

Property Purchase Process

Is buying a property overseas a good idea?

For many of our clients this has been one of the best decisions of their life. People buying the holiday home see a huge lifestyle benefit and they often become so comfortable in the area that they later decide to retire there. They usually also see it increase enormously in value over the years. The person retiring finds a better climate, a lower cost of living and, often, a far more active social life that they enjoyed at home. The investor who buys well and takes good advice sees an asset that often performs far better than the stock exchange - and often with less risk.

Buying a property overseas is not for everyone, but it suits a very large number of people. There are now over 800,000 British households that own a property overseas (Source: MINTEL).

Can you make the same checks you make in Britain?

No. The systems in Italy are different from the English, Irish or US way of doing things.

Sometimes the local procedure is not as safe as in Britain. Sometimes it is better. It is *a/ways* different!

Remember that every year thousands of British people successfully and safely buy houses and apartments.

This is what we set out to do for you.

The role of the estate agent (US: realtor)

Most UK, Irish and US buyers use the services of an estate agent to help them find a property.

Most (but not all) estate agents are, of course, honest and they can also help by introducing you to a legal financial advisor. The problem is the presence of very ruthless and all too often unprofessional competition within this sector.

To become an estate agent in Italy you need to complete a specialised course at the Chamber of Commerce, indeed you need to hold specific qualifications in this field, and yet there are still websites dealing in the sale of properties that conceal people who aren't even licensed estate agents. These are reckless individuals who practise this profession unlawfully. Be very careful you are only dealing with legal estate agents!

Sales direct from a seller or developer

Some people are buying directly from a seller or developer, without the intervention of an estate agent.

You need to take all the precautions.

EVEN SOME MAJOR DEVELOPERS SELL PROPERTY THAT IS ILLEGALLY CONSTRUCTED OR NOT SAFE TO BUY.

The role of the Notary (Notaio)

In Italy the Notary (Notaio) plays a major part in the process of buying and selling real estate.

The Notary is an official who is there to put on the public record the fact that the formal documents recording the sale/purchase have been signed in his or her presence and understood by the parties concerned.

The Notary also carries out a number of checks as to the status of the property and/or the buyer and seller. The Notary may act for both buyer and seller.

Loans and mortgages

Financing the purchase of the property may take several forms. For example:

- a first (or second) mortgage from a UK/Irish/US lender, secured on your existing UK/Irish/US property
- a mortgage on your new Italian property from a lender in Italy (or, occasionally, elsewhere)

Italian mortgages are different from UK/Irish/US mortgages.

Mortgages are freely available in Italy. You will, of course, have to meet the bank's eligibility criteria.

Most mortgages do not exceed a term of 30 years or age 75 years. Interest only mortgages are generally available.

You should bear in mind that the range of mortgage products on offer to you will not be as wide or as flexible as you are used to in the UK, Ireland or US.

Choosing the wrong mortgage is an expensive mistake.

Structural surveys

As is the case with the purchase of a property anywhere, it is often prudent to have the property you intend to buy surveyed (US:inspected). We strongly recommend a survey, especially in the case of older or unusual properties or in

the case of properties that have been extended or modified. Structural surveys typically take 7-10 days. The time and cost varies from place to place.

What is the process of buying a property in Italy?

Preparation

The process of buying a property - whether for your personal use or as an investment - SHOULD start with thorough preparation.

This will save a lot of wasted time AND money.

Preparation Check List

- **Which type of property is best for you?** Villa, apartment, townhouse? This is not always obvious.
- **How are you going to pay for the property?** Are you going to take out a mortgage? If so, where and for how much? What are you doing to guard against the risk of fluctuating exchange rates?
- **How are you going to manage the property? If you want to let the property, who are your target tenants? Who will manage the lettings? How much money will you make? Who should be the legal owner of the property?** The right choice can save you £/\$/€ THOUSANDS, even on an ordinary holiday home. See below for more information.

Who should own the property?

Getting this question of ownership wrong is probably the most common and the most expensive mistake people make when buying property overseas. There are many people who could be made the legal owner of the property or, as the case may be, the shareholders in the company that owns the property. The best choice is often not obvious.

Getting this wrong can cost you tens of thousands of pounds/euro/dollars of totally unnecessary taxes, during your lifetime and on your death.

What are the options?

There are many ways to purchase the property. These include:

- In your own name alone
- In your name and in the name of your co-purchaser(s)
- Wholly or partly in your children's names or in the name of somebody whom you would like to inherit the property from you
- In the name of a limited company, whether English, Italian or "off-shore"
- Via your SIPP/SSAS pension fund
- Via your investment fund (REIT, PUT etc)
- Via an investment club
- Via a trust

Each method has its own advantages and disadvantages. The one that suits you best will depend entirely upon your own personal circumstances.

The choice is NOT obvious. Just because a husband and wife are buying the property does not mean that the best choice is to put it in both of their names.

