

## **PURCHASING REAL ESTATE IN ITALY**

### **Searching for the Right Place to Purchase**

Italy is becoming "sort of" like Florida for the United States. Europeans can move freely to Italy and also Retired Americans can move to Italy without too many complications.

Some people asking about properties in Italy have been there maybe once many years before. It is strongly suggested, instead, to go where one is planning to buy a property and stay there for at least a month. (There are plenty of useful web sites that can help).

### **Guidelines for buying real Estate in Italy**

PLEASE NOTE: The following guidelines are **ONLY guidelines, not legal advice.**

Buying a property in Italy is not much more complicated than buying one in the United States. Moreover, with the help of a good **Consulente immobiliare** (real estate agent) and a good **Notaio** (Notary/Lawyer) you will see very little of this bureaucracy. Please verify your realtor referrals.

## **ATTORNEY, SURVEYOR, REALTOR IN REAL ESTATE CONTRACT IN ITALY**

### **Types Of Contracts**

Italian law requires that **all contracts concerning purchase of lands or buildings must be in writing**, signed by both parties. All binding legal documents relating to an Italian real estate transaction must be written **in Italian**, independently from the nationality of the parties.

**Reservation Contract:** by payment of a small deposit it is possible to get the right to buy the property for a fixed period of time that should be no less than three weeks, but you lose your deposit, if you fail to purchase the property within the mentioned time.

**Full Preliminary Contract:** by this contract it is necessary to pay between 10% and 30% of the property price. This shall commit the purchaser fully to purchase the property, also in this case it shall be difficult to have the deposit returned.

**Formal Offer to Buy:** it is similar in legal terms to a contract. It is advisable not to sign any purchase contract before having the contracts reviewed. It is better for a buyer to select an Italian lawyer and send him any document relating to the immovable property which is going to be purchased for review.

After the contract has been reviewed by the lawyer he will instruct the buyer to pay a preliminary deposit, usually about € 3.000.

Usually after two or three weeks from the signature of preliminary contract (Contratto Preliminare di acquisto) there shall be the signature of the **main contract** (Contratto Definitivo or **Rogito**), after checks on the property have been carried out.

In case of co-ownership, the owner with a share of a willed property can insist on receiving its share, so that, also in this case it is preferable to charge a lawyer to draw up the real estate contract.

### **Power of Attorney**

The buyer may attend in person before the Notary (Notaio), but he can make arrangements for a Power of Attorney (Procura) to be granted enabling an Italian lawyer to attend on his behalf. The power of attorney must be in the Italian form.

### **Technical survey of Geometra**

In order to take the decision to complete the purchase of the property the buyer shall have to gather a lot of information by a Geometra's site visit which is necessary to draft a technical survey (Perizia) in order to:

- check the seller's title deeds;
- check what extras and immovable (if any) are included in the sale;
- check the property boundaries;
- take legal advice on tax and inheritance issues;
- check the power of attorney of the vendor authorizing his agent to sign, in case the vendor isn't signing the deed of sale in person;
- check if the property is correctly and legally described in the paperwork and if it accords with the Land Registry details;
- check if the price of property is correctly listed;
- insert in the contract any clauses stipulating that buyer is not liable for outstanding claims, charges and debts on the property;
- establish who will pay the estate agent's fee;
- check if it is possible to make the changes or perform the planned building work;

- check if the property is legally able to be used for the planned purpose (domestic, commercial);
- check if the property has all necessary facilities for water, gas, electric and sewage;
- check if there are no outstanding bills or charges, debts or claims over the property;
- state what happens if one or other of the parties pulls out.

#### **Surveyor's fee**

The buyer will pay the Surveyor's fee (Geometra's fee) whose services are necessary for the transfer of the property.

These can vary between €500 and €2.000 depending upon what work is involved in the transaction.

In order to buy property in Italy the buyer needs to be registered with the Italian tax authorities and to have a tax identification number.

### **RESPONSIBILITY FOR DEFECTS AND/OR VARIATIONS IN CONSTRUCTION WORKS IN ITALY**

In case of construction works, the contractor is responsible for defects and unauthorized variation of works.

