LIVING AND DOING BUSINESS IN ITALY.

A Guide Provided by the Italian Notariat

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NOTARIATO

We wish to thank
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WHAT IS A NOTARY?

The notary is a public officer to whom the Italian State has entrusted the task of producing all deeds between living persons as well as last wills and testaments and endowing such documents with public trust. In addition to family relationships, on which he or she is among the leading experts, and questions of succession, the notary is involved in many areas, including: real estate conveyancing (purchase and sale of homes, offices, land, warehouses, workshops, donations, subdivisions, mortgages etc.); important changes in company structure, whether it be a one-person firm or a corporate entity (constitution and winding up, amendments to the by-laws of the company, sale and leasing of businesses, etc.).
The Italian notary is subject to stringent checks by the State that help further increase the safety of the client for whom he performs work. All notarial deeds, in fact, are subject to periodic inspection by the Department of Taxation (every four months) and the Ministry of Justice (every two years), to verify that the correct amount of tax has been paid and that the deeds comply with the law. Notarial District Councils, on the other hand, oversee the notary's professional conduct. Should irregularities be detected, the notary undergoes disciplinary proceedings with possible penalties; these are entrusted to independent regional disciplinary commissions presided over by a magistrate. This ensures the absolute impartiality of any decisions.
On behalf of the State, the Italian notary collects the taxes linked to all deeds (registration tax, mortgage and cadastral taxes, etc.). Each year through its online network the notarial system pays in several billion euros of indirect taxes and capital gains without charging the State any commission, even if the client does not pay what is due.

The Notarised Public Deed

The notary confers public trust, i.e. the status of legal proof, to the deeds he draws up. So everyone - including the courts – must accept as true what he has attested, unless the crime of forgery is established.
For this reason, the notary must personally determine what the intentions are of those persons who engage him and the goal to be achieved, in order to prepare the deed, in accordance with the law, in the most suitable and economical manner. To this end provision of the notary's advice prior to the signing of the deed is essential.

Guarantees Regarding Deeds

In performing his function the notary must, by law, be independent and impartial: he must protect the interests of all parties equally, regardless of who has appointed him. He must, therefore, decline to act whenever there is a conflict of interest (for example, when his own relatives are parties to a transaction).
The notary performs a prior check on legality: he has a duty to ensure the laws are respected and cannot and must not produce deeds in contravention of the law. Before drawing up a deed, the notary must determine who the parties are that have come to him and must certify their identity.
The notary also has the duty to ensure that the parties have the right to enter into the transaction. With particular reference to persons who are legally incapable and legal entities, the notary must be sure that the person before him has lawful power of attorney and that all relevant authorisations necessary for the completion of the transaction are in place.
The notary is required to verify the conformity of the intent declared to him with the rules of the legal system, and not only of the Italian legal system. In the event that a case has foreign implications, the notary must identify the law applicable

to the case according to the rules of private international law and must evaluate whether the intention of the parties is in accordance with the applicable rules.

Anti-money-laundering controls

Under the law on money laundering, the notary must ensure the identification of clients and the beneficial owner of the operation and report any suspicious transactions to the FIU (Financial Intelligence Unit) at the Bank of Italy.
According to data provided by the Financial Intelligence Unit (FIU), about 90% of the suspicious transaction reports received from professionals come from notaries. This helps demonstrate how the notary is not only at the service of the public but also assists the authorities in checks on legality.

The Language of Legal Documents

The law requires that deeds be written in Italian. But when the parties declare that they do not know the Italian language, the deed may be written in a foreign language, so long as that language is known by the notary.
The text in a foreign language will be accompanied by an Italian translation. If the notary does not understand the foreign language used by the parties, it will still be possible to draw up the deed in the presence of an interpreter chosen by the parties.
In this last case, the deed will be written in Italian, but will be accompanied by the translation prepared by the interpreter in the foreign language. In this way, foreigners too may enjoy the benefits of transactions sealed by a notarial deed.
The deed and any translation into a foreign language, must then be read out to the parties by the notary, if necessary with the help of the interpreter. Thus the parties will be able to check that the notary has correctly represented their intentions in the public document before signing it.

Registration and Storage of Notarial Deeds

Following the signing of a deed, the notary will lodge it with the appropriate public registries: land, companies, civil status, etc. Registration of notarial documents is therefore not a burden on the parties but is a clear obligation of the notary. Thanks to this task entrusted by law to the notary, the public registers of the Italian State are complete, reliable and up to date in near real time. The notary is responsible for the filing and preservation of the deeds he has drawn up so they do not run the risk of being lost. Only in specific cases provided for by law may the notary deliver the original to the parties. It is also incumbent on the notary to issue certified copies to those requesting them. The law assigns to such copies the same value as the originals.
The preservation of notarial deeds is assured even after the notary who created them ceases his professional activity. The deeds are then delivered to the Notarial Archive, a facility of the Ministry of Justice of the Italian State, which will ensure their preservation and issue certified copies.

