

Legal Notes

Your questions answered

Barbara Heslop of Heslop & Platt answers a reader query

Q: I live in France and have made a will in which I made a choice of UK law under the 2012 EU Succession Regulation because I wanted to leave everything to my wife rather than my children. Now the UK has voted to come out of the EU will I still be entitled to do that, or will I have to find another way to do it under French law? P.H.

A: The law that applies to your worldwide estate is the law of your habitual residence at the time of your death, so France.

With article 22 of the EU Regulation, you can, as you have done, elect the law of your nationality to apply to your worldwide estate in place of French law. The fact that the UK has not ratified the Regulation does not alter this, because you are resident in France. Brexit will not change this because the country whose law you choose does not have to be situated in the EU.

However, you should only choose English law if there is no suitable French estate planning option available.

Because the UK has three separate internal laws, English and Welsh law, Scots law

and Northern Irish law, any election should refer to the law of the country with which you are most closely connected and a generic reference to UK law should be avoided.

By making this election you can regain the testamentary freedom under the law of your nationality and can leave your entire worldwide estate to your wife rather than having to observe French law which entitles children to inherit from their parent.

Under the terms of the Regulation, a French notaire will still have to be appointed to deal with the estate formalities and will then have to apply English law with which he/she is unfamiliar.

Your entire estate will still be assessed for French inheritance tax, although a surviving spouse, under current French law benefits from a total exemption from inheritance tax in France.

There are however existing French estate planning options by which you could leave your worldwide estate to your wife such as the adoption of the *communauté universelle* marriage regime.

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Sarah Bright-Thomas of Bright Avocats answers a reader query

Q: We are moving to a house with a well in the garden. Are there any rules we should think about relating to using this water? S.S.

A: The first rule would be to not use this water for any purpose or discard it where it could enter a watercourse or the public supply unless you know it is safe – you are liable in law for "any problems caused by your actions, your negligence or your carelessness".

There are both bacterial and chemical risks to consider and you must have the water tested at an official lab – the Direction Départementale des Affaires Sanitaires et Sociales (DDASS) will guide you – but the test does not guarantee the water is drinkable or

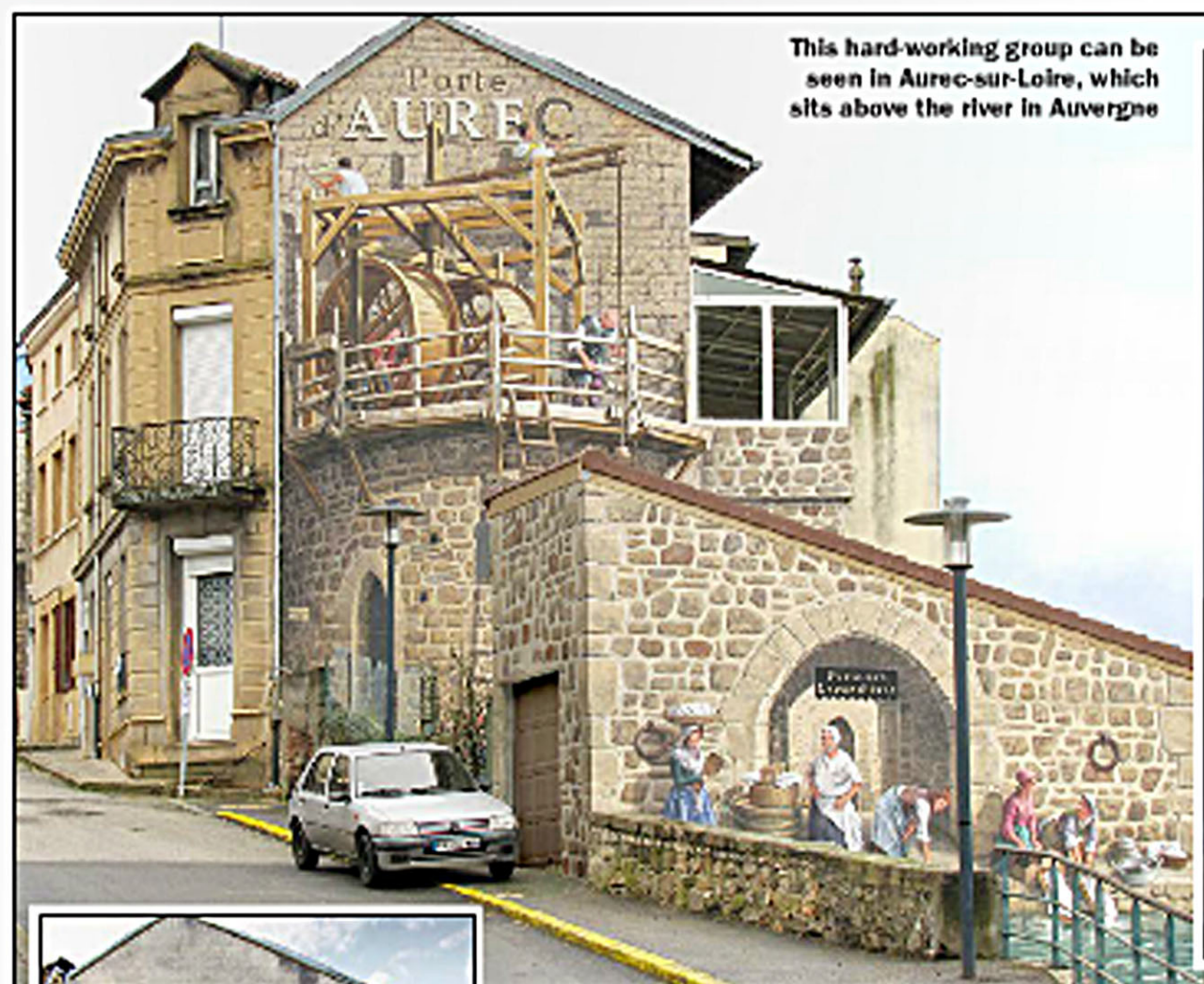
safe as there are too many variables such as pesticides, heavy metals, etc. Since the droughts of 2003 and 2005, officials have taken far greater steps towards controlling water use from France's aquifers.

