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International Law Practice

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Guide to Buying Property in Italy

There is no doubt that, for buyers who have cash at hand, now is a good time to buy a property in Italy. Prices are either steady or slightly dropping, and an increasing number of vendors are either pricing their properties realistically or accepting offers that are signi

ficantly lower than the asking price.

And yet, many buyers are wary of taking the leap. Others are worried they may lose equity in the future or seem confused about the legal process involved when purchasing a property in the Bel Paese.

The good news is that, in this buyer's market, it is already possible to land a bargain and, if you choose wisely, we good legal advice, you are likely to land a property that will hold or increase its value over time - all it takes is some careful research, a level head and insider advice from experienced professionals.

Italy Magazine in partnership with De Tullio Law Firm has created this ebook to help you understanding the basic steps of the Italian conveyancing process.

Should you require further information, or if you have questions, please feel free to contact our partners at: www.detulliolawfirm.com

The Italian Conveyancing Process

When purchasing a property in Italy you usually go through 3 stages:

- Proposta irrevocabile d'acquisto (reservation offer)
- Contratto preliminare (preliminary contract also called compromesso)
- Atto di vendita (deed of sale)

Proposta Irrevocabile d'Acquisto

When buying a property in Italy the first document you will be called upon to sign is called the "proposta irrevocabile d'acquisto" (reservation offer), this is normal practice when purchasing through an estate agent. However, when purchasing directly from the vendor (private sale) this document is not normally used. This is one of the many reasons why a solicitor should always be engaged.



By signing the proposta irrevocabile d'acquisto you will be taking the property off the market for a limited period of time, normally 15 days. During which time it is recommended and where necessary assisted by a surveyor, to make all the necessary searches to ascertain that the property is without any debts, mortgages, claims etc.

This legal procedure is executed by legal professionals to certify the transactions will progress satisfactorily and is recommended to make sure that there will be no unpleasant and possibly costly surprises during the last stage of the purchase.

At this stage you will be required to pay a small deposit, which is normally held by the estate agent or solicitor until the offer is formally accepted (signed) by the vendor, only then is it transferred to the vendor. This deposit will be considered as partial payment of the purchase price. If the vendor does not formally accept the offer your deposit shall be returned to you by the Real Estate Agent. It is important to highlight the fact that the reservation offer is only binding for the buyer until formal written acceptance of the vendor is received. Once signed by both parties it becomes a legally binding contract.

Contratto Preliminare di Vendita

Normally at this stage, buyer and vendor having agreed to go ahead with the conveyance will formalize their agreement with the “contratto preliminare di vendita” (preliminary contract). Some estate agents and, especially private sales, choose or recommend leaving out this particular essential part of the purchase process. However, keep in mind that this legal document is essential because it sets detailed terms and conditions of the sale. This is why it’s highly advisable to engage the services of a solicitor as they can draft this preliminary contract, if this is not possible request that they examine it carefully at the very least before you sign it.

One of the essential legal elements of the preliminary contract is the payment of a caparra confirmatoria (deposit), normally equivalent to a minimum of 10% of the purchase price. This deposit will not be returned if you (the buyer) defaults and backs out of the contract without a valid legal reason, on the other hand, if the vendor changes his mind about the sale he/she will, under Italian law, have to refund your deposit in full. You have the right if you wish, to also claim an amount equal to the deposit through the Italian courts.

In the preliminary contract the parties also set the date to finalize the conveyance in front of the notary public.

The Notary is a public official who has the authority, according to Italian law, to validate contracts transferring the ownership of a property. He is also charged with paying all registry fees and cadastral taxes and carrying out the relevant searches on the property.

The notary is supposed to be an absolutely neutral and impartial party in the transaction. This is why he cannot be a substitute for a solicitor in the defense of the interests of the buyer. The only way to be assured of total impartiality is to engage the services of an **independent solicitor**.