RESPONSIBILITIES OF THE NOTARY

For his work the notary, as a public official, must adhere to strict rules laid down in the code of ethics and the law to ensure, amongst other things, that:
-notarial deeds are in accordance with the will of the parties;
-notarial deeds are valid, meaning in compliance with the law;
-the legal effects of deeds are not affected by any encumbrances or rights of third parties (such as mortgages, foreclosures, easements, pre-emption, etc.) about which the notary did not warn the parties.
If the notary fails to perform his professional duties he is responsible under the law in several cases:
- civil: if he has caused damage to the parties through non-performance of his professional duties, the notary is obliged to make good the damage;
- criminal: if he has committed crimes;
- disciplinary: if he has violated the ethical standards of the profession, the notary must pay pecuniary fines or be suspended from the profession for a specified period of time or, in serious cases, he may be struck off.

In view of these responsibilities, notaries were the first profession in Italy to have set up, as early as 1999, compulsory insurance that by law covers every notary in the case of civil liability for error. There is also a guarantee fund for damages resulting from criminal offences.
So a member of the public, whether Italian or foreign, who enters the office of a notary public knows that he or she can count on protection both in the case of error as well as in the case of malpractice, and that without exception.

RIGHTS AND DUTIES OF THE CLIENT

What are the rights of the client?

To receive an estimate of the cost of the deed, with an indication of the individual expenditure items (taxes, fees and VAT);
2) to be received and heard directly by a notary before the execution of the deed in order to submit special needs or seek clarification of any kind;
3) a full reading of the deed with all necessary explanation;
4) to receive a full explanation in simple and understandable terms of all the tax implications, including those in the future;
5) absolute confidentiality of the notary and his staff about decisions taken and the information communicated.

Are there also duties?

Not so much duties as "instructions for use":
1) Do not request deeds that are contrary to the law or intended to circumvent it;
2) Explain all the problems involved in the case without hesitation. Often the assets being discussed with the notary involve family and personal situations that it is appropriate to present to the notary in order to avoid a situation where the deed does not achieve the desired objective. Do not be afraid to bring out all aspects of the case;
3) Pay close attention during the reading and explanation of the act; that way, it will be easier for the notary to illustrate every aspect and correct any inaccuracies, even those simply relating to personal data.

The Choice of Notary

A notary is a bit like a doctor: one protects your assets, the other your health.
The notary must be chosen by the parties by mutual agreement or, failing that, by the party who is obliged to pay the costs. The choice is personal and must not be imposed by other professionals.
It is possible to visit the official website of the Notariat (www.notariato.it) to search for a notary close to your residence. You should choose the notary on the basis of a trusting relationship, taking into account the time that the notary personally

dedicates to the client; his ability to advise and guide you towards the solution that best achieves the interests of the parties; the way in which he practises the profession and observes the rules of law and the code of ethics; his fairness and professional capabilities, as well as the efficiency of his office staff.

THE LEGAL STATUS OF FOREIGNERS IN ITALY

The notary, when he is called upon to act in relation to public documents or authenticated private documents involving one or more parties who are not Italian citizens, applies a set of rules - known under the overall name of the **legal status of foreigners** – which define the limits, now quite broad, under which foreign nationals may enter into legal transactions in Italy. The legal status of foreigners in Italy finds its primary and fundamental regulation in the Italian **Constitution**, which states that it is governed by law in accordance with international rules and treaties.

With particular regard to international sources, Italy's membership of the **European Union** means that the citizens of EU Member States enjoy in Italy the fundamental freedoms laid down by the European legal system, namely the free movement of capital, the free movement of goods, the freedom to establish economic activities in Italy and to provide services in Italy and the free movement of workers. Based on these freedoms guaranteed by European citizenship, citizens of EU Member States can carry out in Italy, under the same conditions as Italian nationals, all legal acts such as, for example, the purchase of a property or a business, the entering into of a loan agreement or the setting up of a company. Citizens of countries that are not part of the European Union - and except as will be discussed shortly for non-EU citizens legally residing in Italy - may enter into transactions with legal validity in Italy only if the condition of **reciprocity** exists, i.e. only to the extent that it would be possible for an Italian citizen to undertake those same legal steps in the State of the foreign national who intends to operate in Italy. The condition of reciprocity can be met by means of one of the many international conventions stipulated by Italy with many foreign countries for the mutual protection of investments by nationals of the contracting nations. Proof of the existence or otherwise of the condition of reciprocity in relation to acts for which the notary's services have been requested is entrusted to the notary himself and involves an analysis that must necessarily be conducted on a case by case basis – if necessary with the help of the Italian Ministry of Foreign Affairs - since its outcome depends on the specific type of legal transaction involved as well as the national law of the person who is proposing it.

Apart from the fulfilment or otherwise of the condition of reciprocity, citizens of states which are not EU members but who are residing in Italy may enter into legal transactions if their stay in Italy is legitimate under national law. This condition requires the possession of a valid **residency permit** or a **long-term residency permit**, documents which must be shown to the notary prior to the formalisation of the transaction in question.

The possibility for foreign nationals to carry out certain legal activities in Italy having been ascertained under the conditions outlined above, it should nevertheless be noted that the deed in question, even though notarised or authenticated by an Italian notary, will not necessarily be governed by Italian law. The Italian system of private international law – i.e. the system of rules that allows for identification of the jurisdiction and the law applicable in particular legal situations having transnational characteristics - is, in fact, strongly oriented toward openness to foreign legal systems with which such cases may have connections. Italian law and some European Regulations that uniformly govern certain cases of private international law in fact identify a series of connecting factors, depending on the criteria, so that from time to time Italian law may be applicable or instead the foreign law identified by the connecting factor; in some cases, the choice of legal system may be made by the parties to the transaction.