Under Italian law, if there are visible defects, the client should not accept the works otherwise he will lose the right to his guarantee.

In order to formally contest the works the buyer shall have to notify the contractor through a formal letter of default.

If the buyer accepts the works, and defects and/or unauthorized variations of works are visible, he will lose the right to a guarantee, unless the contractor omitted deliberately to inform client about the defects and variations, although contractor was aware of the defects and/or variations.

Anyway, the acceptance of work by buyer does not compromise the clients guarantee in reference to hidden defects, because these defects can be contested when they are discovered.

The buyer who wants to resort to the guarantee shall have:

- report the hidden defects within 60 days of their discovery
- take legal action within 2 years from the end of works.

If one of these abovementioned obligations is not complied with, the buyer will lose his rights to the guarantee.

If the contractor hid those defects, the time limit for legal action is extended to 5 years.

In the case of visible or hidden defects, the buyer is entitled to take 4 possible legal steps:

- he can request the elimination of the defects and/or variations and the total cost shall be borne by the contractor

- he can ask for a reduction of the price
- if the variations or the defaults are very serious he can request the dissolution of the contract
- he can request to be compensated for damage.

Italian civil code provides particular regulations for new builds, in fact, in such cases the contractor will be responsible for collapse (total or partial), evident danger of collapse or serious defects in the construction: the contractor's responsibility will last for 10 years from the date of completion of the works.

The defective work must be contested by buyer with registered letter within one year of its discovery, in fact, buyer has one year to start a legal action in court against the contractor.

The buyer has the possibility to inspect works before they are signed off, such a right exists also during the execution of the work, so that, if the client accepts the works at the point of signing off without requesting an inspection or without contesting, the works are presumed to be accepted.

### **PROPERTY REGISTRATION TAX AND OTHER TAXES IN REAL ESTATE SALES IN ITALY**

When a buyer purchases a building he must pay the **Property Registration Tax** (Imposta di Registro) or as an alternative the VAT, the Imposta Ipotecaria and the Imposta Catastale.

#### **(1) When the seller is:**

- a natural person;
- a company not of real estate sector;
- a real estate company that has built or restored the building since more than 4 years;

#### **the rates of taxes to be paid by buyer are as follow:**

- **Property Registration Tax** (Imposta di Registro) is 7%;
- **Imposta Ipotecaria** is (2%);
- **Imposta Catastale** is (1%).

**(2) When the seller is a real estate company** (or a the company that restored the building) and sale happens within 4 years since the completion of works, the **taxes to be paid by buyer are as follow:**

- **VAT** at 10% (or 20% if it is a luxury building);
- **Imposta di registro** of € 168;
- **Imposta ipotecaria** of € 168;

- **Imposta Catastale** of € 168.

(3) In some cases the **property** being sold is **owned by a company**, in which case I.V.A. (VAT) at a rate of up to 20% is payable on the declared value instead of the Registration tax.

(4) **If you build your own home** you pay a reduced rate of IVA at 4%.

The Italian **Inheritance Tax** ranges from 4% to 8%.

## **LEASE AGREEMENT OF IMMOVABLE PROPERTY IN ITALY**

The term of lease agreement cannot exceed 30 years.

Lease agreement does not need to be in writing unless term exceeds nine years, in such a case the agreement must be in written form and cannot be claimed against third parties, unless recorded in books at the Conservatoria dei Registri Immobiliari (Keeper of Real Property Records).

Those lease agreements which are not recorded at Conservatoria dei Registri Immobiliari, when required by law, are considered void.

Subleasing agreement is permitted, unless contrary provisions in lease agreement.

### **Lessor must:**

- deliver property to lessee in good state of repair;
- keep it in condition such as will be suitable for use agreed;
- ensure its peaceful enjoyment throughout lease.

### **Lessee must:**

- take delivery of property and observe diligence in using it for agreed purposes;
- pay rent on dates agreed;
- return property to lessor upon termination of lease in same condition as originally delivered, subject to normal wear and tear.

Lessee is liable for loss or deterioration of property (even as result of fire), unless he proves that loss or deterioration occurred for reason not due to him.