Atto di Vendita

The final step of the conveyance is the atto di vendita (deed of sale). The deed is drafted by the Notary in his office, it has to be fully compliant with the preliminary contract. So it is the preliminary contract which is the document that sets out all the essential elements of the transaction. Once the deed has been signed by all those present at the signing, the balance of the purchase price is paid to the vendor and the keys of the property are handed over to the new owners.

A copy of the deeds will then be given to the new owners approximately one month after the signing. This is because it takes about a month for the new deeds to be registered at the relevant Registry Office.

If one of the parties does not understand the Italian language, according to the law, the deed of sale must be drafted in both Italian and English.

Under such circumstances the Italian law also provides for the presence of a professional who will take care of the interpreting services.

The Notary will read and explain the contract and the buyer will be able to read the English version. Through the support of the interpreter he/she is obviously entitled to ask questions.

It is advisable to instruct a bilingual solicitor for this sensitive role because not only will he have the legal competence he will also not be in a position of conflict of interest. Finally, if the buyer cannot be at the Notary's office to sign the deed, he can delegate or give power of attorney to his solicitor who will sign on his behalf.

Certificate of Habitability

Having already mentioned the role of the solicitor to execute a legal due diligence (the process through which the buyer evaluates and investigates the property they are about to purchase) one of the most important documents verified under this process is the presence of the Certificate of Habitability. This document certifies the suitability of a residential property to be habitable. It is issued by the competent municipal offices following verification of conditions of safety, hygiene, solidity, healthiness of the property and its systems. According to part of the jurisprudence prior to issue the certificate of habitability the competent authorities should also verify the compliance of the building with planning permission.

The case law of the Supreme Court is unanimous in stating that in real estate transactions the certificate of habitability is one of the documents that the vendor must deliver to the buyer before completion. As a matter of fact the buyer has full right to verify that the property is suitable to satisfy his legitimate interest, that is the usability and marketability of the property. The above mentioned certificate can be considered as an essential requirement of the building because having direct effects on the legal use of the property as foreseen in the contract.

In absence of different contractual agreements, the responsibility to provide the certificate of habitability belongs to the vendor. In case of delay or failure in the delivery of such certificate we are in a clear case of non execution of a contractual obligation (breach of contract). A recent decision of the Supreme Court states that “the vendor of a property intended for residential use has the duty to deliver to the buyer the certificate of habitability without which the property is unmarketable (Cass. 23 of January 2009, n. 1701).

In case of absence of certificate of habitability the property can nevertheless be transferred with a notarial deed of sale but only with the buyer's explicit consent. Verifying the presence of the certificate of habitability before completion should certainly be part of the legal due diligence.

Liability of the Real Estate Agent in Italy

According to the Law 39/1989 real estate agents must be registered with the local Chamber of Commerce. If the agent is not registered, they will be liable to fines and other penalties and they will not be entitled to their agreed commission.

The above mentioned legislation provides an important guarantee for the consumer requesting that real estate agents must have adequate insurance cover in order to practice their profession. This insurance policy should cover cases of professional negligence.

According to article 1759 of the Italian Civil Code the real estate agent must inform the parties of the circumstances, within his/her knowledge, regarding the transaction. The real estate agent does not have the competence nor the qualification to provide technical or juridical information concerning the said property, also that he cannot be charged with technical-juridical investigations concerning the property that might have an impact on the transaction (legal due diligence).

He is nevertheless charged with duties of information according to the principles of the normal professional diligence.



The real estate agent is therefore obliged to give information on each circumstance within his knowledge or that he/she simply should have known according to the principle of normal professional diligence. Wrong or non verified information would not be acceptable according to the law. Lack of respect of such principle could cause contractual responsibility. Under special circumstances the consumer could also be entitled to request compensation for damages.

If the 'guilty silence' of the real estate agent results in the consumer finalizing the contract under different conditions than they would have had if they were properly informed, the real estate agent could be held responsible for it. According to article 1755 Civil Code, if the deal is closed thanks to their intervention, the real estate agent is entitled to a commission from both parties (normally 3%).

