

REAL ESTATE

Buying property in Belgium

Information for expats

My notary, for all
that really matters.


notaire.be

Introduction	p. 1
--------------------	------

Before the notarial act.....	p. 3
------------------------------	------

A. What types of sales exist in Belgium?	p. 3
1. Private sale	
2. Voluntary public sales	
3. Online sale: biddit.be	
B. Financing the purchase	p. 7
1. Preparing the budget	
2. Mortgage loan	
C. How does the buyer commit to a property?	p. 10
1. The purchase offer	
2. The option	
3. The mutual promise of sale and purchase	
D. The sales agreement	p. 14
1. How binding is a sales agreement?	
2. Who drafts the sales agreement?	
3. What does a sales agreement say?	

The notarial act.....	p. 23
-----------------------	-------

A. What is the difference between the sales agreement and the notarial act?	p. 23
B. What is contained in the act?	p. 23
C. Signature of the authentic act	p. 24
D. What are the costs?	p. 25

After the notarial act	p. 31
------------------------------	-------

1. Registration of the notarial act
2. Transcription of the notarial act and registration of the mortgage act at the Legal Security Office
3. Cancellation of the previous mortgage
4. Transfer of the ownership title
5. The notary informs all the authorities concerned of the transfer

Introduction

When an expat takes on a professional challenge in another country, there is a lot involved. In addition to arranging all kinds of practical matters in the country of origin, one must also find a place to live in the new country. If one decides to buy an apartment or a house, there is much more to arrange. This informative brochure gives potential buyers on the Belgian housing market an overview of the steps, important moments, and documents during and after the house hunt.

It is important to know that the legislation applicable to property transactions differs from area to area - the Flemish, Walloon, or Brussels Region. This is because the Belgian government system is spread over several layers, which results in slightly different requirements in property transactions. There are also various actors involved in the purchase of a property: one can look for a house on one's own, or one can hire an estate agent who knows the housing market well. Or one can engage a notary as soon as one intends to buy a property, so the notary can assist the buyer during the process.

No matter how one wants to look for the perfect property, the actual purchase can only be made by means of an authentic instrument, and therefore requires the involvement of a notary. This is a public official, whose task is to inform citizens in a neutral way, to collect the necessary taxes for the administration and to guarantee the accuracy of the content of the registers. Everyone is free to choose their own estate agent and notary, but one cannot deviate from the requirement of the authentic instrument.

This brochure takes the potential buyer through all the steps of the process, from the moment someone decides they want to buy a property and needs a loan to do so, to the moment the authentic instrument is registered and all the formalities have been completed. Some of these phases overlap or occur simultaneously. In this brochure, the steps are dealt with separately from each other, so that each step provides the relevant information in an orderly manner.

The brochure is divided into three chapters corresponding to the three major steps in a purchasing process. The first part explains the types of sales that exist in Belgium, the points of attention when obtaining a loan and which legally binding documents can be signed before the conclusion of the sales agreement. The first part concludes with a thorough explanation of this sales agreement. In a second part, the brochure discusses the authentic instrument itself. Finally, in a third part, the registration, and other formalities to be completed after signing are dealt with.



Antwerp - The Port House

Before the notarial act

A. What types of sales exist in Belgium?

In Belgium, there are several ways to buy a property: private sale, voluntary public sale, and online sale. In this brochure we focus on the private sale, as this is the most common form of sale in Belgium.

1. Private sale

In a private sale, the buyer and the seller reach an agreement between themselves on the object sold and the selling price. When they reach an agreement, the sale is in principle final. Together they sign a sales agreement (often referred to with the French word 'compromis'), which is later followed by a notarial act. The notarial act can only be signed once the notary has carried out certain searches and other formalities, which are dealt with later on in this brochure.

It is a good idea for the buyer to be assisted by an estate agent or a notary in the preparatory phase of a private sale. If the seller entrusts the sale to a notary, the latter will ensure the proper execution of the file from A to Z.

2. Voluntary public sales

The voluntary public sale is an auction sale, in which interested parties bid in public and consecutively. The highest bid constitutes the selling price, provided it is accepted by the seller. The public sale is carried out exclusively by a notary and includes the following guarantees:

- **Equality** : each prospective buyer has the same amount of time (at least 3 weeks) to visit the property properly and, if he wishes, to be assisted by an expert. He therefore does not have to decide quickly under pressure from a persuasive seller, since the sale «takes place in public» on a day and at a time announced in advance, under the direction of a notary.
- **Legal certainty** : all the legal checks required for the sale of a property have been carried out and the prospective buyer may obtain information from the notary.
- **The cost price** : the buyer pays a percentage of approximately 15% on top of the price of the property. This cost includes taxes and registration fees due, the notary's fees and the costs of administrative searches. The costs of publication as well as the procedural costs are borne by the seller.

3. Online sale: biddit.be

Simple, transparent, and safe. The online sale is the more modern alternative to the classic public sale. A bidder logs in via his computer or smartphone, using his identity card or Itsme® and can bid comfortably from home.

If the buyer does not have a Belgian identity card, the notary will create an account for him, thereby giving non-Belgians the opportunity to participate in the bidding as well. In this case, the buyer receives specific codes from the notary to allow him to use biddit.be.

Candidate-buyers can bid for eight days. Upon expiry of this term, the prospective buyer knows whether he has made the best bid. If this is the case, the notary will contact him to complete the sale.

Thanks to the online sale, the buyer becomes the owner of a property in just a few weeks. Since the notary has completed all the formalities in advance, the buyer only has to sign the notarial act. The notary will not only arrange and lead the sale but will also help the parties with their questions during the online sale.

