



Reggi Real Estate

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GUIDE TO REAL ESTATE INVESTMENTS IN ITALY

PROPERTY PURCHASE PROCESS



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- WHY BUY REAL ESTATE IN ITALY?
- LEGAL FRAMEWORK
- PURCHASING PROCEDURE
- FINANCIAL ASPECTS / TAXATION / COSTS OF PURCHASE



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WHY BUY PROPERTY IN ITALY

Italy is surely the place that comes to mind when thinking about good living, fashion, style, gastronomic excellence or, to sum it up in three words, the “La Dolce Vita”.

It is no coincidence that Italy is referred to as the Bel Paese or “Beautiful Country” since it offers unrivalled natural diversity. From the icy Alps and glacial lakes of the north to the volcanic craters and turquoise grottoes of the south. As the epicenter of the Roman Empire and birthplace of the Renaissance, Italy is a place of endless culture and artistic masterpieces that include Michelangelo's David, the Sistine Chapel frescoes, Botticelli's Birth of Venus and Primavera, da Vinci's The Last Supper, the classic villas of Andrea Palladio, the chariot-grooved streets of Pompeii, the Byzantine mosaics of Ravenna and Giotto's revolutionary frescoes in Padua.

While those are some of the best reasons to invest in a property in Italy, in addition to your personal motives and considerations, the current economic and financial context makes real estate investments in Italy even more attractive.

The market is now offering new glittering opportunities to purchase amazing properties at very interesting prices.

LEGAL FRAMEWORK

Since this briefing on the property purchase process in Italy is mainly aimed at foreigners, it should be stated at the outset that, in general terms, Italian law permits the purchase of real estate by non-nationals. Nevertheless, according to principle of reciprocity (pursuant to art. 16 of the general regulations of the Italian Civil Code) “A foreigner is allowed to benefit from the civil rights attributed to the citizen on condition of reciprocity and subject to the provisions contained in special laws. This provision also applies to a foreign legal entity”. In other words, foreigners who are not resident in Italy are subject to the same possible limitations that are imposed on Italian citizens in the purchase of a property in their respective countries of origin.

The relevant legislation relating to the enjoyment of civil rights by non-nationals is now constituted by the Legislative Decree of 25 July 1998, no. 286 (“Consolidated Immigration Act”) as amended, and its implementing regulation (Decree of the President of the Republic August 31, 1999, 394).

Pursuant to the aforementioned act, the following persons are considered to be equivalent to Italian citizens and, therefore, exempt from verification of the condition of reciprocity:

- citizens (natural or legal entities) of EU Member States and nationals of EEA countries (Iceland, Liechtenstein and Norway);
- non-EU citizens residing in the Italian territory who are holders of a residence permit or a permit issued for reasons of employment, self-employment, for the operation of a sole proprietorship, for family reasons, for humanitarian reasons or for study purposes;
- stateless persons resident in Italy for at least three years;
- refugees resident for at least 3 years.

It has been decided, in accordance with the case law concerning the legislative provisions, not to carry out the determination of the condition of reciprocity for citizens of those countries with which Italy has concluded bilateral agreements in the field of the promotion and protection of investments (Bilateral Investment Treaties or BITs).



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In this case, the measure of ratification and implementation of the Agreement assumes the character of "lex specialis" in relation to the overall provision of the aforementioned article 16, so that the condition of reciprocity with regard to the subject matter is assumed.

The list of countries with which Italy has signed agreements for the promotion and protection of investments and the main test case for their application are available at the following website:

www.esteri.it/ministero

Irrespective of his/her status as "resident" or "non-resident" and regardless of other documents which might be necessary, any person who wishes to purchase property in Italy must first of all obtain a tax identification number, the "codice fiscale". This can be requested at any government financial office or at an Italian Consulate or Embassy. This request shall be submitted on the relevant form along with a passport photocopy. It is also possible to have the request submitted by a designated person by means of a specific proxy (please note that married women should only use their maiden names for the request).

PURCHASING PROCEDURE

Italian real estate is a complex area, so before contacting local realtors or real estate agents who have properties for sale, it is advisable to be aware of what is involved in purchasing property in Italy. Foreigners can find it a frustrating process, filled with plenty of paperwork, endless negotiations and a challenging list of "to dos".

Finding the right people to help you buy real estate in Italy is the key. A foreigner planning to buy a place in Italy should be aware of the main Italian legal issues surrounding real estate purchase.

