

## Newsletter | CONSTRUCTION (France)

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### Perfect Completion Guarantee

Turnaround of jurisprudence!

By a judgment of April 15, 2021, the Court of Cassation (highest French civil Court) tightened the conditions of validity of a legal claim based on the perfect completion guarantee defined in article 1792-6 of the French Civil Code (Cass. 3rd civ., April 15, 2021, n° E19-25.748). As a reminder, the said article states that "*the perfect completion guarantee, to which the contractor is bound for a period of one year from acceptance date of the works, extends to the repair of all defects reported by the owner, either by means of reserves mentioned in the works acceptance report, or by written notification for those revealed after works acceptance date*". Should the benefit of such guarantee not be claimed before the relevant Court within one year from the works acceptance date, the perfect completion guarantee can no longer be invoked. In this regard, the Court of Cassation, up to now, used to accept that a claim brought before a Court within a period of one year served as a "written notification", as required by article 1792-6.

With the judgment of April 15, 2021, the Court considers on the contrary that "*in the absence of prior notification to the contractor of the defects revealed after acceptance of the works, a summons even issued within the period of one year provided for in the article 1792-6 of the Civil Code, cannot replace the written notification of defects to be served by the owner to the contractor based on the perfect completion guarantee*". Any legal claim being declared inadmissible in such case!

Owners must henceforth be particularly vigilant if they wish to invoke the protection of the perfect completion guarantee: on the one hand, they must notify the contractor in writing (preferably by registered letter with acknowledgment of receipt) the defects falling under the perfect completion guarantee within a period of one year, and on the other hand they have to bring a claim before the Court within this same period. Failing to scrupulously respect both steps, they will no longer be able to benefit from the perfect completion guarantee in order to have the defects that appear within one year of works acceptance date repaired.

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### Securing urban planning documents

With two recent decisions, the Council of State (highest French Administrative Court) is confirming the general trend towards legal security of town planning documents, as already observed for building permits.

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On the one hand, it creates a possibility of regularization, in the course of a litigation, of declarations of public utility which the judge has found to be illegal (CE, July 9, 2021, n° 437634), and on the other hand it limits the grounds for illegality that can be invoked before a Court in order to challenge the legality of local urban plans (CE, March 24, 2021, n° 428462).

An additional step therefore in securing urban planning documents which apply to real estate developments.

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## Unilateral promise to sell

Turnaround of jurisprudence!

By a judgment of June 23, 2021, the Court of Cassation defines a single legal regime applicable to unilateral promises (Cass. 3rd civ., June 23, 2021, n° 20-17.554).

Up to now, the Court of Cassation considered that a unilateral promise to sell did not fully engage the promisor until the beneficiary had expressed his decision to execute it; the promisor could therefore be released from his engagement, and the beneficiary could not bring a legal action before a Court in order to obtain the execution of the sale, but only claim damages.

In accordance with the provisions of the new article 1124 of the French Civil Code, the Court of Cassation has just put an end to its previous case law. Now the sale is considered perfect from the start, and the promisor can no longer retract. If he does so, the beneficiary can go to court and obtain the forced completion of the sale.

In doing so, the unilateral promise to sell is no longer a simple promise, but constitutes ab initio a perfect sale, which must be carried out unless the beneficiary of the promise renounces.

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If you have any questions, please do not hesitate to contact:



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