

De Tullio

INTERNATIONAL LAW FIRM

Guide to Navigating Italian Divorce and Separation Laws for Foreign Residents



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1. Introduction

Tailored specifically for foreign residents in Italy facing the termination of their marriage or civil partnership, this guide offers comprehensive support and guidance to alleviate stress and confusion.

We understand the challenges of divorce or civil partnership dissolution. Our aim is to offer clarity and empowerment as you navigate through Italy's complex legal landscape.

The purpose of this guide is to demystify the process and furnish you with indispensable knowledge every step of the way.

Understanding the Basics of Divorce and Separation

Before diving into the complexities, let's establish some foundations.

In Italy, divorce (*divorzio*) and separation (*separazione*) are distinct legal processes, each with its own intricacies:

- **Divorce:** This legally terminates the marriage, allowing both parties the freedom to remarry.
- **Separation:** While spouses live separately, they remain married, often involving considerations such as property, custody, and support.

But what happens when a foreign couple residing in Italy, without Italian citizenship, seeks to end their marriage? These spouses come from jurisdictions with different legal frameworks and cultural dynamics. In some cases, divorce may not even be permitted in their home country.

So, what rights do foreign couples have in Italy?

While Italian citizenship may offer greater participation in civic and political life, fundamental rights are guaranteed to all residents, irrespective of citizenship status. Marriage is deemed a fundamental right, ensuring "a right and freedom that must be ensured without any distinction," and the same principle extends to divorce.

2. Rights of Foreign Residents in Italy

Fundamental Rights of Individuals

Italy upholds fundamental rights as inviolable, extending to all individuals within its borders, regardless of citizenship. These rights are enshrined in Article 2 of the Constitution, which affirms:

"The Republic recognizes and guarantees the inviolable rights of individuals, both as individuals and in the social formations where their personality is developed and requires the fulfillment of the irrevocable duties of political, economic, and social solidarity."

This constitutional provision underscores the universality of human rights, emphasizing their transcendence beyond geographical boundaries and citizenship status.

Marriage and Divorce as Fundamental Rights

Within the framework of fundamental rights, Italy acknowledges marriage and divorce as essential liberties.

These rights are integral to personal autonomy and are safeguarded irrespective of citizenship. The recognition and protection of these rights underscore Italy's commitment to upholding individual freedoms within its legal system.



3. Understanding The Legal Landscape

Overview of Italian Law No. 218/1995

Law No. 218/1995 stands as a cornerstone in Italian private international law concerning the separation and divorce of both foreign residents in Italy and Italian citizens residing abroad. This legislation delineates crucial principles governing marital dissolution.

Article 31 of Law No. 218/1995 establishes the regulatory framework for legal separation and dissolution of marriage. It stipulates that these processes are governed by the common national law of the spouses at the time of the separation or divorce request. In the absence of such common law, the law of the State where married life predominantly unfolds applies.

This implies that in cases where foreign spouses share common citizenship, the laws of their country of origin are considered. Conversely, if there is no shared citizenship, the laws of the country where the family primarily resides take precedence.

European Regulation 1259/2010: Impact on Foreign Spouses

European Regulation 1259/2010 complements and, in some cases, supersedes the provisions of Law No. 218/1995, especially concerning the divorce of foreign citizens living in Italy.

This regulation introduces significant considerations for foreign spouses navigating the legal landscape of marital dissolution.

A crucial aspect of the Regulation is the provision for spouses to select the applicable law through mutual agreement.

This empowers couples to choose the legal framework that best suits their circumstances, providing flexibility and autonomy in determining the governing laws.

In cases where spouses agree on the applicable law, the path forward is clear and straightforward. However, disagreements may arise, leading to the application of national domestic legislation.

This divergence in legal paths emphasizes the importance of clear communication and mutual understanding between couples during the divorce process.

4. Navigating Divorce Procedures

As outlined in the Italian Constitution, Italy guarantees the fundamental rights of individuals, including the rights to marriage and divorce.

However, a significant dilemma arises: which legal system should govern the dissolution of marriage?

Should it be Italian law or the law of the spouses' country of citizenship? European Regulation 1259/2010 addresses this issue by allowing the spouses to mutually agree on the applicable law.

In certain cases, especially in countries like Morocco or the Philippines where divorce may be prohibited, this choice becomes particularly critical. Consequently, spouses can jointly select the legal jurisdiction that best serves their interests.

However, it's important to note that this choice cannot be entirely unrestricted to prevent "forum shopping," where individuals seek the most advantageous court, disregarding citizenship, or residence, to achieve favorable outcomes.