Caution! Although online sales through biddit.be generally provide a quite easy experience, a bid is binding. This is discussed in more detail further on.

The smartest way to purchase real estate

biddit.be
surf, bid, settle

The advantages of an online sale for the buyer:

- **Peace of mind.** The buyer has time to think, without outside pressure. He does not have to fear that the sale will escape him.
- **Speed.** A few days after the end of the bids, the buyer will receive all the keys to the property.
- **Transparency.** The price is determined while everyone follows, thanks to the process of bidding in real time.
- **Identification of the bidders.** The certainty that the other bids are real.
- **No surprise.** All information is available from the outset: from a detailed description with photos to the documents required by law (such as town planning information and all kinds of certificates).
- **Legal certainty.** The notary, who is at the heart of this system, guarantees legal certainty.
- **Computer security.** The bidding platform is secured.

All details can be found on www.biddit.be.

The website is available in French, German, and Dutch.





Blankenberge - The Belgian Pier

B. Financing the purchase

Most buyers take out a mortgage loan with the bank in order to purchase their property. The mortgage must be registered in authentic form by the notary, just like the purchase act: two acts are therefore usually required, one for the purchase of the property, and one for the establishment of the mortgage.

1. Preparing the budget

Knowing your borrowing capacity

If the buyers do not have enough funds of their own to buy a property, money can be borrowed from the bank. It is best for a buyer to gather information about the borrowing capacity from the banks in advance, before signing any document in connection with a purchase. It is in the buyer's interest to request a credit offer that already incorporates real needs. This means that he has to weigh the proposals of different banking institutions against each other. He also has to compare the interest rates offered by the different banks and at the same time take into account the insurance premiums they charge.

Estimate the total costs on notaris.be

To get an idea of the total amount of the costs for both the purchase and the mortgage act, the buyer can visit the online calculation module on notaris.be. In addition to the price of a property, the buyer must also pay certain taxes and registration fees, notarial fees, and costs for administrative searches (see the section «What are the costs?» below). Charges are also payable as a result of the mortgage act.

2. Mortgage loan

Applying for a mortgage: be cautious and anticipate!

A signed contract implies a commitment. A mortgage loan is a long-term commitment involving a lot of money. Therefore, the borrower must take enough time to carefully consider the bank's written offer. Taking out a loan is time-consuming. It is always advisable to ask both the bank and the notary when the file will be completed before the buyer commits to a payment date.

Apart from the personal guarantees the bank may request, it in most cases requires a guarantee on the property in the form of a mortgage. Hence the concept of «mortgage loan».

The bank grants a loan, but at the same time it wants the certainty that the buyer will repay the amount in full. The mortgage is the right granted to the creditor, in this case the bank, on a property (land or building) as security for the payment of the debt. In

other words, if the buyer does not repay the loan, the bank may publicly sell the property to get its money back. Since this guarantee is linked to the property itself, the mortgage follows the property, regardless of to whom it is transferred.

The bank may also agree to a mortgage authorisation. In doing so, the buyer (borrower) authorises the bank (lender) to take out a mortgage registration as soon as the bank deems it necessary. The difference with the mortgage is that the buyer gives permission to take out a mortgage, but the bank does not take it yet and probably never will. A mortgage authorisation must be executed in the form of an authentic act.

The advantage of a mortgage authorisation is the lower cost than for a mortgage act. The disadvantage is that the bank has less certainty.

Interest rate

The credit provided by a bank comes at a cost, in addition to which a pro rata fee is charged. The interest rate, the percentage of that interest, can be fixed, variable or semi-fixed.

Fixed interest	Variable interest rate	Semi-fixed interest
An interest rate that remains unchanged for the duration of the loan, regardless of the evolution of market interest rates.	An interest rate adjusted to the evolution of market interest rates. It is possible to have the interest rate adjusted every year, every three years, every five years or with another frequency.	During an initial period (e.g. a period of 10 years in the case of a 15- or 20-year mortgage) the interest rate remains fixed, after which it can be revised.

Banks typically offer a range of alternatives in which fixed and variable solutions are modulated. It is important for the buyer to pay attention to the net amount to be paid monthly and to the term within which it must be repaid. Once again, it is essential to obtain information in advance.

Repayment methods

The bank lends money for a specified period (10, 15, 20, 25 ... years). The interest is the fee the buyer pays for that money. The interest is calculated on the capital not yet repaid, the so-called «debt balance». Generally, the capital and interest are repaid in periodic instalments spread over the entire term of the agreement. The most commonly used period is a monthly instalment, but there is also the possibility of quarterly or annual instalments.

Insurances

The signing of a mortgage loan agreement will often go hand in hand with the conclusion of insurance contracts.

Fire insurance

The bank requires that the mortgaged property be insured against fire and related risks at reinstatement value. That is why fire insurance is of capital importance. After all, in the context of a mortgage, the home is the guarantee for the bank (see above). If the house catches fire, the bank's guarantee goes up in smoke. Should a claim arise, the insurance company will pay the compensation due to the bank. This is then offset against the repayment of the loan. The surplus, if any, will be transferred to the buyer.

Life insurance

Whoever borrows money has to pay it back. But what if the buyer passes away? Do the heirs have to continue to pay off the loan, or the surviving partner? In order to deal with such issues, it is definitely advisable to take out life insurance.

This insurance linked to the loan ensures that the loan is repaid in full or in part if the insured borrower comes to die. The heirs will then be exempted (in whole or in part) from payment of the balance.

