

De Tullio

INTERNATIONAL LAW FIRM

Guide to selling property in Italy



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Consider the legal implications of selling a property in Italy seriously because the process is complex and can be protracted. An experienced property lawyer can guide you safely through the high-stakes transaction.

Selling property in Italy involves three stages:

1. Putting the property on the market,
2. Negotiating and signing the preliminary contract,
3. Completing the sale.

This guide explores each stage.



1. Putting the property on the market

The first stage is to put the property on the market, either directly or through a real estate agent.

To make the sales process as efficient as possible, we recommend that vendors compile a sales package before listing their property. This package should include:

- Title deeds and plans. To prove that the property exists as described and that the vendor has the right to sell the property in question.

As well as relevant paperwork demonstrating:

- Absence of mortgages, charges, third-party rights, or any undisclosed encumbrances affecting the property must be proven by the vendor.
- Land registry entries must be provided to verify compliance with local planning and building regulations, including relevant building plans approved by the local authority.
- Copies of relevant documentation must be provided by the vendor if they have applied for a Planning Amnesty (*"Condono Edilizio"*).
- The appropriate *"Certificato di Abitabilità"* certification for the entire premises must be possessed by the vendor unless the property is being sold for reconstruction purposes.
- Relevant tax returns in accordance with Italian tax legislation must be filed, including taxes due from previous tax years. Failure to do so may render the property legally unsaleable.
- Documentation proving that the vendor's company is not bankrupt or has any pending applications against them must be provided if the vendor is the owner of a company.
- Proof of payment for all service charges due must be shown if the property is part of an apartment block.
- An *"Attestazione di Prestazione Energetica"* (energy performance certificate), which includes a property's energy performance index (value in kWh/sqm per annum), must be possessed by the vendor. Since January 2012, this information must be included in any real estate advertisements.

Real Estate Agents and Commission

If the vendor appoints an Italian real estate agent, the agent should be qualified and registered. Real estate agents should be registered with their local Chamber of Commerce to be in full compliance with Italian law.

The legislation governing Italian real estate agents aims to guarantee not only their professional qualifications but also requires them to possess compulsory indemnity insurance. This type of insurance coverage protects the vendor in case something goes wrong, making it in the vendor's best interest to ensure that the real estate agent has it.

If the agent is not registered, they could be prosecuted for carrying out a reserved activity and may not be legally entitled to request a commission.

Real estate agents receive a commission (*"provvigione"*) both from the buyer and the vendor. Estate agent commission is negotiable but is generally equivalent to 3% of the full sale price. Frequently, real estate agents require vendors to sign standard terms of engagement. Vendors should carefully evaluate the terms before signing any paperwork. All the more so if the document is drafted in Italian. Amongst other aspects, it is important to assess the agent's commission fees, minimum sale price, duration of the mandate and its exclusivity.

Real estate agents in Italy are typically entitled to charge brokerage fees upon the execution (signing by both parties) of the reservation offer or preliminary contract. To avoid paying fees before the sale has been completed, it is crucial to reach a written agreement with the real estate agent that brokerage fees will only be due upon completion. If either the buyer or seller pulls out and the sale falls through, the estate agent may not be entitled to commission. Recuperating a payment already made as commission can be a time-consuming process.

"Proposta Irrevocabile d'Acquisto"

The purpose of the Reservation Offer is to prevent the seller from selling the property to someone else while the buyer is conducting further due diligence and arranging financing.

A small deposit usually accompanies the reservation offer to show the buyer's good faith and commitment to the purchase.

The deposit amount can vary depending on the property and the agreement between the buyer and seller, but it is typically around 1-5% of the property's sale price. If the sale goes through, the deposit will be credited towards the purchase price. If the buyer decides not to proceed with the purchase or is unable to secure financing, the buyer may forfeit the deposit to the vendor as compensation for the time and effort invested in the sale.

The reservation offer requires both buyer and vendor to sign it. By signing this agreement, the vendor removes the property from the market for an agreed period of time. This is usually 15 days to permit the potential buyer exclusive rights to conduct due diligence on the property.

Due diligence includes, but is not limited to conducting surveys, planning and building application / permit searches, local authority and land registry searches, as well as legal searches.

2. Negotiating and signing the preliminary contract

The second stage of the conveyancing process in Italy is the negotiation and signature of the *"Contratto Preliminare di Vendita"* (preliminary contract).

Italian estate agents often use a standard preliminary contract template. This type of "one size fits all" preliminary contract may not be appropriate for your situation. In fact, generally speaking, this type of standard preliminary contract may expose you to legal risks and financial penalties.

The vendor must ensure that all statements in the preliminary contract are truthful to their best knowledge. They must provide full disclosure and truthfully answer any enquiries from the buyer.

Usually at this stage, the buyer makes another deposit, ranging from 10% to 30% of the agreed sale price of the property.

Should the buyer withdraw from the purchase prior to completion, the buyer automatically forfeits the deposit to the vendor.

If the vendor withdraws from the sale before completion, in breach of the preliminary contract, they must return the buyer's deposit.

The vendor may also decide to take the buyer to court for breach of contract. This could result in the buyer having to indemnify the vendor with double the deposit amount. In addition, further sums may be payable if the vendor can prove that damages exceed the amount of the deposit.