For example, with regard to the major issues, it may be pointed out that, according to Italian law:

- Personal relations between spouses are regulated by the common national law of the spouses or, failing that, by the law of the state where the marriage is predominantly located;
- Property relationships between spouses are governed by the law which regulates their personal relationships (unless the spouses agree in writing to regulate their assets according to the law of the State of which at least one of them is a national or in which at least one of them resides);
- Contractual obligations are, however, regulated in accordance with the Rome Convention of 1980 which, in addition to providing for a number of connecting factors according to the circumstances involved, allows the parties - except in limited cases – to freely choose an applicable law, even if without any connection with the contract;

Companies, associations, foundations and any other entities, public or private, even if they do not have the the character of an association, are regulated - as a rule – by the law of the State in which the entity was set up.

With regard to foreign spouses, who may be of different nationalities, it is useful to check with the notary to find the most satisfactory solution for their future succession in case of death or for the needs of their children.

REQUIREMENTS FOR DOCUMENTS FROM ABROAD AND FOR USE ABROAD

In general, for documents originating in a foreign country to be valid in Italy it is necessary, as in most legal systems, that they undergo a process of recognition and validation by the Italian diplomatic and consular authorities abroad: this is called "legalisation", whereby those authorities certify that the document in question was lawfully produced in its State of origin and its content is therefore reliable.

Given that legalisation is a procedure that involves an expenditure of time and resources that is hardly compatible with the requirements of modern commerce, most countries in the world - including Italy - have signed the **Hague Convention** of 5 October 1961 regarding the abolition of legalisation of foreign public documents. This Convention means signatory nations have allowed legalisation to be replaced, as regards documents from another signatory nation, by the appending of an **Apostille**, rendering the document valid in the foreign country. The Apostille is an attestation, prepared in accordance with a standard required by the Hague Convention, as to the legal qualification of the public official (or function-

ary) who has signed the document and the authenticity of his or her seal or stamp. This method means that a foreign national in possession of a document requiring validity in Italy can go to the authorities of the State in which it was issued - and a list of the appropriate authorities for each country is contained in the act of accession to the Convention itself - to have the apostille appended, thus making the document legally enforceable in Italy.
The national authority designated by Italy for issuing apostilles for Italian documents to be used abroad is the public prosecutor's office for notarial deeds, for court documents and for those regarding civil status, while for administrative acts the competent office is the Prefecture (Territorial Government office) of the place where the document was issued.

PURCHASING REAL ESTATE IN ITALY

Buying or selling a property (a home, office, shop, studio, land etc.) is one of the most significant moments in the life of a person, whether it is an investment or, especially, if the property is intended as the family home.
In order to protect citizens, whether Italian or foreign, the Italian State requires that the contract be drawn up by an impartial public official who is a specialist in this area: the notary.
By law, the notary acts as a third party who is independent of both seller and buyer, ensuring that the conveyance of the property complies with all legal requirements, in accordance with the common interests of the parties and with particular attention to the purchaser.
The role of the notary in this case is seen in all its importance, both for the complexity of the operation and because of the need to protect the parties, from the first moment in which they reach an agreement to proceed with the deal: for this reason **it is recommended that the purchaser (almost always the weaker party in the transaction) contact his own notary from the start of the negotiations**, before signing a proposal to purchase or preliminary contract, since these already represent a binding commitment; in this way, every aspect of the transaction to be entered into can be considered together with the notary. So do not hesitate to consult your notary.
The choice of notary is absolutely free (the choice may not be imposed by the estate agent or the bank providing a mortgage or by the seller) and it is **up to the purchaser**, who is required to pay the fees, unless otherwise agreed with the seller. The choice of notary, then, should be guided by the confidence the client has in him, the amount of time he is willing to spend and the advice given to ensure a safe purchase. If one does not know a notary, one can go to the nearest one.
It is extremely important to check that everything is in order before signing any binding document and advice requested of the notary, even before the conclusion of the sale, does not have an additional cost. The parties have the right to consult the notary personally and ask him for all the clarifications and explanations that may be useful for understanding the consequences and legal effects of the deed.
There are numerous activities carried out by the notary for the preparation of all documentation necessary for setting up the transaction. The notary first investigates the intentions of the parties so as to identify the type of deed most suitable for achieving the purpose desired by the client, within the confines of the law. So the notary must ask the parties for all the information that will enable him to understand fully the result they want to achieve. It often happens that, in conversation with the notary, the client ends up changing what had been the initial idea because, for example, there is a more suitable or more fiscally correct solution.
Let us imagine the case in which the price is not paid in full at the time of the deed and part of the payment is postponed. In this case it is important to ask the notary's advice on forms of collateral that can be provided to the seller and the corresponding costs. There are in fact various forms of protection: from the preparation of promissory notes to the registration of a legal mortgage, to a sale with reservation of ownership, in which case the transfer of ownership of the property takes place only upon payment of the last instalment of the price. Lastly, the recent economic crisis has led to the creation of additional contractual forms such as rent-to-buy, in which the purchase is preceded by a period of fruition of the property upon payment of rent, part of which is deducted from the sale price.
Once the deed to be prepared has been defined, the notary must by law carry out a series of advance checks on legality, to ensure the contract will be valid and unassailable over time.
The property may be bought by a private purchaser, by a company or by a construction company.
In any case, the notary will ensure that:

- **the seller really owns the property and has the right to sell it:**
  The notary ascertains the identity of the parties involved in the transaction and their right to act, by verifying the matrimonial property regime applicable between spouses, any power of attorney etc. The notary's check on the identity of the parties serves to avoid the risk of identity theft, which is widespread in jurisdictions where there is no "Latin" notary.
- **the property is not mortgaged:**
  By law the notary must ascertain that there are no previous mortgages, liens or foreclosures recorded at the Territorial Offices of the taxation authorities. The notary must ensure also that the property in question is not subject to specific constraints e.g. in terms of public housing (existence of particular individual requirements on the buyer, or price constraints), or right of first refusal in favour of certain persons, or covenants regarding assets classified as of historic, artistic or archaeological value.
- **the previous owner has paid all service charges:**
  Upon completion it will be essential to have the managing agent prepare a statement on the payment in full of service charges and levies by the seller, since the buyer is liable for the non-payment of service charges due in the previous year.
- **the cadastral plan conforms to the actual state of the property:**
  The notary must ensure that the cadastral plan exists and must bring it to the attention of the parties; the seller must declare and guarantee correspondence between the cadastral plan and the actual state of the property.
- **the necessary checks have been put in place to ensure that the property is in order in terms of building/planning permissions**
- **the correct fiscal regime is adopted by the parties:**
  The notary identifies the taxation applicable to the specific case and proposes it to the parties as well as checking, following indications from the parties, the existence of the requirements for any tax benefits (for example, benefits for the purchase of a first home, or a tax credit or exemption in the case of transfers pursuant to separation or divorce proceedings). The notary has specific training in tax matters and is able to suggest solutions resulting in legitimate tax savings.

The notary is obliged to collect from the purchaser the funds needed for the payment of taxes and duties; upon registration of the deed these will be paid over to the taxation authorities.

- **the rules specifically designed to protect those who buy a property under construction have been complied with (e.g. issuance of a bank surety to guarantee any advance payments)**
- **the energy performance of buildings is certified in accordance with national and regional rules:**
  For the sale of properties with heating plants it is mandatory to have and often even to annex the certificate of energy performance (EPA) prepared by a registered certifier that shows the class of the property's energy consumption for heating.
- **all regulations have been observed regarding** money laundering**, traceability of payments and the commissions paid to any real estate agency.**
  The notary's checks end with the signing of the deed.
  As a rule at the time of signing of the deed of sale, the handover of the property also takes place.
  Nevertheless, the parties may agree otherwise, deciding for:
- early handover, it being understood that the seller remains the owner of the property and therefore responsible for it under the law;
- delayed handover to meet the needs of the seller, a clause being inserted in the contract of sale setting a time limit by which handover must be made, if necessary with provision for a penalty for any delay.

To protect the public, the law provides detailed rules for the preparation of the deed, in particular:

a) the notary must explain the entire contents of the document to the parties and any witnesses whose presence is required by law in certain cases (such as when one party is unable to sign or is suffering from sensory impairment), making sure that they understand the contents and legal effects. If he does not do so, he is criminally responsible for the crime of falsity in a public document;
b) the document, once read and approved, must be signed by the parties and any witnesses before the notary and it is then signed by the notary;
c) what the notary certifies in the notarial deed is legally conclusive evidence for all purposes - even in the courts - unless the crime of falsity in a public document can be proved.

The phases of a sale are many and often complex, and do not come completely to an end with the signing of the deed, given that the notary must undertake an important series of steps at the Public Registries, including lodgement and fiscal registration.

The Preliminary Contract (commonly called a "*compromesso*")

This is the first contract that the seller and the buyer must sign. Sometimes, however, the preliminary contract ("*compromesso*") is preceded by a purchase proposal ("*proposta d'acquisto*"). With the compromesso, the party agrees to sell/buy; the total price of the property is set, as well as the terms of payment, the actual timing of the sale and the amount of the advance payment (down payment/deposit) that is paid at that moment to the vendor.

This preliminary agreement (even if it is concluded privately) gives rise to commitments that are legally enforceable. They pose constraints for both the seller and the buyer: if after payment of the deposit the buyer decides not to buy the property, the seller may retain the deposit; but if the seller decides not to sell, the buyer is entitled to receive back an amount equal to double the deposit paid.

It should also be pointed out that if the preliminary contract is made with a notarial deed, the contract can be "transcribed" into the registries: in this way the buyer is protected from any problem that may arise during the period of time between *compromesso* and completion of the deed, such as mortgages, foreclosures or bankruptcy of the seller. In case of insolvency of the seller, for example, registration of the preliminary contract allows for recovery of all or part of the amounts paid. This suggested approach offers the best protection for the buyer.

Activities Subsequent to Completion of the Deed

Even after the signing of the deed, the notary is required by law to perform a series of tasks, within a short time, which will ensure on the one hand that the State receives payment of its taxes, and on the other publicly advising third parties and establishing the certainty of the transaction for the benefit of all citizens.

The notary is obliged to carry out, within a brief time-frame:

a) registration of the deed with the taxation authorities and payment of the relevant taxes on behalf of the client;
b) lodging of the deed – as protection for the whole community - in the Public Registers, making it known and fully effective to all (technically known as third parties). The filing of the deed with the competent authority in the land register is required by law to let everyone know who is the owner of the property and whether it is subject to mortgages or other encumbrances.
c) cadastral registration in order to update the land registry.

