

# GUIDELINE FOR THE PURCHASE OF REAL ESTATE IN ITALY



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## PURCHASE OF REAL ESTATE

Whether it is your primary residence or a holiday home, it is certainly one of the most important decisions you will ever make.

The Italian real estate market, with its **territorial diversity** and **tax advantages**, offers a wide range of opportunities that you can make the most of **with the right advice**.

Buying a real estate in Italy is basically a straightforward process, but from the point of view of a foreigner who is not familiar with the local conditions, it can present a number of pitfalls, as there are some special features that make the procedure very different from other European countries.

Therefore, before signing the various documents and concluding the final purchase contract, some preliminary work should be done **to protect the buyer from unpleasant surprises**.

### IN A REAL ESTATE TRANSACTION, VARIOUS ASPECTS HAVE TO BE CONSIDERED IN ADVANCE:

- Analysis of the property to be purchased: depending on the type of use of the property (main residence or holiday home) and with regard to the implementation of any renovation and/or energy-saving measures.
- The Italian real estate market is divided into “premium” areas, where sellers dictate prices, and secondary areas, where buyers’ bargaining power increases significantly.
- Applying for a loan: Despite the common European market, in practice it is easier to finance the purchase with a loan from an Italian bank.

# THE SINGLE STEPS:

In general terms, the procedure for acquiring real estate is always the same. The main differences arise from (i) the condition of the property (already existing or still under construction) or (ii) the type of seller (natural person or company). Apart from these differences, a foreign buyer necessarily has to follow the following five steps:

## STEP 1



### Real Estate - Due Diligence: Checks to be carried out before signing the contract

Once the property to be acquired is found, several preliminary checks must be carried out to avoid unpleasant surprises.

These checks can fall into different areas, i.e. in legal terms, to ensure that the property can actually be legally acquired without the risk of legal action by third parties and/or other owners, and in purely technical terms, to ensure that the property complies with legal requirements and that there is no condition contrary to building law or conditions restricting transferability or access to tax relief (see section “Building bonuses: the 110% super bonus and subrogation”).

#### | Checking the origin of the property

It is advisable to check the contents of the last purchase contract for the property to determine how it came into the possession of the current seller and thus exclude the existence of previous deeds based on which third parties could assert rights to the property or ownership claims. In the case of a previous gift, for example, the relevant claw-back actions can still be brought forward by the heirs 20 years after the gift itself. It is therefore advisable to request a special insurance policy from the seller to safeguard the value of the property. Of course, the purchase in such cases is not simple and straightforward, so it is advisable to rely on the experts at the law firm Dike Schindhelm to find the best solution.

#### | The examination of the existence of adverse register entries and encumbrances.

Checking that the property is unencumbered is also a necessary activity.

IT IS ALWAYS BETTER TO CONSULT AN ADVISER TO AVOID UNPLEASANT SURPRISES





In particular, the registration of a court application (i.e. a dispute over the property under Article 2656 of the Italian Civil Code) may limit the free transferability of the property and entail further risks. This may not have any practical consequences, but the cancellation of the registration requires a formal procedure (before a notary or a court), which is not always easy. The same considerations apply in the case of a possible registration of a previous prior contract.

The possible registration of mortgages is also to be checked and their cancellation is to be obtained before the notary with the participation of the parties concerned, as is customary in the case of mortgages registered as security for loans from credit institutions. In the case of the registration of property attachments, on the other hand, court cancellation proceedings must be initiated. It is therefore advisable to carry out these checks with extreme caution.

### | Technical construction tests: “The declaration of conformity”

As a rule, a technician (architect/expert) is commissioned to determine the building law conformity of the property, who must carry out the following activities:

- Verification of the urban planning compliance of the property;
- Checking for the presence of any landscape or historic constraints;
- Verification of the existence of any extraordinary resolutions of the community of owners;
- Verification of the conformity of the lines and installations.

### | The correctness of the service charge statements

When buying a condominium, it must be ensured that the seller has settled the payments for ordinary and extraordinary expenses for the current year and the year preceding the sale (art. 63 par. 4 Introductory Act to the Italian Civil Code), as the buyer is jointly and severally liable for these amounts.

