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INTERNATIONAL LAW FIRM

Guide to buying property in Italy



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Once you find an Italian property that you want to buy, carefully consider the legal implications. Whether you buy through a real estate agent or directly from a vendor, legal knowledge is key to a trouble-free purchase. If you would normally engage the services of a lawyer to purchase a property in your home country, it is certainly a good idea to seek independent legal advice in Italy, where you may not be familiar with the language or its legal system. The services of an experienced Italian property lawyer will ensure your interests are protected throughout the process.



Property purchases in Italy proceeds through three key stages:

1. *"Proposta irrevocabile d'acquisto"* (reservation offer),
2. *"Contratto preliminare di vendita"* (preliminary contract)
3. *"Atto di vendita"* (deed of sale).

In this guide, we explore each stage of the Italian purchase process.

1. *“Proposta irrevocabile d’acquisto”* (reservation offer)

When buying a property in Italy the first document you will be called upon to sign is the *“proposta irrevocabile d’acquisto”*, reservation offer. Once accepted by both parties, this becomes a legally binding document which cannot be revoked unilaterally without legal consequences. While a reservation offer may look innocent, once signed it has legal ramifications. It is therefore never a good idea to sign one without first taking legal advice or preferably, getting your lawyer to draft it for you.

Before signing a reservation offer, you should conduct preliminary due diligence. Due diligence aims to ensure that there are no unpleasant and possibly costly surprises during the following phases of the purchase. Your lawyer, where necessary assisted by a surveyor, will be able to conduct relevant searches, including, but not limited to, checking the property title deeds.

Another essential check you should make is to verify that there are no outstanding mortgages or other debts associated with the property. Depending on your country, this may seem odd, but in Italy a mortgage is attached to a property, rather than a person. An Italian mortgage is a real guarantee rather than a personal guarantee. A mortgage therefore travels with a property. If an owner sells a property without paying off an existing mortgage, the new owner will become responsible for the outstanding amount owed on the property.

Although having a reservation offer is standard practice when purchasing through an estate agent, when purchasing directly from the property vendor (private sale), a reservation offer is not always used. There are many legal implications to dispensing with a reservation offer. You would be well-advised to consult a lawyer regarding your specific case.

Estate agents often use a standard reservation offer. This boilerplate template may not include relevant conditions pertaining to your situation. It is therefore essential that your reservation offer contains considered conditions that relate to your circumstances and the specific property you’re buying, ensuring that you’re protected if any aspect of the purchase process is impacted by other circumstances beyond your control.

If a buyer doesn't include conditions in the reservation offer, it will not be possible to add these to the preliminary contract in the next phase of the purchase.

For example, you may want to include conditions that allow you to pull out of the purchase without penalty if you're unable to raise a mortgage or if a property inspection uncovers serious defects. You may also need to include conditions about resolving existing mortgage or planning and land registry issues.

If you use a standard reservation offer that contains no conditions relating to these situations, you may find yourself facing a financial loss through being unable to complete the purchase or buying a property that requires costly remedial work.

By signing the reservation offer, you will be required to pay a small deposit to the vendor. Should you finalise the purchase, this deposit will be considered as partial payment of the purchase price. If the vendor does not formally accept your offer, the deposit will be returned to you.

It is important to highlight that the reservation offer is only binding upon the buyer until formal written acceptance of an offer is received from the vendor.

Once the vendor has signed the reservation offer, they are agreeing to remove the property from the market for a period of time, normally 15 days. This gives you exclusive rights on the property for that time frame.

At that point, once signed by both parties, the reservation offer becomes a legally binding document between both parties.

Usually at this stage, buyer and vendor, having agreed to go ahead with the conveyance, will formalise their agreement by drawing up a "*contratto preliminare di vendita*" (a preliminary contract).

2. "*Contratto preliminare di vendita*" (preliminary contract)

Some estate agents, and property owners in the case of a private sale, choose or recommend to leave out this essential part of the purchase process.

Due to the benefits in terms of speed and cost, it may not be unusual for an estate agent to recommend you press ahead at this stage using their standard preliminary contract. It's understandable that you may be tempted to do anything that will get things moving as quickly as possible.

However, this legal document really is extremely important. The "*contratto preliminare di vendita*" sets out the detailed terms and conditions of the sale. Often you will need to carry forward terms and conditions established in the reservation offer to the preliminary contract. In addition, the preliminary contract will be used by the notary public to draw up the deed of sale in the final stage of the purchase process.

