



REAL ESTATE IN ITALY: A GENERAL OVERVIEW

THE FIRM

Founded in 2003, JMU Law Firm is an international law firm located in the centre of Florence. The Firm comprises an experienced team of lawyers specialized in international law. The Real Estate sector is a fundamental part of our activity and over the last ten years we have assisted hundreds of foreign clients with property investments nationwide, ranging in value from €100K to €50M.

Our attorneys are fluent in English and the majority have advanced legal degrees or law firm experience and qualifications from foreign countries. We also have a Technical Department which is comprised of an English mother tongue assistant and two experienced surveyors (*geometri*) registered at the Court of Florence, as well as an accountant.

We can provide comprehensive legal advice and assistance with all types of commercial and residential real estate transactions.

Thanks to the extensive professional network we have built up over the years, we are also able to offer an effective nationwide property-finding service.

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BUYING A RESIDENTIAL PROPERTY IN ITALY

The Italian property market is open to all types of buyers who come from those countries where an Italian citizen can enjoy the same purchase rights (reciprocity): individuals buying on their own behalf, corporate investors, trusts, REITs, SIPPs, etc.

It is difficult to give an accurate estimate of time scales for completion of this process and, as in other countries, this very much depends on factors such as the type of property (a single house or a development for instance), if there are any problems with the property (if work needs to be done or there are any issues regarding building permission/planning regulations; we have an in-house “administrative lawyer” who can manage these items) and the speed of obtaining financing, if necessary. Some of the main issues relating to buying a property in Italy are set out below.

1. The purchase deed/contract, completion and payment

The purchase deed or contract must be in written form and must be signed before an Italian notary, who is an officer of the State. The notary verifies that the rights can be transferred and whether the property is subject to a mortgage, charge or any other restriction.

The full rights on the property pass at the time when the notary completes the procedure and registers the contract into the local land registry. If one of the purchasing parties does not understand Italian, the entire contract must be translated into the other language and an interpreter must be nominated. Alternatively, the party who does not understand Italian can give a power of attorney to an Italian speaker (in general, the lawyer). The power of attorney must be signed in front of a public notary in Italy or, as usually happens, in the country of the given party. A power of attorney may be useful for two reasons; firstly, only the power of attorney (and not the whole contract) needs to be translated and secondly, the parties do not need to attend before the notary (i.e. they do not have to plan a trip only for that purpose).

The most common method of payment is the delivery of a banker's drafts (cashier's checks) at the time of the signing of the purchase deed.

If there are no complications, the meeting in front of the notary generally takes one to two hours. A lawyer can prepare the contract, but each notary has their own standard they prefer to use. The lawyer will therefore deal with the Notary's draft and negotiate amendments, if necessary.

2. Mortgage

It is possible for the buying party to request a loan from a bank in Italy which will then register a charge against the property. The mortgage contract must be signed in front of a notary, and this is generally performed at the same time that the purchase contract is signed. As for the purchase deed, this contract can also be signed by means of a different power of attorney, given by the person taking out the mortgage (the buyer) to an Italian speaker.

An Italian bank account is also normally necessary to make this process simpler. It is generally fairly easy to open a bank account in Italy and this would be very useful even for the payment of the utilities.

3. Proposal and Preliminary contract

3.1 Purchase offer

This is a written agreement under which the purchaser unilaterally commits himself to buy. The offer can include certain conditions or contingencies decided by the purchaser (e.g. that the property conforms with building permits and planning regulations).

Once the seller accepts the offer, this offer commits both parties in the same way as a preliminary contract (see below 3.3).

3.2 Deposit

Together with the purchase proposal the buyer is normally required to leave an initial deposit (normally between 0.5-3% of the final price). These deposits, reservation fees, purchase proposals, etc., are often written in ambiguous terms and can lead to the loss of the deposit. It is therefore strongly advisable, especially for foreign buyers to have any proposal, contract, document, checked by a lawyer before signing anything.

3.3 Preliminary contract

In Italy, particularly when the property is not ready for immediate delivery to the buyer (e.g. where the selling party is a developer or is carrying out restoration works) or in a situation where some important details have yet to be resolved (e.g. checking building permits) or where the buyer does not have ready the full funds available (e.g. a mortgage is required), it is very common to sign a "preliminary contract". The rights on the property do not pass on signature of the preliminary contract, but from that point forward, the seller is obligated to sell and the buyer is obligated to buy. If one of the parties then fails to carry out its obligation (i.e. the seller does not sell or the buyer does not buy), the parties have two options:

1. To ask an Italian judge to issue an order by means of which the party in breach must perform its obligation (i.e. buy or sell);
2. When a caparra confirmatoria has been included in the preliminary contract, to keep the confirmatory deposit (the seller), or ask double the deposit paid (the buyer).