Such right could arise primarily at the signature of the preliminary contract. In order to be entitled to the commission, the real estate agent must have a decisive role in the transaction.

Simply generating the lead of a potential buyer without accomplishing any other task

is not enough to be entitled to such right.

The law does not stipulate the cost of the commission, therefore, this can always be freely agreed by the parties. It is always advisable to agree the commission in writing. Legal support can also assist in negotiating the brokerage contract as well as agreeing on the timing of the final payment.

It is important to highlight that a real estate agent will be entitled to his brokerage fees only if the transaction is finalized. This could generate a potential conflict of interest. Therefore, it is always recommended to rely on the support of a solicitor whom will not only have the competence to advise but also the independence to tell the buyers the truth.

Legal translations in real estate transactions

All binding legal documents relating to an Italian real estate transaction must be written in Italian, independently from the nationality of the parties.

Italian legal writing is highly technical, ritualistic and often archaic due to the close links with Roman Law. Ultimately it can appear to be obscure for people lacking a solid legal background in Italian law. All this is further complicated by the profound differences between legal systems, more specifically between the English/American system based on Common Law and the Italian one based on Civil Law.

As a matter of fact there are juridical concepts in Roman Law that simply do not exist in Common Law and vice versa, there are concepts bearing the same names in the two systems but having different meanings. As a consequence, an accurate understanding of the legal systems and the legal processes involved is essential for translators or interpreters involved in such important transactions.



This is why we advise that a legal document should never be signed without the assistance of a bilingual qualified lawyer who can explain the full scope of your commitment in English. Many real estate agents use printed contracts with an English translation. Such translations might not be accurate and therefore could mislead the buyer. It's important to know that in case of litigation the Italian version will always prevail. In the most crucial phase of the transaction, when signing the Deed of Sale in front of the Notary, the Italian law requires the Deed to be translated into English and the presence of an interpreter if the buyer is not fluent in Italian. Our advice is to make

sure that the interpreter is duly qualified and fluent, not only from a strictly language point of you, but also in terms of legal background.

Another crucial aspect to bear in mind is the independence of the interpreter, who should be someone committed to your sole interest. This would exclude a bilingual real estate agent, an English speaking relative or friend of the seller or an Italian English teacher.

The explanation of the Deed or Sale that you are about to sign is a very delicate task and you want to make sure you are entrusting the right professional. Please remember that the Italian version of the Deed will prevail so it's essential to have an expert and independent explanation of the legal implications that are involved. Your independent legal adviser has the right qualifications to assist you throughout the real estate transaction and will always make sure you have a full understanding of the documents you are requested to sign and the legal consequences implied.

Investing in Off-Plan properties in Italy

Investing off-plan is where a purchaser makes a commitment to buy a property that has not been built yet (or is in the process of being built) from a developer. This type of investment hides a number of risks you should be vigilant about, the major one being that the contractor may become bankrupt and the buyer might lose their money. Italian legislation provides a number of protections for the buyers of such types of properties. Law 122/2005 declares the obligation of the contractor to offer a surety bond. This is to guarantee the buyer for the money deposited prior to the transfer of ownership of the property, in case of bankruptcy or default.

According to art.1 of Law 122/2005 the builder is obliged to offer such a surety bond (through a qualified financial intermediary) at the latest at the moment of the signing of the **preliminary contract required in off-plan transactions**. In absence of such a surety bond the preliminary contract will be considered void unless the buyer explicitly wants it to produce its effect. The surety has to be clearly mentioned in the preliminary contract.

According to article 2 of Law 122/2005 the surety needs to be a Bank, an Insurance Company or a Financial Broker authorized by the Bank of Italy. The surety bond guarantees the buyer repayment of the money paid as deposit.