You must give details to your mairie and the DDASS, attaching both the test results and a map of the site.

To protect water usage you may be asked to fit a water meter to check how much you are using and you will be liable for a bill (redevance d'assainissement). To protect the aquifer, the well must be isolated to prevent any pollution reaching the water source. You must also maintain and clean the well. If it ceases pollution you may face three years' prison and a €45,000 fine.

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If you have a legal query send it to news@connexionfrance.com
We select questions for answer every edition



This hard-working group can be seen in Aurec-sur-Loire, which sits above the river in Auvergne



The bare Aurec-sur-Loire gable wall



Aurec-sur-Loire stone-workers group

Seeing is believing but not in the fresco world

by EMILY COMMANDER

LABOURERS turning a treadmill, washer-women doing the laundry, film stars out on their balconies... In some French towns, you would be quite right to question what you see, for *trompe l'œil* is back in fashion.

The technique, where images give the illusion of 3D objects on a flat surface, is increasingly being used to adorn otherwise mundane buildings in public spaces, giving

passers-by pause for thought. And going beyond *trompe l'œil*, a new breed of "muralists" are painting walls with architectural features, decorative designs, signs or simply pictures.

Patrick Commeey, of Isère firm A-Fresco, says the paintings bring a sense of distinctiveness to a place.

"It is about representing the specificity of each location, taking into account local conditions, such as light, and constraints, such as the placement of windows or balconies.

"For tourists, these walls act as giant ID cards for the place they are visiting."

Rather than the problem of incorporating objects, sometimes the biggest constraint is how to make a large blank wall in a dull grey square interesting.

It is not like painting on canvas or on paper, said Mr Commeey as the key difference lies in the audiences of the two art forms.

"When you paint a wall, you are creating something for the public sphere. Anyone at all could see it: young, old, rich, poor: people of all creeds, colours, nationalities and political views."

By contrast, the painter at his easel can "paint whatever he likes".

"The person who sees a wall painting has no choice: it is "imposed", but the person who goes to an art gallery, or pays for a cinema ticket has chosen to be there and so, "if he does not like it, it is his problem".

The muralist's consideration for his public is also the point at which the work's superficial similarity to graffiti ends.

Grffiti artists impose their own self-expression on an audience which has no say, and indeed may not want the graffiti to be there at all.



Seeing is believing but not in the fresco world



A bare wall in Puy-en-Velay is transformed into a new pilgrim route

A wall painting has to endure whatever the weather throws at it, so the painter will use hard-wearing wood and masonry paints more often seen on shutters or flat walls. And the painter, too, has to endure the weather with changing light conditions and temperatures altering the nature of the work as it goes along.

Muralists work on scaffolding, so cannot take a step back for a different perspective, but have instead to work at close quarters, without getting any real sense of the work in its entirety. Nor can they rely on viewers seeing the work from head-on only.

Buildings can be viewed from every angle, and distance so the painter must ensure they work from all viewpoints, something particularly challenging with the tricks of perspective in *trompe l'œil*.

"Something that works well from one side may fail completely from the other", says Mr Commeey, "and you have to take that into account from the start".

Training is not easy to come by using traditional routes. Mr Commeey said: "I studied fine art, for all the good it did me. I wanted to work for the people, not to create works that would hang in galleries".

He learnt in the street, spending six months in Mexico, looking at the many wall paintings there. "When I started out in 1978, wall painting had been out of fashion in France for a good 20 years, so I was starting from zero."

Having an idea does not give the painter a right to start painting. "If a wall gives onto a public space, you need the authorisation of the mairie to paint on it," says Mr Commeey. If the building is classified, an additional layer of permission is required from the architects of Bâtiments de France.