A common form of insurance is the «outstanding balance insurance». Should the buyer pass away, the insurance company will pay out the balance of his credit. The buyer can pay this premium outright or in annual or monthly instalments.

Caution! The financial institution will probably try to persuade the buyer to take out both insurances (fire and life) with it: although this is certainly an option, there is no obligation to take out the insurances with the same institution. The buyer can use the competition to his advantage.

THREE TIPS IN A NUTSHELL:

1. Gain information about the borrowing capacity before making a price offer
2. Once the price offer has been accepted, visit the banks again and compare their actual proposals (interest rate, insurance, account openings, etc.).
3. Agree with the seller on the period within which the credit must be completed.

C. How does the buyer commit to a property?

The buyer may agree to the asking price, but in Belgium, it is also customary for the buyer to make an offer on the property and propose a price to the seller himself.

If the seller accepts the offer, the sale comes into being, as a purchase offer is legally binding. This is why it is advisable for the buyer to have his offer checked by a notary. The seller may also decide not to accept the offer and make a counteroffer. The seller's original offer then expires and the ball is back in the buyer's court. If the buyer does not want to wait indefinitely for a decision from the seller, he may limit the offer in time.

1. The purchase offer

The buyer may agree to the asking price, but in Belgium, it is also customary for the buyer to make an offer on the property and propose a price to the seller himself.

If the seller accepts the offer, the sale comes into being, as a purchase offer is legally binding. This is why it is advisable for the buyer to have his offer checked by a notary. The seller may also decide not to accept the offer and make a counteroffer. The seller's original offer then expires and the ball is back in the buyer's court. If the buyer does not want to wait indefinitely for a decision from the seller, he may limit the offer in time.

How do I make a purchase offer?

There are no fixed formal requirements for making a purchase offer. The buyer may make an offer in writing, but e-mail is also accepted. The following information should at least be included in an offer:

- The name of the buyer
- The address of the property
- The price offered
- The duration of the purchase offer
- The signature and the date.

In addition, it is recommended that the buyer provide for a condition precedent. The agreement will then only come into effect if the condition precedent is fulfilled (e.g. obtaining a mortgage credit). The condition precedent is also inserted in the sales agreement (see example below).

What should the buyer consider?

The buyer is bound as soon as the seller has knowledge of the purchase. For this reason, a condition precedent is often included in the offer itself, which makes the existence of the sale subject to fulfilment of a condition.

***Example:** the buyer has signed a bid but has discovered just before the signing of the sales agreement that the ground is contaminated. He does not want to continue with the sale. If he has included a condition precedent in his offer stating that the sale is subject to obtaining a soil certificate proving that the ground is not contaminated, he is not bound by the sale.*

In addition, sellers and estate agents in Belgium use different techniques to sell homes. An increasingly common procedure is the sales method by which the seller or an estate agent invites all potential buyers to visit the property on the same day. By a specific date, all prospective buyers must make a bid, without being aware of each other's bid ('pre-sale technique'). Partly due to the fact that prospective buyers do not have much time to give the matter considerable thought, some caution is required, and it is certainly important that the buyer is properly informed and obtains relevant documents from the seller in advance.

2. The option

Suppose the buyer is not yet one hundred per cent sure, then the buyer can ask the seller for an option. This is a unilateral commitment by the seller not to sell to anyone else within a certain period (e.g. 1 week or 14 days). If the buyer decides to buy within this period, he will inform the seller in writing. This is then called "exercising" the option. It is usually agreed that the buyer must inform the seller by registered letter. Once the option is exercised, the sale is concluded. If, on the other hand, the option is not exercised within the specified period, then there is no sale and the owner is free to sell to whom he wishes.

In order to persuade the seller to allow an option, the potential buyer can pay a certain amount in advance. If the option is not exercised, the owner usually retains this sum as a form of compensation. If the option is exercised, this amount will be deducted from the price. Doing so, the interests of both parties are taken into account.

ADVICE: As the sale automatically comes into being when an option is exercised, it is necessary that all the modalities of the sale (e.g. price, term of payment and conditions) are already precisely included in the option, just as in the purchase offer.

3. The mutual promise of sale and purchase

The mutual promise of sale and purchase is a document in which two unilateral commitments, the promise of sale and the promise of purchase, are mutually recorded. Both follow each other in time. First, there is the promise of sale, which can be exercised by the buyer within a certain period of time. If not exercised, the promise of purchase becomes effective and can be exercised by the seller. In principle, the purchase becomes effective when one of the options is exercised.

However, in the event of a mutual promise of sale and purchase, it may also be agreed to turn the sale into a 'solemn agreement'. This means that the realisation of the sale depends on an agreed form: the notarial act. After one of the options is exercised, an agreement is made to realise the purchase. The purchase agreement itself is only effective as when the notarial act is executed.



The Ardennes

This technique is often used in Flanders. It is important that the document is formulated correctly. It is advisable for the buyer to be assisted by a notary.

ONCE BOUGHT ... REMAINS BOUGHT!

In principle, the buyer purchases the property «as it is». The buyer therefore has an important obligation of due diligence.

Since it will be very difficult to sue the seller for any defect in the building, a buyer would do well to visit the property several times, if necessary accompanied by an expert who will give advice on any works that may be required.

If the works carried out by a previous owner were not executed in accordance with the rules of the art, the seller cannot be blamed for the fact that these works do not meet the buyer's expectations.

Moreover, neither municipal officials nor notaries are able to visit every building beforehand in order to check that the information provided is correct. Only a comparison between the information derived from urban planning and the actual condition of the property can give the buyer clarity as to whether the property - in the condition in which he buys it - is in good condition from an urban planning perspective.

