FIAIP

Estero

THE GUIDE TO BUYING AND SELLING PROPERTY IN ITALY

FIAIP Estero

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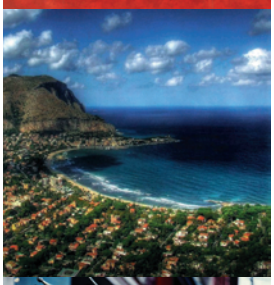
BUYING or SELLING



How to look for or sell real estate

The purchase, or the sale, of a house is a difficult and costly but important stage, and the consumer who undertakes this should be aware of the many problems connected with it.
First of all, he or she has to decide whether to avail themselves of a professional, a real estate agent, or to handle it themselves personally: doing it personally obviously allows them to save the real estate agency's commission, but on the other hand it makes it harder to find a buyer or a property to buy.
The tools available today, besides ads in the papers, real estate publications and word of mouth, consist of the Internet, where both free and pay sites can be found, judiciary auctions and announcements via mobile phone text messages.
Secondly, and in any event, one must always move forward and stay alert in order to avoid having the stress and anxiety of looking for a house and the fear of "missing out on a great deal" lead one to make a commitment and sign contracts too hastily.
Lastly, one must pay attention to the rules and laws necessary for signing a private agreement between the seller and the buyer for a property sale that protects them from possible risks. Indeed, although it is true that a sale becomes final only with the notarial deed, the obligations between the parties begin initially with the preliminary contract, which will be legally valid until the signing of the final deed of sale.

How to buy and sell through a professional agent

Real estate agent

A "*mediatore*" – broker or agent – is "a person who brings into contact two or more parties in order to enter a contract, without being connected with any of the parties by a relationship of collaboration, employment or representation" (Art. 1754 Civil Code).
This means that the broker, or agent – the roots of which go back to ancient Roman times – has the task of making the needs of the seller and of the buyer meet, bringing together the opposite interests of the two parties so as to arrive at the conclusion of the negotiation.
The profession of Brokerage Agent is regulated by laws that require those who work as a broker of any type to be registered on the List of Brokerage Agents held by the Chamber of Commerce, which qualifies them and is valid throughout the entire country of Italy. This obligation also regards those who practice this profession only occasionally and/or for organized companies.
The real estate agent generally provides a valuation of the property guiding the seller toward the actual market conditions, offers the property through advertising channels with the aim of reaching the potential buyer who can evaluate the possibilities offered by the market, and compares characteristics and costs.
The agent must also be able to give information on the legal, technical and tax aspects before the signing of the preliminary contract, the moment in which the parties mutually bind themselves to the purchase and sale, in order to prevent them from having to face obstacles that may be insuperable.
Therefore we ask the reader to follow attentively the information regarding the figure of the real estate agent or broker, in order to understand what are the rights and duties provided for by the law.
The real estate agent must prove that they are registered by showing the identification card issued by a Chamber of Commerce, to which the consumer may also refer in order to receive information on the business and on the laws that regulate the field, or to file a petition or contestation if they wish to report conduct considered improper or if doubts or problems should arise.
The law requires real estate agents to take out a professional liability insurance policy for the protection of its clients.
Those who are not registered in the list kept by the Chamber of Commerce and who illegally practice the profession are subject to a fine of up to 15,000 euros. They must also

refund any commissions received to the contracting parties. In some cases, they may also be reported to the judicial authorities for criminal conduct.
Those who instead are registered in the list and practice the profession as an agent or broker in an unlawful or improper manner, violating their duties and/or not complying with the obligations provided for by law, are subject to the disciplinary measures of suspension, cancellation and elimination from the list. The authority for disciplinary measures lies with the Chamber of Commerce Board. The real estate agent must act in the interest of both the two parties at the same time and, therefore, has the right to a commission from each of the parties, if the transaction is closed through his or her services (Art. 1755 Civil Code).
The Civil Code also tells us that a transaction is considered "closed" at the moment in which the person who made the proposal learns of the other party's acceptance (Art. 1326 Civil Code). Therefore, the real estate agent's right to the commission arises at the concluding of the preliminary contract or agreement to sell/purchase ("compromesso").
Generally, and in conformity with the custom in the province, real estate agents follow the negotiations up to the signing of the notarial deed.
As regards commissions, since 2006 it has been obligatory in all property sales to put into the notarial deed a sworn statement ("dichiarazione sostitutiva di atto di notorietà"), which indicates the amount of the commission paid to the real estate agent and the method of payment. This statement gives the agent's personal data and registration number in the List of Real Estate Agents, as well as their VAT or taxpayer's code numbers.
Those who do not comply with this obligation when buying or selling real estate risk a number of penalties, including payment of a fine from 500 to 10,000 euros, as well as any possible penal consequences in the case of a mendacious statement.
Furthermore, Law 4 August 2006, no. 248, introduced the possibility of deducting 19% on the commissions declared up to a maximum ceiling of 1,000 euros.
Thus the agent must provide the client with a copy of the means of payment and related tax documents so that the client may avail themselves of the deduction when doing their income tax return.

Authorized Representative

Sometimes the real estate agent acts as an authorized representative, i.e. receives the assignment to represent one party and therefore acts exclusively in that party's interest: in this case the agent has the right to a commission only from the party that has given that assignment, but the agent must still observe their own professional duty.

Useful advice

It is important to remember that real estate agents must not limit themselves to bringing together the buyer and the seller; they are also obliged to provide correct information according to the criterion of average profession diligence, which includes the obligation of informing the parties as to all the elements that are known or are knowable through normal professional diligence and that may have an influence on making a deal, as well as to carry out the enquiries and research necessary for the closing of the purchase/sale.
It should be specified, however, that certain technical-legal enquiries (mortgage register and title searches, municipal authorization measures) must be defined in advance, including for the purposes of any possible and specific refunds.
If there are any misunderstandings or complaints regarding the services of a real estate agent, it is important to know that the Chamber of Commerce supervises brokerage activities. Indeed, the law assigns to the Chamber of Commerce Board the task of examining, following reports by citizens, any irregularities in the services of those registered in the List of Brokerage Agents. If it determines that the work of an agent has created problems, it may decide to suspend the agent (for up to 6 months) or to expel them from the List.
Real estate agents' associations also watch over their members, in the interest of maintaining the reputation of real estate agents, through the creating of codes of conduct with which members must comply, through the evaluation of any complaints made by clients or by other real estate agents, and they also provide for warnings in the event that the complaint

is considered to be legitimate.
The agent and the consumer must therefore work together so that:

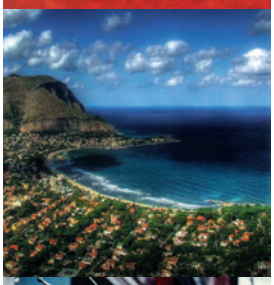
- The forms (assignment, purchase proposal, etc.) are filled out in their entirety, crossing out the items that are purposely to be left out;
- The aforesaid forms refer to the registration of the agent in the List of Real Estate Agents and, if it is a company, of the company itself as well as of the legal representative and/or the delegate. A copy of these forms must be filed beforehand with the local Chamber of Commerce, which may be requested to verify the observing of this provision.
- The commission due to the agency, determined freely by agreement between the parties, is clearly indicated. If it is not given, it may also be determined by the Chamber of Commerce Board, on the basis of local practice.
- The sale price of the property is always established and stated exactly. It is necessary to firmly reject any "extra" proposal, i.e. the amount that the agent may be able to obtain from the buyer above the price agreed upon with the owner and is not included in the commission.
- The real estate agent gives a copy of any form that is signed, which must be countersigned at the same time also by real estate agent, both in the case of the acceptance of the sale or purchase assignment and for the receipt of sums left with the agent as a fiduciary deposit/down payment.

The following should always be stated:

- the duration of the assignment (generally three-six months);
- the period of validity of the proposal (period within which the seller's acceptance must be given), which shouldn't be more than fifteen days, with the exception of special cases which must be specified in the proposal;
- the existence of the sole right (exclusive agency) clause, if granted;
- whether or not a tacit renewal is possible: this option must be provided for just one time, with the possibility of cancellation by means of registered letter;
- the existence of any suspension clauses such as loan applications, particular checks, amnesties, licenses to be obtained. In the case of a purchase by means of a loan application, it must be clearly indicated that the effectiveness of the proposal is conditional upon the disbursement of the loan and that it will not be valid if the client is not able to obtain it. All possible suspension clauses must always be specified so that, in this case, the proposal will have no effect until the suspensive condition has occurred;
- a detailed analysis should be given of any costs such as those outside of specifications, works for finishing the building and the outside areas, urbanization works, joint-ownership rules, local property tax, waste disposal charges, etc.

If the client who formulates a purchase proposal gives the agent a cheque as a fiduciary deposit/advance payment/down payment, this should be made out to the owner of the property, and not to the real estate agent, and it should be nontransferable. In any event, these sums must never be cashed by the real estate agent, either as compensation for damages or in payment of the commission.
Obviously, the client must act properly and:

- Pay the real estate agent's commission even if:
    - the transaction is made directly by the client but with a person contacted through the real estate;
    - the transaction is made directly by the client or through another real estate agent in the case in which the assignment contains a sole (exclusive) right clause.
- Always define all the details of the agreements, both those regarding the giving of the assignment to the agent, and those regarding the property purchase proposal. In particular, in the case of the accepting of the proposal, the client must always ask the real estate agent for written confirmation. It is a good idea to agree upon in writing the amount of the commission, the method of payment, and the services that are included and are not included in the commission.



- Provide all of the useful information and necessary documents so that the agent can work in a safe and transparent manner in regard to future buyers;
- In the case of giving an assignment to a real estate agent, whether exclusive or not exclusive, the client must:
    - Choose and respect the procedure with which the assignment is given to the agent:
        - the choice of an exclusive or sole right assignment puts restrictions on the client's contract freedom, as it prohibits him or her from making the sale on their own or assigning the sale to another real estate agent, except by paying the penalties provided for, but it allows them to obtain a number of additional services that the client must indicate in writing. The alternative is a non-exclusive assignment, which provides for the obligation of the client to notify the agent promptly as to the sale of the property. In this case the agent shall not be required to provide all the services included in an exclusive assignment, such as the types of advertising, but the agent shall nonetheless be required to provide the services indicated in the contract, as well as those pertaining to the agent's professional duty.

DOCUMENTS REGARDING THE PURCHASE AND SALE OF REAL ESTATE

Buying a house is an important investment and therefore it is necessary that the buyer receive all the documentation that can prove that the property is in fact sellable.
Let us look briefly at what are the main documents that must always be correlated to a real estate sale:

Title Deed or Provenance

A property may be had by inheritance following a death, by legal decree, by notarial deed (sale, gift, division….). The seller must produce the title that proves ownership. The information given in the title of provenance could have changed in the meantime: the notary hired for the stipulating of the deed of sale will check on the actual ownership of the seller and the absence of any detrimental formalities.

Town-planning Aspects

It is absolutely necessary to pay very close attention also to the town-planning documents. This is a very important aspect that can prejudice the free sale of the property. If construction of the building was begun after 1 September 1967, the essential data of all the municipal authorizations must be mentioned in the deed of sale (building permits and licenses, concessions to build, variances, report of start of activities) as well as the essential data on any applications for amnesty (condono) and building permits in indemnity (concessioni edilizie in sanatoria). In any event the burden of proving that the property complies with town-planning regulations lies with the seller. Lastly, do not forget to ask to see the "Certificato di Agibilità" or Certificate of Habitability (formerly called the "Certificato di Abitabilità") or the self-certification document of the period for the establishment of silent consent registered by the Comune (municipality). If the property in question includes one or more plots of land with an area of over 5,000 square meters, the zoning certificate (certificato di destinazione urbanistica), which can be requested at the competent municipal office, must be attached to the deed of sale.

Cadastral Aspects

Cadastral documents are equally important. Every real estate unit must be registered in

the Catasto, or Land Register (today called the Agenzia del Territorio). It is an enormous paper and computerized archive in which all the buildings built in the country are filed and preserved for tax purposes. Every provincial capital has its own District Office. The main document that is needed is the so-called cadastral sheet, which is simply a small scale reproduction of the plan of the property drawn up by a qualified expert and presented to the cadastral offices, which may be checked by means of a "title search" (visura) in which the data regarding the real estate unit (category, class, size, income) are given. If the cadastral plan differs from the actual situation, it must be rectified by submitting a report of variation.