How much does the notary cost?

There are no obligatory or predetermined tariffs. The fee is therefore left up to free negotiation between the buyer and the notary. The notary is obliged to provide, upon request, a written estimate with the detailed description of his fees and the taxes payable. **As an indication only, the fees charged for the purchase of a property valued at EUR 200,000 may not exceed 1%.**

What other costs are associated with the purchase?

Where a real estate agency is involved, the buyer must pay his commission. **As an indication only, the fees charged for the purchase of a property of the above-mentioned value is commonly 3%**.

Buying a Home: Fiscal Aspects

A) Purchase from a builder/renovator

Puchase from a firm of builders or renovators, except in particular circumstances, attracts VAT which is payable directly to the seller.

The VAT rate to be applied on the sale price will be:

- 10% unless it is a first home purchase
- 4% if "first home" assistance applies.

The same tax treatment is applied to the allocation of houses to members of housing cooperatives.

In the case of purchases subject to VAT, the following taxes will be also paid to the notary who will then pay the Taxation Office:

- Registration Tax: Euro 200
- Mortgage Tax: Euro 200
- Land registry Tax: Euro 200

The rates apply on the sale price declared in the deed.

B) Purchase from a private party

For the transfer of property between private individuals the registration tax, mortgage and land registry taxes are paid by the buyer to the notary who, in turn, will forward them to the government Taxation Office at the time of registration.

1) In the absence of incentives

- Registration Tax: 9%
- Mortgage Tax: Euro 50
- Land registry Tax: Euro 50

2) Support for the purchase of a first home

- Registration Tax: 2%
- Mortgage Tax: Euro 50
- Land registry Tax: Euro 50

In the case of transfer of residential property to physical persons the purchaser may apply for payment of the registration tax **on the "cadastral value" (price-value)** of the property (which is the value obtained by multiplying the cadastral income by the legal coefficient of 115.5), regardless of the actual amount of the sale price, even if it is higher than this value.
The minimum tax is still €1,000.

TAKING OUT A HOME LOAN IN ITALY

A mortgage loan is the typical financing contract within our legal system and almost always one of the parties is a bank.
To obtain a home loan it is sufficient to approach a bank and provide the documentation it requests.
Those applying for a mortgage loan who need clarification can also consult, in addition to the bank, various consumer associations and their usual notary who can furnish all the advice and information needed for the operation.
It is not necessary, on the other hand, to make use of a credit intermediary (e.g. a credit broker or financial asset manager): if this occurs, the costs of the operation are destined to grow, the broker's fee sometimes being expressed as a percentage of the amount borrowed.
Common sense and **prudence** are necessary in applying for a home loan or other financing in general.
The use of credit is now common for the purchase of motor vehicles or non-durable, sometimes inessential, goods. Also the use of electronic means of payment often does not allow one to fully assess a dangerous decline in one's savings.
One must therefore be fully aware that the accumulation of instalments that have been inadequately weighed up at the time the commitments were made, could render the periodic payments out of real family income unsustainable, thus in some cases causing serious financial difficulties with unpredictable consequences.
Sometimes it is wiser to give up, limit or postpone a purchase. Good advice and the exchange of views with an expert can help ensure one's future serenity.
The role of the notary is important to the granting of home loans. His participation is required by law because a mortgage is recorded in the land register.
The notary, in addition to checking the validity of the contract and accepting responsibility toward the bank as to the ownership and freedom from encumbrance of the property denominated as security, checks in the contract for the existence of any unfair terms detrimental to the client, prevents fraud that might harm the bank or the client and, by virtue of his experience and training, can advise the borrower regarding the best solutions, pointing out provisions that could lead to an imbalance in the contractual terms.
The practice of contacting the notary early on is really crucial, because the notary has less room for manoeuvre if problems are raised when contractual deadlines are imminent and when the buyer of the property, to meet his commitments, absolutely must somehow and without delay obtain release of the funds. It should be remembered also that prior intervention of the notary in contracts of this kind is in effect an opportunity to obtain legal assistance that is routinely included in the total cost of the deed.
A mortgage loan normally accompanies the purchase of real estate (a so-called "fondiario" loan, i.e. secured by real estate, where the amount is not more than 80% of the market value of the mortgaged property), so that it very frequently happens that the deed of sale and the mortgage are signed in front of the notary simultaneously. In this case, too, it is useful to contact the notary well in advance, so as to have all the information necessary for the procedures to be followed with the bank, especially with regard to mode of delivery of the money, which is not always at the time the mortgage deed is signed.

The right to be informed

Consumers, according to the Consumer Code (Legislative Decree 206/2005), have a genuine right to full information – in **clear and understandable** terms – about the home loan agreement, a principle that, from 1 October 2003 pursuant to a resolution of the C.I.C.R. (Interministerial Committee for Credit and Savings), is contained in new national rules on the transparency of banking transactions and services set out in special provisions issued by the Bank of Italy. As a result of these rules, banks make available to their customers, in premises open to the public, an **information sheet** which contains, among other things, the economic conditions of the transaction and the main contract clauses that regulate it.
The customer is thus able to make assessments more easily and above all to compare the loan terms proposed by the various banks so as to choose the cheapest offer.
Under these provisions the customer (borrower), having picked a **lending bank**, then has the right to receive from it, before the signing of the contract, a **copy of the contract** in the form in which it is to be signed (i.e. a pro forma contract) for an informed evaluation of its content. The furnishing of this copy does not bind the parties to conclude the contract.
Timely exercise of this right is highly recommended, so that the client, after consultation with a trusted **notary** or with **consumer associations**, may request any appropriate changes and corrections to meet the specific case.
Attached to the contract is an **epitome document** aimed at providing the customer, in the clearest possible terms, with a summary of the most important conditions of the contract.
If there is difficulty in understanding these documents the Bank and the notary stand ready to give information and explanations.