Conclusion: it is useful to contact the town planning departments of the municipality directly in order to check the available information against the actual condition of the property. Visiting the property several times is recommended in any case.

D. The sales agreement

The exercise of the purchase offer is followed by the sales agreement. It is often wrongly assumed that the sales agreement is of minor importance compared to the notarial act: the sales agreement is a document of major importance. The notary who executes the act bases the authentic instrument on the content of this agreement.

1. How binding is a sales agreement?

The popular term 'preliminary' sales agreement ('voorlopige' verkoopovereenkomst, often used in Dutch) can be misleading because it gives the impression that both the buyer and the seller can still refrain from the purchase/sale. This is definitely not the case: under Belgian law, a sale is concluded as soon as there is an agreement between the buyer and the seller on the price and on the property sold.

The realisation of the purchase is therefore - in principle - not dependent on the payment of the price or on the 'delivery' of the property. The agreement is final and the notary who subsequently drafts the authentic instrument is also bound by its provisions. Hence the importance of formulating the terms and conditions in the sales agreement as completely and clearly as possible, leaving no room for discussion. In view of the many searches prescribed by law and decrees relating to the property, drafting a sales agreement is by no means easy. The help of an expert is therefore required.

The fact that a sales agreement is binding on the parties means that ownership of the property is transferred when the agreement is signed. However, the transfer of ownership is often conventionally postponed until the authentic instrument has been executed. This will be discussed at length later on.

2. Who drafts the sales agreement?

The law does not stipulate who should draft the sales agreement. The sales agreement is a private document and can also be drafted by the buyer, the seller, or an estate agent without the intervention of a notary. However, due to the complexity of the regulations and the major importance of this document, the buyer would do well to be assisted by an expert. At the very least, the buyer has the sales agreement read by the notary, either via the estate agent or not. The notary has a role as legal adviser: a single dossier generally involves different areas of law, e.g. family law, tax law, administrative law, etc.

Usually a deposit or advance payment is requested from the buyer when signing the sales agreement (usually ten per cent of the sales price). The deposit or advance is usually blocked on a third-party account of the notary's office until the signature of the authentic instrument. In this way, both parties are protected: the buyer knows that the amount will not disappear and the seller is sure of the buyer's commitment.

3. What does a sales agreement say?

The seller must provide the buyer with a set of documents and information prior to the sales agreement, or at the latest when the sales agreement is signed. Thereafter, the sales agreement will be signed, based on among others the following elements:

The parties

The seller	The buyer
First, the seller's details must be included. All sellers must sign the sales agreement. There are a number of factors to consider. Is the seller the sole owner? Are all sellers of age and do they have the legal capacity to enter into this transaction? Are the sellers unmarried, de facto or legally cohabiting, married or separated? Does the person representing any absentees have a valid power of attorney? Is there a person with a special status among the sellers (underage, bankrupt, in debt mediation, etc.)? The notary will advise the parties.	The notary also describes the buyer's details. In principle, it is not possible to change the name of the buyer between the sales agreement and the authentic instrument.

The property

The description of the property is then a crucial part. We list a few elements below.

- The correct description of the property sold: in order to avoid problems, it is advisable to copy the description from the seller's title, unless the condition of the property has changed in the meantime: does the neighbouring meadow belong to the sale? Which basement is sold with which apartment?
- The condition and surface area of the property sold: at this stage, the buyer must be fully informed and be given the opportunity to visit the property closely. He must be able to confirm that the building is not in any way defective and that the surface area indicated in the sales agreement is consistent with the reality.
- The easements that may rest on the property: right of passage, easements of view or of the discharge of water, etc., which may lead to a disturbance of enjoyment.
- The conditions of use of the property: when the property is let, the sales agreement specifies the precise conditions of its use so that the purchaser knows his rights and obligations towards the tenant, at least a reference to the lease, a copy of which has been communicated. If the seller uses the property himself, he indicates when he will make it available. It must also be stated whether the property is the subject of a usufruct or a right of habitation, which may prevent the purchaser from enjoying the property.

- The energy performance certificate of the building (EPB/PEB in Brussels and Wallonia, EPC in Flanders).
- Town planning information and any infringements relating to the property.
- The information of the trustee in the context of a co-ownership (apartment). The sales agreement provides for compliance with the basic instrument and the rules of co-ownership, as well as the decisions of the general meeting of co-owners. If a general meeting has to meet between the signing of the sales agreement and of the authentic instrument, it is usually stipulated that the seller will invite the buyer, since the buyer will ultimately be bound by the decisions adopted.
- The soil certificate: the certificate from Brussels Environment (Brussels), BDES (Wallonia) or OVAM (Flanders) proving whether the soil is contaminated or registered in the «soil inventory».
- A certificate proving that the electrical installation was tested (house and apartment).

Checklist: which documents must I receive from the seller?

Property title

Notarial purchase act
and in case of an inheritance the act of inheritance and the certificate of succession.



Tenancy documents

In case of letting

The tenancy agreement, the description of the premises, the certificate of deposit of the tenancy guarantee.



Post-intervention file (PID)

Inventory and description of **all works performed since 1 May 2001** (security purposes): offers, invoices, specifications, photographs, etc.