Co-Ownership Aspects

Before buying an apartment in a jointly-owned building, the following should be checked with the condominium administrator:

- if there are any outstanding condominium expenses (the buyer is jointly obligated with the seller for payments of the current year and the preceding year);
- what the annual routine maintenance expenses come to;
- if the meeting of co-owners has planned or decided on any maintenance or repair works, and if so, what they are (e.g.: reconstruction of the roof, exterior walls, entry, hallway, stairs, or other) and if they are included in the extraordinary maintenance and repair expenses; if there are, it is advisable to establish who will have to pay these expenses;
- if there are limits for the joint-ownership rules, such as the changing of the zoning of a real estate unit (e.g. from a dwelling to an office).

Certification of Systems and Installations

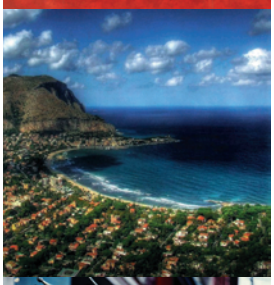
The declaration of conformity is a document or rather a set of documents by which the person who installs a system or installation (electric, heating, plumbing, radio/television, etc.) declares and certifies that it has been done in a workmanlike manner. The declaration of conformity contains the data on the system or installation and on the following persons: technician in charge, owner, customer. It also provides information on the installation procedure, on the type of materials used, on the laws and regulations followed, and on the location of the system or installation. In accordance with current laws, the declaration of conformity is drawn up on a Ministry of Labor-approved form and is completed by a series of attachments, some of which are mandatory (without which the statement is considered void):

- the plan (if the building exceeds certain size limits);
- a diagram of the system/installation (if there is no plan);
- the type report (or list of materials);
- the certificate of registration in the Chamber of Commerce.

Following the repeal of Art. 13 of D.M. 37/2008, as of 25 June 2008 it is no longer mandatory to attach documentation of conformity nor is the contractual regulation of the seller's guarantee regarding the conformity of the systems and installation mandatory; however, it is definitely still advisable to obtain this regulation.
If the systems/installations of an old building are not up to code, or do not exist, the seller and the buyer may, by mutual consent, proceed with the sale of the building in the state in which it is in.
To avoid disputes later on, it is a good idea during negotiations to establish who will be responsible for bringing the systems and installations up to code.

Energy Certification

The energy certification is simply a certificate regarding how the building was built from the perspective of insulation, and therefore in what way the building can help to save energy. It consists of an evaluation of the integrated energy requirements of a building and the resultant certification and attributing of a certain energy class.
Today, electrical appliances are grouped into classes according to their power consumption:



A, B, etc. The same will be done with all buildings, which, on the basis of their energy consumption, will be placed in a given consumption class.
It is in the interest of the buyer of a building to know how much energy a given building consumes. A building constructed without any measures or provisions for saving energy not only produces more pollution, it is also more costly for the person who lives in it. Art. 35, par. 2b of D.L. 25 June 2008 no. 112, as annexed to the conversion law 6 August 2008, no. 133, in force since 22 August 2008, changed the previous national regulation; in general, it is no longer necessary to attach the energy certificate to the real estate transfer deeds; the obligation to provide the buyer with the certificate of energy qualification remains for the following buildings:

1) new buildings, the building permit or report of start of activities which were submitted after 8 October 2005;
2) buildings in which there has been the complete renovation of the building elements constituting the shell or the complete demolition and reconstruction, with the requesting of a building permit or report of start of activities, submitted after 8 October 2005;
3) buildings that are "in fact" provided with the statement of energy certification or qualification in order to make use of tax benefits;
4) public buildings or buildings for public use;
5) buildings have a useable surface area (net floor space) greater than 1,000 square meters, when the deed of transfer for a consideration regards the entire building (also when it regards the transfer of single real estate units, when they, by themselves, have a useable surface area greater than 1,000 square meters);
6) buildings, both old and newly built, of any useable surface area, including those less than 1,000 square meters, when the deed of transfer for a consideration regards the entire building (with the exclusion, therefore, of transferring deeds for individual real estate units that are part of the complex).

As of 1 July 2009, the obligation of providing and delivering the energy qualification certificate regards all real estate units (therefore also apartments in condominium buildings), whether old or new. For Lombardy, at the moment in which we are going to press, it seems to be a different matter, as the national law did not abrogate the regional laws: subject to the national law as concerns the obligations of providing and delivering the certificate to the buyer, there remains the obligation of attaching the energy certification to the real estate deed of transfer for a consideration in those cases in which it is provided for by regional laws. These cases are:

a) in the case of title for construction requested starting from 1/09/07;
b) for demolition and construction works for extraordinary repairs and maintenance work or renovation, building renovation that involves more than 25% of the dispersing surface of the building; volumetric additions, if the controlled temperature volume of the new portion is greater than 20% of the existing volume; all of these if the building title was requested starting from 1/09/07;
c) for taking advantage of tax benefits and incentives;
d) for public buildings or buildings for public use, which have a useable surface area greater than 1,000 square meters;
e) when there is the transfer of the entire building, even if built previously;
f) if there is a service-energy contract stipulated or renewed after 1 January 2008.

THE STAGES OF THE PURCHASE AND/OR SALE

The Negotiation

The negotiation is necessary for defining the details of a sale, in order to satisfy the interests of both the seller and the buyer. Among the most important elements are: the price and method of payment, the deadlines for the delivery of the property and the stipulation of

the deed of sale, the dividing of joint-ownership expenses in the time that passes between the preliminary and the final deed, the extraordinary expenses already decided upon, the buyer's notification of the possible need to obtain a loan and the seller's notification of any encumbrances on the property.

The Purchase Proposal

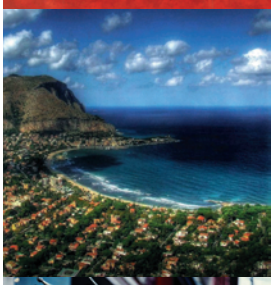
The formulating of a purchase proposal is the most delicate stage of the negotiation, as it binds the proposing party to the purchase for a given period starting from the moment in which it is signed: the signed purchase proposal, which is generally formulated as an irrevocable proposal, is binding for the proposer, but is not yet for the seller, who, until they sign it, is free from any commitment.
If the seller has not accepted by the end of the period of validity, the proposal becomes ineffective.
For the complete protection of the parties, it is best that mortgages or encumbrances of any kind be indicated in the proposal, as well as the property's conformity with town-planning regulations. The buyer must analyze carefully all the clauses of the purchase proposal before signing it.
At the time of the drafting of the proposal, it is a good rule to have a look at the main documents regarding the property, in particular the deed of provenance and the cadastral sheets; if the documents are not available, it is advisable to indicate in the proposal itself the ways in which the documents will be made available.
It is also important to indicate in the proposal if you plan on taking out a loan for the purchase, and especially the terms with which you plan on obtaining it.