It is therefore advisable to ask the property manager for an indemnity for these payments or else a special assurance from the seller.

### | Tax aspects of real estate acquisition

This aspect is of utmost importance when buying: many factors can influence the applicable tax regime and thus the cost of the project. It is therefore advisable to examine every possibility in advance with an advisor. In general, each purchase is subject to a different tax regime. Taxes are often based on the cadastral value rather than the purchase value or a fixed amount. Taxes can be divided into two categories:

- Taxes related to the transfer of the property, the amount of which depends on whether or not you can claim the benefits for primary residence (see section “Benefits for primary residence of foreigners”).

<b>Registration tax</b>	9% (min. € 1.000)
<b>(or) VAT 10%</b>	22% for luxury property
<b>Mortgage tax</b>	€ 50,00 / 200,00 fix
<b>Land registry tax</b>	€ 50,00 / 200,00 fix

- Taxes related to the maintenance of the property, i.e., in connection with its ownership or the public services associated with it (e.g., refuse tax):

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Since the price also depends on the intended use of the property (renting, tourism, etc.), it is advisable to take these aspects into account during negotiations to avoid unpleasant surprises.

## | Benefits for primary residence of foreigners

The acquisition of a property as the purchaser’s main residence may be subject to a very favourable tax regime.

The foreign buyer can claim these benefits even if he is legally (already) resident in Italy. The most obvious advantage is the reduction of the registration tax from 9% to 2%! It is therefore necessary to check, with the help of an expert from the law firm Dike Schindhelm, whether you meet the necessary requirements to benefit from these considerable savings.

## STEP 2



### Steps before signing the contract

Once all checks have been successfully completed, the necessary formal / bureaucratic steps can be taken to prepare for the actual purchase.

#### | Request of an Italian tax number

To be able to carry out any activity related to real estate, it is necessary to obtain from the tax office the so-called tax number, i.e., an alphanumeric code that is assigned to each contracting party (natural person or legal entity) and uniquely identifies him or her for any business-related activity. This code must be mentioned in every official document.

The tax number can be applied for at any office of the tax authorities in Italy, stating the reasons for applying for the tax number (e.g., purchase of a property) and attaching a copy of an identity

document showing the address of residence. The tax number is usually issued within a few days and the law firm Dike Schindhelm can take care of the entire procedure.

### | Application for a bank loan and opening of an Italian current account

It may be useful to open a current account with an Italian bank to manage the property and facilitate maintenance.

In this way, it will be possible to make utility and tax payments using payment instruments typical of the Italian banking/tax system, such as MAV, F24 and F23.

The purchase of the property will also be greatly facilitated using an Italian current account, even if it is not strictly necessary for this purpose.

If the buyer needs to take out a bank loan in Italy, it should be borne in mind that the time required for approval and the need to sign the contract in notarial form at the same time as the purchase contract and the corresponding payment of the purchase price require appropriate organisation: It is therefore advisable to conclude the sale subject to the bank granting the loan and to indicate in the preliminary contract (see below) the appropriate time for the conclusion of the subsequent final purchase contract.

## STEP 3



### The preliminary contract

It is common that an initial written commitment called an “offer to purchase” (which has the value of a preliminary contract) - subject to the successful completion of the checks referred to in steps 1 and 2 - has already been signed through an estate agent.

#### | The Offer to Purchase

Such offer consists of the buyer’s declaration of interest in purchasing a property at a certain price: the offer is usually signed on pre-printed forms provided by real estate agents and is accompanied by the payment of a sum of money in the form of a deposit or a deposit in accordance with article 1385 of the Italian Civil Code.

The offer is irrevocable until it expires, i.e., until the period during which the seller is free to decide whether or not to accept it, while also being free to consider other offers.

Once the seller accepts the offer, it becomes an official preliminary contract, albeit without all the guarantees that a “real” contract can offer.

However, for sales without particular problems, a mere (accepted) offer to purchase may be sufficient.

**NB:** *the offer is binding, i.e., the deposit is lost if the buyers do not conclude the deal or do not want to complete the purchase contract!*





## | The preliminary contract

The preliminary contract is - regardless of its form (purchase offer or drafting of a stand-alone contract) - an agreement that commits the parties to sign the final purchase contract. It must be very similar in content to the final deed and contain all important information about the property as well as agreements on the price and the method of payment.