If you use the estate agent's standard contract that contains no conditions relating to your personal situation, you may find yourself facing a financial loss through being unable to complete the purchase or buying a property that requires costly remedial work. This is why it is highly advisable to engage the services of a lawyer to draft the preliminary contract to ensure that all the details are in your best interests.

It may be tempting to tweak an existing template in a way that appears to cover various situations, but you should note that Italian law only considers specific types of conditions as valid. Conditions considered to be merely potestative do not qualify as valid. Simply put, that means that a condition will not be valid if it is in the sole interest of just one of the two parties. Perhaps the most common example of a condition that affects both parties is the buyer's ability to raise a mortgage. Clearly, both parties stand to lose out if a mortgage isn't secured, so this isn't considered as a purely potestative condition.

If your vendor has had the preliminary contract drawn up by their legal advisor, it is important that you have your own lawyer examine it. Your own lawyer will be able to provide detailed advice on the legal implications of the preliminary contract before you sign it.

One of the essential legal elements of the preliminary contract is the payment of a deposit ("*caparra confirmatoria*"), normally equivalent to a minimum of 10% of the purchase price.

Your deposit will not be refunded if you back out of the preliminary contract without a valid legal reason. On the other hand, if the vendor pulls out of the sale, the vendor will have to refund your deposit in full. You also have the right to pursue a claim for double your deposit through the Italian courts.

In the preliminary contract the parties also set the date to finalise conveyance in front of the public notary. The public notary is a public official who works for the Italian State. A notary has the authority, in accordance with Italian law, to validate contracts transferring the ownership of a property. The public notary is also charged with paying all land registry fees and relevant taxes and ensuring the relevant searches on the property are conducted.

The public notary must act as an absolutely neutral and impartial party in the transaction. This is why a notary cannot be a substitute for a lawyer in terms of representing the interests of the buyer. The only way for a buyer to be assured of proper legal safeguards is to engage the services of an independent lawyer.

The Public Notary's checks may include confirming each party's rights to buy or sell the property, a land registry search to see whether any third parties have a claim on the property, a search for any mortgages on the property or to verify the presence of planning permission.

Remembering that these checks will all be conducted after you've paid a substantial deposit, you will want to be sure that all these aspects have been checked and cleared before you commit to the preliminary contract or, at the least, the contract contains conditions protecting you in case any issues arise during the notary's checks.

3. "*Atto di vendita*" (deed of sale)

The deed of sale is drafted by the public notary. It must be fully compliant with the all the details and essential elements contained in the preliminary contract.

Italian law requires that the deed of sale must be drafted in Italian and, where one of the parties to the deed of sale does not understand the Italian

language, translated into the relevant mother tongue language by a sworn translator. However, for legal purposes the Italian version will prevail.

The first time the buyer usually meets the notary is at the end of the property transaction and the notary, being an official of the Italian State, cannot interfere in any commercial aspect of the transaction by taking either the side of the buyer or vendor.

In the context of a property transaction the only professional who is exclusively committed to the best interest of the buyer is their own lawyer. To avoid a possible conflict of interest, it is never recommended to instruct a notary recommended by the real estate agent.

The signing of the deed of sale usually takes place at the public notary's office. The public notary will read aloud and explain the Italian version of the deed of sale in the presence of the vendor and the buyer, and/or their legal representatives. If you cannot be present at the signing of the deed of sale, you can give your lawyer a power of attorney to represent you.

Both parties have the opportunity to read and check the relevant language version of the deed of sale to ensure everything is correct. Having your own bilingual lawyer in attendance at the deed of sale signing allows you to raise any questions, queries and concerns and get immediate responses.

Once the deed of sale has been signed by all those present, the balance of the purchase price is paid to the vendor and the keys are handed over to the buyer.

It takes approximately one month, following the signing of the deed of sale, for the deeds of new ownership to be registered at the relevant land registry office. Once registered, a copy of the title deeds will be given to the new owners. If you are not in Italy when your title deeds become available, you can have your lawyer collect the title deeds on your behalf. Your lawyer can send your title deeds to you or hold them in safe keeping.

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Buying or inheriting property in Italy can be a real maze – especially if you don't speak Italian or know the Italian legal system. Italian law can be confusing and navigating it alone can be frustrating and even dangerous.

Whether you need assistance with your property project in Italy or you need to arrange an inheritance, the team at De Tullio Law Firm will help you understand the processes and the pitfalls. Let us answer your questions and remove the worry of making costly and time consuming mistakes.

Get in touch to arrange your FREE, no obligation consultation in your chosen language at a time to suit 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.

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