

G É R A N C E

Agence Immobilière



Villars - Switzerland

Maison fondée en 1969

S E R V I C E



S A L E

OF REAL ESTATE IN SWITZERLAND

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A. INTRODUCTION

The sale of a property implies important decisions and must always remain a matter of trust. Therefore contact a real estate company with a long experience and a solid reputation.

GERANCE-SERVICE SA

is a Real Estate agency established in Villars for more than forty years that remains independent specialising in the local real estate. For these reasons the company has an extensive knowledge of the market and its clients' requirements.

Each property has been professionally evaluated and each client receives a completely personalised service.

With this in mind we provide you with this document, drawn up in consultation with Notary and Doctor of Law Maître François Bianchi.

B. SALE OF A RESIDENCE

1) **Conditions of sale**

If a Swiss person or a person domiciled abroad wishes to sell a property to a Swiss purchaser, the transaction can be carried out without delay and without requiring any authorisation.

On the other hand, the sale of (non commercial) property owned by a Swiss or a foreigner, whether resident or not, to persons domiciled abroad is subject to various laws and edicts. The Federal law for the acquisition of freehold property by non-residents, commonly known as "**Lex Koller**" stipulates sales to foreigners on the basis of **annual quotas** per tourist region (according to Canton). If these quotas are filled during the course of the year it is necessary to wait for the provision of additional quota or for the release of the following year's quota.

This law came into effect on the 1st January 1985 and followed different legislations, in particular the Lex Furgler. Its goal is to limit the acquisition of apartments and other non commercial properties in Switzerland by non-resident foreigners.

2) **Conditions of purchase**

Firstly, it must be pointed out that a **legal entity** such as a limited company or any other legal form cannot acquire a holiday home. The purchase must be made in one's **own name**.

Also, those with a C permit are treated as Swiss nationals for the purchase of buildings and can therefore acquire any apartment, chalet, building, land or villa in Switzerland.

European nationals from an EU country (or EFTA) benefiting from a B permit can acquire properties as a Swiss, including for pure investment. Holders of B permits

coming from any other country can also buy property freely as long as it is their main residence. If they purchase as a second home, they must also request an authorisation.

3) **Legal restrictions**

a) Non-Swiss may only own ONE property per family in Switzerland: family defined as husband and wife and/or under-age children (up to 18 years). After the age of 18, the son or daughter of an owner may purchase one property in his/her own name, provided he/she can prove his/her financial independence.

b) The foreign purchaser may buy an apartment with up to **200 m2 of living area**. The purchase of an individual chalet is also possible if the land does not exceed about 1,000 m2 (to date the limit has reached plots up to 1,750 m2). Special authorisations may be obtained if the owner can prove the necessity (large family, grand style of life) or, for land, if it is sloping or the topology justifies it.

c) The non residents owners that have bought a holiday property after January 1st 2008 cannot resell during 5 years, neither to a non resident, nor to a Swiss, except imperious reasons (force majeure).

d) In certain cases, if the apartment is not occupied for a long period, the property must be resold within a time limit of two years. (After the delay of 5 years for those who have bought after January 1st 2008).

e) The owner, or his family, must occupy his apartment as a holiday home, in principle every year, but for not more than six months as per the law for stays of foreigners in Switzerland.

f) The property can be rented out for up to 11 months per annum. Annual rentals are not allowed.

If the vendor is of Swiss nationality (or a limited company) and the purchaser is a foreigner, a request for authorisation must be addressed to the relevant authorities (see below).

If the vendor and the purchaser are both foreigners, the notary must also request an authorisation. In this case, the authorisation will not be deducted from the quota and the process will follow its normal course even if the quota has been filled.

Sale of a property to a Swiss national does not require any particular authorisation from the authorities, whatever the nationality of the vendor.

C. **LEGAL ASPECTS**

1) **Purchase procedure for a holiday home**

Once the client has made his choice, the procedure is as follows:-

a) To complete a **civil status questionnaire**.

b) To sign a **Power of Attorney** which states:-

- the name and full address of the purchaser(s)
- the location of the plot and/or name of the chalet, the number of the apartment and preferably its size and its floor
- the number of the parking bay (if applicable)
- the detailed sale price :
 - price of the apartment, land or chalet
 - + price of the parking bay (if applicable)
 - + price of any furnishings (if applicable)
 - = Total Sale Price

c) To provide copies of each vendor's **passport or identity card** duly signed. The signature of the vendors on the copy of the passport or identity card must be authenticated by a Notary and if possible with an official stamp.

These documents (a, b, c) are normally completed and forwarded to the Notary by our office.

Only once all these documents (see a, b, c.) have been received will the notary take the following steps:-

1. Sign a **sale contract or conditional sale contract** (acte de vente ou vente à terme conditionnelle).
2. Apply for the **authorisation to purchase** on behalf of those who are not resident in Switzerland.

No request can be made until the sale contract has been signed.

The administrative time taken to obtain the authorisations is usually two to three months from the date the application is submitted. Longer if the annual quota has been fulfilled.

Once the authorisation has been received from the cantonal department and ratified by the Federal authority, the Notary will sign the transfer document requisition to the Land Registry on the basis of conditional sale.