Energy performance certificate dwelling (EPC)

Control by an accredited certifier
Attention: energy performance to be mentioned in the sales announcement

More info on:
www.energiesparen.be
energie.wallonie.be
environnement.brussels



Inspection certificate of the fuel tank

Inspection certificate of the fuel tank

Inspection before the tank is put into use + periodical testing

More info about the regional rules: www.informazout.be



Certificate of electrical inspection

Only for dwellings

Inspection by an accredited organisation (conformity report or motivated non-conformity)



Information about the co-ownership

Basic act and rules of co-ownership
Minutes of the (last three) general meetings, settlement of accounts of the charges (working capital, reserve capital, etc.)

To be supplied by the trustee.



Urban development information

Urban development permits and certificates, etc.
Available at the town hall.



Soil certificate

Certificate of non-contamination of the soil. To be made by an accredited organization:
Bruxelles
Environnement/Leefmilieu
Brussel, BDES or OVAM, according to the region

More info on
www.ovam.be/bodemattest
environnement.brussels
sol.environnement.wallonie.be



Price and taxes

The price, the time and the method of payment must be clearly stated. The notary will also check other points when signing the sales agreement, including:

- Taxes: the property tax and the other taxes are chargeable to who owns the property on 1 January of the year. Usually it is also stipulated from which date the buyer will be responsible for payment of the taxes and duties resting on the property. The buyer must then pay to the seller the share of the property tax for the part of the year from that time onwards.
- For newly built properties, the sale may be subject to VAT instead of the registration fee, or to a mixture of both. This should be provided for in the sales agreement.

Conditions precedent

If the parties do not wish to commit themselves straight away, they can ask a condition precedent to be inserted. This means that the sale does not become 'final' until such condition is met.

Example of a condition precedent: *"This sale is agreed under the condition precedent of the buyer obtaining financing, within a period of 4 weeks from now, for an amount corresponding to 100% of the sales price under normal market conditions."*

The most common example of a condition precedent is that of obtaining a loan, which is practically always included in the sales agreement. If the condition is not met (meaning that the buyer does not receive credit), the sale is deemed never to have taken place.

The condition precedent gives the parties greater certainty and protection. If the notarial office drafts the sales agreement, a condition precedent will generally be added (unless the seller expressly wishes to work without one).

Possible sanctions

The sales agreement may provide for various sanctions in the event of one of the parties failing to comply with its commitments, e.g. the payment of a fee corresponding to the aforementioned guarantee (which is generally ten per cent of the sales price).

Dates, time limits and designation of notaries

The sales agreement also contains certain information regarding the final date for the notarial act, including the name(s) of the notary or notaries who will execute the authentic instrument. Within a period of four months after signing the sales agreement, the registration fees must be paid. If a condition precedent has been formulated, the four-month period shall run from the time the condition is fulfilled.

The sales agreement also determines when transfer of ownership will take place or when transfer of enjoyment of the property sold is foreseen. Generally, the date of transfer of ownership and of enjoyment concurs with the date of signature of the authentic instrument. That is, in principle, also the time when the keys are handed over to the buyer.

CHOICE OF THE NOTARY

The parties may each either choose their own notaries or rely on the same notary. Both the buyer and the seller contact the notary of their choice and give him all the necessary information in order to launch the procedure. The fact that two notaries are involved has no effect whatsoever on the fees to be paid.

Since the notary's fee is determined by law, both notaries are obliged to divide this fixed fee between themselves. If the seller has chosen his own notary, the buyer's notary will automatically contact this notary for all practical arrangements and the exchange of required information.

Do I have to pay a deposit/advance?

Although the buyer is not legally obliged to pay a deposit or advance, it is customary in Belgium to do so. This is also advisable, as it demonstrates the seriousness of both parties in concluding their agreements. Ten per cent of the sale price is the standard, which the buyer should deposit with the notary, who will place it on a special account.

Two tips for paying the deposit/advance:

- The buyer always pays the deposit or advance to the notary or the estate agent, never directly to the seller!
- An 'advance payment' is not legally the same as a 'guarantee', although both terms are popularly used interchangeably. It is preferable to mention an advance payment in the sales agreement. No cash payments will be accepted because of the anti-money laundering legislation.

A digital or paper sales agreement?

The fact that a sales agreement is concluded as soon as there is an agreement on the price and the object sold does not alter the fact that the parties have to take into account the law of evidence. In Belgium, for sales over € 375, parties need a written document proving the sale. Obviously, this rule applies to the sale of a property. Therefore, in order to prove the sale one needs a written document and a signature.

The term 'written document' may be interpreted broadly, and so electronic documents such as e-mails are eligible to prove a sale. Under the influence of economic law, 'electronic signatures' have also gradually gained ground. However, an e-mail can only serve as full proof of the sale if it actually carries an electronic signature, which will certainly not always be the case. Text messages never carry an electronic signature and never constitute full evidence.

Is an e-mail without an electronic signature or a text message worthless as proof? Written documents without a signature can be a 'beginning of evidence' and must be complemented by other forms of evidence such as testimony and presumptions.

A sales agreement comes into being as soon as there is an agreement on the price and the object, but one can encounter problems of proof when the e-mail has no electronic signature! It is recommended that a potential buyer be vigilant in communicating with the seller via e-mail.

RECEIVING THE KEYS WHEN SIGNING THE SALES AGREEMENT? BEWARE OF THE RISKS!

Although it is not forbidden to hand over the keys when signing the sales agreement, notaries advise against handing over the keys before signing the authentic instrument because of the risks involved. Just think of the case where a fire breaks out in the building before the instrument is signed.

If the keys are handed over before the signature of the authentic instrument, some precautions should be taken: it is advisable to draft a contract for the handing over of the keys explaining the conditions of such handover.