The 'Reservation Contract', 'Offer to Buy' or Preliminary 'Purchase Contract'

A **Reservation Contract** (Offerta di Acquisto) is a contract, usually short, under which you pay a small amount of money (typically £2000, \$3,000 or €3,000) to take the property off the market for a short time (typically 2 to 4 weeks). During this period the Notary can check things out. If everything is in order you can then sign a preliminary purchase contract and pay over a full deposit. If there are any problems, you pull out. Usually, if you pull out because of legal problems you will be contractually entitled to your money back. If you simply change your mind you will often lose the deposit.

An **Offer to Buy** is a formal written offer to buy a property. It should, ideally, be drafted by a qualified estate agent to make sure that it contains any clauses needed to protect your position. Once you have made the offer, if it is accepted by the seller this can create a legally binding commitment. An Offer to Buy is not a document to be signed lightly.

A **Preliminary Purchase Contract** (Contratto Preliminare) is a legally binding contract to buy a property. It is followed up by a formal contract of sale, so to that extent it is a preliminary contract, *but it is legally binding. If you do not go ahead with the purchase you will almost certainly lose our deposit and may face further action from the seller.*

Ideally, it should be subject to conditions stating that if various things do not happen (e.g. if you don't get a mortgage or permission to build a swimming pool) the contract will be cancelled and you will be entitled to your money back.

In fact, in Italy the starting point is the Offer to Buy. This will give the seller 14 or 28 days to accept your offer, during which time you are legally bound to buy if the offer is accepted and any conditions in it are met. This means that the offer must be drafted carefully to cover all the points of importance to you. We do this for you.

Once the offer has been accepted, whether formally in response to an Offer to Buy or informally, and the buyers have completed any checks they want to carry out, the buyer and seller sign a **Preliminary Contract Purchase Contract**.

Be sure that, before you sign a preliminary contract we carry out a variety of checks to make sure the property is what it seems. These will vary from place to place and from one type of property to another but would usually include:

- A **Land Registry check** to make sure that the person selling the property is its registered legal owner and that the property is free from debts or other onerous burdens
- A **Planning enquiry** to establish the current planning status for the property. Ideally, this would show that there is (in the case of a new property) a construction licence for the building of the property or (in the case of a resale property) a habitation certificate authorising the occupation of the property as a dwelling
- **Checks on the proposed contract** of sale to make sure its terms are fair and cover all the necessary points
- Checking that, where these are required, the proper guarantees securing the completion of construction of the property will be made available

If you want a survey, now this is the time to do it. The same applies to obtaining an approval, in principle, of any mortgage. If you wish to make alterations to the property, for example to put in a pool, this is the time to check that the authorities will, in principle, approve the project - though you will not usually be able at this stage to get a binding commitment to do so. If you have not already done so, now is the time to decide who will become the legal owner of the property (see above). There will usually also be some issues specific to your property that will need to be checked at this stage.

If you decide to go ahead, you then sign the Preliminary Purchase Contract and pay over a deposit, typically in the case of a resale property 10% to 30% of the price. For property bought off plan the deposit (often 30% of the price) is usually followed by a series of stage payments as the building work progresses.

If the transaction does not proceed as a result of your fault you lose the deposit. According to art. 1385 of the Italian Civil Code, if the vendor decides not to sell the property after having signed the preliminary sale contract and collected the deposit, he must pay the purchasing party back twice the sum received.

After you have signed a Preliminary Purchase Contract

There is no cooling off period when you buy a property in Italy. Once you have signed the Preliminary Purchase Contract you are committed and you can only 'escape' from the contract for good legal reasons - those stated in the contract or laid down by the general law. It is, therefore, VITAL that you are entirely happy with the terms of the purchase before you sign any contract.

Do I need official permission to buy a property in Italy?

Not for EU citizens.

Are there any restrictions on a foreigner owning property in Italy?

No special rules apply to people from the UK & Ireland.

Signing the Final Contract/Deed of Sale (Rogito)

As soon as everyone is ready to proceed, the Final Contract of Sale/Title Deed (Rogito) is signed. This is, normally, when you pay over the balance of the price of the property and all of the necessary fees and taxes. This Rogito is the document transferring ownership to you. This must, by law, be prepared by and signed in front of the Notary (Notaio), who must carry out various tasks before doing so.

The whole process up to signing the Rogito will (in the case of a resale property with no mortgage) typically take about 12 - 16 weeks, though this can vary enormously. In the case of a property under construction, the pace is usually determined by the speed of construction - typically, perhaps, 18 months.

Once the Rogito has been signed the Notary makes arrangements for your title to be registered at the Land Registry. This is the main protection of your right of ownership and must be done without delay in order to safeguard your position.

Special points for new properties

By law, where you pay all or part of the price before the property has been fully built, the property must have the benefit of a bank guarantee to ensure that, if the developer goes bust before he completed the building work, you do not lose your money. In some parts of Italy developers try to ignore this important legal requirement.