Lessee is not entitled to compensation for his improvements to property, unless such improvements were agreed by lessor.

Lease agreements for specified term terminate at expiration thereof without notice.

Lease agreement agreed for indefinite term will terminate upon giving by either party to other of notice agreed or required by custom; if after termination of the agreement, lessee is left in possession of property, lease is deemed to have been renewed for indefinite period.

### **About the lease of commercial premises:**

- commercial leases cannot last less than 6 years or 9 years in case of hotel leases;
- duration of leases is automatically renewed at first expiration date for further six or nine years;
- increases of rent cannot exceed preset index-linked threshold.

### **About lease of residential premises:**

- lease agreements must be in writing and recorded in books of Conservatoria dei Registri Immobiliari;
- the duration of these agreements must not to be less than 4 years subject to automatic renewal for further 4 years unless specific needs of landlord arise;
- different arrangements as to duration may be agreed between organizations for residential property and most representative organizations of tenants.

### **About agricultural leases:**

- agricultural leases cannot last less than 15 years and rent cannot exceed amount determined by governmental commission.

## **THE ROLE OF NOTARY IN REAL ESTATE CONTRACT SALE IN ITALY**

### **The Notaio (Italian Public Notary)**

The Notaio is the Italian Notary Public. He is a public official but charges fees for his services. All land transfers in Italy have to be signed in front of him. The Notaio is independent and impartial because he acts on behalf of both the vendor and the buyer. He is likely to be appointed by the vendor and makes a lot of the preliminary work on the details of the property.

The role of Notaio is to witness and validate the signature of the title deed (the Rogito) of the immovable property and other administrative functions.

Only the Notaio can witness the legal deed of sale (Scrittura Privata Autenticata), and performs the task of registering the sale at the land registry (Ufficio dei Pubblici Registri Immobiliari) for tax purposes, in fact, only when the deeds are duly registered at land registry the property is officially of buyer.

The Notaio will also inform the local police (Carabinieri or the Questura) of the change of ownership within 48 hours.

Until the sale is lodged at the land registry, the contract (though binding upon buyer and vendor) is not binding upon third parties.

The Notaio does not give legal advice to either the buyer or the vendor.

**The Notaio checks that:**

- the vendor is the legal owner of the property and is entitled to sell it;
- there are no debts or mortgages on the property;
- there are no written liens or burdens;
- the vendor is aware that they must declare any outstanding private agreements regarding the property: i.e. if the vendor has agreed to allow a neighbor to build or extend within the minimum stated by Italian law or has given to someone a right of way across the property.

**Notary's fee in Italy**

The buyer will also pay the Notary's fee, which amount is approximately 2,5% of the total declared value of the property, with a minimum charge of approximately €1.700.

The Notaio's fee is legally fixed and is on a sliding scale according to the property sale price, there can be variation between notaries about the fees (from 2% to 4%).

Calculations of Notaio fee under immovable property value		
Value of immovable up to	Minimum fee	Maximum fee
€ 93.000,00	€ 1.681,30	€ 2.428,80
€ 139.500,00	€ 1.805,50	€ 2.617,40
€ 186.000,00	€ 1.933,15	€ 2.830,15
€ 232.400,00	€ 2.029,75	€ 2.991,15
€ 280.000,00	€ 2.157,40	€ 3.203,90
€ 370.000,00	€ 2.254,00	€ 3.364,90
€ 465.000,00	€ 2.478,25	€ 3.738,65

The Notaio will also charge buyer for the following: expenses (Rimborso Spese), searches (Visure), indemnities (Indennità), access rights (Diritti Accessori) and authenticating the documents (Autenticazioni).

**PRELIMINARY CONTRACT OF SALE  
CONTRACT OF SALE  
ADVANCED DEPOSIT  
PRELAZIONE OF IMMOVABLE PROPERTY IN ITALY**

**The Preliminary Contract (Contratto Preliminare or Compromesso)**

If the seller accepts the purchase offer of the buyer, the parties shall have then to sign a preliminary contract so called Contratto Preliminare or Compromesso.

At this point it is advisable that buyer shall seek legal advice of an Italian law firm skilled in real estate services which shall draft the Contratto Preliminare.