In order to request the excussion(1) of the guarantee the buyer has to formally withdraw from the Preliminary Contract. A written request of withdrawal from the buyer, together with evidence of payments, will be sufficient to activate the guarantee. The surety will be obliged by the law to pay the money back within 30 days.



According to art.3 of Law 122/2005 the surety bond will also cover damages arising as a consequence of building defects of the property, even when discovered after the signing of the Deed of Sale. The building defects of the property covered by art.3 are listed in art. 1699 of the Italian civil code. The guarantee for such defects lasts ten years from the finalization of the building works in question. In case the seller is a different legal entity from the builder of the property, he is obliged to

request a copy of the surety bond from the contractor and give it to the buyer. This is part of his contractual obligation in accordance with the Deed of Sale. If you are considering investing in an off-plan property in Italy our advice is to contact an independent separate legal adviser. This may not be the case when the lawyer is recommended by the Developer or the Real Estate Agent.

Insurance policy for off plan properties

According to article 4 of the legislative decree 122/2005 the construction company is obliged to deliver an insurance policy to the buyer, this occurs at the moment of transfer of ownership and is a guarantee in case of serious construction defects affecting the property. Such insurance covers a period of 10 years. A good piece of advice is to request that the Notary makes explicit reference to the insurance policy in the Deed of Sale. This document is aimed at explaining what type of defects would be covered under this guarantee.

The notion of a “serious construction defect” has developed substantially throughout time thanks mainly to jurisprudence. Initially, such a notion only included defects involving prejudice to the safety and stability of the property. At present, this notion has a larger meaning. It includes all the defects that could provoke a significant decrement to the normal use of the property. As a consequence the guarantee will cover all the damages that might have an impact on the regular use of the property.

If the construction defect has an impact on the regular use of the property, it could also concern secondary elements of the construction. The use of poor or inadequate materials can be considered as a serious defect, if this jeopardizes habitation and implies maintenance work. A good example of a serious defect could be detachment of tiles in some areas of an apartment. Another example could be the case of poor quality sealing of the roof with consequential water infiltration. Both of these examples clearly explain that the notion of “serious construction defects” is rather large.

The law limits the right to such insurance policy to buyers who are private individuals. According to a more restrictive interpretation the buyer can also be defined as a “consumer”; this means that he would only be entitled to the policy if he bought the property for personal use. The consequence is that any entrepreneurial or professional use of the property would exclude such right.

The party obliged to offer the insurance policy would be the construction company, therefore the buyer should not only claim this right but also be aware of **the responsibility of the contractor concerning defects in construction work.**

Legal Requirements for preliminary contracts in Off Plan transactions

The legislative decree 122/2005 introduced very strict requirements for preliminary contracts concerning off plan transactions. Following art.6 of the above mentioned legislative decree the preliminary contract should also contain:

- Full description of the parties.
- Identification details of the property, including the cadastral reference of the plot. A description of the property inclusive of those outbuildings for the exclusive use of the buyer, the object of the contract.
- Details relating to the building license or the request of the building license. The law explicitly requires the mention of any burden connected with the building license.
- Technical data relating to the building. The law requires a summary of the technical data in the preliminary contract. Such data would be described in detail in the attachment concerning technical specifications (capitolato). Such specifications cannot be modified without the agreement of both parties. - Deadline for completion.
- Method of payment. The entire price should be declared, also specifying the amounts paid as a deposit. 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 the 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 sign the Deed 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 should also have the following attachments:

- Technical specifications of the property, detailing all the materials to be used in the construction, a list of agreed finishes and fittings.
- Copy of the Plan submitted to file the request for the building license.

What are the consequences if the Preliminary contract lacks one of the mandatory elements set out in art. 6?

A preliminary contract not in compliance with the requirements of articles 6 could be affected by nullity on grounds of it contrasting with mandatory rules (public policy).

Since the above mentioned legal requirements are set in order to protect the interests of the buyer, the invalidity of the preliminary contract can only be objected to by the buyer.

