

# The role of the notary

*The purchase or sale of an immovable property is not to be taken lightly. It is a serious act full of consequences. At the time of signature, the notary explains the rights and obligations of the parties to the deed. He is duty-bound not to remit the sale price to the vendor until the necessary verifications have been completed and all parties are fully protected.*

## **Promise to purchase**

The promise to purchase is the most common document signed by all interested parties prior to a sale. Contrary to popular belief, such a document is not one that can be easily be disposed of after signature. It is a preliminary contract that imposes obligations on the parties. Once the promise is signed, it becomes extremely difficult to alter its terms and withdraw from the obligations thereby contracted.

## **The sale with legal warranty**

The vendor and the purchaser of a property have certain obligations towards one another. The purchaser must take possession of the property and pay the sale price. The vendor must deliver the property and is bound by the legal warranty, that is, the law obliges him to guarantee certain things to the purchaser.

First, the vendor is bound by the warranty of ownership. He must guarantee to the purchaser that the immovable has no title defects and is free of all charges, except those declared at the time of sale. The vendor must also guarantee that the immovable does not suffer from encroachments (an encroachment on his part or an encroachment caused before the sale by a third person with his knowledge) and, within the confines of the law, does not contravene public law restrictions (for example, the vendor guarantees that the property complies with zoning regulations). The warranty of compliance with public law restrictions is, however, not absolute; the purchaser must remain vigilant.

Secondly, the vendor is bound by the warranty of quality, that is, the warranty against hidden defects. The warranty of quality covers only major defects that existed at the time of the sale, that were unknown to the purchaser, and that a prudent and careful purchaser would not have discovered. To the extent permitted by law, the parties may add to or reduce the legal warranty.

## **The title search, a necessity**

After carrying out the necessary title search, the notary is in a position to guarantee that title to the property will not be contested. His search consists of verifying whether the vendor is the true owner of the property, that the vendor has the right and capacity to sell it, that the vendor's spouse or other persons required to consent to the sale have done so, etc.

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**With the aid of a certificate of location, the notary then verifies:**

- whether the dimensions of the lot are correct
- the buildings have been properly erected on the lot you are purchasing
- the dwelling has been built in conformity with municipal by-laws and zoning regulations
- whether or not the neighbour's property encroaches on the lot
- the windows conform to legal standards
- there exist rights of way
- etc.

**The notarial deed of sale, a valuable document**

The notary drafts the deed of sale with the care and attention to detail that characterizes all of his or her work, putting into this document all the clauses essential for the protection of the buyer's and seller's rights. The notary also draws up all other deeds related to the deed of sale: hypothecary loan, servitudes, mortgage acquittance, co-ownership agreements, wills, etc.

The buyers are given an authentic copy of the original deed of sale, which is numbered, recorded, and registered, the whole, for their protection.

