

## **Buying a residential property in Italy**

The Italian property market is open to all types of buyers who come from those countries where an Italian citizen can enjoy the same purchase rights (reciprocity): individuals buying on their own behalf, corporate investors, trusts, SIPPs, etc. For example, this status is granted to citizens of both the United States and the United Kingdom.

It is difficult to give an accurate estimate of time scales for completion of this process and, as in other countries, this very much depends on factors such as the type of property (a single house or a development for instance), if there are any problems with the property (how much restoration work needs to be done or issues regarding communal service charges) and the speed of obtaining financing. Some of the main issues relating to buying a property in Italy are set out below.

### **1. The deed of sale, completion and payment**

#### **1.1 The deed of sale**

The purchase deed must be in written form and must be certified before an Italian notary, who is an officer of the State (see § 5 below). The notary verifies that the rights can be transferred and determines whether the property is subject to a mortgage, charge or any other restriction. It is always advisable to obtain, prior to signing and completion of the contract, a report from a 'geometra' (the equivalent of a surveyor) who will check if the technical aspects of the property (town planning, structure, utilities, etc.) are correct and compliant with both the official public records and the expectations of the buyer. This report will then be attached to the contract deed. The jurisdiction (i.e. where any disputes are to be resolved) and the law of the contract must be in Italian.

The rights in the property pass at the time when the notary completes the procedure and "transcribes" the contract into the public register for the area.

If there are no complications, the meeting in front of the notary takes about one hour. A lawyer can prepare the contract, but each notary has their own standard form which they prefer to use. It is therefore, not advisable for a lawyer to waste time in the preparation of a sale contract when the notary will want to use his/her own in any event.

The original deed of sale is always kept by the Italian public notary who presided over the deed, but a valid certified copy can be released to the owner either by the notary himself or by the public register ("archivio notarile").

#### **1.2 Completion and power of attorney**

If one of the purchasing parties does not understand Italian, there are two options for completing the transaction: 1) the entire contract must be translated into the other language and an interpreter must be nominated, or 2) the parties who do not understand Italian can give a power of attorney (this is generally in a bilingual Italian/English version, however, other languages may be used instead of English) to an Italian speaker.

The power of attorney document can be signed either in Italy or abroad :

1) If managed in Italy, it must be signed in front of a public notary, with two witnesses (at least one of them has to speak the language of the purchasing party) and an interpreter must be present; the witnesses and the interpreter must be either Italian or Foreigners resident in Italy (it is advisable to select these persons in advance since the notaries do not provide them);

2) If managed abroad, the power of attorney must be either signed in front of a Notary Public and then affixed with the "apostille" (this solution is not advisable unless the Notary Public is familiar with this procedure), or signed and completed at the Italian Consulate.

A power of attorney may be useful for two reasons; firstly, only the power of attorney (and not the whole contract) needs to be translated and secondly, the parties do not need to attend before the notary at the deed of sale.

Regarding the content of the power of attorney document, it is helpful to point out a few specific issues in advance :

- a) the power of attorney should be granted to two attorneys (instead of only one) to help avoid any last-minute complications which would postpone the transaction (e.g. if one attorney is severely ill and cannot attend);

- b) if the buyers are married, their regime in which their distribution of property is governed (community or separate property) should be stated; this information will be required for the transcription of the contract in the public register;
- c) it is useful to grant powers to the attorneys so that they can proceed with a more precise identification of the property being purchased, clarifying boundaries, consistency of the property, easements, and cadastral data; this may again save time and avoid any postponement of the deed;
- d) it can be useful also to enable the attorneys to withdraw payments in the form of banker's drafts for paying the balance on the property, taxes, fees owed to professionals (notary, surveyor, etc.), and any other expense inherent in the acquisition of the property.

### 1.3 Payments and bank accounts in Italy

Opening a bank account in Italy is very useful for two reasons:

- a) The most common method of payment of the purchase price or of the remaining balance is the delivery of a banker's draft (cashier's cheque) at the time of the deed of sale, that is, when the selling party formally hands over title and delivers the keys to the property; to obtain an Italian banker's draft, it is necessary to have already opened a bank account in Italy;
- b) After you have purchased a property in Italy, you will have to make some regular payments for utilities and local taxes; the easiest way to manage these payments is by means of an Italian bank account.