Mutual Agreement on Legislation

When spouses reach a mutual understanding regarding the applicable legislation, they have several options:

1. They can choose to apply the law of the State where they habitually reside at the time of reaching the agreement.
2. Alternatively, they may opt for the law of the State where they last habitually resided if one of them still resides there when the agreement is finalized.
3. Another option is to select the law of the State in which one of the spouses holds citizenship at the time of finalizing the agreement.
4. Lastly, they can choose to apply the law of the forum, which refers to the legal jurisdiction where the case is being heard.

Resolving Disputes over Applicable Law

In cases where foreign citizens seek divorce in Italy without reaching a consensus on applicable legislation, complexities arise.

The differing interests of the spouses make it challenging to determine which laws should apply.

This scenario, although not uncommon, highlights the divergent perspectives and evolving values that can emerge following the breakdown of a marriage. Consequently, determining the most appropriate legal framework becomes increasingly complex.

In such cases, specific regulations govern divorce and separation proceedings:

1. The laws of the country where the spouses habitually reside are applied.
2. If these laws are unavailable, the laws of the country where they last cohabitated are considered, provided it has been less than a year since the initiation of legal proceedings.
3. If neither of the above options applies, the laws of the country of which both parties are citizens are considered.
4. If all other options fail, the laws of the country where the divorce petition was filed are applied.



5. Matrimonial Regimes: Impact on Property Rights in Italy

Matrimonial Regimes in Italy

Matrimonial regimes, also known as marital property systems, are pivotal in divorce settlements in Italy, especially when one or both spouses are non-Italian nationals with real estate assets in the country.

These regimes govern the financial affairs between couples and often become significant aspects of divorce proceedings.

Community of Assets: Principles and Implications

Under the community of assets regime, spouses jointly own all purchases made during their marriage.

However, certain personal assets, such as those acquired before marriage or through gifts or inheritance during the marriage, are excluded from common ownership.

The essence of the community of assets regime lies in the principle that, irrespective of which spouse made the purchase, both spouses hold an equal share. Nonetheless, exceptions exist, and each case necessitates individual scrutiny.

The Italian Supreme Court has stated that: "*The property acquired by the spouses, jointly or separately, during marriage, constitutes the subject of their community and becomes directly common property of the two spouses, even if intended for needs unrelated to those of the family and the consideration is paid, exclusively or predominantly, with the proceeds of one spouse's activity.*"

Separation of Assets: Legal Considerations

Conversely, in the separation of assets regime, each spouse maintains sole ownership of any purchases made, whether before or during the marriage. Only assets specifically acquired together are considered jointly owned.

For a separation of assets regime to hold legal validity, couples must establish a written agreement.

This agreement can be formalized either at the time of marriage or at a later stage, offering a clear delineation of ownership rights and responsibilities.

Foreign couples purchasing property in Italy may choose to adopt an agreement, particularly if they wish for the asset to be held solely in one spouse's name.

Such agreements serve to clarify ownership arrangements and provide a framework for the equitable distribution of assets in the event of divorce.



DIVORCE DECREE


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Dear Mr. Barney Stinson

But I must explain to you how all this mistaken idea of denouncing pleasure and praising pain was born and I will give you a complete account of the system, and expound the actual teachings of the great explorer of the truth, the master-builder of human happiness.

No one rejects, dislikes, or avoids pleasure itself, because it is pleasure, but because those who do not know how to pursue pleasure rationally encounter consequences that are extremely painful.

To take a trivial example, which of us ever undertakes laborious physical exercise, except to obtain some advantage from it? But who has any right to find fault with a man who chooses to enjoy a pleasure that has no annoying consequences, or one who avoids a pain that produces no resultant pleasure?

Best regards,
 Lily Aldrin Eriksen
 Lawyer



6. Special Considerations in Divorce Proceedings

Divorce proceedings in Italy encompass various legal considerations that shape the outcomes and arrangements for the involved parties. From custody of children to financial support, Italian law provides specific guidelines and regulations to address these matters. In this chapter, we will delve into the special considerations in divorce proceedings according to Italian law, focusing on the custody of children and child support, as well as spousal maintenance rights and obligations.

Custody of Children and Child Support

In Italy, the custody of children and child support arrangements following divorce are governed by specific legal provisions outlined in the Italian Civil Code, particularly Articles 155 and 155-bis.

These articles establish the principles for determining custody arrangements based on the best interests of the child, considering factors such as the child's age, health, and relationship with each parent.