Acceptance of the Proposal and Payments

The proposal is usually accompanied by a non-interest bearing deposit in the form of a nontransferable cheque made out to the seller: the cheque is returned if the seller does not accept the proposal; on the contrary, in the case of entering into a contract, i.e. when the buyer learns of the seller's acceptance, that amount will become the confirmatory down payment.
The definition and the significance of the confirmatory down payment are indicated in Article 1385 of the Civil Code: "If at the time of entering into a contract one party gives to the other, as a down payment, a sum of money, or a quantity of other fungible goods, the down payment in the case of fulfillment must be returned or ascribed to the sale price. If the party that gave the down payment defaults, the other party may withdraw from the contract, keeping the down payment; if instead the party that received the down payment defaults, the other party may withdraw from the contract and demand double the down payment. If however the party that does not default prefers to demand the performance or the cancellation of the contract, the compensation for damages is regulated by the general laws."
It is important to know that with the new laws all payments regarding the purchase of real estate must obligatorily be made by means of cheques or bank transfers, with the exception of transactions for a total value of not more than 12,500.00 euros. The essential data of these payments must be kept, because the notary that stipulates the deed must quote them in the deed.
After entering into the contract, the parties are both bound to execute it, and thus also to the subsequent stipulating of the notarial deed with the transferring of the ownership of the real property by the seller and the payment of the price by the buyer.
With the acceptance of the seller and the entering into the contract, the Real Estate Agent, regularly qualified and registered in the List held at the Chamber of Commerce, has the right to receive the commission.

The Preliminary Contract

The preliminary agreement to sell, which contains the commitment to sell and to purchase, is a document divided into articles created jointly between the parties, in which there is



the accurate identification of the parties as well as a precise description of the property to be sold; it is signed by all the parties in question (an especially important element if there is more than one seller, and not to be underestimated is the signature of both spouses, if a husband and wife with legal community of assets are selling, as well as in the case of a company, with the signature of the person who is legitimated).
To ensure that the preliminary contract is formally complete and correct, it can be drawn up with the help of a professional, which could also be the notary who will handle the drawing up of the final deed of sale, who in this case will:

- provide consultation regarding all aspects (including taxes) so as to avoid legal disputes;
- do preliminary checks and controls (mortgage register searches, title searches), especially if large sums of money have been paid as a down or advance payment;
- check the validity and importance of the clauses.

The main points that a preliminary must contain are:

- The personal data of the parties;
- the exact identification of the property;
- The agreed price;
- The methods of payment, clearly indicating what part is ascribed to the confirmatory down payment, the advance payments and, if any, the premium. The advances paid with the signing of the purchase proposal, which may be further added to with the signing of the preliminary, may be added to the confirmatory down payment or may simply be ascribed to advance payments. The advance is a deposit paid by the buyer prior to the sale: if the sale isn't made, it must be returned to the buyer;
- The date on which the parties intend to stipulate the notarial deed, indicating if possible who the Notary Public will be and the terms for the delivery of the property;
- The existence of any mortgages or other encumbrances;
- The taking over by the buyer of any remaining loan amount or its paying off by the seller with the commitment to cancel the mortgage;
- The provenance of the real property and its accessories, and other pertinent data, such as common property, appurtenances, easements, etc.;
- The condition of the systems and installations, certifications, conformities, compliance with town-planning regulations, the possible releasing of the seller's responsibilities;
- The essential data of any real estate agents or companies that have negotiated the sale and the commissions paid.

A purchase proposal containing the above characteristics is a preliminary contract provided that it is accepted with a written statement by the seller and the buyer knows about it.

The Registering of the Purchase Proposal and of the Preliminary Contract

A preliminary agreement to sell contract, whether done by means of a notarial deed or a private deed, is subject to registration within a fixed time period at the Revenue Office, i.e. Ufficio delle Entrate (only preliminary contracts by enterprises owning developable land without a down payment are not subject to registration within a fixed time period).
In addition, Art. 1, paragraph 46 of Law 27 December 2006 no. 296 extends the obligation of requesting registration also to the real estate agent and makes the agent jointly liable for payment of the registration tax.
The registration of the preliminary and of the purchase proposal is done at the Revenue Office and may be done by anyone, within 20 days from the notification of the seller's acceptance to the proposer for the purchase proposal, and within 20 days from its stipulation for the preliminary.
The registration tax is 168.00 euros. If there is a down payment, it is also taxed at the rate of 0.50%.
If there are advance payments, it is necessary to distinguish:

- if the final contract is subject to VAT, the advance payments must be invoiced by the

promisor seller at the same rate as that of the transfer (e.g. 4% on a first home);
- if the final contract is subject to payment of the proportional registration tax, 3% on the amount of the advance must be paid.

For both down payments and advance payments, the taxes paid with the preliminary contract will be deducted from the taxes to be paid for the registration of the final sale contract, with the exception of sales subject to VAT.

Transcription of the Preliminary Contract

One should always evaluate the great opportuneness of transcribing the preliminary contract at the Agenzia del Territorio Servizio di Pubblicità Immobiliare (Land Agency - Real Estate Advertising Service), stipulating said contract in a notarial deed, especially if the seller is a contractor, or a company that could go bankrupt, if a fairly long period of time will pass between the preliminary contract and the deed of sale or if the down payment is very large.

Unlike the registration, which is valid essentially for tax purposes, the transcription is aimed at protecting the future buyer:

- it avoids the danger of prejudicial formalities (sale to others, mortgages, distraints…) that could be transcribed or registered before the final contract;
- it attributes to the future buyer a lien in the case of the bankruptcy of the seller: following the compulsory sale of the bankrupt's properties and the distribution of the proceeds among the creditors, the future buyer is given preference over the bankrupt's other creditors, including mortgage creditors;
- it blocks the challenge of antecedent transactions and the power of the receiver to opt for dissolution, when the preliminary contract has been entered "at a fair price" and regards a building for use as a dwelling, which is to be the main residence of the buyer or the buyer's family or kin up to the third degree.