Alternatively, for payment of the property, you may (although we do not recommend the following methods since they pose additional risks):

- a) Make payment with foreign banker's drafts, although in this case, they should be obtained far in advance with a copy sent to the selling party to see if his/her bank will accept and process such a payment;
- b) Make an international "immediate wire transfer" (i.e. the funds should be both sent and received on the same day), however the costs are rather high and you cannot avoid unexpected technical problems which might postpone the deed of sale, in which case the buying party may be in breach of the contract. More importantly, the selling party cannot transfer title to the property until these funds are received. This means that the selling party will have the funds in hand prior to the purchasing party receiving title to the property, and if there are last-minute complications with the transaction, it is much more difficult to chase after the funds once they are in the hands of the selling party if for any reason the deed transaction cannot complete;
- c) Ask your Italian attorney to open or use a specific bank account so that you can send him/her the funds for completion. Since the concept of "escrow account" does not exist in Italy, the costs of using this type of "client bank account" are very high since it takes substantial time for the attorney to arrange this with bank personnel, and there is a significant risk that the transfer will be investigated by the Italian tax and money-laundering authorities.

## 2. Finance

Up to about 70% of the value of the property can normally be financed by a bank, which will then register a charge against the property. The mortgage contract must be certified in front of a notary and so it is normal to formalise the mortgage and the sale contract at the same meeting with the notary. The mortgagor (the person who is taking out the mortgage) pays for an expert's report of the property (this is separate from a report of a geometra and is for the bank's purposes) and the insurance of the property. Information about the income of the mortgagor will be required.

There are local banks which are accustomed to providing services such as insurance contracts and the opening of a bank account to foreigners who wish to buy property in Italy. The banker's draft is then provided by the bank at the time specified in the purchase contract. Completing a power of attorney for a mortgage abroad is more complicated than for a sales contract, with the result that if a mortgage is needed, it is easier if all the parties attend before the Italian public notary. If that is not possible, the power of attorney should be signed either at the Italian Consulate or in front of an Italian public notary.

It is not strictly necessary to have a current bank account in Italy. It is, however, strongly advisable for many of the transactions such as production of a banker's draft for payment, payment for reports, and payments for taxes, utilities and accountants.

## 3. Preliminary contract and other early steps

### 3.1 Preliminary contract

In Italy, especially where the property is not ready for delivery to the buyer (for example, where the selling party is a developer or is carrying out restoration work) or in a situation where some important details have yet to be resolved

(for example, checking building permissions, communal service charges, etc.) or where the buyer does not have the funds immediately available, it is very common to sign a “preliminary contract”. The rights in the property do not pass on signature of the preliminary contract, but from that point forward in regards to the property, the seller is obligated to sell and the buyer is obligated to buy. If one of the parties then fails to carry out its obligation, the other party can ask a judge for a court order mandating that the party in breach perform its obligations under the contract.

Normally on signing the preliminary contract the buyer gives the seller a deposit, which is agreed upon between the parties, and is normally 20-30% of the total price. The preliminary contract can be signed without the intervention of a notary. Because the rights in the property do not pass with the preliminary contract, the seller can, in theory, sell the property to a third party for the duration of the preliminary contract. If the second buyer completes all the necessary steps and becomes the legal owner, the first buyer has only a right to damages as compensation against the seller. Similarly, the buyer can resell his rights in the property under the preliminary contract to a third party. Another potential problem to bear in mind is the situation where a limited company enters into a preliminary contract as seller, but falls into bankruptcy before title is transferred. This situation will be addressed below.

The preliminary contract can be entered into abroad and signed by fax. In theory, the jurisdiction and the applicable law do not have to be Italian. A lawyer can prepare the preliminary contract, but it is essential that the requirements of the notary who will eventually draw up the sales contract are kept in mind.

As a general rule, the buyer can enter the property at the time the deed is signed and title is transferred. However, contracts may specify that the buyer may occupy the property prior to completion of the sales process.