Additionally, Italian law requires parents to provide financial support for their children, typically in the form of child support payments.

The amount of child support is determined based on the financial resources of both parents and the needs of the child, with the court having the authority to adjust the amount as circumstances change.

Spousal Maintenance: Rights and Obligations

Spousal maintenance, also known as alimony or maintenance allowance, refers to the financial support provided by one spouse to the other following divorce or separation.

In Italy, spousal maintenance rights and obligations are primarily governed by Article 156 of the Italian Civil Code.

Pursuant to this article, the court may order one spouse to pay maintenance to the other if the latter is unable to support themselves adequately, considering factors such as their economic situation, age, health, and ability to work.

Spousal maintenance payments aim to ensure the financial well-being of the recipient spouse and may be temporary or permanent, depending on the circumstances of the case. The court has the discretion to determine the amount and duration of spousal maintenance, considering the needs and resources of both parties.

7. Transferring Assets and Rights

In Italy, asset transfer in divorce is governed by specific legal provisions outlined in the Italian Civil Code (*art. 155 Codice Civile*).

While the general principles of asset division may align with those in other jurisdictions, there are some unique aspects to consider under Italian law. Here are some options for asset transfer in divorce within the framework of Italian law:

1. **Community Property Regime:** Italy follows a community property regime (*regime di comunione legale dei beni*) for marital property acquired during the marriage. Under this regime, assets acquired by either spouse during the marriage are considered jointly owned, regardless of whose name is on the title. Upon divorce, these assets are typically divided equally between the spouses, unless there are specific reasons for a different allocation.
2. **Division of Marital Assets:** Upon divorce, marital assets, including real estate, financial investments, vehicles, and other possessions, are divided between the spouses according to the principles of equity and fairness. While the default rule is an equal division of assets, the court may consider factors such as each spouse's contributions to the marriage, their financial needs and resources, and any agreements reached between the couple.
3. **Assignment of Assets:** In some cases, divorcing spouses may agree to assign specific assets to one party while compensating the other with different assets or financial payments. This can be done through a mutual agreement or through a court-ordered division of assets. The assignment of assets should be fair and consider the overall financial situation of both parties.
4. **Sale of Assets:** If dividing specific assets equally or assigning them to one party is not feasible or practical, the court may order the sale of marital assets, such as real estate or businesses, and the division of the proceeds between the spouses. The sale of assets allows for a clean break and ensures a fair distribution of funds, although it may involve transaction costs and logistical challenges.
5. **Valuation of Assets:** Determining the value of marital assets is crucial for equitable division. In Italy, assets are typically valued at their fair market value at the time of divorce, considering factors such as depreciation, market trends, and expert opinions. Valuation may be required for various assets, including real estate, businesses, investments, and personal property.



Transferring Assets to Children in Case of Divorce

When opting to end a marriage and reaching an agreement, it is possible to directly transfer real estate and rights to children, rather than to the spouse.

In the event of separation or divorce, regardless of the chosen regime of asset community or separation, it is possible to transfer real estate or other real rights to children, as they are legitimate heirs.

The transfer request must be recorded during the separation hearing, in the minutes, and it is also possible to choose the timing of the transfer, especially if the children are minors.

In this way, it will no longer be necessary to resort to a notary, as the children would already be listed as legitimate heirs, resulting in considerable tax savings, as these transfers are advantageous from a tax perspective.

If the transfer concerns financial instruments, such as securities, a ruling by the Italian Supreme Court clarified that it must be ratified by a Notary under penalty of nullity, unless it concerns donations of small value.

If the transfer concerns a business, a donation institution can be used, as the donor is still alive, or alternatively a family pact can be used.

With a donation, the parent transfers ownership to the child, but when the donor dies, at the time of succession, the value of the business must be added to the entire capital in order not to infringe upon the rights of other legitimate heirs.

An alternative to donation is the family pact.

The family pact is a contract that must be signed by all family heirs, including the ex-spouse, grandchildren, siblings, and all close relatives.

With this contract, the value of the business is offset against other assets.

In this case, the business will no longer be part of the inheritance, and no other heir will be able to claim it.

If the transfer involves cash, anti-money laundering regulations must be complied with.

8. Trusts in Divorce Settlements

A trust is a legal institution whereby assets forming part of the settlor's estate are separated and earmarked, to pursue specific interests, in favor of certain beneficiaries or to achieve a specific purpose.

