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Free initial advice

TONTINE CLAUSE: SOLUTION OR POTENTIAL WHOOPSY?

If you decide to buy a property and you're an English-speaking individual, it is quite certain that you are aware of the existence of Tontine.

You might consider asking this clause to be added in the notarial deed when you purchase the property.

If you are in this situation, I would strongly suggest that you read the present article and request further information to your notaire before you do.

This article might save you from making a big whoopsy!

This clause is known to prevent the dangers of undivided ownership and guarantees the survivor ownership of the entire property.

Two conditions to use this clause are required:

- each party must finance the property,
- life expectancy of the buyers should be roughly similar, to prevent the clause to be considered as a gift.

ADVANTAGES:

The tontine clause is often used by couples with children of a previous marriage.

- It could be considered as a great option so that in case of death, the surviving spouse is not asked to leave the property a few months after the deceased passing.

With this system, the predeceased person is declared never to have purchased the property.

The surviving purchaser is considered to always has been the owner, from the beginning.

-The heirs of the deceased have no right on the property!

-Also, the property is said to be unseizable by the spouses' creditors as the property is belonging to none of the spouses (except in the eyes of the French tax authorities).

So simple, why not jump at the chance and choose this option. Read on

DANGERS:

-There must always be unanimity in any decision in relation to the property (ex: building work or sale).

Therefore, if you want to get divorced, your wife or husband will be able to block the sale of the real estate property for the rest of your life. What did they say? until death do us apart.

Indeed, legally it is not possible to provoke sharing as in joint ownership or "indivision" through the judge. It is one of the very few exceptions where even through a judge you cannot bypass the refusal to sell.

-You disinherit your children (of a previous marriage)

IS THERE A SOLUTION?

Yes, but it is only available **when you are about to purchase the property.**

A paragraph in the tontine clause needs to be requested to be added by the notaire in the **preliminary sale agreement**, ie the first notarial deed signed, stating that in case of divorce the clause tontine would terminate itself. This provision could detail any conditions for the tontine clause to self-terminate. (I would check with your notaire the tax consequences of this)

Once again as advised in the past, before purchasing a property or any other major step is taken in France, seek the advice of a legal professional beforehand.

CALONNE & ADOUE-DUGAST, law firm in Toulouse, France

Disclaimer: This article is for general information only. Every case is different and you should seek professional help to make sure you get tailor-made advise fitting your personal situation.