### 3.2 Confirmatory deposit

This is an agreement by which the parties establish that a part of the price (called the “caparra confirmatoria” or confirmatory deposit) (i) can be kept by the seller if the buyer does not properly carry out his obligations, or (ii) in a case in which the seller does not properly carry out his obligations, the buyer may ask for return of the “caparra confirmatoria” plus an additional penalty equal to the “caparra confirmatoria”. This term is often used in the preliminary contract (for example, if the buyer gives the vendor Euros 10,000 as a confirmatory deposit and the vendor does not deliver the property without a legally legitimate reason, the buyer could ask for the return of the Euros 10,000 together with an additional Euros 10,000.) It needs to be kept in mind that the breach in the contract that can activate the confirmatory deposit mechanism needs to be serious and that, for example, the seller refuses to repay the deposit voluntarily and the buyer is forced to apply to the judge.

### 3.3 Purchase proposal (offer for purchase)

This is a written agreement under which the purchaser unilaterally commits himself to buy. The offer can include certain conditions or contingencies decided by the purchaser, who might, for example, bind his offer on the condition that the result of a technical survey is satisfactory. The offer must have an end date beyond which it is no longer valid, and only acceptance by the property owner to the terms of the proposal will trigger any obligation on the part of the owner. It is important to remember that if the owner makes a counter-offer or suggests a change in terms, there is still no agreement between the parties and neither is contractually bound to the purchase proposal. This type of document creates some notable dangers. Above all, if the offer is irrevocable the buyer could find himself required to buy the property if the seller activates the clause.

### 3.4 Deposit

To show that his intentions are serious the buyer can leave an initial deposit. However, if the deposit is not of the nature of a confirmatory deposit, the vendor remains free to sell while the buyer could lose the deposit in the event that he is unable to proceed with the contract.

These deposits, reservation fees, purchase proposals, etc., tend to be written in ambiguous terms and can be difficult to interpret in the eyes of the law.

## 4 Protection of the Intended Buyer

Italian law offers some protection to the Intended Buyer.

### 4.1 Preliminary Contract Registration

The buyer may decide to register the preliminary contract at the local registry (Agenzia del Territorio). Upon registration, the buyer has a first right against any debtor of the seller who tries to assert his rights against the contracted property. In addition, the seller will find it difficult to sell the property to a third party because the notary who has to

certify the sales contract for the third party will discover the preliminary contract of sale at the public registry. The registration of the preliminary contract means that it has to be signed in front of a notary with the costs and expenses that this will incur.

#### 4.2 Warranty and insurance

The decreto legislativo n. 122 dated 20 June 2005 is a piece of legislation which grants protection to buyers of properties which are under construction. Indeed, the builder is required to obtain a bank guarantee to cover its liabilities for any potential intervening rights of third parties which might affect the property, including bankruptcy. The general warranty for latent defects on the main structure of the building is for ten years.

### 5 Professionals required by a foreign buyer

- Notary (Notaio) - This is obligatory. The buyer has the right to choose the notary who will authenticate the purchase deed. His role is to check the accuracy of the documents which are put in front of him. It follows that he is not the appropriate person to give advice to one of the parties on a purchase deed previously prepared by his firm. Otherwise, he can be an excellent advisor on local laws, transfer of property rights and inheritance, but it is difficult to find a notary who is prepared to work in English. The costs of a notary to certify a purchase deed and a mortgage are in the range of a few thousand euros. His costs are determined by a national tariff, and so the cost difference between one notary and another will never be more than a couple hundred euros. The notary will always keep the original purchase contract but he can issue the owner a certified and valid copy.
- Lawyer (Avvocato) - If the subject of the sale is a straightforward property transaction, then a lawyer is not needed because the purchaser and seller will have the assistance of the notary. If, however, there is a preliminary contract, works to be carried out on the property, certain restrictions affecting the property (mortgages, partial rights etc.), any other actions or necessary divisions of the property or foreign buyers or sellers, then it is advisable to obtain the services of a lawyer, and if possible, one who speaks the language of the buyer. The notary should also discover any actual or legal impediments to the property; however, he will only do so at the last minute before signing of the contract, with the risk that the date for completion may have to be postponed if he discovers something unexpected. Generally, the most practical method for a foreigner to purchase Italian property is to appoint a lawyer, under a power of attorney, to enter into the deed on behalf of the foreigner.
- Public accountant (Commercialista) – Essential to keep track of the books for the Italian tax system. Moreover, it is advisable when there is a need to apportion costs or shares under a management company scheme.
- Surveyor (Geometra) - If the buyer decides not to get advice from a lawyer, it is at least advisable to obtain a surveyor's report to check out the technical specifications and the town/city planning requirements/ restrictions. The surveyor, in addition, is in a position to check and direct works, etc.
- Architect (Architetto) - This may be advisable if it is necessary to redesign the property, its interior, or any other matters of structure and design.
- Geologist (Geologo) - For larger properties it is also advisable to get a report from a geologist on the ground and structure of the property.