The preliminary contract can also already be drawn up in notarial form (this is only mandatory for properties under construction, see below): Only if the contract is drawn up in this form can it also be registered in the land register to ensure maximum protection. The registration of the contract has the so-called “reservation effect”, i.e., its validity is enforceable against all third parties, so that later registrations of other preliminary contracts, mortgages in favour of third parties and other disadvantageous acts are prevented or rendered ineffective for the buyer.

## | The acquisition of a property to be constructed and Legislative Decrees No. 122/2005 and No. 14/2019

If the property to be purchased is not yet completed or still “under construction” and the seller is a construction company, Italian law provides for special protection of the buyer against the main risks related to the insolvency of the seller and/or the subsequent deterioration of the building. Legislative Decree No. 122/2005 imposes certain obligations on the seller, among others:

- The necessity to sign a preliminary contract in notarial form;
- The necessity to hand over a bank guarantee for the amount paid by the purchaser as a deposit when signing the preliminary contract;
- In the event of sale, the handing over of a ten-year insurance policy to protect the building against deterioration.

Despite the precautions prescribed by law, each step must be carefully examined in these cases.

## | The down payment

When signing the preliminary contract, i.e., the offer to purchase, the buyer has to pay an amount which has a dual function, namely: (i) a deposit on the price in the event of a successful sale, (ii) a guarantee to the seller that the buyer will fulfil his contractual obligations. This amount is called a “down payment” and is forfeited if the buyer does not go through with the sale, while the seller must repay a sum equal to twice the amount of the amount received in the event of his own breach of contract.

## | The real estate agent's fees

The involvement of an estate agent is common practice. Their fee is usually calculated as a percentage of 1 to 3 % of the final sales price. The right to payment of the fee arises when the seller accepts the offer and/or signs the preliminary contract. Failure of the sale has no effect on the agent's fee, which remains due.

## | The representation of the buyer

The participation of foreign buyers in sales contracts is not easy due to language barriers. Indeed, it is mandatory that all official acts be drafted in Italian and that those involved in the act must be proficient in Italian.

The acquirer can still participate personally in each deed, but if he does not speak Italian, each deed must be drafted in two languages and a translator (along with two witnesses, at least one of whom must also speak the foreign language) must participate in the signing. This would not only complicate negotiations but also increase costs, not to mention the fact that many technical details would remain unclear.

However, it is possible to handle all purchase transactions in such a way that a third party (e.g., a lawyer of the law firm Dike Schindhelm) is issued with a special power of attorney to handle all formalities connected with the purchase. A lawyer of the law firm Dike Schindhelm) is issued a special power of attorney for the completion of all formalities connected with the purchase, which must be signed and certified before a notary in the buyer's country of origin and provided with the so-called “apostille”, unless a bilateral agreement is in force between Italy and the buyer's country of origin which exempts notarial deeds from the obligation to legalise/apply the apostille; subsequently, a certified translation of the power of attorney must be prepared in Italy.

If the purchase is made in the name of a company, the person representing the company must have appropriate powers, which the notary must verify on the basis of the company's documents, such as extracts from the commercial register, certificates of appointment or special powers of attorney. The power of attorney must be drafted with the utmost care and be sufficiently “comprehensive”, as it is the document needed for all formalities related to the sale.

DELEGATING THE SIGNING OF THE CONTRACT TO A LAWYER FROM THE LAW FIRM DIKE SCHINDHELM OFFERS MORE SECURITY IN THE ACQUISITION AND SAVINGS IN TRANSLATION COSTS.





## STEP 4



### The notarial deed

You finally become the owner of your new home! The notarial deed is the act by which ownership of the property is officially transferred and usually coincides with the transfer of possession.