Liège - The quayside and the Finance Tower

The notarial act

A. What is the difference between the sales agreement and the notarial act?

In order to make the sale opposable to third parties, it is necessary for the notary to have the notarial act entered into the registers of the Legal Security Office (formerly called the mortgage office). This registration can only be made by means of an authentic instrument.

This transcription leads to the creation of an «ought to know». Any third party, including those who are not actually aware of the sale, must respect the sale. From that moment on, the buyer may rely on the fact that his purchase is protected. If the seller has creditors, they will also have to accept, as from the time of registration, that the property is no longer an asset of the seller.

The buyer can enjoy protection and be sure that his purchase is opposable only by means of a registered notarial act.

It is therefore also advisable to postpone transfer of ownership until the moment of the notarial act. Moreover, do not forget that an authentic notarial act is an enforceable title, as opposed to a private agreement. A holder of an enforceable title can directly enforce the agreements in the contract, without having to go to court.

B. What is contained in the act?

As soon as the sales agreement has been signed, the notary's office can continue the formalities and prepare the authentic instrument. Certain information and documents listed below have already been collected at the time of the sales agreement, as mentioned above. In order to draft the authentic instrument, the notary must, among other things, complete the following formalities:

1. If the buyer only consults the notary at this stage, the notary will have to check all the elements already mentioned relating to the sales agreement since he was not involved in its drafting.
2. The notary must obtain information from the Legal Security Office concerning (mortgage) registrations, if any, encumbering the property sold.
3. If this has not yet been done, he will inquire with the municipality about the urban planning situation.
4. The notary will also write to the collector of direct taxes and the VAT office, as he is legally obliged to inquire about the tax situation of the seller.

5. The notary will also make sure that the seller hands over certain documents to the buyer at the time of signing of the act:
- Where applicable, the post-intervention file (postinterventiedossier or PID/ dossier d'intervention ultérieure or DIU). This file mentions and describes all the works that have been carried out in or on the property since May 2001. It contains all the useful health and safety elements to be taken into account for any future works.
 - Where applicable, the certificate relating to the condition of the electrical installation. If the installation does not comply with the legal requirements, the buyer has 18 months from the date on which the authentic instrument is signed to make the electrical installation comply with the legal requirements.
 - If this document has not yet been handed over to the buyer: the energy performance certificate (EPB/PEB Certification in Brussels or PEB Certification in Wallonia, EPC in Flanders) and, in case this document has not yet been handed over to the buyer: the soil status certificate (soil certificate).
 - The share of the property tax that the buyer must pay (back) to the seller.

When buying a plot in a co-ownership (e.g. an apartment), the notary will ask the trustee to provide him with certain information and documents. By doing so, the buyer is fully and transparently informed of the details associated with his co-ownership. The purpose of this information is to inform the buyer in the best way possible about the costs associated with the property.

C. Signature of the authentic act

Once the loan application file is in order and all requirements are complied with, the notary will agree with the parties and, if necessary, with the bank on a date for the execution of the acts. The execution of the acts comes with an explanation of the substance by the notary. Unless an exception is made, the price will be paid at that time and the keys will be handed over.

If both parties have chosen their own notaries, the signing of the authentic instrument will, in principle, take place at the notarial office of the buyer.

CONSIDER THE FAMILY SITUATION

The added value of the notary is that he has a complete overview of the various rules related to inheritance and matrimonial property law. He frames the purchase of a house within a larger whole and has an important advisory function. He not only informs the parties about aspects of the purchase, but also looks, with the buyers, at their family situation.

It is extremely important that the buyer provide the notary with the necessary information on his nationality, future plans and relational state. Different rules may apply to your situation. Discuss this thoroughly with the notary.

D. What are the costs?

There are different types of costs, which are explained below. They include the purchase costs associated with the notarial act and the costs of registering the mortgage associated with the mortgage credit act.

Calculation of the costs of the purchase, the credit and, if necessary, the mortgage release by means of the calculation module on www.notaris.be.

1. Costs due to the seller

- The purchase price paid by the notary to the seller;
- Where applicable: the buyer's share in the property tax.

2. Taxes payable to the authorities

Taxes are the most important cost item when purchasing a property. The notary's office transfers these taxes to the authorities concerned. The three Regions each have their own registration rate for real estate transactions. The same applies to any reduced rates and discounts. The buyer must be well informed about the taxes he will have to pay before making his purchase.

For the purchase	For the mortgage loan
Registration fees or VAT (in the case of new construction)	Registration fees
The standard registration rates are 10% in Flanders and 12.5% in Wallonia and Brussels. Attention: if the buyer purchases a 'new' dwelling, he will pay 21% VAT instead of registration fees under certain conditions.	The registration fee of 1% on the amount guaranteed by the mortgage. Mortgage fees The registration fee of 0.3% on the amount guaranteed by the mortgage.
Registration fees for the annexes	Registration fees for the annexes
Duty on written documents	Duty on written documents
VAT (21%) on the duty on written documents and on the notary's fees	

3. Other costs payable to the authorities

The buyer pays certain other costs to the notary's office, which are being transferred to the Legal Security Office, the local authorities, and the administrations. These differ from municipality to municipality. The notary must advance these costs for the buyer in order to execute the act.

For the purchase	For the mortgage establishment
Registration of a property transfer	Mortgage registration
Formality paid for by the buyer.	This is a fee depending on the value of the mortgage.
Cancellation/release of an existing registration	
Formality paid for by the buyer .	
Mortgage record fees	
The buyer reimburses the fixed costs for requesting the mortgage records. This amount depends on the mortgage state (30 years or additional) and the urgency.	
Outstanding amount of a debt (if any)	
If the buyer still has a debt outstanding with a local authority, this debt must be paid before the act is executed.	