### 6 Insurance

It is not necessary (in the sense of being a legal or compulsory requirement) to insure the property. It is of course advisable, and the bank will insist on this if there is a mortgage. Banks and insurance offices offer various policies against fire, theft, and damage to the property in other ways for a few hundred euros per year.

### 7 Inheritance

In the absence of an express choice relating to the applicable inheritance law, the Italian law will be applied which will automatically protect certain categories of heir. However, specific advice should be taken in each case if this is something which is of concern.

### 8 Costs

1. Notary: according to the national tariff and in proportion to value of the legal documents. For a property of 500,000 euro the costs of the notary will be around 3,500 euro.
2. Lawyer: according to national tariffs which can be either in proportion to the value of the property or on an hourly basis.
3. Accountant: according to a professional tariff which can either be in proportion to the value or on an hourly basis.

4. Estate agent: a percentage of the property price. Each party must pay, usually, between 2 and 5%, which is normally payable on the signature of the preliminary contract.

## 9 Tax implications

For individuals, the income tax rules which apply are normally the rules of the country of residence. Accordingly there are no difficulties where the individual receives income solely from sources within this country. However, where they receive income from activities or rights located abroad (as is the case when a foreigner buys a property abroad), a series of adjustments will have to take place to avoid the income being taxed in the state of the property as well as in the state of residence. In other words it is necessary to ensure that the income is not subject to double taxation.

It is necessary to note that residency is not the same as citizenship; in addition, when an individual has contacts with more than one country, it might happen that these countries consider the individual as a resident so that each of them can levy taxes on him/her. To resolve any conflicts there is usually a bilateral treaty between the two countries which will determine residency and how tax is to be imposed.

### 9.1 Determination of residency

In a case in which it is not clear if an individual has the fiscal residency, for example, in the UK or Italy, the conflict is avoided by Article 4 of the treaty between the UK and Italy (a similar treaty governs this situation between USA and Italy), which provides that residency will be determined by a number of criteria, set out below in order of importance, until it is determined unequivocally whether the individual is resident in one country or the other.

The criteria which go to determine the country in which an individual has residency are as follows:

- 1.1 where the individual has a permanent house
- 1.2 where the individual has their closest personal relationships and economic ties
- 1.3 the normal location of the person
- 1.4 the nationality of the person.

It can be seen therefore that the determination of residency is not just based on formal criteria, but is very much based in fact.

### 9.2 Property taxes in Italy

When someone buys a property in Italy the first thing they must do is to ask the taxation authorities of the area (*Ufficio dell'Agenzia delle Entrate*) for a "Codice Fiscale" (taxation code) or, if the property is to be used for a business activity, a "Partita IVA" (VAT number). The property (buildings or land) will be subject to a series of taxes and impositions. Some are paid only at the time of purchase while others are regular payments.

#### 9.2.1 Taxes imposed at the moment of purchase

9.2.1.1 When the vendor is a company or body which pays VAT (for instance a building constructor, or a development company which has carried out a restoration project in which they actually were owners of the property), in addition to the purchase price shown on the purchase deed, the buyer must pay:

- VAT of 10%
- Registration tax (fixed rate. The "fixed rate" is always equal to euro 168,00)
- Mortgage tax (fixed rate)
- *Catastale* tax (fixed rate)(this is the presumed income of land determined by a public office for the purpose of tax.).

With "prima casa" benefit (see below para. 11)

- VAT of 4%
- Registration tax (fixed rate. The "fixed rate" is always equal to euro 168,00)
- Mortgage tax (fixed rate)
- *Catastale* tax (fixed rate)(this is the presumed income of land determined by a public office for the purpose of tax.).

9.2.1.2 In other cases (for example in a purchase from an individual or a business different from that set out above) the taxes that must be paid are:

- Registration tax of 7%
- Mortgage tax of 2%
- *Catastale* tax of 1%

With “prima casa” benefit (see below para. 11)

- Registration tax of 3%
- Mortgage tax of 2%
- *Catastale* tax of 1%

In purchase deeds relating to the purchase of building sites or agricultural land the registration taxes are 8 and 15% respectively instead of 7%, plus Mortgage and *Catastale* taxes.

