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**THE ROLE OF COURT APPOINTED NOTARIES IN FRENCH
MATRIMONIAL PROCEEDINGS**

The importance of the profession of Notaire in divorce proceedings in France is often misunderstood by our Anglo-Saxon neighbours.

The judicial system of France and the countries of the United Kingdom (and indeed the various countries all over the world that have followed these two systems) are very different.

Specifically the French system is an inquisitorial system, in which the Court is charged with the responsibility of enquiring into the facts, whereas those systems that are based upon the English legal adversarial system require the parties own legal teams to bring the facts before the Court.

Under the French system it has recently been recognised that Notaires have an important role to play in the fact finding process, and also in the collation, presentation and judicial interpretation of the facts relating to a matrimonial breakdown.

French Notaires are a legal profession licensed by the French State responsible for the assessment, registration and transfer of all types of property.

There is a misconception that French Notaires are not involved in Court work – this is not true, specifically certain Notaires, such as myself, are licensed as Court appointed experts to assist the Court in carrying out its inquiry into the facts and in deciding how matrimonial property should be allocated in the event of divorce.

COLLABORATIVE LAW

As in the UK, in France we have started to use collaborative law as a means to enable parties to settle matrimonial proceedings in a non-combative way.

Like you we have evolved, and are still evolving, systems whereby the parties to a marriage that has broken down can settle their respective interests by agreement, rather than by having to pay lawyers to argue their case before the Court.

In collaborative cases a Court appointed Notaire can either act for both parties, or each party can appoint their own Notaire. It is quite common for one Notaire to act for both parties, advising both sets of legal teams and giving his professional opinion as an expert on the appropriate division of assets.

In this way parties to collaborative law case can gain an insight into what would be the likely outcome of Court proceedings, without having to go through the stress, pressure and expense of actual Court proceedings.

Parties who do this are much more likely to be able to have an ongoing relationship without bitterness and ranquor. This can obviously be extremely important, not only if there are children involved but also if parties live in the same city and are likely to come across each other in the future.

ASSIGNMENT OF COURT APPOINTED NOTAIRES IN COURT PROCEEDINGS IN FRANCE

The French court is required to carry out an enquiry into the facts and the relevant law and is assisted in doing this by each party and their respective advocates.

French Advocates are not directly the same as barristers because it is still relatively unusual for a barrister to prepare his own case and interview all the witnesses and investigate the facts, whereas in France the advocate does indeed carry out this function. In some ways French advocates are more similar to English solicitor-advocates.

The French system recognises that Notaires, by their training and experience are highly experienced and trained to deal and advise in all aspects of property, both real estate and personal property as well as intellectual property. Notaires are also very good at assessing and discovering the facts of a case, sometimes even facts that the parties would rather conceal!

It is for this reason that the system of having a court appointed expert Notaire has evolved and our job is to discover the facts, identify the relevant legal principles and thereby assist the Judge in coming to his decision.

We do this by carrying out an enquiry into the facts and preparing a report, which is known as an “Expertise”. The Expertise is made in collaboration with the parties and their own advocates and relies upon the knowledge, experience and professional contacts of the court appointed Notaire. As a court appointed Notaire, for example, I can make enquiries of banks, who are not allowed to hide behind customer confidentiality in answering my questions. Similarly as a Notaire I have the resource of the Paris Notaires behind me when, for example, it comes to valuing a piece of real estate.

MATRIMONIAL PROCEEDINGS INVOLVING FRENCH NATIONALS LIVING OVERSEAS

Nowadays, of course, many hundreds of thousands of French couples live overseas. Indeed many thousands of them live and work in England.

These French citizens have organised their lives and their marriage in accordance with French law and custom. For example unless there has been a specific prenuptial agreement put in place, they will probably have “community of property”.

Very often in the case of matrimonial breakdown one spouse will return to France, where he or she will expect to be treated in the way that is common and normal for a French citizen in his or her situation.

It follows that where French nationals suffer from matrimonial breakdown it is very sensible that both they, and their local legal teams in the country in which they may currently be temporarily residing, should understand the French system and know what the ramifications of their decisions are in France. This is even more important, of course, if there are children involved.

French court appointed Notaires, with their knowledge and experience of French law and practice, and their experience and track record of acting independently of the parties to produce an independent “Expertise” are very well placed to assist.

We can provide independent and impartial advice to French nationals and to their legal teams explaining the effect and ramifications of a matrimonial breakdown and a consequent financial settlement and alimony settlement under the laws and practices of France. We can do this either for an individual party (applicant or respondent) or indeed we can provide impartial advice to both parties, instructed by both parties and by their local lawyers, as we do in France.

The upshot is that an English solicitor acting for a French national in matrimonial proceedings should not automatically leap to the conclusion that he must go to learned French counsel for advice – he and his client might well be much better off instructing a court qualified Notaire to either assist in a collaborative law settlement or to give independent and impartial advice as to the way in which a French court would address the issues of division of matrimonial property and payment of alimony/maintenance .

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