The Notary Public

The notary is normally chosen by the buyer, who is charged with the expenses of the purchase.

It is the notary's job to check the full ownership of the property, that it has no encumbrances and to verify the identity of the owners and of the property to be purchased.

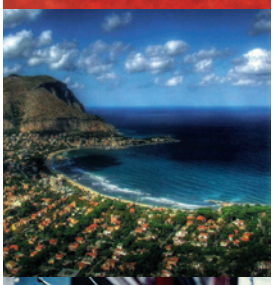
The checking of whether or not there are encumbrances (mortgages, distraints, attachments, citations, preliminary contracts, liens, third party rights in general) is done at the Land Agency (Agenzia del Territorio), by means of the studying of the deeds regarding the property for a period of over 20 years: very briefly, this involves reconstructing the changes in ownership for at least the last twenty years in order to ascertain the continuity of the transcriptions and the non-existence of encumbrances.

The notary also checks on the correct planimetric identification and the correct classification of the property at the Registry Office.

Once these things are done, the notary begins to draft the deed of sale, which must also provide for:

- the indicating of all town-planning measures involved in the construction of the building and the conformity of the works to said measures;
- the seller's right to sell (in relation to the status with their spouse, with any other co-owners, to bankruptcy proceedings or authorization decisions by authorities);
- the buyer's right to purchase (in relation to the status with their spouse, to bankruptcy proceedings or authorization decisions by authorities, to their citizenship if a foreigner who is not resident in Italy);
- the method of payment to the seller and to the real estate agent;
- the attachment of any documents regarding the energy performance of the building, in the cases provided for by law;
- tax requirements (deed VAT or registration, any tax benefits, problems connected with tax deadlines).

The notary also provides consultation in order to solve legal and tax problems encountered,



such as: risks of losing ownership due to preceding gifts or in regard to unknown heirs or tax privileges on the real property (such as in the case of the reselling of a first home in the first five years), of revocatory actions, of bankruptcies, of pre-emptive rights in favor of the State for properties of cultural interest or for leased properties, of restrictions connected with garages.
Lastly, the notary handles the formalities subsequent to the deed, such as registration (for payment of taxes) and the transcription (to make the deed opposable to third parties).

The Notary's responsibility in the case of errors

In the event of the notary's failure to check the possible existence of detrimental registrations or transcriptions and the resulting proven existence of damage to the purchaser, a claim for compensation may be made to the notary.
If instead there is a mere material error in the drawing up of the deed (e.g. in the indicating of the data identifying the parties or the property) it may be advisable to request the notary to correct the erroneous data.

Cancellation of the mortgage

If there is a mortgage on the house that one wishes to sell/purchase and the buyer does not intend to take over the loan against which the mortgage had been registered, the mortgage may be cancelled prior to the sale by means of the "Bersani method," i.e. with the redemption of the loan and the "assignment" of the Bank to notify the Land Agency (Real Estate Advertising Service) as to the redemption of the debt.
The day of the sale, however, it is necessary to make sure that the mortgage is "recorded as cancelled" at the Land Agency (Real Estate Advertising Service) so that the Bank has thirty days following the redemption of the loan to request that the mortgage will remain.
It is also possible, however, to cancel the mortgage by notarial deed (the costs of which are very low), which guarantees the immediate effectiveness of the cancellation.

Purchase from a "Builder"

Some information should be given on the sale of buildings to be constructed by those who are defined as builders. Important changes regarding this type of purchase were introduced with D.Lgs. 20 June 2005 no. 122, giving "Provisions for the protection of property rights of purchasers of real properties to be constructed, according to Law 2 August 2004 no. 210" and coming into force on 21 July 2005: it includes precise guarantees in protection of the buyer and against those who sell this type of building, such as the "suretyship" that the builder is obligated to provide, in the preliminary contract, for the buyer for an amount corresponding to the sums that the builder has collected. The failure to provide the suretyship gives the buyer the right to declare the contract "null and void," with the request for reimbursement of the moneys already paid, along with any compensation for damages.
Another important change is that of the builder's obligation to issue the buyer an insurance policy that, for at least ten years, protects the buyer against damages deriving from the total or partial ruin of the building or from serious flaws in the construction.

Allotment of real properties by cooperatives

Another way of purchasing real estate is through allotment by cooperatives through the application for membership, or by purchasing the share of an outgoing member.
It is essential that for a client who applies to a cooperative to evaluate the reliability of the cooperative by means of various inquiries such as membership in an association of cooperatives, registration in the National List of Cooperatives, the cooperative's annual or biennial balance sheets, the charter, articles of association, condominium rules, agreements with the municipality, and the building permit.
It is necessary to clarify beforehand what the planning, construction and registration costs will be, as well as those for permits and licenses, connection to utilities, the costs for price adjustments, the amount of the original contract and the risks deriving from any delays in

construction procedures or the assigning of the shares of the divided loan, as the liability for a missed payment falls upon all of the members of the cooperative up until the final assigning of the dwelling and the of the corresponding share of the divided loan.

Subsidized housing

One type of real estate regards the construction of subsidized buildings by companies that, following an agreement stipulated with local authorities, sell to persons or organizations with special requisites subsidized buildings with right to property, or also with a building lease generally for 99 years and renewable. For these properties there exist specific regulations that provide for the possibility of the subsequent sale to potential buyers, who must possess the same characteristics established in the specific Conventions, at prices set by the municipal offices.

TAXES ON THE PURCHASE OF A HOUSE

Taxes on houses

Whoever buys a house must pay the registration tax, or else VAT, as well as mortgage and cadastral taxes.
More specifically:

- If the seller is:
  - a private individual;
  - a "non-construction" company;
  - the "construction" company (or the company that has renovated the building) and has completed the work 4 or more years ago;
    - the taxes to be paid are:
      - registration tax 7%
      - mortgage tax 2%
      - cadastral tax 1%.
- If the seller is:
  - the "construction" company (or the company that has renovated the building) and the sale is made within 4 years from completion of the work;
    - the taxes to be paid are:
      - VAT at 10% (or 20% if a luxury building)
      - fixed registration tax 168.00 euro
      - fixed mortgage tax 168.00 euro
      - fixed cadastral tax 168.00 euro.