This process usually involves 3 key stages:

- Reservation Offer "Proposta irrevocabile d'acquisto"
- Preliminary Agreement "Contratto preliminare di vendita"
- Deed of Sale "Rogito"

Reservation Offer

Once the property has been selected, the interested buyer can make an offer (usually, as a gesture of good faith, such an offer is accompanied by a monetary deposit, made available to the vendor only once an offer has been received and accepted).

Any offer is binding only on the buyer (as the vendor may still consider other offers) so it is advisable to specify, and include in the documentation, a time limit for the offer to avoid procrastination.

The vendor is free to accept or not.

Once the seller accepts, an agreement is concluded.

Should the vendor, however, insist on different terms and conditions, "acceptance" does not conclude the agreement but represents a counter offer which must be accepted by the buyer before an agreement can be concluded.



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The Preliminary Agreement

As mentioned above, once the vendor has accepted the buyer's proposal and the latter has been informed of this acceptance, the agreement is concluded.

Before signing any comprehensive and binding agreement, the buyer should check:

- The property complies with all the applicable local planning, building and land registry regulations (Regolarita` edilizia urbanistica e catastale) and with any relevant permit / building regulations issued by the Local Authority (Comune);
- The property is fit for human habitation and has a certificate to this effect (Certificato di abitabilità);

and also:

- If the vendor is a trader / commercial entrepreneur or a company, that he / the company has not been declared bankrupt or compulsorily wound up (Fallito), and that no legal proceedings to this effect are pending against him / the company (as applicable);
- If the property is in joint ownership (Condominio), that all outstanding service charges have been paid up to date;
- If the property includes agricultural land, that there are no tenants / neighbours with agricultural pre-emption rights (Prelazione agraria) nor any third parties rights over the property.

It is important to ensure that the property complies with any applicable land registry planning and building regulations, and this should be carefully investigated by the buyer's professional advisors.

The "compromesso" is a private agreement between the buyer and seller, which contains the following:

- Identification of the parties (full names, places and dates of birth, passport numbers, nationalities, tax identification numbers - vendor companies must provide a value-added tax registration number, and their legal registration number);
- Indication of the location of the property in question (city and province);
- Identification in the national register of lands (NCT) or urban areas (NCEU) - this identification can be found in the appropriate sheet of the register, which records the various lots. In the case of parts of a property, the vendor must undertake to obtain, at his expense, their identification number (frazionamento) in the national register. This must be done before the final deed of sale;
- In the case of land and/or portions of buildings, the agreement must be accompanied by a map from the register, to be signed by both parties;
- Verification of the vendor's title to the property;
- Verification of whether any limitations exist on the title, for example legal or bank obligations, inheritance or property rights, rights to first choice of purchase, or any other limitations that reduce or in any way curtail the right to full title of the property. The vendor must undertake to remove such constraints prior to, or simultaneously with, the final deed of sale;
- Identification of all servitudes that concern the property (roads, trails, pipelines etc. that transit through the property to be purchased) and of which it benefits (access to water from nearby natural sources or wells, rights of passage, and rights to access to pipelines etc.);
- Building permits issued after 1967;



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- Building permits in the process of being issued: in the case of the purchase of a building to be constructed, agreement to purchase and full payment must be conditional on the issuance of the required permit;
- The sales price, indicating the amounts paid on signature (or at various later times) and the balance to be paid at the time of the final deed of sale. The initial payment (anticipo) represents the down payment (caparra confirmatoria). If the vendor decides that he/she no longer wishes to sell, he/she must compensate the damaged buying party with a sum equal to twice the initial down payment;
- Indication of whether a real estate agent has been involved in the transaction or not, and, in case of such an involvement, the amount of the fee due to such agent.
- The date established for the final deed of sale.

On signing the compromesso, the purchaser is committed to buy and the vendor is committed to sell the property.

On signing the compromesso, a deposit or "caparra confirmatoria" will be due of between 10% and 20% of the sale price, depending on what has been agreed. Should you decide not to pursue the property, the deposit will be forfeited, or the seller may take legal action to enforce the purchase. Should the vendor back out, he will be liable to pay double the amount paid as a deposit.

Deed of sale

A few months after signing the "Compromesso", the deed of sale "Rogito" is drawn up for signature.

This deed of sale (the concluding agreement) and all the aforementioned stages of the sales procedure are governed by Italian law. The agreement must be drawn up in written form in the presence of a public notary. The public notary acts as a State officer and registers the real estate transfer at the land registries ("conservatoria and catasto"). Usually the buyer chooses the notary.

The sale price is paid on the conclusion of the deed of sale; at that time, the deposit paid on signing the commitment agreement and the payment made at the time of the reservation offer will be deducted from the sale price.