Asset transfer in divorce involves one or both spouses transferring their assets to a trustee for the benefit of third-party beneficiaries, like children, spouses, or ex-spouses.

These assets can be money, movable property, registered movable property, real estate, real estate rights, and more.

Trusts are essential in asset protection and economic settlements, particularly in divorce cases.

They help safeguard assets from potential disputes and ensure fair distribution among beneficiaries.

In divorce, trusts can regulate shared assets, ensuring financial support for children until they become financially independent.

Trusts may be part of separation agreements or joint divorce petitions, pending court approval, giving spouses a way to resolve disputes and secure their financial future independently.

Application of Trusts in Asset Protection and Economic Settlements

Trusts are vital for protecting assets and managing financial settlements, particularly during divorces.

They offer a way to shield assets from potential disputes and ensure fair distribution among beneficiaries.

In divorce cases, trusts can be used to manage shared assets, ensuring ongoing financial support for children until they become financially independent.

Trusts can be incorporated into voluntary separation agreements or joint divorce petitions, pending court approval.

This provides spouses with a method to settle disputes and secure their financial future autonomously.

9. Ending a Civil Partnership in Italy

Civil Partnerships in Italy:

A civil partnership, known as "*unione civile*" in Italian, is a legal institution that grants couples similar rights and responsibilities as marriage.

Established by Law No. 76 of 2016, civil partnerships allow same-sex and opposite-sex couples to register their relationship with the municipality where they reside.

Once registered, civil partners enjoy legal recognition of their union and access to various rights and benefits, including inheritance rights, social security benefits, and healthcare coverage

Civil partnerships in Italy provide legal recognition and protection for couples who choose not to marry but wish to formalize their relationship.

Like marriage, civil partnerships offer certain rights and obligations to the partners, as well as legal processes for dissolution in case the relationship ends.

Legal Processes for Dissolving Civil Partnerships:

The legal process for dissolving a civil partnership in Italy is governed by Law No. 76 of 2016 and subsequent regulations.

Like divorce for married couples, civil partners must follow specific procedures to terminate their partnership.

This typically involves filing a petition for dissolution with the competent court, providing grounds for the termination of the partnership.

Grounds for dissolution may include mutual consent, irreconcilable differences, or the breakdown of the relationship. The court then examines the case and issues a decree of dissolution, officially ending the civil partnership.

Rights and Obligations of Civil Partners in Italy:

Civil partners in Italy are entitled to certain rights and obligations under the law, similar to those of married couples.

These include rights related to inheritance, property ownership, healthcare decision-making, and social security benefits. Additionally, civil partners have obligations toward each other, such as providing financial support and mutual assistance.

The rights and obligations of civil partners are outlined in Law No. 76 of 2016 and other relevant legislation, ensuring legal recognition and protection for couples in civil partnerships throughout Italy.

When a civil partnership ends - if there are children involved - their well-being remains a primary concern and the rules are the same as those provided in the case of divorce:

1. **Custody and Visitation Rights:** Civil partners must determine custody and visitation rights for their children. If the parents can agree on a custody arrangement, they can submit a parenting plan to the court for approval. This plan outlines where the child will live, visitation schedules, and decision-making responsibilities regarding the child's upbringing.
2. **Child Support:** Parents are legally obligated to provide financial support for their children, regardless of the status of their relationship. The court may order one partner to pay child support to the other based on factors such as income, earning capacity, and the needs of the child. Child support payments are intended to cover the child's expenses, including food, clothing, education, healthcare, and extracurricular activities.
3. **Mediation and Court Intervention:** If they cannot agree on custody and visitation arrangements, partners may seek mediation to resolve their differences with the help of a neutral third party. If mediation is unsuccessful, the court may intervene and make decisions regarding custody and child support based on the child's best interests.



10. Contact De Tullio Law Firm

At De Tullio Law Firm, we frequently field inquiries regarding Italian divorce law. In today's world, many individuals are part of cross-cultural relationships, which can be profoundly enriching. However, if such relationships encounter difficulties, they can also present unique challenges.

When facing separation or divorce, seeking guidance from experts is essential, both for emotional support and legal advice.

We understand the multitude of issues that arise during this stressful time, and we are here to assist you every step of the way.

If you find yourself in need of assistance, please don't hesitate to reach out to us.

To begin, we offer a free preliminary consultation to discuss your situation and explore how we can best support you.

About us

Since 1965, we have been providing legal services to clients at an international and local level, gaining an enviable reputation for quality, expertise, and professionalism.

Book a **FREE** consultation

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