The Interest Rate

The rate is certainly one of the main elements to be considered when assessing a home loan.
The interest rate can be **fixed**, when it agreed that it will remain unchanged for the duration of the mortgage, or **variable**, when it is determined with reference to changing parameters that must be defined with the requirement of objectivity and impartiality.

The **choice between a fixed or floating rate** is the substantive question, where the borrower has full discretion, assuming full responsibility for the **risk**. The rate of a variable mortgage is - normally - lower than that of a fixed-rate mortgage, but entails the risk that the rate may rise over time. Apart from the primary split between fixed-rate mortgages and adjustable-rate mortgages, there are **different types of contracts** in which those characteristics may merge or alternate: for example, the term **mixed-rate** mortgage means the borrower has the option, as stipulated in the contract, to change from fixed to floating interest rate or vice versa; a **capped** mortgage has a variable rate which however can never exceed a certain predefined maximum; then there are **variable-rate mortgages with fixed instalments** where any increase or decrease in the benchmark rate automatically extends or shortens the life of the contract; and so forth. In order to have a clear picture of the obligations to be met, the Bank provides an **amortisation schedule**. This document consists of a table containing details of all the instalments to be paid (split between principal and interest) and due dates, thus allowing for clearer planning of the family budget. The generally short period during which the borrower is committed to interest-only and not capital repayments is called **pre-amortisation.**

Other Charges

In addition to interest there are **other expenses** that contribute to the overall cost of the loan, and these need to be known in good time. For example, the cost of expert valuation and investigation and any other cost item, or the insurance policy to guarantee against the risk of fire/explosion damaging the property given as collateral. These charges weigh on the overall cost of the mortgage. For the purposes of **clarity**, banks provide to the customer - and the customer has the right to receive before signing the contract - the APR (**Annual Percentage Rate**) [T.A.E.G. (Tasso Annuo Effettivo Globale) in Italian], which provides in percentage terms the actual cost of the loan that is represented by a rate that takes into account not only the **nominal** rate of interest but also the other expenses to be incurred for using credit. By using this figure, the customer should be able to compare on a consistent basis the real cost of the loans offered by various banks.
The borrower should also enquire in advance of the bank, the notary and/or consumer associations the extent of the **taxes** and **notarial fees** to be paid. The tax treatment of bank loans is governed by Article 15 and following articles of Presidential Decree 601/1973: instead of the ordinary tax, provided that the term of the loan is set at longer than eighteen months, a substitute tax is applied. This tax is equal to 0.25% of the amount borrowed, except on money borrowed for the purchase, construction or renovation of houses to be used as a second home, for which the tax increases to 2%.

Set-up and Delivery Times

When one has committed to buying a home within a certain time and has to pay a penalty to the seller for any delay, it is good to be certain of the **preparation time**. As a rule, 60 days should be enough to get a mortgage loan, but it is necessary to **look well ahead** and take precautions, making one's needs clear to the bank and demanding that they meet the schedule.

Late or Missed Payments: Interest on Arrears and Other Risks

Although a person seeking a mortgage does not expect to be in the position of not being able to pay the instalments on time, as already mentioned this possibility must be considered lest unfavourable or unforeseen circumstances produce dangerous ripple effects.
The first, automatic consequence of any delay in a loan repayment is that late payment interest is levied; the interest rate on arrears is generally higher than the normal rate, in order to discourage late payment; it cannot, however, exceed certain limits and penalise the borrower excessively.

The Amount of the Mortgage

The mortgage is the **guarantee** that the bank acquires over a property, in order to facilitate the forced recovery of its loan if the debtor does not pay. It is said to be a **first mortgage** when it is not preceded by other mortgages. To determine the value of the mortgage, to the amount borrowed (the capital) must be added the agreed interest, any interest on late payments, any possible legal costs etc. For this reason the mortgage is registered for **an amount considerably greater than that of the home loan itself.**
In case of non-payment of the mortgage, the bank has the right to auction the mortgaged property.

Additional Guarantees Required by the Bank

In granting a loan the bank must consider not only the value of the property offered as collateral but also the **economic capacity of the borrower** to make the repayments (one element in this evaluation is the borrower's tax return). For this reason a **surety** from a third party is sometimes required (such as a parent guaranteeing for a child), whereby the third party undertakes to pay the amount due from the debtor in case of default. The surety must have certain limits as to amount and duration.

Early Repayment

In **mortgage-based financing**, the law provides the borrower with the **opportunity to repay the loan early**. The borrower can then decide, at some point of the amortisation, to discharge the contract, returning the outstanding capital on which naturally he ceases to pay interest.
Faced with this loss of income the bank can, **in general** and if it is provided for in the contract, demand compensation (also called a **commission** or sometimes a **penalty**).
No commission or other compensation is applicable in the event of early repayment, or partial early repayment, of loans taken out (or imposed as a result of a subdivision) for the following purposes: "the purchase or restructuring of properties used as a home or the performance of their business or profession by natural persons".

