

Compagny savings and purchase of principal residence: documentation is not interchangeable

The AMF Ombudsman is regularly asked to look into complaints relating to the early release of funds for the purpose of acquiring a principal residence. The case described here, resolved through equity considerations, draws attention to the very different consequences arising from an employee's choice of documentation between a provisional sale agreement and a notarised deed of sale.

The facts

On 29 September 2014, Mrs A, an employee of Company X, requested the early release of the entirety of her company savings plan, amounting to 2,406 euros, under its "purchase of principal residence" clause.

When the transfer took place, Mrs A noted that the amount was for only 432 euros. She therefore asked the institution managing her company savings account for an explanation.

This institution explained that the difference could not be paid as requested under the early release clause. This was because it stemmed from a bonus recognised on her account after the occurrence of the event in question, i.e. after 8 April 2014, when Mrs A signed the *compromis de vente*, or provisional sale agreement.

Mrs A did not understand this reply, as she believed the material event in her request for early release was not the signature of the provisional agreement but the signature of the notarised deed of sale, which was on 3 July 2014. She said that she had made her early release request after she signed the provisional agreement and had mentioned the date of signature of the deed of sale in her request. She therefore felt that the account manager should have applied the most favourable date in her case.

She asked me to look into the matter in order to release all her assets recognised between the date she signed the provisional sale agreement and the signature of the deed of sale, i.e. up to 3 July 2014.

The analysis

I questioned the institution managing Mrs A's company savings scheme, which initially declined to give a positive response to her request.

The institution told me that Mrs A had asked for early release for the purpose of "purchase of principal residence" on 18 September 2014 and that she had supported this request only with a copy of the provisional sale agreement dated 8 April 2014, not the notarised deed of sale signed on 3 July.

In the meantime, I noted that the applicable company savings regulations state that in the case where an employee requests the early release of assets under the "purchase of principal residence" provision, **the material event is "the date the deed of sale is signed. That said, a promise to sell or buy or the provisional sale agreement may qualify. [...] Sums locked up after this material event cannot be released."**

I also took account of the fact that Mrs A had supported her request only with the provisional sale agreement and not the notarised deed of sale, and also that the date the deed was signed did not appear, contrary to Mrs A's belief, in the information she provided in her release request.

In the absence of additional documentation, and above all because the signature of the notarised deed had not been mentioned in Mrs A's request, the account manager could legitimately consider at that time that the material event triggering the release request was the provisional sale agreement.

It follows that the institution was acting in accordance with the regulations when it released only the special bonus reserve and sums recognised before the signature of the provisional sale agreement dated 6 April.

That said, I believed that this case ought to be re-examined from the point of view of equity.

The recommendation

In my view, it had been established that when she made her request, after the date she signed the notarised deed, Mrs A had a perfect right to benefit from the entirety of the assets recognised between the signature of the provisional sale agreement and the signature of the notarised deed. And this amount was significantly different from the amount actually released.

I therefore considered that from an equity standpoint, and on an exceptional basis, Mrs A's error could be rectified, given that each party had acted in good faith.

I asked the institution managing the company savings account to reconsider the case from this point of view.

The institution then agreed, on an exceptional basis, to release Mrs A's bonus as soon as she provided them with a copy of the notarised deed of sale. This was effected immediately.

The lesson to be learned

In order to obtain the entirety of sums recognised before the signature of a notarised deed of sale, the purchaser employee requesting the early release of savings under the "purchase of principal residence" provision must not only wait until the signature of the notarised deed but should also provide this document alone rather than the provisional sale agreement: these supporting documents are not interchangeable.

Institutions managing company savings schemes must insist as clearly as possible on the consequences of providing one of these documents rather than the other and relying simply on the date on which an early release request is made.

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