Administrative costs to be borne by the buyer

All searches and administrative formalities for which the public authorities charge. These include tax, urban planning, mortgage, or land registry documents that the notary requests from the various authorities. Please note that these costs may vary from one municipality to another (e.g. urban planning searches).

These costs are included in the operating expenses as explained below.

4. Costs due to third parties (bank, surveyor, etc.)

- Plan costs of the surveyor, if any
- Costs to be paid to the financial institution

When purchasing a property, the bank has to open a file. The venal value of the property mortgaged must be determined by an expert. Usually, the bank chooses this expert itself and passes on the consultancy fees to the borrower. In addition, the bank charges administrative costs. These are the costs of processing the credit application. They are not due until the borrower receives a written credit offer.

5. Costs payable to the notary's office

L'acheteur paie ces frais à l'étude notariale.

For the purchase	For the mortgage loan
<p>Statutory fee</p> <p>The fee is the remuneration that is due to the notary; it is determined by law.</p> <p>The notary fee for a purchase includes the remuneration for all intellectual transactions necessary for the purchase, including: meetings with the parties, advice, drafting the act, communication with the parties and third parties, registration of the act and keeping the minutes.</p> <p>The employees of the notarial office involved in these tasks are also remunerated with this fee.</p>	<p>Statutory fee</p> <p>The fee for mortgage acts is also determined by law.</p> <p>The notary fee in the case of a loan includes the remuneration for all intellectual transactions necessary for the drafting of the mortgage act. This mainly concerns checking the bank's drafts, advice, drafting the credit act, communication with the bank, registration of the act and keeping the minutes.</p> <p>The employees of the notarial office involved in these tasks are also remunerated with this fee.</p>

Post-processing of the acts and operating costs

- The fees for the administrative staff mainly responsible for the post-processing of sales and credit acts. It concerns the formalities to be completed by the notary after the signature of the authentic instrument with the various public authorities (mortgage formalities, notification to the trustee, notifications concerning immovable heritage, forest, and nature, etc.).
- The general operating costs of the office.

Buying property in a bird's-eye view

Notary's advice

Contact your notary before you sign any document, even a purchase offer, and check your financial standing.

Formalities with the administrations

The notary contacts the administrations to request the necessary certificates and information.

Preparing the act

Preparation of the draft: the notary contacts the administrations for additional information in order to guarantee the legal certainty of your purchase.

Signing the act and delivery of the keys

You sign the authentic instrument, commented by the notary. The seller hands over the keys.

Congratulations!
You are the new owner.

Step
1

Step
2

Step
3

Step
4

Step
5

Step
6

Step
04

4 months

Step
7

Step
8

Loan

You inquire with the bank in order to apply for a loan. Notify your notary's office. The bank will send your credit file to the notary.

Signing the sales agreement

You sign the sales agreement and you pay a guarantee of 5 or 10%.

Completing of the draft act, settlement of accounts and payment

The notary prepares a draft act and communicates it to you, together with a detailed statement. You pay the price balance.

Formalities post signing of the act

The notary registers the sales act and pays the required taxes. He will also notify the transaction to several administrations.



Ghent - The quay of the Lys

After the notarial act

The buyer usually receives the keys when signing the authentic instrument, but the process does not end there. After signing the notarial acts (both for purchase and credit, if any), the notary's office will take care of a number of matters.

1. Registration of the notarial act

The act of purchase must be registered at the competent Legal Security Office (registration office). The notary's office pays the federal and regional taxes due (registration fees) on behalf of the buyer. The notary's office so ensures that the buyer complies with his tax obligations.

2. Transcription of the notarial act and registration of the mortgage act at the Legal Security Office

Together with the registration, the notary's office lodges the act at the Legal Security Office. That office will transcribe the property right to the name of the buyer. From that moment on, the ownership of the buyer is opposable to third parties. This means that his right of ownership is protected against possible claims of creditors of the seller. In addition, in the case of a mortgage act, the Legal Security Office will register the mortgage(s) in behalf of the lender(s).

3. Cancellation of the previous mortgage

The notary's office makes all payments in order to have the existing mortgage registrations at the expense of the previous owner cancelled.

It is not because a credit has been repaid in full that the mortgage is cancelled. A mortgage will continue to encumber the property for 30 years. The cancellation of the mortgage (also known as a mortgage release) can only be done by means of a notarial act or by expiry of the term of 30 years.

4. Transfer of the ownership title

In a final step, the notary delivers a copy of the ownership title to the buyer. This is a certified copy of the ownership act, certified by the notary. The original ownership title (in a legal context referred to as 'the minute') is kept by the notary in his office.

5. The notary informs all the authorities concerned of the transfer

After signing the act, the notary's office notifies all the necessary bodies of the sale of the property (e.g. different administrations). When selling an apartment, the trustee must also be informed. If necessary, the office will also send them a copy of the executed act.