Renegotiation, "Portability" (or Substitution), and "Exchange" of the Mortgage (Loan Replacement)

Fluctuations in interest rates and innovations in the products offered by the market may sometimes make it interesting to change the conditions of a loan "during the course of the race": such changes can be made using different methods. **Renegotiation** (or perhaps rather: reformulation of the contract) means a new agreement by both parties (the bank and customer) and so can hardly be a unilateral expectation by the borrower.
Article 120 (4) of the Unified Banking Act provides a new way for borrowers to achieve savings: this is "**portability**" (or **substitution**). The borrower may make arrangements with a new bank for another loan of a similar amount to the previous one with which to pay off the one with the original bank, a move which the

latter cannot oppose; the new loan will be guaranteed by the mortgage already granted for the original loan; the cost of the operation is borne by the new bank.
In order to take advantage of more favourable financial conditions and possibly also obtain liquidity to meet financial needs that have occurred, it is also possible to pay off the old mortgage and take out a new one at the same or a different bank (**loan replacement**).
In this case, one must take into account the costs arising from taking out of a new loan agreement.

STARTING A BUSINESS IN ITALY

In Italy, especially in recent years, it has become much easier and faster to start a business.
This is made possible thanks to the simple, fast, consistent and effective procedures that can be completed by a notary acting as a "one-stop-shop", providing all the checks dictated by law for the establishment of companies and then forwarding all necessary documentation to the Registrar of Companies online.
Italy has recently made starting a business easier and quicker, both by reducing the minimum capital requirement and by streamlining the registration procedures. A corporation, which until 2000 required a time estimated at about 150 days from its setting up in the presence of a notary until its effective operation, can now be operational on the day of the deed if it is urgent or, in normal cases, within 3-4 days.
In addition, the overall system provides a high level of security as a result of the notary's prior check on legality and the consequent reliability of the data, all being managed using efficient high-tech infrastructure.
In Italy a business can be conducted as a sole proprietorship or, if it is larger, as a company.
Both forms are governed by the Italian Civil Code.

The Individual Entrepreneur

Sole proprietorship is the simplest and least costly legal form for starting a commercial or agricultural business.
The sole proprietorship is suitable for those who wish to pursue agricultural or commercial activities of modest dimensions and a relatively low turnover.
The individual entrepreneur personally assumes the business risk with the possibility of bankruptcy but also has the freedom to make any management or administrative decisions for the business with complete autonomy, making the most of his business skills.
The entrepreneur is free to make simple money transfers from the company for his personal needs.
The entrepreneur is someone who carries out a non-occasional economic activity using means of production (capital, labour), either his own or someone else's, as necessary.
Shareholder equity consists of all assets held by the entrepreneur for carrying on the activity and is called a company ["azienda"]. The company, once started up, can be sold by the entrepreneur who no longer intends to carry on the business and wants to monetise its value.
In terms of liability, the entrepreneur is required to cover the debts of the company with the entirety of his personal assets.
The individual entrepreneur cannot have "partners", but may make use of employees. If the employees are family members of the entrepreneur we talk, instead, about a family business and this is subject to beneficial rules.
Starting up a sole proprietorship is simple and requires the completion of limited formalities.
It is sufficient to obtain a VAT number and register the company with the Chamber of Commerce in whose jurisdiction it has its headquarters.
The carrying on of business activities also means obtaining the licences or administrative authorisations required, depending on the type of activity.
The starting up of the company does not require a minimum capital. The capital the entrepreneur needs in order to carry on the business is paid into a bank account specifically dedicated to the business of the company.
A different option may be the purchase of an already existing company. The object of the acquisition may be, for example, a company or a branch of a company involving a set of assets (moveable and immoveable property, equipment, trademarks, patents, etc.) that is functionally intended for the carrying on of business activities. By law, the purchase of a company may be stipulated only by a notary using a public deed or authenticated private deed.

Establishment of a Company

Italy offers a wide range of legal forms for the setting up of a business.
It is therefore necessary, preferably with the help of a notary, to identify the most suitable type of company organisation; this also involves the objectives to be pursued, the capital to be committed, the level of legal responsibility any form entails, the various tax implications and, finally, the complexity of accounting and compliance requirements.
Partnerships and corporations are treated differently.

Corporations in General

Corporations consist of organisations of people and resources for the joint operation of productive activities, with full economic independence. This means that the company's obligations are to be met by the company's assets alone.
Corporations have legal personality; that is, they are entities capable of assuming the rights and obligations arising from the economic activity carried out and enjoy perfect patrimonial autonomy, i.e. their assets are totally independent from those of the shareholders, and creditors have a claim only on the corporation's assets.
There are:

- the joint stock company (società per azioni or S.p.A)
- the publicly traded partnership (società in accomandita per azioni or S.a.p.a)
- the private company limited by shares (società a responsabilità limitata or S.r.l.)
- the simplified private limited company (società a responsabilità limitata semplificata or S.r.l.s.)

