

Pre-emption rights in France

In France when a Vendor sells their property it is vital to understand that certain authorities have the right to purchase the property in priority to the proposed purchaser. This is called the "*Droit de Preemption*". There are essentially four ways in which this right of pre-emption may be exercised.

1 The first right of pre-emption is the right of the Commune where the property is situated. This right is called the "*Droit de Préemption Urbain*" (DPU). The Mairie's office usually exercises the right where the property or land is required for development purposes including public works, leisure facilities etc...

The DPU starts by a notification called "*Déclaration d'intention d'aligner*" (DIA) sent to the Mairie who have two months within which to reply. The DIA is usually drawn up by the Notaire in charge of the sale of the property.

If the Mairie does not intend to "*préempter*" it can either not reply or send the DIA back with the comment "*Droit non exercé*" or "*Droit n'existe pas*". Where the Mairie does exercise its pre-emption right it usually purchases at a lower price than the purchase price indicated in the DIA.

In the circumstances where the Mairie does exercise its right of pre-emption the Seller has three options :

1. To withdraw from the sale and keep the property.
2. To accept the Mairie's offer at the lower price
3. To maintain the asking price and let a judge fix the price at which the Mairie purchases the property.

2 The second right of pre-emption can be exercised by the tenant of a property. In this case there are two rights of pre-emption. The right quoted by the Law of 31st December 1975 and the right granted by the Law of 6th July 1989.

The Law of 1975 relates to "occupied" premises and gives the tenant a "lot de copropriété" a right of pre-emption when the landlord sells occupied premises for the first time following the division of the property into a condominium. The landlord sends a notification to the tenant who has one month within which to reply. Where he wishes to buy the property he has two months to complete the purchase or four months if the tenant requires a loan.

The Law of 1989 relates to unoccupied premises. In this instance the landlord who wants to sell his empty premises has to send a notification called "*Conge pour vendre*" to the tenant six months before the end of the lease and the tenant has two months within which to reply. The same rules apply as those in the 1975 Law should the tenant wish to purchase.

Importantly both the Laws of 1975 and 1989 provide security for the tenant if the Landlord sells the property without notifying the tenant or sells the property at a lower

price. The tenant can within one month following completion take priority over the purchaser.

3 The third right of pre-emption is in relation to rural areas. The farmer and the "*Société d'Aménagement Foncier et Etablissement Rural*" (SAFER)(Agricultural Commission) both have a right of pre-emption over land or property.

As far as SAFER is concerned the notification is sent to SAFER by letter. From receipt of the notification SAFER has two months within which to decide whether to purchase. If SAFER then intends to purchase the property the same rules apply as to the "*Droit de Prémption Urbain*". The notification of the "*Droit de Prémption*" is published in a newspaper.

A farmer may purchase the agricultural land where:

1. He effectively uses the land.
2. He works as a farmer on the land for 3 years.
3. The total surface of the land he uses is over 1 hectare 50 Acres.
4. The land which the farmer owns has a total surface area of less than the "*Surface Minimum d'Insertion*".
5. He commits himself to use the land continuously for 9 years.

(The right of pre-emption is exercised by the French Tax Administration (*the Trésor*) when the purchase price is considered to be insufficient by the Tax Inspector has been repealed)

4 The fourth right is exercised by the "*Co-indivisaire*" and relates to joint property. If one of them sells his/her share then the other "*indivisaires*" may purchase the share. The Seller serves a letter by a "*Huissier de Justice*" on the other *indivisaires* and they have one month within which to answer. If the other "*indivisaires*" wish to purchase the share they must do so within two months.

The consequences of the "*Droit de Prémption*" are that the purchaser is obliged to let the "*préemptor*" buy the property. He recovers all deposits made to the Notaire.

Finally there are some properties which the mairie, a tenant, or a farmer cannot purchase because they do not have a "*Droit de Prémption*". These circumstances are where:

1. Firstly the Mairie cannot exercise its right for sale of "lots de copropriété" if the "réglement de copropriété" have been registered for more than 10 years, or if the sale of the property has been completed for less than 10 years or if the property is to be built in the future (Vente en l'état futur d'achèvement et vente terme)...
2. Secondly a farmer cannot pre-empt a sale taking place between members of the family until the "Troisième degré" which means nieces, nephews, uncles...
3. Thirdly the tenant cannot pre-empt a sale taking place between members of the family until the "Quatrième degré" which means cousins under Law of 31st December 1975, and the "Troisième degré" under Law of 6th July 1989.

