

Preferential and pre-emptive right – Part one

Encompassing several objectives, such as mitigating the fragmentation of woodlands and forests, grouping plots for more efficient operations and protecting the environment, landscapes and natural resources, various public or private entities have been granted certain preferential or pre-emptive rights by law, as a means of harmonizing forest plots and the surrounding environment.

Various rights therefore need to be surrendered prior to a sale. The main ones most frequently encountered in practice are listed here, so we can study their scope of application, the notification procedures and their ranking.

In the article below, we will first deal with the pre-emptive right. We will turn to the preferential right in our April issue

PRE-EMPTIVE RIGHT

State

Article L331-23 C.for[i] provides for a pre-emptive right benefiting the State. It concerns the sale of property classified as woodland and forest in the land register, with a surface area of less than 4 hectares, ***when the property lies adjacent to a state-owned forest.***

The notary is required to notify the prefect of any such transaction. The latter then has a 3-month period from the date of notification in order to assert their rights.

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If there is no response, the State shall be deemed to waive its right.

Municipality

Article L331-22 C.for[iii] provides for a pre-emptive right benefiting the municipality in which the property to be sold is located, and ***which owns a wooded plot adjacent to the property to be sold, subject to a management plans*** such as a development plan or Standard Management Regulations (RTG) (L122-3 C.for[iii]).

This right concerns the sale of a property classified as woodland and forest in the land register, with a surface area of less than 4 hectares. This surface area threshold no longer applies if the seller is a municipality where wood and forests are subject to a specific forestry regime.

The seller notifies the mayor of the municipality benefiting from the right by recorded delivery, setting out the price and terms of sale. The municipal council then has a period of 2 months to exercise its right.

Pursuant to Article L211-1 Curb[iv], the municipality may also have an urban pre-emptive right, conferred by the relevant urban planning document. However, in practice, it is rare for forest properties to fall within its scope.

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However, it is advisable to check with the municipal council as to whether or not this right exists.

S.A.F.E.R.

S.A.F.E.R. (the rural development and land use organization) has ***no pre-emptive right for properties classified as woodland and forest in the land register (Article L143-4 CPMR[v]), except in four cases:***

- Plots classified as woodland and forest in the land register, put up for sale with other plots classified differently in the land register;
- Seedlings or plantations subject to destruction by decision of the communal land development commission;
- Plots subject to a land clearing permit, or exempt from such a permit;
- Plots located in an agricultural and forest land management area in a forest zone.

Taking the first exception, properties are regularly subject to the S.A.F.E.R pre-emptive right. The latter is notified by recorded delivery, after which it has a period of 2 months within which to exercise its right.

There are two possibilities at the time of notification:

> An inclusive notification

S.A.F.E.R. may then exercise its pre-emptive right for the plots falling within the scope of that right.

The seller will then have various options (acceptance of the S.A.F.E.R. offer; dispute the price; acceptance with compensation for the loss in value of non-pre-exempt property; Refusal and request that S.A.F.E.R. acquire the property in full).

This leads to a period of uncertainty and negotiation which, in the event of a disagreement between the parties, will eventually lead to the price being set by the High Court (Tribunal de Grande Instance).

> Specific notification

With one price indicated for the parcels classified as woodland and forests, and a separate price indicated for the other plots. S.A.F.E.R. will then be able to put in an offer specifically for the plots within the scope of its pre-emptive right.



Département:

Under Article L113-14 C. urb[[vi](#)], the departmental council may create pre-emptive zones in **Sensitive Natural Areas (ENS)**. If the forest property to be sold is located within such an area, a Declaration of Intent to Sell (Declaration d'Intention d'Aliéner, DIA) should be sent to the departmental council. The maximum period is 3 months, taking into account any cases of substitution (Conservatoire du littoral, Parc Naturel, EPCI, municipality).

The pre-emptive right may be exercised at the price if the terms of sale are met. It may also be exercised on the basis of a revised price. In this case, the seller has two months to accept the counter-proposal, withdraw the property from the sale, or refuse the price while maintaining the sale. The département will then have 15 days to refer the matter to the judge in charge of expropriations so that the price of the property can be set by the courts.

Sitting tenant

If forest property comprises **agricultural land leased under a rural lease subject to tenant farming conditions, whether oral or written**, the lessee of the land has a pre-emptive right under Article L412-1s CPMR^[vii].

The lessee has to meet certain conditions, such as the period of exploitation (3 years) and a regulation on the size of the area farmed in order to exercise this right (the lessee must not already own more than three (3) times the 'minimum Installation area' (SMI)).

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The notary must send the lessee notification by recorded delivery of the price and conditions of the sale, after which the lessee has a period of 2 months from the date of receipt of the notification to exercise their right.

The second instalment on preferential rights in our April issue.

REFERENCES

[i] <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025244092&idArticle=LEGIARTI000029586484>

[ii] <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025244092&idArticle=LEGIARTI000029586476>

[iii] <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000025245786&cidTexte=LEGITEXT000025244092>

[iv] <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006074075&idArticle=LEGIARTI000006815039&dateTexte=&categorieLien=cid>

[v] <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071367&idArticle=LEGIARTI000006582059&dateTexte=&categorieLien=cid>

[vi] https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=4965A2203DCC2C4B9BC6A4E46333C31B.tplgfr33s_2?cidTexte=LEGITEXT000006074075&idArticle=LEGIARTI000031210337&dateTexte=20180213&categorieLien=id#LEGIARTI000031210337

[vii] <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071367&idArticle=LEGIARTI000006583883>

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