You must also make sure that the property specification is agreed in detail with the builder and that the property will be delivered to you complete with the necessary licence to occupy it as a home. Ideally you should not pay the final instalment of the price until this is produced but, because of bureaucratic delay it is common for the deeds transferring ownership to you to be signed - and the price paid - several months before this paperwork is issued by the Town Hall.

What are the main dangers when buying property in Italy?

The important thing to understand is that there is no simple list of dangers you need to check.

For different people and different types of property or for people who are buying for different purposes the dangers will be different.

Having said that, there are some dangers that arise in every country and every transaction. For example:

- Does the seller have good legal title and right to sell?
- Is the property affected by debts?
- Has the building been constructed legally?
- Does the property suffer from any defects?

In addition, in Italy there are other issues that often need special attention. These include:

- Are you SURE you have chosen the correct form of legal ownership?
- Is the property subject to any rights of pre-emption?
These can give certain people the right to buy it in preference to you. These rights need to be eliminated.
- Will you be able to get planning consent for any changes that you want to make?
Many of our clients are buying older properties. Some of those properties will suffer from considerable restrictions on what can be done with them. Even something as 'simple' as putting in a swimming pool is often not straightforward or may be prohibited completely. We will work to clarify the planning situation - especially if you want to make any alterations to the property. This will, usually, require some action locally.
- Is the property built in an area that is specially protected?
- Are the boundaries of the property clear?
- Is the existing planning status of the property clear?
- Does the property have a habitation certificate, permitting its occupation as a dwelling?
- The price you declare in the Deed of Sale as the price paid for the property should, legally speaking, be the full price paid. This is the value used to calculate all of the taxes arising from the transaction. Declaring any other value can lead to all sorts of problems, both locally and in the country where you live. Are you aware of the rules of any condominium or home owners association of which the property forms a part?

There will usually be other issues that arise in the special circumstances of any particular transaction.

Do I have to be in Italy to complete the transaction?

The person buying the house may attend in person before the Notary, but, if this is inconvenient, arrangements can be made for a Power of Attorney (Procura) to be granted enabling another person to attend on their behalf. This must be in the Italian form and signed in front of a Notary. Our clients usually appoint a member of our staff to sign on their behalf.

Is there a Land Registry system in Italy ?

Yes. After the Rogito has been signed in front of the Notary we arrange for it to be presented to the appropriate Land Registry and for the payment of the Land Registry fees (Imposta di registro).

Several months can elapse before the process of registration is concluded, but as soon as we are notified that the deeds are ready we will have them collected, check them and then forward them to you.

How do I get the money to Italy?

You will normally transfer the money from your bank account in England to your bank account in Italy. In order to do this, you obviously need to open a bank account in Italy (normally this can be done before the Preliminary Purchase Contract). Alternatively, you can transfer the money directly to the seller's bank account.

Are there any other things I should do at the same time as I buy a property?

We believe that it saves a great deal of time, effort and money later on if you now review your English Will and make a separate Italian Will. For most people the cost of this is fairly small.

It is highly advisable for any person who has a property in Italy but does not live there all the time to nominate a "fiscal representative". This is a person to whom the tax authorities can send all correspondence relating to your affairs in Italy, secure in the knowledge that it will arrive. The fiscal representative must be resident in Italy, but it is for you to choose whom to appoint. It can either be a friend, a neighbour, a lawyer, or your tax adviser.

You will wish to insure your property and its contents. Once again we can assist you in doing this.

You will wish to have the electricity, water and rubbish collection charges transferred to your name. You will need to notify the Town Hall that you own the property and register for local rates, open bank accounts and register with the Italian authorities for tax and other purposes. If you do not speak Italian we would recommend that you use the services of a local person to do these things for (or together with) you. He is a sort of official form filler who does this sort of work at quite reasonable charges. If you prefer we can arrange this for you.

You should register as the owner with the Community of Owners if you live in an apartment block or an estate with shared facilities.

What happens if I decide to live and/or work in Italy?

As part of our service we can assist you with residence, work permits and licences and permits in connection with the opening of new businesses. We also advise on the importation of cars, furniture and pets into Italy, obtaining payment of your pension in Italy, Healthcare issues, planning your tax affairs, National Insurance and other related matters.

Please ask for details

After I have settled in, what are my continuing obligations?

If you spend less than 184 days a year in Italy then you are, generally speaking, classed as a "non-resident" and you must:

- Pay your local rates.
- Make a Italian income tax declaration and pay income tax on any income deriving from your activities in Italy. If you have a car, pay car tax and arrange suitable insurance cover.
- Pay your electricity, water and other bills. It is usual to do this by arranging for your bank to pay the accounts directly to the suppliers.

What happens if either I or my co-owner should die?

Jointly owned property does not automatically pass to the survivor. It will be dealt with according to any instructions which you leave in your Will (either English or Italian) or, if you do not leave a Will, under the rules relating to intestacy. It is generally much cheaper and simpler to deal with your affairs if you have made an Italian Will.