The taxes are paid by the notary at the time of the registration of the deed. The proportional taxes are paid on the price, except when there are the conditions for requesting in the notarial deed of sale the application of the "price-value" clause: the price paid is declared, but the proportional taxes are paid on the cadastral value of the property if:

- the sale regards real property for use as a dwelling and/or related appurtenances;
- the buyer is an individual who is not acting in the practicing of commercial, artistic or professional activities;
- the deed is subject to registration tax (thus sales subject to VAT are excluded).

Thus any advantages from making statements aimed at tax evasion are nullified. The notary's fees are also reduced by 30%. The price-value mechanism applies on the condition that the entire agreed price is indicated in the deed: if the agreed amount is concealed, even partially, the consequences and penalties are very high.

First home benefits

When one buys a "first home" the taxes are reduced:

- If the seller is:

- a private individual
- a "non-construction" company
- the "construction" company (or the company that has renovated the building) and has completed the work 4 or more years ago
  - the taxes to be paid are:
    - registration tax 3%
    - fixed mortgage tax 168.00 euro
    - fixed cadastral tax 168.00 euro.

- If the seller is:
  - the "construction" company (or the company that has renovated the building) and the sale is made within 4 years from completion of the work
    - the taxes to be paid are:
      - VAT 4%
      - fixed registration tax 168.00 euro
      - fixed mortgage tax 168.00 euro
      - fixed cadastral tax 168.00 euro.

First home prerequisites

PROPERTY: It must be a "non-luxury" home

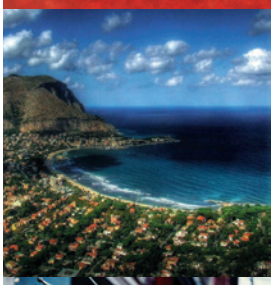
BUYER: The buyer must live in the Municipality where the property is located or must move there within 18 months from the stipulation of the deed or prove that their main work is in the Municipality where the property is located;

The buyer must not hold, either alone or together with their spouse, any rights (ownership, use, usufruct or habitation) on another home in that Municipality;

The buyer must not be the owner, not even partial, of rights of property, usufruct, use, or habitation on another home purchased with first home benefits anywhere within the national territory.

In order to avoid speculating, the property purchased with "first home" benefits cannot be sold before five years have passed from the date of purchase, under penalty of loss of the benefits, and the payment of surtaxes and interest.
This loss of the benefits can be avoided by purchasing another house within one year from the date of sale. In this case one may also avail themselves of the "tax credit," as a kind of discount on the new purchase, equal to the tax paid on the first purchase.

GLOSSARY



Dwelling
An urban real estate unit consisting of one or more rooms and accessory areas:
- built with those requisites that make it suitable for use as the permanent residence of one or more persons.
- having at least one independent entry from the outside (street, courtyard, etc.) or from common areas (landings, terraces, etc.);
- separated from other housing units.

Real estate agent
An individual registered pursuant to Law 39/1989, qualified to provide real estate services including brokerage, consultation and valuation.

Real estate agency
An organization that offers real estate brokerage and technical consultation services and companies licensed to operate as an individual person and legal entity, registered in the List of Real Estate Agents pursuant to Law 39/1989 and subsequent amendments and integrations thereof.

Furnished *
A real estate unit supplied with furniture and furnishings so as to make it useable and suitable for its intended use.

Brokerage
Intermediary activities aimed at bringing together the wishes of two or more parties in the negotiating of contracts and other related activities.

Building authorization
Permit issued by the Mayor free of charge for the carrying out of certain building rehabilitation works (generally extraordinary repairs and maintenance, etc.).

Rent
Monetary consideration, generally periodical, for the tenancy of a property, in conditions of free negotiation, excluding accessory expenses (condominium, heating, etc.).

Confirmatory down payment
The confirmatory down payment consists of a sum of money or a quantity of other goods, which one party has given to the other at the time of the stipulation of a contract.
If the party that has given the down payment defaults, the other may withdraw from the contract, keeping the down payment as compensation for damage; if instead the other party which received the down payment defaults, the other may withdraw from the contract and demand double the amount of the down payment.
However, this is only a right attributed to the unsatisfied creditor, who may, if they prefer, insist on the performance of the contract or request its cancellation, in following with the general regulations. In this case the down payment shall constitute, in the hands of the person who received it, a guarantee for the payment of the damages that will be settled by the judge.
If the contract is fulfilled, the down payment must be returned or ascribed to the sale price.
Note that the amount paid as an advance on the price cannot be considered as a down payment, unless the parties have agreed to attribute this function to it.

Premium

If the right of withdrawal for one or both parties is stipulated in the contract, the premium serves only as compensation for the withdrawal.
In this case, the withdrawer loses the premium given or must return double that which they have received.

Cadastre
An office that keeps a general inventory, for fiscal purposes, of the real properties in a municipality (Comune) or Province. The cadastre is divided into the Land Registry Office and the City Property Registry Office.

Cadastral category
Division for cadastral purposes of real estate units according to use, i.e.: A (dwellings), B (collective buildings), C (warehouses, shops, garages), D (buildings used for entrepreneurial purposes), E (special buildings).
Further distinctions are made within these categories, depending on the characteristics of each real estate unit of the various building types.
For example, dwellings are divided into nine categories: A1 are luxury buildings, A8 are single-family homes, and A4 are low-rent flats (public housing).
Each category is then further divided into classes, which identify the quality and state of the building; in some cases there may be as many as 20 classes for a single category, with a great range of values.

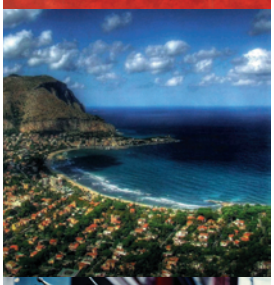
Certificate of habitability
Administrative act issued by the Municipality attesting the compliance of the building with the parameters established by the laws regarding hygienic and sanitary characteristics suitable for habitation.

Certificate of fitness for use
Administrative act issued by the Municipality attesting the compliance of the building with the parameters established by the laws regarding hygienic and sanitary characteristics suitable for other than residential use.