NOTES:

Both the purchaser and the vendor can appoint a representative to act on their behalf at the time of the preliminary purchase agreement or the final deed of sale, or both. In this case, a special power of attorney will be required (if issued abroad, this will require an apostille).

If the buyer is unable to read Italian, he or she must be accompanied by an interpreter registered with an Italian court.

In order to simplify payments, the purchaser is advised to open a bank account in Italy.



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FINANCIAL ASPECTS OF PURCHASE

Costs

The foreign buyer of an Italian property should be aware of the fact that the investment is not limited to the selling price of the property but includes taxes imposed on transactions and fees for the various professionals who assist the parties in concluding the deal.

Notary

Pursuant to Decree no. 1/2012 of January 24, 2012, converted into law March 24, 2012, no. 27, there are no longer any minimum and maximum limits for the determination of the remuneration of the notary.

Nevertheless, on request, a client has the right to obtain a rough estimate and an indication of the complexity of the assignment from the notary. This estimate cannot be considered binding, as the actual complexity may be discovered only at the end of the legal process which leads to the attainment of the final result requested by the parties.

The notary's fees are to be added to the taxes due for the registration, taxes and stamp duties due to the government (as further detailed and explained in the next paragraph) plus VAT (22 % of the fee)

Notarial fees for the sale of a property ranging from € 500.000,00 to one million euro are, on average, about 5,000.00 euros.

Realtor / Real estate agent

The average estate agent's fee is around 3% of the purchase price.

Lawyers

Pursuant to Decree No. 1 2012 of 24 January 2012, converted into law March 24, 2012 , No. 27, there are no longer any minimum and maximum limits for the determination of the remuneration of the lawyers.

Nevertheless, on request, the client has the right to obtain a rough estimate and an indication of the complexity of the assignment from the lawyer. Despite the fact that actual complexity may only become clear during the procedure, we believe that legal fees could be estimated on an average of around 1% of the purchase price, plus VAT (22 %), general expenses (15%) and Pension Fund (4%).

Taxation

Italian tax legislation is very complex and subject to frequent and extensive changes. It is difficult even for professional tax advisers to keep up to date with all the changes and their effects. Foreign buyers are advised to check the tax implications of the proposed Italian real estate purchase well before the date of completion, with expert professionals.

This section provides only a very general outline of property purchase taxation in Italy.

Specialist and detailed Italian tax advice on the particular circumstances is always advisable.

There are three main taxes that have to be paid by a buyer on purchasing an Italian property, Registration Tax (Imposta di Registro), Stamp Duty (Imposte ipotecarie e catastali) and Italian VAT (IVA). Normally, where Italian VAT is charged, the other taxes are reduced to a small flat rate of Euro 200.00 each.



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Pursuant to article 10 of Decree No. 23/2011 and article 26 of Decree 104/2013, starting from January 1, 2014, the taxes on the transfer of residential properties (commercial, professional or industrial property might be subject to a different taxation regime) are as follows:

Type of property	Vendor	VAT	Taxes and duties	
			registration tax	Stamp duty "ipotecaria+catastale"
Main Residence "prima casa"	Building firm - commercial entrepreneur*	4%	200 €	200€ + 200€
	Private	-	2%	50€ + 50€
Second home	Building firm - commercial entrepreneur*	10%	200 €	200€ + 200€
	Private	-	9%	50€ + 50€
second luxury home "cadastral categories A1, A8, A9"	Building firm - commercial entrepreneur*	22%	200 €	200€ + 200€
	Private	-	9%	50€ + 50€

* If the Vendor is a Building Firm /Commercial Entrepreneur who sells the property within 5 years from completion of the works (construction / restoration). After 5 years from completion of the works, the building firm can sell the property as a private individual (no VAT is due).

The tax base for the calculation of the aforementioned Registration Tax is the sale price or, when the buyer is a private person (not a legal entity), and opts to do so in the deed of sale, the tax can be based on the cadastral value ("Valore catastale").

[Valore Catastale: this is a notional value that can be calculated by considering the coefficients and other data that can be found under the title of the specific Italian property in the local land registry. It is often only a fraction of the commercial value of the property in question. Provided that the full commercial value of the Italian home is correctly stated in the Deed of Sale, it is now perfectly legal and acceptable to pay tax on a different, notional and frequently lower value in Italy. This has resulted in a totally legal and financially substantial tax saving for buyers of Italian residential properties].



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If you would like to know more about the subjects covered in this publication or our services, please contact:



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