

## A Guide To Selling Property in Italy



- The legal implications of selling an Italian property require serious consideration.
- The Italian legal process for selling property is complex and can be protracted.
- Property transactions involve high stakes, an experienced property solicitor can guide you safely through the process.

The sale of real estate in Italy is arranged in three stages:

1. Putting the property on the market
2. Negotiation and signature of the preliminary contract
3. Completion of the sale

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### **1. Putting The Property on The Market**

The first stage is to put the property on the market, either directly or through an estate agency.

If you are considering appointing an Italian real estate agent, it is important to ensure that the agent is qualified and registered with the local Chamber of Commerce in full compliance with Italian law.

Legislation governing real estate agents aims not only to guarantee the professional qualification of real estate agents but also to ensure the agent has compulsory indemnity insurance, which is in the best interests of the client.

Should the agent not be registered, he/she could be prosecuted for carrying out a reserved activity and may not be legally entitled to request commission.

The estate agent is usually paid commission (Provvigione) both by the buyer and the vendor.

Estate agent commission is negotiable but is generally the equivalent to 3% of the full sale price.

Frequently, real estate agents require a foreign seller to sign standard terms of engagement, which should be carefully evaluated before signature. All the more so if the document is drafted in Italian.

Amongst other aspects, it is important to assess the agent's brokerage fees, minimum sale price, duration of the mandate and its exclusivity.

Once a potential buyer is considering the purchase of your property, the buyer will generally sign a first legally binding document called a Proposta Irrevocabile d'Acquisto, Reservation Offer. Often a small deposit is made to the seller at this point.

The reservation offer should be signed by both buyer and seller.

In effect the reservation offer removes the property from the market for an agreed period of time, usually 15 days, to allow the interested buyer exclusive rights to conduct due diligence on the property.



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

The aim of due diligence, amongst other things, is to establish:

- That the property exists. It is as described, and the seller has the right to sell the property in question.
- That there are no mortgages / charges nor any third parties rights or other undisclosed/encumbrances affecting the property.
- That the property complies with all the local planning and building regulations, and complies with any relevant building plan approved by the local authority.
- That the property is fit for human habitation, unless the property is being sold for reconstruction, and that the owner holds the relevant certification of habitability Certificato di Abitabilità.
- That the seller has complied with all the relevant Italian tax legislation by lodging tax returns, and paying tax ,including tax which may have been due in the previous tax years. In default of this requirement, the property may be deemed legally unsaleable.
- That where the vendor is the owner of a company, the vendor should not have been declared bankrupt and no application to this effect should be pending against him; and
- That where the property is in a block of flats, all service charges due have been paid.

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## ***2. Negotiation And Signature of The Preliminary Contract***

The second stage of the conveyancing process in Italy is the negotiation and signing of the Contratto Preliminare di Vendita, preliminary contract.<sup>1</sup>

The seller must ascertain that all the statements contained in the preliminary contract are true to the best of his/her knowledge, that no false statements have been made, that full disclosure has been given and that the specific enquiries raised by the buyer have been answered truthfully.

Usually at this stage, the buyer makes a deposit, ranging from between 10% and 30% of the total sale price of the property. **The implication of such payment is that should the buyer withdraw from the purchase prior to completing the sale, the buyer will automatically forfeit the whole of the deposit to the seller.**

**Where the seller withdraws from the sale prior to completion, and if the seller is deemed to be in legal breach of the preliminary contract, the seller will be required to return the buyer's deposit. The buyer may also decide to take the seller to court for breach of contract. This could result in the seller being required to indemnify the buyer with double the deposit amount. In addition, further sums may be payable, if it is proved that the damages actually exceed the amount of the deposit.**

Italian law states that both parties to a prospective transaction must act in good faith. Prior to exchange of a preliminary contract, the seller must provide the buyer or their legal advisers, with copies of all documentation relating to the property, and inform the buyer of any material fact which may affect the buyer's decision to proceed with searches and the purchase of the property.

