

# MAKING SENSE OF ENTITLEMENT

Historically, British buyers have been advised to buy French property in various different ways to help them avoid French inheritance rules. But now that the EU Succession Regulation is in force, **Charlotte Macdonald** asks if any of these models are still worth it

Prior to August 2015, if a person died owning a property in France that property would pass under the French forced heirship laws. Put simply, if you had one child, they would be entitled to one half of your French property; if you had two children, they would be entitled to two-thirds of your French property; and if you had three or more children they would be entitled to three-quarters of your French property.

These forced heirship rules sat uneasily with most British property owners who were used to the idea that they could leave their property to whomever they wanted when they died. Under English and Welsh law, as long as you have a valid will, you can generally leave your assets to whomever you wish, be that your family, friends or charity.

Following the introduction of the EU Succession Regulation (650/2012) in August 2015, it has been possible for those with British nationality, who are most associated with the jurisdiction of

England and Wales, to elect the laws of England and Wales to apply to their French wills. This means that an English person is free to choose who they leave their property to, as they can do in England.

However, before the EU Succession Regulation came into force, British buyers bought their properties in several different ways in order to avoid French forced heirship rules. It is useful to be aware of these when entering the French property market, as they may still have advantages.

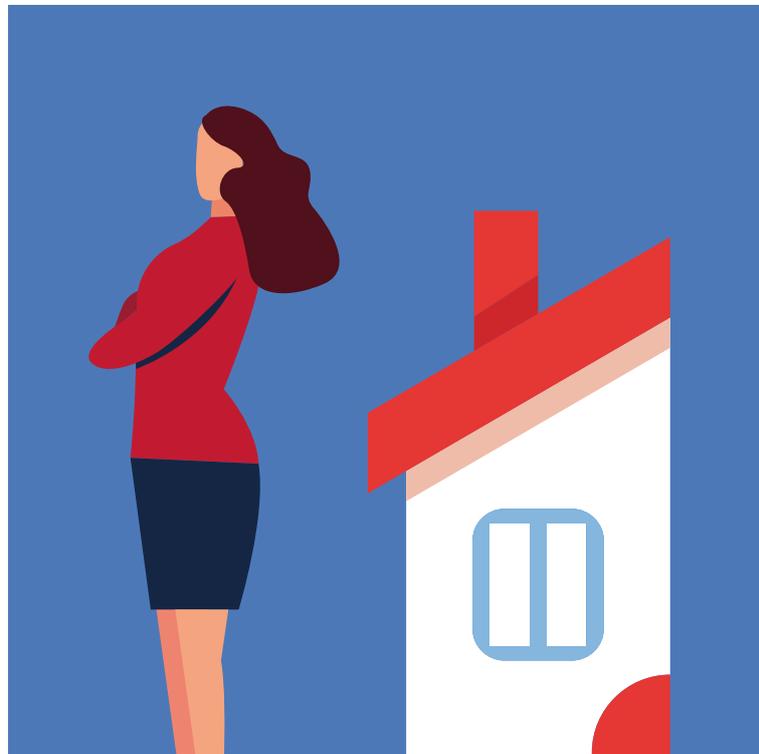
## En tontine

British couples, who wished for their property to pass to their partner when they passed away, would often buy a property *en tontine*. When a property is bought by two people and the purchase deed contains a *tontine* clause, it has the effect that should one of them pass away, the property becomes owned solely by the surviving partner.

The first of the couple to die cannot leave their 'share' of the property under their will, and it will not pass under the French forced heirship rules because it will automatically be deemed to be owned completely by the surviving co-owner. Buying a property *en tontine* was a way of ensuring that the co-owner (often a spouse or partner) would become the sole owner of the property should the other pass away. This was especially important for anyone who did not want their children to inherit, or who only wanted their children to inherit once both partners had died.



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“For those wishing to avoid forced heirship rules, they can now elect for English and Welsh law to apply in their will and have maximum flexibility on how to leave their share of their property”

While it was an effective way of avoiding the French forced heirship rules, a *tontine* clause is not ideal in all situations. It cannot be entered into the purchase deed retrospectively; it has to be done at the time of purchase and it is also possible for children (if the co-owners are not jointly their parents) to challenge the clause. Perhaps one of the biggest limitations of owning a property *en tontine* is that it restricts the inheritance tax planning that a couple can carry out.

## SCI – Société Civile Immobilière

An SCI is a type of non-trading French company through which it is possible to own and manage property. SCI ownership has been a popular way of avoiding the French forced heirship rules. Technically, under the pre-2015 rules, while real estate property was subject to the French forced heirship rules, shares in a company (as movable assets) were not for individuals domiciled outside France.

This meant an English person could own all the shares of a

property in an SCI and leave them to their spouse rather than their children, if they wished to. While the use of SCIs can still be useful, even since the introduction of the EU Succession Regulation (especially if there are going to be multiple owners), the costs of setting up and winding up the SCI should be carefully considered.

## En indivision

Since the new EU Succession Regulation came into force, buying a property *en indivision* has become the standard way for British people to purchase property in France with a co-owner. Each buyer will own their share of the property (for example 15%, 25%, 50% etc). They can leave this share under their will, or it can pass by the French forced heirship rules.

For those wishing to avoid forced heirship rules, they can now elect for English and Welsh law to apply in their will and have maximum flexibility on how to leave their share of their property.

Owning a property *en indivision* provides wide scope for inheritance planning, both at the

time of purchase and going forward, if and when personal circumstances change.

### Other models of ownership

There are also other ways that married couples can own property in France. For example, matrimonial property regimes exist in many parts of the world and govern how a married couple's assets are split upon marriage and death, including in France (but not the UK).

  
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If a married couple enters into a French matrimonial property regime, they can choose for their marriage contract to include a clause which states that all the assets belonging to the couple would pass to the surviving spouse automatically, should one die. However, this can be challenged by children of previous relationships.

There are also ways of giving a person a right to live in the property for their lifetime (*usufruit* or for married couples, an *usufruit* by way of donation *entre époux*), which can be helpful to those who want to secure their partner's ongoing occupation of a property, but ultimately want it to pass to their children or another person.

### Which model of ownership will be best for me?

The European Succession Regulation has given British nationals (in particular those most closely connected with England and Wales) the freedom to leave their assets as they wish when they die.

Some pre-European Succession Regulation ways of buying (such as

via a SCI) may no longer have the advantages they used to. Equally, buying in a *tontine* may still provide a couple with the protection they want for each other, should one of them pass away, but may not be the most inheritance tax-efficient way to own their property.

Bear in mind that the regulation may not be as helpful to nationals of a country that also has a forced heirship regime.

Ultimately, the best way to own a property in France will depend on individual circumstances. We therefore always recommend obtaining advice from a cross-border expert and ideally before you buy your French property. ■

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