

DE TULLIO LAW FIRM

International Law Practice

Italian Property Checklists



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Italian Property Checklists

INTRODUCTION

Whether you are thinking of buying, building or renovating a real estate property in Italy, there is a lot of paperwork and red tape involved. Many property purchasers from abroad will be unfamiliar with the technical and legal aspects of all this Italian property-related documentation.

This guide aims to provide you with checklists, which set out legal frameworks, documents required and processes and procedures involved in making your Italian property purchase, construction and or renovations as smooth as possible.

Investing in property in any country is a major financial undertaking for most people and it is vital to ensure your investment is safeguarded. Just as you would involve professional expertise in your own country, it is important to seek professional help in Italy. An experienced Italian property lawyer will have contacts with trustworthy, independent experts such as surveyors, architects, building contractors and will be able to advise and guide you throughout your real estate property purchase.

CHECKLIST: CONVEYANCING DUE DILIGENCE AND SEARCHES

There are a number of searches, which a purchaser needs to conduct between the signing of a preliminary contract and completing on an Italian property purchase. These form part of the legal framework around due diligence when purchasing a property in Italy:

1. Verification that the vendor's ownership is lawful. This is done by requiring owner/s to lodge title deeds and/or similar deeds, land registry cadastral plans and surveys; establishing that the real estate is free of encumbrances;
2. Requirement on the vendor to supply a complete package of documentation pertaining to the legitimacy of the real estate:
 - Licenses, Planning and Building Permits, Certificates of Indemnity, Authorisations, Certified Declarations and Notifications of Works, Owner's Statements proving that the real estate was built prior to 1942 (urban centre) and/or prior to 01/09/1967 (countryside) and that since building date, the property has not been subjected to modifications, other than modifications not requiring planning permission. The whole documentation package should be accompanied by printouts of floor plans and layouts printouts;
 - Certificate of Habitability, which should include the history of the property;
 - Land Use Certificates concerning land, from which can be ascertained, use of land and the presence of any landscape and civic restrictions and constraints.
3. Establishing that the property is effectively compliant with the condition of the real estate, based on the documentation above;
4. Verification of Systems Certification and Energy Performance Certification.

CHECKLIST: CERTIFICATE OF HABITABILITY

1. The Certificate of Habitability certifies the suitability of a residential property as being fit for human habitation. It is issued by the competent municipal authorities following an inspection to ascertain that the building, and its systems, comply with health, safety and structural stability regulations. According to Italian law, prior to issuing the certificate of habitability, the competent authorities should also verify that the building complies with planning permission.
2. 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 the 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 an essential requirement of the property because it has direct effects on the legal use of the property as stipulated in the contract.
3. Unless otherwise stipulated in contractual agreements, the responsibility to provide the certificate of habitability belongs to the vendor. In case of delay or failure to deliver a certificate of habitability, there is a clear case of non-execution of a contractual obligation (breach of contract). A recent decision by the Supreme Court states that, "The vendor of a property intended for residential use has a duty to deliver to the buyer the certificate of habitability without which the property is unmarketable". (Cass. 23 of January 2009, n. 1701).
4. In cases where there is no certificate of habitability the property can still be transferred with a notarial deed of sale but only with the buyer's express, written consent. Verifying the existence of the certificate of habitability before completion of the purchase of a property should certainly be part of the legal due diligence.

CHECKLIST: CHOOSING PROFESSIONAL SERVICES IN ITALY

When choosing any kind of expert to help with property purchases in Italy, it is advisable that you choose the expert yourself to avoid any conflict of interest that may arise from using someone recommended by the vendor or real estate agent. In addition, any professional you engage, should be:

1. Registered with the relevant professional body or trade organisation;
2. Up to date with social security contributions and certificates / licences to practise;
3. Qualified and experienced for the mandate – check cv, references.

CHECKLIST: CONSTRUCTION OR EXTENSION OF REAL ESTATE PROPERTY IN ITALY

Should you purchase land in Italy and wish to build a new property and/or to extend an existing construction, once the mandate has been entrusted to a qualified expert, who will conduct preliminary due diligence, the expert must follow this procedure:

1. Survey the possible building area, arising from the description of the Land Use Certificate, and the presence of possible landscaping restrictions;
2. Ensure building design complies with provisions of current building regulations and can be completed with the related building permit to be requested from the relevant municipal authorities;
3. Obtain planning and building permits;
4. Choose the building company which will execute the works and submit to the builders, detailed architect's project plans and statement of works.
 - Preferably, request at least three estimates, in order to establish some basis for comparison. Normally a new construction involves at least four different kinds of companies (excavation company, building company, electrician, plumber).
 - For an easier management of the works it is advisable to contract out the works to a sole company which will subcontract works non-executable by themselves. This facilitates on-site project management.
 - Before choosing companies to bid for the project, you should check:
 - company insurance contributions are up to date, by examining the Single Insurance Contribution Payment Certificate;
 - average annual workforce;
 - references. Ask to see other examples of their work and talk to previous clients.
5. Once defined, the owner, planning supervisor and building company, begin the works by lodging all relevant paperwork with the relevant municipal authorities.
6. The managers of the construction site are represented by the owner, planning supervisor and building company. The Coordination and Safety Plan

should be drafted pursuant to the Legislative Decree 81/08 and the onsite health and safety executive (HSE) should be appointed. All involved companies should comply with the provisions of the HSE and should produce their own safety document (POS). Particular attention should be paid to the management of waste on the construction site, as this must be treated and conferred to a dump in compliance with the regulations in force in the area.

7. Once the works are completed, an inspection will be required and the land registry will need to be notified regarding the completion of the works.

CHECKLIST: RENOVATING ITALIAN REAL ESTATE PROPERTY

Should you wish to renovate an existing building, without changing the property footprint, once the mandate has been entrusted to a professional expert, this is the procedure to follow:

1. Survey the condition of the property and design the renovation, which should be carried out pursuant to the provisions of current regulations;
2. Choose the building company which should execute the works, by submitting the project plan (drafted by an expert) completed with statement of works, as detailed as possible.
 - Preferably, request at least three estimates, in order to establish a basis for comparison. Normally a renovation involves at least three different kinds of companies, (excavation company, electrician, plumber).
 - For easier management of works it is advisable to contract the work to a sole company, which will subcontract the types of works non-executable by themselves.
 - Before choosing companies to bid for the project, you should check:
 - company insurance contributions are up to date, by examining the Single Insurance Contribution Payment Certificate;
 - average annual workforce;
 - references. Ask to see other examples of their work and talk to previous clients.
3. Once defined, the owner, planning supervisor and building company, begin the works by lodging all relevant paperwork with the relevant municipal authorities.
4. The managers of the construction site are represented by the owner, planning supervisor and building company. The Coordination and Safety Plan should be drafted pursuant to the Legislative Decree 81/08 and the on-site health and safety executive (HSE) should be appointed. All involved companies should comply with the provisions of the HSE and should produce their own safety document (POS). Particular attention should be paid to the management of waste on the construction site, as this must be treated and conferred to a dump in compliance with the regulations in force in the area.

5. Once the works are completed, an inspection will be required and the land registry will need to be notified regarding the completion of the renovation works.

CHECKLIST: CONTRACTOR LIABILITIES FOR DEFECTS AND/OR VARIATIONS IN CONSTRUCTION WORKS

The first essential advice I can give you before entering into a contract with a Construction or Renovation Company is: call your legal advisor requesting him to draft a contract between you and the Company you have chosen to carry out the work. A professionally drafted contract is your best protection if any problems connected with the works arise.

Whether this is because of defective material, poor execution of works, variations from the agreed plan or a request for additional money, a professionally drafted contract in both English and Italian will prevent a lot of problems and stress and often save you a considerable amount of money.

Below, summaries of the Italian legislation covering these topics:

POOR EXECUTION / VARIATIONS FROM PLAN OF WORK

1. The contractor is responsible for defects and unauthorised variation of works. If there are visible defects, the client should not accept the works otherwise he will lose the right to his guarantee (art. 1667, first paragraph of the Italian civil code).
2. In order to formally contest the works, the client should request his legal advisor to notify the contractor through a formal letter of default. If the client accepts the works, and defects and/or unauthorised variations of works are visible, he will lose the right to a guarantee unless the contractor omitted the defects and variations maliciously.
3. The contractor is deemed as acting maliciously if, although aware of the defects and/or variations, the contractor fails to clearly declare such things to the client.

HIDDEN DEFECTS

1. The acceptance of work does not compromise the client's guarantee with reference to hidden defects. Such defects can be contested when they are discovered.
2. In order to activate a guarantee, the client, through his lawyer, should do the following:
 - Report the hidden defects within 60 days of their discovery
 - Take legal action within 2 years from the end of works

If one of the two above-mentioned obligations is not complied with, the client will lose his rights to the guarantee. In cases where the contractor not only omitted to declare the defects, but also behaved in a malicious manner in order to hide those defects, the time limit for legal action is extended to 5 years.

CONTRACTOR LIABILITY

Once the defects and/or the unauthorised variations have been proven, the fault of the contractor is considered as presumed, so it will be his responsibility to prove the absence of negligence.

GUARANTEES

According to article 1668 of the Italian civil code, in the case of visible or hidden defects the client is entitled to take 4 possible legal courses of action:

- Request the elimination of the defects and/or variations, the total cost to be borne by the contractor;
- Ask for a reduction in price;
- In the case where variations or faults are very serious, the client can request that the contract is cancelled; or,
- Request compensation for damages.



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