There is no need to worry about not receiving an authorisation to purchase as long as the future owner **does not own another property in Switzerland** and the size conditions have been fulfilled.

An official notary (practising in the Canton of Vaud) will act for both the vendor and purchaser. He will complete all the documents required for the legal acquisition and will protect the interests of both parties.

D. FINANCIAL ASPECTS

1) Sale Price

The sale price of the apartment will be paid into the notary's client account in a Swiss bank.

2) **Breakdown**

a. **Mortgage**

If the vendor has an outstanding mortgage on the property, the notary must pay this off using the funds from the sale. For this reason, the notary must be informed with which establishment the mortgage deeds have been deposited.

If the vendor has no mortgage, he must indicate where any previous mortgage documents for the property have been deposited, if any.

In case of loss of mortgage documents, the notary must publish requests in an official newspaper, *la feuille des avis officiels*. This process lasts approximately one year, and prevents the completion of sale in the interim.

b. **Outstanding tax charges**

In the case of sale by foreigners, the notary must make sure that all taxes are paid up until the day of transfer. Even if the taxes have been paid regularly, there always remains a balance, since charge of taxes is made with a delay of a few months.

If the notary does not pay these taxes on the vendor's behalf, the property cannot be transferred and the sale price will remain blocked in the notary's bank account.

c. **Outstanding co-ownership charges**

In the case of sale of an apartment owned in a co-ownership by floors, the notary will, in principle, ask the building administrator for the total of charges up until the day of transfer. This prevents these charges being referred to the purchaser. The amount brought forward from any renovation fund on the property is transferred to the purchaser.

d. **Tourist tax – communal contributions**

In cases of sale by a foreigner, the notary always asks for the total of communal charges and tourist tax still outstanding. These must also be paid by the notary in order to avoid them being charged to the purchaser.

e. **Deposit for property gains tax**

Cantonal law on direct taxation obliges the notary to reserve 5% of the price to guarantee the payment of an eventual property gains tax. This deposit is obligatory, legal measures will be taken if not even if it is clear that there will be no property gain. This amount will be returned to the vendor with the deduction of an eventual tax once the agreement of the cantonal tax administration is received.

This agreement can be made by means of a tax declaration for taxation of property gains. If you wish the notary to complete this declaration, the notary must be informed. If no such wish is indicated, the notary will act on the assumption that the vendor will

himself undertake the necessary steps for the registration of this tax declaration before the fiscal administration.

f. Commission

Normally the agent who found the purchaser will send the notary a bill for commission. (Usually 5 % of the price). Unless otherwise stated, the notary will assume that this already forms part of the agreement between the vendor and the agent.

3) Notary's fees

All the notary's fees are by default charged to the purchaser. However, in all that concerns the eventual powers of attorney, legalisation of the vendor's signatures, and the tax declaration mentioned above (communications with the tax office, establishment of a tax declaration for taxation of property gains, requests for statements from banks, etc.), a separate bill will be drawn up at the expense of the vendor. In fact the costs mentioned above do not concern the purchaser.

4) Balance of sale price

The balance of the sale price will be transferred to an account in the vendor's name, whose details he will have sent to the notary.

This transfer will be made upon approval by the vendor of the final breakdown.

E. LEGAL ASPECTS

1) Structure

« **Propriété Par Etage** » (**PPE**) means co-ownership by floors.

Co-ownership is a legal right which consists of two indissolubly linked elements:-

a share of the whole building and its integral parts (totality of the property)
walls/fences/screeds & flooring/roof covering & metalwork and common areas.

an exclusive right of use over defined parts of the building.

The building is divided into lots expressed in o/oo (thousandths).

The co-ownership's official controlling body is the co-owners' Annual General Meeting.

2) Recording in the Land Registry

The acquisition of the property is only made legal with the recording of the purchaser(s) in the **Land Registry**.

From the date of this record (*entrée en jouissance*) the co-ownership charges and taxes are due by the new owner.

F. TAXES ON PROPERTY GAINS

In case of resale, the notary must by law retain 5% of the sale price to guarantee the payment of tax on property gains. The taxable profit is the difference between the sale price and the cost price. Cost price = sale price (which is not indexed to the Swiss consumer prices index) + buying expenses + improvements (special works) + eventual agent's commission on resale. When the fiscal authority has given its decision, the notary will reimburse, if necessary, the balance to the vendor. The tariff of the tax decreases according to the duration of ownership:

1 year	30%
1 – 2 years	27%
2 – 3 years	24%
3 – 4 years	22%
4 – 5 years	20%
5 – 6 years	18%
6 – 7 years	17%
7 – 8 years	16%
8 – 9 years	15%
9 – 10 years	15%
10 – 11 years	14%
11 – 12 years	14%
12 – 13 years	13%
13 – 14 years	13%
14 – 15 years	12%
15 – 16 years	12%
16 – 17 years	11%
17 – 18 years	11%
18 – 19 years	10%
19 – 20 years	10%
20 – 21 years	9%
21 – 22 years	9%
22 – 23 years	8%
23 – 24 years	8%
24 years or more	7%

Years of occupation proven by the taxpayer count double. (for Swiss or residency permit holders)

For any additional questions, please contact our sales team on +41 24 495 95 95

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