The Preliminary Contract is binding upon both vendor and buyer, it doesn't however confer final ownership nor does it preclude the rights or claims of third parties over the property. It stipulates that both parties agree to buy and sell the property and concur on the terms and conditions of the sale, it also stipulates the movable as well as the immovable elements of the real estate to be purchased.

On signing the buyer will usually pay a deposit of between 5% and 10% of the purchase price.

As per Italian Civil Code the Preliminary Contract has binding effects, in fact, though property sale is not complete by a Compromesso, it forces the parties to complete a final Sale Contract (the Rogito).

The Compromesso can be registered in order to protect at least in part the deal against the rights of third parties; for registration of Preliminary Contract is necessary to pay for this, but it's worth doing particularly if there is to be a long delay between Compromesso and Rogito.

The Preliminary Contract should also contain:

- full description of the parties
- identification details of the property, including the cadastral reference of the outbuildings for the exclusive use of the buyer
- details relating to the building license or the request of the building license, it is necessary the mention of any burden connected with the building license;
- technical data relating to the building, it is necessary a summary of the technical data in the Preliminary Contract that will be described in a detailed attachment concerning technical specifications (Capitolato), such specifications cannot be modified without the agreement of both parties;
- deadline for completion;

- method of payment: in fact, the entire price should be declared, also specifying the amounts paid as a deposit, all payments should be executed by using bank transfers or other means that are traceable and that will leave a clear trail;

- details of the bank guarantee: the bank guarantee should be delivered at the signing of the Preliminary Contract, such a guarantee should be issued prior to or upon the signing of the Preliminary Contract;

- the presence of mortgages or any other type of burden: in fact, in case of presence of a mortgage opened by the construction company covering an entire compound that shall be parcelled out amongst several buyers, the notary will not be entitled to certify the Contract of Sale until the parcelling out of the said mortgage to the individual buyers has been completed;

- the presence of the contractors together with proof of their identities;

- the preliminary contract must also contain the following attachments:

A. technical specifications of the property, detailing all the materials to be used in the construction, a list of agreed finishes and fitments;

B. copy of the plan submitted to file the request for the building license.

A Preliminary Contract not in compliance with the aforementioned requirements could be affected by nullity on grounds of it contrasting with mandatory rules, since the above mentioned legal requirements are set in order to protect the interests of the buyer, the invalidity of the preliminary contract can be objected to only by the buyer.

### **Deposit**

The advanced deposit of price could be 5% or it may be much larger, i.e. over 20% or 30% in this case it has the advantage of forcing the sale because a vendor is less likely to pull out if he has to refund twice 30 per cent as a penalty for killing the sale.

### **The Rogito**

The final stage is the signature of the Contract of Sale, the Rogito (it is equivalent of completion in a UK property transaction).

For completion the buyer will need to have the tax code number (Codice Fiscale), so that, it is necessary to ask to the Italian solicitor to arrange in order to get the release of the tax code number.

It is also necessary to provide a passport or other valid identification document.

If at the date of signature for the completion (data del Rogito) the buyer won't be able to be present at the allotted date of signing it shall be possible to assign the power of attorney to a lawyer in Italy.

The release of power of attorney means to confer temporarily the legal rights on a third party (the Italian solicitor) giving him the proxy power to sign any legal documents that would normally require the signature of the buyer.

### **The Prelazione**

As per the principle of Prelazione, third parties have the right to buy, it allows neighbors adjoining the land first refusal on the property at the asking price.

This principle was designed for rural areas where a small farmer might wish to expand his farm.

The Prelazione is officially permitted in favour of real farmers (called Coltivatori Diretti).

After the Preliminary Contract is signed by the parties, it must be sent to all neighbouring farmers, they have 30 days to decide whether to purchase the property at the same price of the Compromesso.

It is not possible to ask to neighbouring farmers to waive this right.

If no neighbouring farmers ask for Prelazione, the buyer can proceed with the Rogito.

It is not advisable to under-declare the price to be paid for the purchase of the property because, anyway, the notary would know the real price of the property and because if the neighbouring farmers would discover the disparity, the Contract of sale can be challenged within a year.

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