The "caparra confirmatoria" (confirmatory deposit) is an amount of money, normally 20-30% of the total price, paid to the seller by the buyer at the signing of the preliminary contract. Its role is to provide a penalty in the event one of the parties breaches the preliminary contract (i.e. the buyer does not buy or the seller does not sell).

4. Professionals required by a foreign buyer

- a) Notary (Notaio) - mandatory. The buyer has the right to choose the notary who wishes. The notary will:
- carry out checks and certify that, at the time of the signature of the final purchase deed, the owner/seller has good title on the property and that the property is not affected by mortgages, restrictions, prejudicial registrations, etc.;
 - certify the identity and the signatures of the parties to the purchase deed;
 - register the deed at the local land registry;
 - pay the taxes related to the transfer on behalf of the buyers.

The costs of a notary are normally determined by a national tariff, with minimum and a maximum for each activity. Having close relationships with many notaries in Italy, we are able to negotiate good rates on behalf of our clients.

- b) Lawyer (Avvocato) – the lawyer may draft/check and negotiate all the contracts involved in a property purchase: from the instructions to the estate agent, to the final purchase deed going through the offer of purchase and the preliminary contract, if necessary. In addition, organizes the purchase process in accordance with the needs of the client and the outcome of technical/legal checks. Given the above, it is strongly advisable to obtain the services of a lawyer and, if possible, one who speaks the language of the buyer.

- c) Accountant (Commercialista) –the property produces an income so it is mandatory to fill a tax return that is usually prepared by an accountant). It is strongly advisable in the event the buyer wishes to buy shares in a company owning a property (e.g. if the property is run as a commercial/agricultural activity: B&B, *agriturismo*, etc).

- d) Surveyor (Geometra) – It is strongly advisable to ask a surveyor to carry out a due diligence to check the technical specifications and whether the factual state of the property conforms with the town/city planning records, requirements and restrictions. The surveyor is also in a position to check and direct works performed on the property. We have in-house surveyors who provides comprehensive reports in English for our clients.

- e) Estate agent – If required, an estate agent can be instructed. The fees of the estate agent are normally paid by both buyer and seller. Italian law states that the broker commission is due if the deal is concluded as a result of the estate agent's intervention. In absence of an agreement between the parties and the estate agent, the amount of the commission is determined by professional tariffs or local practice. To avoid unpleasant surprises, we advise clients to sign a written agreement with the estate agent, specifying the agreed fees, any expenses due, and relevant terms and conditions of payment, etc.

Costs

- a) Notary: according to the national tariff and in proportion to the value of the legal documents. For a property of euro 500.000,00 the fees for the notary will come to around euro 2,500.
- b) Lawyer: according to national tariffs which, in property transactions, is generally in proportion to the value of the property (1-3% according to the price of the property and the activities to be carried out). The fees can be agreed also on an hourly basis.
- c) Surveyor: according to a professional tariff which can either be in proportion to the value or on an hourly basis.
- d) Estate agent: a percentage of the property price or a flat-fee if the property is not of high value. Both the buying and selling party must pay, on average, between 2-4% each, generally due at the time of signature of the preliminary contract or the purchase deed.

5. Insurance

It is not compulsory to insure a property in Italy. Of course, it is advisable, and the bank will require this if there is a mortgage. Banks and insurance companies offer various policies against fire, theft, and other damage to the property

and to third parties, usually for a cost of around a few hundred euro per year. We are available to deal with the insurance companies on behalf of our clients in order to find and negotiate the most suitable insurance policy.

6. Inheritance

When buying a property in Italy, please note that Italian inheritance law grants minimum percentage interests to certain categories of heirs (spouse, children, etc.), even if there is a Will which purports to allocate the inheritance in a different manner. Normally, in countries like the USA or UK, private international law states that, for immovable assets, the inheritance law of the country where the asset is situated is applied to the succession. In order to avoid frequent problems with the registration of these properties into the heirs' names in future, an Italian will may be registered, the content of which must be examined by a lawyer on a case by case basis.

7. Tax Implications

When you buy a property in Italy, the following taxes are due:

a. Property transfer taxes

The applicable transfer taxes in Italy, to be paid by the buyer, depend on several issues: the seller (if a development company, a company or private individual), the intention of the buyer (if he wishes to take out residence or not), the kind of property to be transferred (if registered as luxury property or not, or for residential use or not).

In general, transfer taxes come to around 10% of the purchase price paid for the property. Given the above, in order to provide clients with the exact figure of the taxes due, it is necessary to receive all the relevant information.

