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Short guide for purchasing residential real estate in Italy

By

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The Offer process

The first step is an offer tendered by the offeror to the owner of the property, usually through the real estate agency. The offer is binding only upon the buyer and it is therefore important that it be subject to acceptance within a reasonably short period of time. It is also recommendable that the offer be explicitly subject to the property being in compliance with all applicable laws and to the satisfactory results of the due diligence activities. The offer usually involves the delivery of a small down payment to the agency.

If the Seller accepts the offer, the parties have a binding deal, which is then formalized with the execution of a so-called "contratto preliminare" or "compromesso".

This is a formal agreement according to which the parties undertake to buy and sell the property and agree on the terms and conditions of the sale. As this agreement

includes all elements of the future deed of sale, it is extremely important to include all requirements and conditions to which the sale is subject. Upon signature, the buyer customarily pays a deposit ranging between 5% and 10% of the purchase price. Unless otherwise indicated, in the event either party does not perform the sale, the other party has the right, at its option, to request specific performance (i.e. force the sale), and/or collect damages and/or to retain the deposit (or request the return of an amount equal to two times the deposit if the seller is the breaching party) and terminate the sale.

The transfer of the property takes place with the execution of a deed of sale ("rogito") in front of a notary public. The transfer is effective between the parties immediately upon execution of the agreement. The contract is subsequently recorded in a public registry

Right of First Refusal

Most foreigners come to Italy to buy beautiful properties in the countryside. In those cases, one very important facet to pay attention to is that of the right of first refusal in favour of neighbouring farmers.

According to Italian legislation if a piece of cultivated land is sold – as it is almost inevitably the case when buying a property in the countryside – the neighbouring farmers have the right to be preferred in the purchase of the property, at the same terms and conditions. From a practical point of view this means that once the preliminary contract is signed, the contract and the identity of the prospective buyer must be sent to all neighbouring farmers, which have 30 days to decide whether to buy the property under the same terms and conditions. This right is not waivable in advance.

If no neighbouring farmers exercise the right of first refusal, the parties can proceed with the deed of sale. It is important that the price indicated in the deed of sale be not lower than the price communicated to the neighbouring farmers, otherwise the deed of sale may be challenged within one year. This is a very important issue to consider, as the common practice is that of underreporting the purchase price in the deed of sale for tax reasons, however this underreporting may create problems in the event a neighbour has, in fact, a right of first refusal.

Because of right of first refusal problems, it may be recommendable, in some cases, to buy the property through a company. Company shares can be circulated without triggering a right of first refusal and this will certainly create a future benefit to the value of the property, in the event the property must be resold in the future.

Taxes and costs

The transfer of real estate property is subject to substantial transaction taxes. Assuming that the seller be an individual, as it is most likely the case, the price allocated to the building is subject to taxes in the amount of 10% (which is the sum of three different taxes, the "imposta catastale", the "imposta sul registro" and the "tassa ipotecaria") and the price allocated to land is subject to taxes in the amount of 11%. If the building it is the first home in Italy, there is a significant tax reduction (3% instead of 10%). Depending on the nature of the property, it is also possible to reduce significantly the tax burden if the new owner is willing to undertake certain agricultural and forestry developments.

Both buyer and seller are liable for transaction taxes, however the common practice is that taxes are paid entirely by buyer. The same applies to notary costs. Real estate agency fees are normally around 3% for the buyer and 3% for the seller.

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