Mortgage certifications *
Statement issued by the Land Registrar at the provincial offices of the Land Agency regarding mortgage formalities which have been executed on one or more real properties belonging to one or more firms (individual persons or subjects other than individual persons).
* valid only for the old provinces, in Trentino Alto Adige and Trieste there is the land register

Assignment of contract
Assignment of contract means the replacement of one of the contracting parties (TRANSFEROR) with a third party (TRANSFEREE) in the entire juridical situation deriving from the contract.
It is a taking over not only of credits and debts, but of all the assets and liabilities pertaining to the entire juridical contract.
As opposed to assignment of credit, which is done simply by the agreement between the transferor and the transferee, the assignment of contract also requires the CONSENT of the PAST CONTRACTING PARTY.
The transferor is released from his or her obligations toward the past contracting party, unless the latter has declared not to release them.

Cadastral classification
Operation consisting of assigning each urban real estate unit or plot of land consisting of cadastral parcel to a category and a class to which it belongs.



Cadastral class
Division within the cadastral category based on different qualitative levels and incomes ordinarily derivable from the urban real estate unit.

Penalty clause
The evaluation of the damages deriving from the breach of a contract may present difficulties and uncertainties. In order to avoid them, the parties may put a penalty clause into the contract that establishes BEFOREHAND the amount that will be due as compensation for damages in the case of breach. The defaulting party must then pay the agreed penalty, without the creditor having to give proof of having actually suffered damages. The parties may agree that the penalty shall constitute the minimum amount due in any case of breach of contract, with the creditor maintaining the right to claim additional compensation when they can prove that the damage actually suffered EXCEEDS the penalty amount. Without this agreement, the creditor may not claim more than that established in the penalty clause.

Termination clause
Not every breach justifies the cancellation of a contract.
If it is simply a matter of a small inaccuracy in the performance or a slight delay or the non-fulfillment of an secondary service of little importance, cancellation can be ruled out.
In these cases, the creditor may bring suit only to have the debtor ordered to fulfill the contract and to compensate the damages.
Therefore the judge has a certain power of evaluation as concerns the importance of the breach. If the parties wish to limit the extent of this judicial evaluation, they may put a clause in the contract that provides for its cancellation in the event that a given obligation – or obligations, provided that they are specifically indicated – is not fulfilled or is not performed complying with the terms established. With reference to these specific instances of non-performance, the clause takes away from the judge the power to deny the cancellation if he or she does not consider them sufficiently serious. It may happen, however, that the creditor of the unperformed service prefers to continue the contract: the law offers this possibility, establishing that the cancellation will take place only if, following the non-performance, the creditor declares to the other party that they wish to avail themselves of the termination clause.

Client (of the real estate agency)
Anyone (individual person or legal entity, public or private body) who requests brokerage services and technical advice regarding real estate and companies.

Composition of the real estate unit
Makeup of an urban real estate unit consisting of "main rooms" (bedrooms and kitchen with natural direct lighting) and "direct accessory rooms," that serve the main rooms and are essential (bathrooms, storerooms, entryway, hallways, etc.).

Joint ownership (of real property)
Ownership common to two or more persons.

Suspensive condition
The contract may provide that its provisions (or some of them) may be effective or ineffective upon the occurrence of an uncertain future event. This is a condition.
The condition is said to be condition precedent if the negotiating effect dependent upon it is lacking earlier and is destined to become effective in the case in which the condition occurs.
If instead the negotiating effect is immediately effective but is destined to become ineffective in the case in which the condition occurs, it is called a resolutory condition.

Condominium
Coexistence of common parts of a building, of which the individual co-owner is a joint

owner of an undivided share.

Building amnesty
Amnesty for illegal building work by means of the payment, by whoever did the illegal work, of sum of money as a fine.

Land registry
Office at which transcriptions and creations of mortgages on real properties are registered.

Report of Start of Activities (DIA)
The Report of Start of Activities (Denuncia d'Inizio Attività – DIA) regards minor building works, mostly changes or modifications in existing buildings; may be authorized by means of "silent consent."

Right of habitation
The right to inhabit a house limited to the needs of oneself and one's family. The inhabitation is a limited type of usufruct.

Right to withdraw
The right to free oneself from a contractual tie.
Normally, after entering a contract, a unilateral withdrawal – i.e. the right to free oneself from a contractual tie by means of a statement communicated to the other party – is not allowed. However, in some contract relationships, the law gives one of the parties the right to withdraw at any time or upon the occurrence of given conditions. It is important above all to point out that the right to freely withdraw from a contract is granted by the law, normally in continuous or periodic contracts entered for an open term. In these cases, each of the parties may bring an end to the relationship by means of a simple statement, apart from the obligation of giving the other party appropriate advance notice. In all continuous or periodic contracts the withdrawal is not effective for the services already performed or in progress. The right to withdraw may also be established by an agreement between the parties (conventional recession).
If it is not a continuous or periodic contract, this right may be exercised only before the performance of the contract begins, unless otherwise agreed.

Building lease
The right to build and maintain upon the ground owned by someone else a construction of which ownership is acquired.

Right of use
The right to make use of a property and, if fruit bearing, to pick the fruits limited to the needs of oneself and one's family. It is a limited type of usufruct.

Gift
A contract by which, in a spirit of generosity, one party enriches another, providing them with a right or claim or assuming an obligation towards them.

Heredity
The whole of legal relationships, assets and liabilities, of an estate that upon the death of a person is passed on to their successors.

Expropriation
Procedure for the acquisition of privately owned areas or properties by a public body, in the public interest for collective purposes. It is an instrument for the implementation of town planning for acquiring the areas necessary for the creating of public works, economic and

public housing, industrial or production zones.

New building
A construction built new from the foundations to the roof in observance of town-planning regulations that is not more than 5 years old.

Recent building
A construction built 5 to 30 years ago.

Renovated building
A construction that has undergone considerable repair work.

Old building
A construction built over 30 years ago.

Map sheet
Portion of land used in cadastral maps. The sheets are numbered progressively and separately for each municipality and are composed of parcels.

Mortgage
Right of lien in favor of an institute that disburses a loan, guaranteeing it against the risk of insolvency on the part of the borrower.

First mortgage
Mortgage registration that makes it possible to be the first creditors to collect the proceeds from a sale under execution for the insolvency of the borrower. It is the first mortgage registered on real estate.

Second mortgage
Mortgage registered on a property already encumbered by a first mortgage.