Responsibility of the contractor for defects and/or variation in construction works

The Italian legislation regulates several aspects regarding the responsibility of the contractor in construction work:

Defects

The contractor is responsible for defects and unauthorized variation of works. If there are visible defects, the client should not accept the work otherwise he/she will lose the right to his guarantee (art. 1667, first paragraph of the Italian civil code). In order to formally challenge the works, the client should request his/her legal advisor to notify the contractor through a formal letter of default / breach of contract terms. In case of hidden defects, the acceptance of work does not compromise the purchaser's guarantee in reference to hidden defects. Such defects can be contested when they are discovered (report the hidden defects within 60 days of their discovery, and take legal action within 2 years from the end of projects). In cases of omission and malicious behaviour of the contractor who has tried to hide those defects, the time limit for legal action is extended to 5 years.

Serious Defects

Serious defects are the ones which can seriously damage the use of the property or the ones having a significant impact on essential structural elements such as solidity, efficiency and duration of works. According to the Italian Civil Code, some serious defects are: detachment and rupture of a significant number of tiles; inadequacy of thermal insulation; defective heating system jeopardizing the normal use of the property; defects concerning the roof of the property causing infiltrations of water; inefficiency of the plumbing system; defects of the chimney or flue jeopardizing a normal use of the property (under art. 1669 of the Italian Civil Code). Such defects should be contested within 1 year of the discovery, and the contractor is liable for such defects for a period of ten years after the completion of works.

Cover of the guarantee in case of fault of the contractor

In the case of visible or hidden defects, the client is entitled to act in 4 different ways:

1. request the elimination of the defects and/or variations, the total cost to be borne by the contractor;
2. ask for a reduction in price;
3. request the annulment / cancellation of the contract, if the variations or the defaults are very serious;

4. request compensation for damages.

Responsibility of the contractor for new buildings

The contractor is responsible for collapse (total or partial), evident danger of collapse or serious defects in the construction. Jurisprudence has extended this accountability to renovation works expected to last for a long time e.g. paving and waterproofing on a roof. The contractor's responsibility will last for 10 years from the date of completion of the work, and the contestation should be made through means of a legal letter describing faults. The letter should be drafted by your lawyer and sent to the contractor within 1 year of its discovery.

The inspection of works

The Italian civil code provides purchasers with the possibility of inspecting construction works during their execution and before they are signed off. It is highly recommended to involve your lawyer in this process together with an independent surveyor. If the client accepts the works at the point of signing off without requesting an inspection or without challenging them, the works are presumed to be accepted. The work is also implicitly considered as accepted when the customer accepts it without raising any type of formal objection. The direct consequence of this is the loss of the guarantee for visible defects or unauthorized variations, (an exception is made for work intentionally or maliciously not declared by the contractor). At this stage, the contractor will be entitled to the final settlement of his fees.

Contacting a lawyer in the early phase of a dispute can often lead to a friendly settlement, avoiding lengthy and costly litigation.

Glossary

Proposta irrevocabile d'acquisto : This is where an initial formal offer is made and a small deposit is paid. The price you are willing to offer has been determined and also any conditions you may wish to make.

Contratto preliminare (compromesso) : This is the contract that sets out in detail the terms and conditions of the sale and also all the relevant cadastral and registry information. It is also known as a Compromesso.

Atto di vendita : The moment when the parties exchange contracts in front of a Notary, the outstanding amount of the purchase price will be paid and the keys to the property will be handed over to the new owners.

Caparra confirmatoria : This is a deposit that is regulated under art.1385 of the Italian Civil Code. If a deposit is defined as a "caparra confirmatoria" it endows legal rights upon both parties.

Excussion : The process or proceedings whereby a creditor must proceed against a principal debtor before proceeding against a surety.

Capitolato : Specifications attached to a contract between a client and contractor which provides details of technical data about the property, time and completion of the work etc.

Due diligence : Refers to assessments made of a property on order to discover any liabilities which could impact on the future of that property.