a contract without being able to see and check the seller's title and the parties identity.

If you do not sign a compromis because the information is not available then you could sign an offer to buy "Offre d'achat". In theory this would bind you as soon as agreed by the seller. But if you change your mind or discover a flaw in the property, it is unlikely that the seller will bring the matter before court. It is not in the interests of the seller to wait for an hypothetical court order. He would prefer to find another purchaser. Nevertheless it is always sensible to sign it "sous les conditions d'usage") and **without** signing a deposit cheque (between 5 and 10 %).