If the buyer intends to take up local residence, the taxes come to 2% (4% if the premises were erected by a building company and the works were finished less than 5 years ago) on the price of the property, but to take advantage of this “prima casa” (first home) tax discount the buyer must obtain local residence within 18 months from the date of the purchase deed. In addition, he must not have purchased other properties in any part of the country with this “prima casa” discount, nor must he sell the “first home” within a period of 5 years after the purchase date, unless he buys another property as his principal residence within a year from the sale

Moreover, if the property is registered for residential use and the buyer is a private individual, the above taxes can be calculated on the “cadastral value” of the property, which is in general much lower than the purchase price.

The “cadastral value” is a value obtained by multiplying the “cadastral income” (*rendita catastale*) 110 or 120 times. The “cadastral income” is a value expressed in euro given by the Tax Office to all properties by means of a calculation which takes into account the surface area, the location, the number of rooms, etc.

For purchase deeds relating to the purchase of luxury property the registration taxes are 9% (22% if VAT is applicable; i.e. if the seller is a building company and the property was built less than 5 years ago). For building sites or agricultural land, the registration taxes are 9%.

All the above taxes are paid to the notary at the time of signing of the final purchase deed. The notary will then forward this amount to the Tax Office.

b. Periodic taxes

IRPEF (*Imposta sul Reddito delle Persone Fisiche* – Income tax). This tax is only payable in the event rental income is earned from the Italian property, full details of which will need to be provided in the relevant income declaration submitted yearly. When a person takes up residence in Italy, he normally pays taxes in Italy.

IUC (*Imposta Unica Comunale* – Single Municipal Tax). This tax actually comprises three different local taxes:

- 1) *IMU* (*Imposta Municipale Unica* – Local authority tax). This is a tax which has to be paid to the local authority in which the property is located (similar to council tax). It is not charged on the so called "first house" (except for luxury properties) ;
- 2) *TARI* (*Tassa Rifiuti* – Local refuse removal tax). This minor tax must be paid to the local authority in which the property is situated. It is calculated from both the square meters of real estate units and the volume of waste produced by its resident.
- 3) *TASI* (*Tassa sui Servizi Indivisibili* – Local tax for municipal services). This is a tax which has to be paid to the local authority in which the property is located for the services rendered by the municipality such as lighting, road maintenance and other municipal services. If you rent your property for a long period, the tenant will pay TARI and a part of TASI.

c. Rental income

Pursuant to Italian law (art. 23, 1st §, lett. a) of D.P.R. 917/1986), any income arising from ownership of real estate located in Italy earned by a non-resident is taxable in Italy. Therefore, if a non-resident rents out property in Italy, he is liable to pay Italian taxes on the rental income.

Taxable rental income is generally computed as rental income less a lump-sum deduction of 15%, i.e. the taxable rental income cannot be less than 85% of the gross income. The normal income tax rates (IRPEF) are then applied to the computed taxable rental income, but a flat rate (so called "cedolare secca") of 19% or 21% may be applied if specific conditions are met

Non-resident companies are taxed as if they were an individual: in other words, there is no substantial difference between buying as an individual or purchasing as a company.

The rental income is VAT-free, unless the seller chooses to apply VAT for fiscal reasons (it may be advisable in certain cases when the Landlord is an Italian company).

8. Residence

A foreigner can apply for residence in Italy. One of the requirements to take up residence is that the foreigner must live in Italy for no less than 6 months per year. Residence has tax implications:

- it gives the possibility to benefit for "prima casa" tax discounts
- it may cause the payment by the resident of all taxes in Italy, including those due for income received abroad, in accordance with the world-wide income principle. However, this must be examined on a case to case basis.

9. Transfer taxes in case of inheritance

A "declaration of succession" (*dichiarazione di successione* - the advice of an Italian lawyer will be strongly advisable in these cases) must be submitted within 12 months from the date of death of the owner/co-owner of immovable assets in Italy, at the competent Tax Office in which the deceased last had his residence. If the deceased did not have residence in Italy, the declaration must be presented at one of the Tax Offices in Rome.

The taxation rate depends upon the size of the assets to be transferred to the heirs. In general, 3% tax is applied on the cadastral value of the assets. For assets with a cadastral value greater than euro 1M, another 4% (or 6% if the heirs are not the spouse or the children of the deceased) inheritance tax is applied on the amount exceeding 1M.

Please note that the information herein is of a general nature and should not be regarded as legal or professional advice. The subject matters covered in this document are complicated and you should seek advice on how they apply to your individual circumstances.