That is not generally a problem for Mr Commeey as many of his works are com-

Spot the scene, spot the star, name the film in a popular game at this Cannes wall painted to celebrate the film festival



Seeing is believing but not in the fresco world

missioned by town authorities themselves. In the medieval town of Aurec-sur-Loire, the mairie wanted to create a walking route, which would draw visitors into the centre of the town using painted scenes that drew upon the town's history.

A-Fresco produced a spectacular gateway, superimposed onto an ordinary blank wall, and the walking route now takes in a medieval celebration scene, a painter at the foot of a tower, and a prisoner in the town jail, among other features.

In Cannes, the authorities wanted to celebrate its cinematic history, resulting in a series of murals depicting the filming of a movie, a cinema entrance, Marilyn Monroe and a series of famous cinematic kisses. Some of the paintings trick the eye, but others are simply emblematic of the town's rich celebrity history.

Usually commissions are made on the basis of a guiding theme or idea, "but this leaves plenty of scope for creativity on the part of the painters. It's up to them how to achieve the desired effect."

Most murals come from teamwork and while Mr Commeey is alone in charge of his company, the scale of the works require more than one painter to be involved.

He must pull together groups of independent painters depending on the project. "I've trained most of them at one point or another," he said.

Good teamwork was shown in their Fresques des Français project, a 5km artwork in a Parisian underground carpark, which covered the walls and ramps with famous French figures from history.

Mr Commeey said: "We had to paint 250 frescos in just six months. That meant three per day, every day, from conception right through to realisation".

It kept 30 painters fully employed. Mr Commeey is not fearful of changing tastes of the public or municipal authorities hitting his business.

"If you think about it, painting on walls is the oldest art form known to humankind. It is here to stay," he said.

If buyer pays the estate agent, they could save cash

WHO PAYS the estate agent's fees when buying a property? The correct answer is the seller, as they instructed the estate agent (or in some cases, the notaire) to find a buyer on their behalf.

However, there may be some situations when it could help the buyer to offer to pay the fees – as it could save them money at the end of the day.

When the seller pays negotiation fees to an estate agent or a negotiating notaire, these are included in the price of the property when the notaire calculates taxes and fees paid by the buyer for preparing and signing the *acte de vente*.

However, if the buyer pays these fees, they are not included when calculating the notaire's fees and taxes.

That means the buyer can save money on the transaction.

Take the example of a buyer paying €100,000 for a property; that total sum will include a typical estate agent fee of 10% (ie €10,000), so the buyer pays the notaire fees and taxes of about 8% on the €100,000 – or about €8,000.

If, however, the buyer offers

to pay the estate agent the €10,000 fee and pays just €90,000 for the property, they then pay the 8% notaire's fees and taxes on only €90,000.

This will cost roughly €7,200 and save about €800 and, while the saving may not be dramatic, in some situations every little helps... and it may help pay for white goods or furniture.

In legal terms, the buyer pays the estate agent fees if they instructed the estate agent, property finder or notaire (notaires have recently started to publicise this service) to search for a property on their behalf, and the seller pays if they instructed the estate agent/notaire to find a buyer.

The buyer can organise to pay the estate agent fees by requesting it during the negotiations – but must be able to pay once the sale is agreed.

The selling agreement *mandat de vente* will stipulate who pays the fees, the seller or the buyer, and the buyer can simply pay the sum or ask for the *mandat de vente* to be rewritten as a *mandat de vente avec commission charge acquiescer* to reflect the new situation.

New aid for young tenants

YOUNG people looking to rent property are to get help from the government as it is extending the Visale deposit guarantee scheme to all under-30s who are not living at home.

The Visa pour le Logement et l'Emploi will cover unpaid rent for the first three years of a tenancy and gives an option to get a Locapass loan to pay any deposit needed. Tenants must meet the earnings requirements of rent plus charges being less than half their monthly pay while owners must be charging less than €1,300 a month outside Paris or €1,500/month in the capital.

Run by Action Logement, the extension starts on September 30.

High-end property starting an upturn

THE high-end property market is starting to come alive with sales of €2million-plus Paris properties doubling this year.

Specialists Barnes say prices in the Rive Gauche and some in the Rive Droite's 9th, 10th, 11th, 12th and 18th arrondissements had started to rise after five years of constant fall.

It has even seen the best flats sell within two days with a price premium while others that are not ideally placed can sit for several months.

With prices less than half those of Paris but with a bright economic situation, Lyon is seeing growth in the market with an average of €3,342/m² in 2015 rising 1.2% in a year and luxury properties in the Mont d'Or area up 5%.

The luxury specialist estate

agent Barnes Mont-Blanc suggests keeping an eye on properties in mountain areas nearby Lyon, Chamonix-Mont-Blanc, Saint-Gervais-Mont-Blanc and Megève, where it feels prices are under-valued.

The region is sought-after by clients wanting "real" ski stations that have a "French" feel, with both winter and summer seasons alongside good airport links such as at Geneva.

More than half the clients are British, with others being northern or eastern European for whom near-piste chalets from €2m-€6m are in demand along with three or four-room properties near villages.

Elsewhere, sea views are luring buyers with sales of luxury properties in Pays Basques up 35% where prices are stable.