#### | The purchase contract

The notary, who is usually chosen by the buyer, carries out the checks required by law to ensure the conformity of the deed, and in particular he:

- Confirms the identity of the persons involved in the deed and their authority to sign, and checks any financial relationships between the spouses;
- Checks that the property complies with building and town planning regulations;
- Checks the existence of adverse registry entries such as mortgages, court applications, other preliminary contracts and the regularity of the land register of the property;
- Determines the applicable tax regime for the case in question and the existence of the conditions for claiming this regime by the persons involved (e.g., in the case of claiming benefit of primary residence);
- Verifies the energy efficiency status of the building by issuing the energy performance certificate;
- Verifies compliance with anti-money laundering rules in relation to the traceability of payments and the payment of brokerage commissions.

#### | The payment of the purchase price, the taxes, and the notary fees

On the occasion of the notarial deed, the price is to be paid. If the buyer has an Italian bank account, the usual means of payment is to hand over a cash cheque. Otherwise, especially in the case of foreign buyers, the buyer may pay the price a few days in advance into an escrow account of the notary to ensure that the amount is credited to the account on the scheduled notarisation date, with the obligation of the notary to transfer the amount to the seller once all formalities have been completed. In any case, all taxes incurred in connection with the sale (see section “Tax aspects of real estate acquisition”) must be paid to the notary, who will then:

- Register the deed of sale with the Land Registry and pay the taxes on behalf of the buyer;
- Record the deed in the public registers to make it effective and binding on third parties. Ownership is then recorded in a register that is publicly accessible and can be inspected by anyone.

The notary fees, which are normally paid by the buyer, must also be paid. Once the deed is signed, you are officially the owner of the property!

## | Checklist for the purchase contract

In order to proceed with the purchase of the property, the buyer must submit various documents, depending on whether he is a natural person or a legal entity (company).

### In the case of natural persons, the following information is required:

- ✓ ID (with current residence)
- ✓ Italian tax number (codice fiscale)
- ✓ Document certifying marital status, i.e., married or not married.

### For legal entities, the following information is required:

- ✓ ID of the legal representative.
- ✓ Indication of the name, registered office, and tax number/VAT number of the company, normally by submitting a current extract from the companies' register.
- ✓ Document proving the power of representation (e.g., minutes of the shareholders' meeting or appointment resolution).

### In addition, the following documents must be presented to the notary public:

- ✓ Copy of the preliminary agreement
- ✓ Copy of the payment made when signing the preliminary contract
- ✓ Details of the real estate agent, if any, with details of the agreed commission and proof of payment of any amounts already paid.

## STEP 5



## Property Management and Tax Benefits

### | Handing over of the property

As a rule, the signing of the purchase contract transfers not only ownership but also possession of the property by handing over the keys: however, there is nothing to prevent the parties from agreeing on an earlier or later handover, taking care to regulate their respective responsibilities.

### | The subsequent steps

After the handover, the new owner must take on some additional tasks for the management of the property and its functionality, in particular:

- Transmission of the sales statement to the condominium manager for the calculation of the condominium's utilities and the updating of the owner's register;
- Transfer of the main utilities (electricity, water, gas) and determination of the payment modalities;
- If applicable, transfer of residence to the condominium via the local residents' registration office if the property is used as a personal residence.

If you intend to rent out the property, even for a short period of time, it is necessary to consider the tax aspects and the need to apply the regime established in Legislative Decree 50/2017, which generally provides for the application of the so-called "Cedolare Secca" (i.e., the payment of a fixed amount).

### | Building bonuses: the 110% super bonus and subrogation

Partly due to the need to revive the economy after the Covid 19 crisis, the Italian government has launched a very convenient and easy-to-use incentive programme for the construction sector, which makes the market very dynamic.

The main relief allow for the recognition of a tax credit that can be reclaimed over 10 years as a deduction from outstanding taxes.

This credit can also be transferred, as provided for in Article 16 of the "Relaunch" Decree-Law (all banks offer this service), so that the amount spent can be monetised immediately and, in certain cases, the construction work can be carried out free of charge.

Below is a list of the main benefits and the corresponding tax credit:

- Super bonus in connection with energy retrofitting of buildings: 110% credit;
- Bonus facades for the beautification of the external appearance of buildings: 60% credit;
- Bonus for energy savings through replacement of windows and doors or renovation of facilities: 65% credit;
- Extraordinary renovation of building/apartment interiors: 50% credit.



THE BUILDING  
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