Breaches of the preliminary contract

Italian law states that both parties to a prospective transaction involving selling a property in Italy must act in good faith. Prior to exchange of a preliminary contract, the vendor must provide the buyer with copies of all documentation relating to the property. The vendor must also disclose any material fact that could impact the buyer's decision to proceed with the property purchase.

It is important to ensure that the property complies with all applicable planning and building regulations. Breach of this legislation may result in the annulment of the preliminary contract and the seller may incur hefty penalties.

Where the vendor has applied for a planning amnesty (*"Condono Edilizio"*), copies of the relevant documentation must be handed over to the prospective buyer.

Italian law requires the vendor to provide a certificate of habitability to confirm that the property complies with safety regulations. Obtaining the certificate before receiving the deposit is advisable.

To draft the deed of sale for the property, the public notary will require the certificate of habitability. Unless the buyer agrees in writing to purchase a property without the certificate, the sale cannot proceed.

A vendor's failure to obtain the certificate of habitability may result in a breach of contract. The vendor should disclose any issues with obtaining the certificate before signing the preliminary contract to avoid penalties. In addition, the vendor must ensure that the preliminary contract reflects any issues with the certificate. This might, for example, be the fact that the certificate doesn't cover the entire property such as outbuildings.

Preliminary contract disclosures

The vendor should disclose any outstanding payment of taxes as well as any remedied and or outstanding breaches or notices that the relevant authorities have served.

If the property is subject to a mortgage, the vendor has a duty to redeem it and cancel the corresponding entry in the local land registry.

If the potential buyer is purchasing the property with a mortgage, it is advisable for the vendor to ensure that arrangements are in place before completing the sale.

Take particular care if the sale property is a villa or land with statutory farming pre-emption rights (*"Prelazione agrarian"*). According to Italian law, farmers, tenants, and neighbours in the immediate neighbourhood have first option on purchasing agricultural property.

The vendor must serve a copy of the preliminary contract to all parties with pre-emption rights before signing it. This allows the entitled person to make a decision within the statutory term, which is usually 30 days.

It is important to ensure full compliance with this legislation. Any breach of Italian pre-emption rights and notifications may result in a local tenant / neighbour claiming the property from the buyer. This right is valid for up to a year after completion of the sale.

This can leave the unaware buyer with a legal claim against the vendor.

If there are planning or zoning issues related to the property, these must also be disclosed to the vendor.

When selling an Italian property, the vendor needs to contemplate numerous factors that could have serious repercussions. Although the above list is not comprehensive, it highlights a few possible issues that should be taken into consideration.

3. Completion of The Sale

The third and final stage of selling a property in Italy is the completion of the sale. This usually takes place in the offices of a local public notary ("*Notaio*").

The Role of Italian Public Notaries

Italian public notaries are officials of the Italian State. In other words, they work for the Italian government. Their involvement in property transactions is a legal requirement. Public notaries are responsible for transferring ownership titles of Italian property. They have a duty of care to correctly draft the deed of sale. They then ensure its proper execution and registration. In addition, public notaries ensure payment of all Italian tax ancillary to the completion of the sale.

The Italian public notary has a crucial role to play as an entirely neutral and unbiased party. However, the notary cannot serve as a substitute for a lawyer in terms of representing the vendor's interests. Therefore, to protect their legal interests, the vendor should engage an independent lawyer who they have chosen themselves. By "independent," we mean a lawyer who is not affiliated with any other party involved in the transaction.

In Italy, the notary is appointed by the buyer who is also responsible for the notary's fees. The notary plays an important role in the property sale process, as they are responsible for ensuring that the sale is legally valid, and that all necessary documentation is in order.

Signing the deed of sale

The completion of an Italian property sale is known as the "*Rogito*", which is the final signing of the deed of sale. It typically takes place in the office of the public notary, who is responsible for preparing the final deed of sale and ensuring that all necessary legal requirements are met.

Before the "*rogito*" can be signed, the buyer must transfer the full purchase price into the notary's escrow account ("*deposito prezzo*") or pay the vendor on completion day with a banker's draft.

Translator

If one of the parties involved in the signing of an Italian deed of sale does not understand Italian, the law requires that a professional translator be present during the signing process. This requirement is in place to ensure that the signing of the deed of sale is valid and legally binding for all parties to the sale and purchase.

Having a bilingual lawyer present on signing day can provide translation and additional services. A lawyer can review and explain the *"rogito"* and compare it with the preliminary contract. A lawyer can also provide legal advice regarding the *"rogito"* and assist with the transfer of funds.

During the signing, the notary will read the deed of sale aloud to both the buyer and vendor. Subsequently, the interpreter will read the deed of sale in English (or the relevant language), to ensure that both parties understand and agree to the contract terms. Once everyone is satisfied, the parties, interpreter, witnesses, and notary public sign the deed. The deed only gains legal significance and transfers the property once the notary public has signed it. At this point, the buyer becomes the legal owner of the property and can obtain the keys to take possession.

After the signing, the notary will register the sale with the local land registry (*"catasto"*) and issue the buyer with a certified copy of the deed of sale. This usually takes about a month.

Property Sales Tax

If the vendor had *"prima casa"* (first home) tax reductions, they may face a penalty if they sell within five years. However, buying a new property within one year after selling the first one can avoid this.

Following completion, the vendor may be subject to Italian capital gains tax, etc. However, usually, no tax is levied in Italy if the vendor owned the property for more than five years.

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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.

Book a **FREE** consultation

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