		Flanders	Brussels	Wallonia
REGISTRATION DUTY*		10%	12,5%	12,5%
REDUCED DUTY	Reduced registration duty for the purchase of:	<ul style="list-style-type: none">An own and only home: 6%A property if the buyer(s) enter(s) into a rental agreement with an accredited social rental agency within a period of three years: 7%An only, own home that is a protected monument: 1%An own and single dwelling provided a major energy renovation occurs within 5 years: 5%.		In the case of a “ modest home ”: 6% (or 5% in the case of a “social credit”) on a first bracket that depends on the zone where the property is purchased. <ul style="list-style-type: none">Inside a “zone de pression immobilière” bracket enjoying the reduced rate = → 174.000,61 (indexation 2020)Outside a “zone de pression immobilière” bracket benefiting from the reduced rate = € → 163.125,56 € (indexation 2020) There is a different scheme, with different conditions in the case of a building plot.
	Conditions	Conditions to enjoy the benefit of a reduced rate of 6% for the purchase of an own and only home: 1 <ul style="list-style-type: none">The purchase is made by one (or more) natural person(s);The purchase concerns a family home in Flanders. It must be an existing dwelling, which serves or will serve primarily to house one family or one person (building plots are excluded from the favourable regime);The buyer(s) must not yet be a full and complete owner of another house or building plot; 2 ! Exceptions to this principle are possible. Ask the notary for advice.It concerns the purchase of the entire property;It is a pure purchase; exchange or withdrawal from an indivision is therefore not eligible;The purchaser is registered at the address of the purchased property in the population register or the foreigners’ register within two years of the execution of the notarial deed.		Conditions to enjoy the reduced rate of 6% (or 5%): <ul style="list-style-type: none">The buyer is a natural person;The purchase concerns a modest house in Wallonia = house with a cadastral income of max. 745 euro (to be increased according to the dependent children);The purchase concerns the full ownership of the entire property;The buyer(s) (or their married partner or legal cohabitant) may not yet be a full and complete owner of another property; 3 ! Exceptions to this principle are possible. Ask the notary for advice.The purchaser is registered at the address of the purchased property in the population register or the foreigners’ register within two years of the execution of the notarial deed;Purchasers must remain filed in the population registers for a continuous period of three years.
ABATTEMENT (reduced tax liability or discount on registration duty	Abattement (reduced tax liability) or discount on registration duty	Reduction of € 5.600 on the registration duties due if the buyer enjoys the reduced rate of 6% (exemption of registration duties over the first € 80.000 for the sole and own home) and of € 4.800 if the buyer enjoys the reduced rate of 5% (major energy renovation). 4 Exemption of registration duties on the first € 80.000. → Tax saving of € 5.600 or € 4.800.	Abattement (reduced tax liability) from registration duties on the first € 175.000 . 5 → Tax saving of € 21.875	Abattement (reduced tax liability) from registration duties on the first € 20.000 . → Tax saving of € 2.500
	Conditions	Conditions to enjoy the discount of € 5.600: <ul style="list-style-type: none">Cf. conditions to enjoy the 6% rate ;The taxable base may not exceed € 200.000Or € 220.000 euro for real estate located on the territory of the core cities and the municipalities of the Flemish periphery around Brussels (Aalst, Antwerp, Boom, Bruges, Dendermonde, Genk, Ghent, Hasselt, Kortrijk, Leuven, Mechelen, Ostend, Roeselare, Sint-Niklaas, Turnhout and Vilvoorde, Affligem, Asse, Beersel, Bertem, Bever, Dilbeek, Drogenbos, Galmaarden, Gooik, Grimbergen, Halle, Herne, Hoeilaart, Huldenberg, Kampenhout, Kapelle-op-den-Bos, Kortenberg, Kraainem, Lennik, Liedekerke, Linkebeek, Londerzeel, Machelen, Meise, Merchtem, Opwijk, Overijse, Pepingen, Roosdaal, Sint-Genesius-Rode, Sint-Pieters-Leeuw, Steenokkerzeel, Ternat, Tervuren, Vilvoorde, Wemmel, Wezembeek-Oppem, Zaventem and Zemst).	Conditions to enjoy the discount of € 21.875 <ul style="list-style-type: none">The taxable base may not exceed € 500.000;The buyer must be a natural person;The property must be located in the Brussels-Capital Region;The natural person must not already enjoy another regional advantage;The purchase concerns the full ownership of a real estate;The buyer(s) must not already be the full and complete owner of another house or building plot; 2 ! Exceptions to this principle are possible. Ask the notary for advice.The purchaser is registered at the address of the purchased property in the population register or the foreigners’ register within two months after the execution of the notarial deed of purchase; 7Purchasers must remain registered for a continuous period of five years.	Conditions to enjoy the discount of € 2.500: <ul style="list-style-type: none">The purchase is made by one (or more) natural person(s);For a real estate located in Wallonia;The property is intended for use as a home, as a building plot or as a dwelling planned or under construction;Entire property is purchased in full ownership;The buyer(s) must not yet be the full and complete owner of another house or building plot; 2The purchaser is registered at the address of the property purchased in the population register or the foreigners’ register within three years of the execution of the notarial deed of purchase; 6Purchasers must remain registered for a continuous period of three years.

Infranotes :

1. In order to enjoy the reduced rates of 1% and 6%, the buyer must meet additional conditions. Seek advice from a notary.
2. The buyer must not already be the owner of a property abroad.
3. The buyer must not already be the owner of a property abroad.
4. If not all purchasers meet the conditions, the discount of € 5.600 or € 4.800 will only be granted in part on the legal share of purchasers who are entitled to enjoy the reduced rate of 7% or 6%.
5. If it concerns a building plot, the abattement amounts to € 87.500 and the purchase price may not exceed € 250.000.
6. Within 5 years if it concerns a building plot, a house under construction or a house on plan.
7. Within 3 years if it concerns a building plot, a house under construction or a house on plan.

The notary, your specialised and impartial advisor. A confidential person you can turn to for tailor-made advice about your private or professional life.