La società a responsabilità limitata (S.r.l.) or Proprietary Limited Company

The Srl is certainly the company type most widely used in Italy. The main reason is the combination of high organisational flexibility and limited liability. Although in the past it was used for small companies, it is now also used for companies of considerable size, since it offers greater organisational flexibility and may also take on a "personalised" character.
The shareholders are not personally liable for the company's debts, even if they have acted in the name and on behalf of the company.
To make the most of the flexibility that characterises an "s.r.l." and so allow the

shareholders to mould the company for the achievement of their own specific objectives, it is fundamental to prepare the correct memorandum and articles of association, with the constant help of the notary.
In a limited liability company the articles of association must be drawn up by a notary who lodges them with the Registrar of Companies: only following only following registration with the competent Company Registry can the limited liability company be said to have actually come into existence.
Extreme flexibility also marks the rules on corporate governance: an "s.r.l." may have a sole director, a board of directors, or even forms of joint administration (where the directors must act, in fact, jointly) or separate administration (where any director can operate on his own) or mixed forms of administration where certain actions and/or categories of actions must be undertaken jointly while the rest may be done separately (along the lines of a partnership).
A very useful tool is that of so-called special rights whereby individual shareholders may be assigned special rights in the administration of the company and the distribution of profits.
The minimum share capital of an "s.r.l." is Euro 1.
In an "s.r.l." with share capital equal to or greater than Euro 10,000, at the signing of the articles of association at least 25% of the consideration must be paid in cash (the rest of the capital can be paid up later) as well as the full amount of contributions in kind.
When the amount of capital is, however, set at less than €10,000, but not less than one euro, contributions may be in cash only and must be fully paid upon subscription.
In the event that the company is formed with only one partner the full amount of the share capital must be paid up.

The simplified limited liability company (S.r.l.s.) has capital of less than EUR 10,000 and the content of the memorandum is fixed by law: this form does not, therefore, allow for any flexibility in corporate governance.

Joint-Stock Company (Società per azioni or S.p.A.)
The joint-stock company (S.p.A. or Società per Azioni) is certainly the prototype of limited liability companies and is the main trading company model most suitable for large investments.
The two key features are the limited liability of all shareholders and the division of the capital into shares.
The corporation is necessarily subject to the supervision of the Board of Auditors: this has the task of controlling the management of the company and ensuring compliance with the law and the articles of association.
The S.p.A. is set up by public deed before a notary, who records the deed and registers the company in the Companies Register for the area (the one in which the head office is located).
The capital is divided into shares whose value may be as low as one euro each ("face value"). The shares are freely transferable units.
For its constitution the company requires a minimum capital of €50,000, of which at least 25% of the share capital (equivalent to €12,500) must be paid into the hands of the directors and that must be documented in the articles of association.
In the event that the company is created with only one partner, the full amount of the share capital must be paid in.

Limited partnership company (Società in accomandita per azioni, or S.a.p.a.)
The società *in accomandita per azioni* (S.a.p.a) is a company in which two different groups of shareholders coexist: limited partners *(soci accomandanti*), excluded from directorships and liable only to the extent of their contribution, and general partners (*soci accomandatari*), directors by right, who are personally and fully liable.
As in the joint-stock company, participation in equity is represented by shares, and, as in the limited partnership, management authority is vested in directors having unlimited liability, even if subsidiarily, for the company's debts.

Partnerships
Partnerships do not have legal personality: the partners are liable for the obligations taken on by the partnership; so the partners pay the partnership's debts (except for a few exceptions regulated by law). There are the:
• **Non-Commercial General Partnership** (*Società semplice* or *S.s.*)
A società semplice may be used only for the exercise of a non-commercial economic activity and, therefore, mainly farming. The articles of association must be in writing. There is no minimum amount of capital and the partners are fully liable for the debts of the partnership, unless otherwise agreed. This type of partnership is not subject to bankruptcy. The management and representation of the partnership are generally vested in each partner separately from the others, unless otherwise agreed upon by the partners.

• **Commercial General Partnership** (*Società in nome collettivo* or *S.n.c.*);
The articles of association of this general partnership must be drawn up by public deed or notarised private deed and must be lodged with the Registrar of Companies. The company name (business name) must contain the name of at least one of the partners and an indication that it is an S.n.c. There is no minimum capital. The partners are fully and severally liable for the partnership's debts and there can be no agreement to the contrary. In any case, a creditor of the partnership cannot demand payment of a debt of the partnership directly of a partner, but must first attach the partnership's assets. The general partnership is subject to bankruptcy which also involves the bankruptcy of all partners. Management and representation are generally vested in each member separately from the others. Different arrangements are however allowed and management may be limited to only some of the partners.

• **Limited Partnership** (Società in accomandita semplice or S.a.s.).
The limited partnership is characterised by the presence of two categories of partners:
- general partners (accomandatari), who are solely responsible for the administration and management of the partnership. They have unlimited joint and several liability for the partnership's debts;
- limited partners (accomandanti), who are not directors and who are responsible for the partnership's debts only to the extent of their investment, except for certain exceptions regulated by law.
  The partnership (business) name must contain the name of at least one general partner and an indication that it is an S.a.s. If a limited partner agrees that his name be included in the partnership name he becomes, along with the general partners, jointly and severally responsible without limit for the partnership's obligations.

Limited partners cannot carry out administrative acts, nor deal or transact business on behalf of the partnership, except by virtue of a special power of attorney for each business matter. The limited partner who contravenes this prohibition assumes unlimited joint and several liability towards third parties for all the partnership's obligations and may be excluded from the partnership.

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