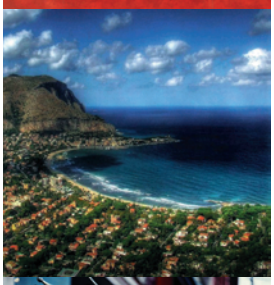
Mortgage inspections
Consultation of the registers, of the formalities and of the titles filed at the Land Registries of the provincial Land Agency offices.

Cadastral microzone
Portion of municipal territory or census zone that is uniform as regards position and urbanistic, historical-environmental and socioeconomic characteristics, as well as in the services available and urban infrastructures. It is identified by one or more contiguous sheets, or part of them, that are part of the cadastral map and that belong to the same municipality.

Loan
A contract by which one party (lender) gives to another party (borrower) a certain amount of money, which the borrower binds themselves to pay back along with interest over a given time period, or an extended maturity loan which provides for the repayment at periodic intervals of shares of principal and the payment of stepped interest. Loans can be fixed, variable or mixed rate depending on whether the interest to be paid remains the same or changes over time.

Mortgage loan
A particular type of medium- to long-term loan secured by a mortgage on real properties in favor of the bank that grants the loan.

Bare property
Real right remaining after the establishment of usufruct on a real property.



Cadastral parcel
The cadastral parcel is a continuous portion of land or building belonging to the same possessor, provided that it is of the same quality or class, and has the same zoning. Cadastral parcels are identified by the sheet number of the cadastral map and by the parcel number (or letter).

Building permit
Paid permit, issued by the Mayor, upon presentation of a plan, of the right to carry out all the activities that bring about the urbanistic and building creation or transformation of the municipal territory.

Preliminary agreement to sell/promise to sell
Deed by which the parties bind themselves to close a property sale.
The deed must indicate: the personal data of the seller, the cost and characteristics of the real property, the method of payment and the date of the closing. The personal data of the buyer may be omitted in the deed and made known before the notary.

First home
The first house owned or possessed by a person, for which tax benefits are available.

Irrevocable proposal
A contract proposal is irrevocable not only in the cases provided for by law (e.g. in a contract with obligations only for the proposer) but also each time that the proposer is obligated to keep it unchanged for a certain period. In this case it does not lose its effectiveness following the death or the incapability of the proposer, unless otherwise provided for by the nature of the deal or by other circumstances.

Ownership
The right to enjoy and dispose of things fully and exclusively, within the limits and in compliance with the obligations established by law.

Agrarian income
Income attributable to whomever (owner, lessee, etc.) uses agricultural land; it is represented by the sum of the interest of the working capital and of the consideration for management work.

Farmland income
Income attributed to the possessor of a plot of agricultural land; it is represented by incomes deriving from land ownership before taxes. It is established by the cadastre on the basis of the quality of the land divided into different production classes, expressed in valuation rates.

Condominium rules
The set of rules within a condominium, which regulates the aspects regarding the use of common properties.

Cadastral income
Gross average ordinary income obtainable from an urban real estate unit, previous to the deduction of expenses and any losses and before taxes.

Residence
The place where a person has their regular dwelling.

Agency head (real estate)
Real estate agent, legal representative or director with general powers of attorney, head of

the services provided by the real estate agency.

Tacit renewal
When tacit renewal is provided for by the contract, if there is no cancellation of the insurance by the insured party according to the term provided for in the contract, it is automatically renewed for a duration of one year.
In the case of a regularly notified cancellation, according to that provided for in the contract, the insurance coverage will end upon the expiration of the contract and there will be no application of the 15-day grace period provided for by Art. 1901 par. 2 C.C.

Renovated (building)
Building in which recent renovation works have been done.

Building renovation
Work aimed at transforming buildings by means of a systematic set of works that can lead to a building wholly or partially different than the preceding structure.
They include:
- the restoring or replacement of some building elements, the elimination, the changing and the adding of new elements, systems and installations;
- the reorganization of the spaces in buildings and real estate units, of their number and their dimensions;
- the changing of the zoning of buildings, according to that regulated by regional laws;
- the transformation of accessory rooms into residential rooms;
- the modification of structural elements;
- the works for expanding areas.

Notarial deed
Public contract drawn up by a notary.

Subaltern
Identifies the specific real estate unit, or real estate unit number, in a building.

Succession
The complete or partial taking over of the legal relationships belonging to a person, on the occasion of their death.

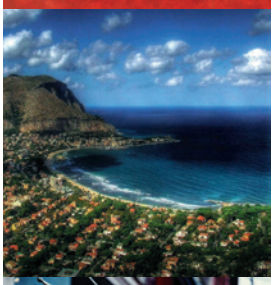
Variable/Adjustable rate (Tasso a regime)
Interest rate applied to loans in the loan redemption period, which is determined according to methods and indexation parameters agreed upon in the contract.

Agricultural land
Plot of land or farmland not susceptible to urban development on the basis of the town-planning instruments in force, the zoning of which is exclusively for agricultural use or the construction of rural-type buildings for farm use.

Developable land
An urban area that may be built upon on the basis of the town-planning instruments in force.

Adverse possession
Acquisition of the ownership of real property and of other real property rights on said properties by virtue of continuative possession for a number of years defined by law.

Usufruct
Real right to enjoy another's property and its fruits, having possession but not ownership. It is of temporary duration and is understood to be established for the entire duration of the



life of the usufructuary and in any event it is extinguished upon the death of the usufructuary. It cannot be for more than thirty years if established in favor of a legal entity.

Sale
Contract regarding the transfer of ownership of a house or of another right through payment of a price.

Block sale
A contract for the transfer of ownership of all or part a real property, regardless of the actual measurements of the real property.

Sale based on area
A contract for the transfer of ownership of all or part of a real property, made on the basis of the actual measurements of the real property.

Oppressive clause
A clause is oppressive when its content is in contrast to or violates the regulations that protect the consumer in contracts between consumers and professionals (Art. 1469b, Civil Code et seq.)

Title search
Consultation of cadastral deeds and documents. The search makes it possible to acquire identification and income data on real properties (land and buildings). It is also possible to consult the map and cadastral updates and the planimetries of urban real estate units. Copies of databank results can be issued at the provincial offices of the Land Agency, upon payment of the required fees and taxes.

Census zone (cadastral)
A continuous portion of the municipal territory that is uniform as regards environmental and socioeconomic characteristics and that has real estate units that are similar in type and in period of construction.

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