It is important to ensure that the property complies with any 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 seller has applied for a Planning Amnesty (Condono Edilizio), copies of the relevant documentation must be handed over to the prospective buyer.

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<sup>1</sup> For additional information, see De Tullio Law Firm's Guide to Buying Property in Italy

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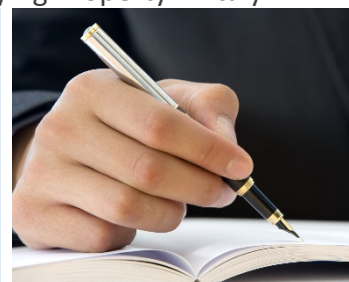
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The seller is required by law to produce a certificate of habitability (Certificato di abitabilità). This certificate, issued by the local authority, confirms that all systems at the property are legal and that they comply with health and safety legislation. To sell an Italian property, this certificate is mandatory. It is therefore advisable for the seller to obtain this certificate prior to signing a preliminary contract and receiving any deposit from a potential buyer.

If unable to obtain the certificate of habitability, the seller may be deemed to be in breach of contract. To avoid possible claims and penalties, should a certificate of habitability not be available on exchange of contracts, the seller should disclose the issue prior to signing a preliminary contract. The seller should ensure the preliminary contract reflects this.

The Public Notary will require the certificate of habitability to draft the deed of sale for the property. Without this certificate, the sale of a property cannot proceed, unless the buyer accepts, in writing, to purchase a property lacking a certificate of habitability.

The preliminary contract should reflect all disclosures. Any outstanding payment of taxes should be disclosed as well as any remedied and or unremedied breaches or notices served by relevant authorities.

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

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

Particular care should be taken if the sale property is a villa or land with statutory farming pre-emption rights (Prelazione agraria). According to Italian law, farmers, tenants and neighbours in the immediate neighbourhood are entitled to be notified of the proposed sale of a property.

According to legislation, they have first option on purchasing agricultural property. Immediately prior to signing a preliminary contract, it will be necessary for the seller to serve a copy of the contract on all parties with pre-emption rights, so that a decision can be made by the person entitled within the statutory term (usually 30 days).

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It is important to ensure full compliance with this legislation. Any breach of Italian pre-emption rights may result in the local tenant / neighbour who has not been duly notified, claiming the property from the buyer for up to a year after completion of the sale, thus leaving the unaware buyer with a legal claim against the seller.

These are just a few of the points to take into consideration, but it is by no means an exhaustive list. However all aspects of purchase entail potentially serious consequences for the seller. Annulment or breach of the preliminary contract and/or a claim for damages for misrepresentation are some of the risks that a knowledgeable property solicitor will ensure a seller avoids.

### **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).

Italian Public Notaries are State officials legally entrusted to transfer ownership titles of Italian property; they have the special duty of correctly drafting the Deed of Sale (Rogito), to ensure its proper execution, registration, and payment of all Italian taxes ancillary to the completion of the sale.

The Public Notary must act as an absolutely neutral and impartial party in the transaction. This is why he/she cannot be a substitute for a solicitor in terms of representing the interests of the seller. The only way for a seller to be assured of proper legal safeguards is to engage the services of an independent solicitor.

Before completion of the sale, the seller must produce the originals of the property title deeds for the buyer. These documents are the Deed of Sale or the Italian Inheritance Tax Return duly lodged with the Authorities, all relevant planning and building licenses together with an Energy Performance Certificate, a certificate of habitability and any other required documentation.

All parties have the legal duty to provide the Public Notary with information regarding the sale price and the real estate agent appointed. This will be included in the Deed of Sale, which is the document that completes the sale. It is drawn up by the Public Notary and is affirmed under oath (Dichiarazione in atto pubblico) by buyer and seller.

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Should any information in the Deed of Sale be omitted, incorrect or incomplete, the parties could expose themselves to criminal liabilities and risk substantial fines.

If the seller benefited from “prima casa” (first home) fiscal reductions, the seller will be subject to a penalty if resale of the property occurs within five years of the original purchase. This can be avoided if the seller buys a new residential property in Italy within one year from the sale of the first home.

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

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