The taxes (registration, mortgage and *catastale*) are paid to the notary at the moment of registration of the purchase deed.

## 10 Periodic taxes

IRPEF (*Imposta sul Reddito delle Persone Fisiche* – Income tax). In Italy a house always produces income, even if the house is used solely as a residence of the owner, and also if the house is not used at all. The taxes are calculated on the basis of the *reddito catastale* (the presumed income of land determined by the local authority for the purposes of tax- similar to rateable value), to which you apply a rate which depends on the total or overall rate of the income of the person. If the property is rented, the tax will be based on the perceived rental value, which will also have an impact on the ICI (see below), while the tax for removal of refuse will in this case be paid by the tenant.

ICI (*Imposta Comunale sugli Immobili* – Local authority tax). This is a tax which has to be paid to the local authority in which the property is based (like the English rates or council tax). The amount will depend on the *reddito catastale* (rateable value- see above) of which 5% is calculated. This amount is then multiplied by a rate, from a minimum of 4 per thousand to a maximum of 9 per thousand, depending on a number of criteria (in addition to surface area, for example, whether or not the property has a swimming pool will be taken into account). The tax is therefore based on a mathematical calculation. This tax is not due in the case the discounts allotted for “prima casa” (see § 11 below).

TARSU (*Tassa rifiuti solidi urbani* – Local refuse removal tax). This tax must be paid to the local authority in which the property is situated. The amount is a calculation of the surface area of the property multiplied by the rate used for that locality (for instance in Florence, the rate is 1.84 Euro per metre squared). Some local authorities provide discounts if the property is only occupied for short periods or if there is a sole occupier.

## 11 Foreign buyers and residence

If a foreigner buys property in Italy and intends for it to become his place of residence he can obtain what is called “prima casa” or “first house” discounts or relief.

These discounts can be substantial and, in many cases, can reduce both the VAT payable and the percentage used for the registration calculation by more than 50%.

The discounts will also apply to the periodic taxes. The local taxes will be applied at the minimum rate and will be discounted by an additional 100 Euro, the IRPEF is reduced to a flat rate, and the tax for refuse removal will also benefit from a reduction. The decision of residency needs to be carefully considered however, as the person will then very likely be subject to and integrated into the Italian tax system which will then exercise control over all income earned by the person, except that which is subject to a convention to avoid double taxation and in respect of which it is expressly provided that this will remain subject to the taxes in the country of origin of the income. As a result those foreign citizens who, in addition to buying a house, take residency in Italy and still receive income abroad (for example a pension, a business income or income from other property) must declare it on their income tax return to the Italian tax authorities. In this way the income received will only be taxed once (in Italy or in the country of the income) in accordance with the convention against double taxation.

The change in residency is achieved by a series of formal steps and adjustments between the old and new countries of residence.

To take advantage of the various tax discounts of “prima casa” the buyer must obtain residency in the area in which he has bought the property within 18 months of the date of the purchase deed. In addition he must not have other rights in property in any part of the country nor must he sell the “first home” within a period of 5 years after the purchase date, unless he buys another property as his principal residence within a year.

If the requirements necessary to qualify for “prima casa” reductions are not complied with, the relief will decrease and the tax authorities will seek to recover the relief that was given, together with interest, and the application of a further sanction equal to 30% of the tax.

In conclusion, it must be kept in mind that if residency in Italy is taken, the regulations make it very difficult to leave in the future!

## 12 Taxes of property in case of inheritance

The declaration of succession (the advice of an Italian lawyer will be needed in these cases) must be presented within 12 months of the date of death, at the *Ufficio dell'Agenzia delle Entrate* in which the deceased had his last residence. If the deceased did not have residency in Italy, the declaration must be presented at the *Agenzia delle Entrate* in Rome.

The taxation rate depends upon the size of asset. However the mortgage tax and the *Catastale* (see above) are at the rates of 2 and 1 % respectively, and are applied to the taxable basis according to the tax regulations on succession.

**Please note that the information herein is of a general nature and should not be regarded as legal or professional advice. The subject matters covered in this document are complicated and you should seek advice on how they apply to your individual circumstances.**