

Buyer's Guide

THE REAL ESTATE AGENCY: rights, duties and services.

In the Italian Real Estate market there are many estate agencies, a few operate at an international level, operating under the franchise system, whilst the remainder, smaller privately owned agencies, operate mainly within Italy's towns and cities.

The most notable Estate Agencies in Italy are: TECNOCASA, GABETTI, PROFESSIONE CASA, TEMPOCASA, PIRELLI IMMOBILIARE and REMAX.

How to identify a reliable and professionally qualified real estate agency.

The Italian legislature has regulated the occupational activity of real estate agents; with law n.39/1989, and the modifications which followed, re. law n. 57/2001, and with which the Italian government affirms that:

1. The Agency Director and the Agency itself must be registered with the provincial register of brokers (which is made available to the public at the local Chamber of Commerce). A legitimate mediator, should have his Agent's Registration number printed on his business card and/or his letter head. If not then you are advised to request it from the chosen agent.
2. A mediator can practise the task of intermediation, only.
3. A mediator must operate with impartiality, attending to all client's needs with equality, that he comes into contact with. The mediator is legally entitled to receive a commission from both the vendor and the buyer; if they finalise a contract or from the party who defaults on the contract at no fault of the agent or where the agent has entered two parties into negotiations through his/her introductions and the affair is concluded within the year before the expiration date of the intermediation mandate. The mediator can claim his/her commission if one of the parties default on the contract through no fault of the mediator's(agent). Commission is only due to be paid in this case, by he/she who has broken the contract and defaulted.
4. If the mediator does not have an Agent's Registration roll number, he does not have the right to receive any commission from either vendor or buyer.
5. If the mediator is not registered with the provincial register of brokers and he has already received a commission, he can be reported to the police. Where-upon he must repay the money and pay a fine of between 516,00 to 2064,00 euros.
6. If the mediator uses a pre-printed contract he must register it at the local Chamber of Commerce.

Italian law does not bear heavily upon its mediators. They must only inform a potential buyer about any faults or defects stipulated in the contract. He does not have to ask the vendor about faults or defects nor to make inquiries himself; due to the inadequacy of law n. 39/99. The professional association's Code of Ethics, partly compensates for this inadequacy, the mediator's role is to :

1. not to describe himself as a Real Estate Agent during the negotiation and promotional stages.

2. vow not to use the deposit given to the Agent by his/her clients , and entrusted upon him/her, for his/her personal use or for that of the agency's.

3. to acts as a notary until the Compromesso (the preliminary contract). He must accept from the buyer a non negotiable cheque made out to the seller. A non negotiable cheque must be given when the seller accepts the proposta di acquisto (offer subject to contract, purchase proposal)

4.informs the buyer about the qualities and/or faults of the property; he produces documentation about the property to prove that there are no problems or unauthorized buildings.

5. If the mediator uses a pre-printed contract he must write his Agents Registration number upon it and must assure in the name of seller that:

limmobile e libero da oneri, vincoli, vizi ed evizione, trascrizioni pregiudizievoli, pignoramenti, iscrizioni ipotecarie, ed in regola con la normativa edilizia, urbanistica e catastale.

(Before signing the contract check to see if this phrase is written in it!)

6. assists clients until notarial deed.

7.shows clearly the total expenditure necessary to buy/sell the property and commission on buying/selling (Unfortunately some agencies have a habit of asking, a percentage of the propertys price, on a lump sum basis. This amount covers the total cost to buy ,plus the agency commission. Poor transparency can cause doubt and fiscal confusion.)

Remember : to request a detailed estimate for taxes, agency and notarial fees

Italian law does not place any legal restrictions upon the purchase of property within its borders by non-citizens but because a person cannot sign a contract when he/she does not understand its contents (as it would become null and void under Italian law) Non-citizens can buy a property in two ways:

-by signing two contracts: one in Italian and another one in their native language.

-by giving power of attorney to a trustworthy person. This person must understand the Italian language to be able to sign the contract under his own name.

A Notary will always provide this service. Real Estate Agencies may not provide this service, for this reason it is essential that you understand the exact content of any document before you sign it.

Remember: to ask your Agency for a translation of the contract into your native language and ask for a declaration,that will verify that the translation corresponds to the original.It is always better to be sure and clarify every detail at the outset, it is in everyones interest for things to turn out well. But remember this does not mean that if an agency or agent does not follow these rules to the letter that it is an unscrupulous or unreliable agency!

Generally it is preferable to deal only with qualified and registered agencies that respect the rules and regulations, if in doubt ,before signing any document, you can take it to a notary . The notary can, in compliance with the agency ,check for you if all the documents are in order. You can find addresses and telephone numbers for notaries in the phone book, usually there is at least one Notary in every town.

Most Real Estate agencies such as ours, do their best to provide you with an excellent service and will work hard to meet your requirements. Please use our guide to help you navigate the sometimes complicated and confusing purchase of a property here. Make sure all details are correct and correspond to what it is you think you are buying, before you sign any document!

Make sure everything is in order and happy purchase ,whoever you buy with !!

The 3 Phases of Purchasing a Property in Italy

When you have found the Property of your dreams, generally there are 3 phases:

1. Proposta dacquisto (the Offer to Purchase)
2. Compromesso (the Preliminary Contract)
3. Atto notarile (the Final Contract Exchange)

1. Proposta dacquisto (the Purchase Offer)

When you buy through an agency, after you have determined and fixed a price and under which conditions payment shall be made, there is a ticklish moment: the phase of the so-called Proposta dacquisto (the Offer to Purchase). The agency needs you to sign this document to be sure that if you make an offer, and the owner of the property accepts it, you will not go back on your word. To make only a verbal offer is too risky and self-defeating for both parties. Almost all agencies use a pre-printed form, this is based on a standard, legally approved form registered at the Chamber of Commerce, and states the terms of the offer as defined by the buyer. At that time, when the price and all other details regarding the purchase of a property are decided, or almost negotiated by the prospective buyer and seller, the real estate agent forwards the written "proposta dacquisto" to the seller. The seller can accept it in full, or refuse it within the agreed time-limit.

Therefore, it is very important to know all the qualities and faults about the property you want to buy, and that there are no doubts concerning planning, building or land regulation. For this reason, the proposta dacquisto must contain the following phrases:

" Il venditore dichiara che limmobile e in regola con la normativa edilizia ed urbanistica vigente

il venditore dichiara che limmobile e libero da, ipoteche, pignoramenti e/o altri pregiudizi

It sometimes happens that not all of the documents are in order, but the Offer to Purchase can be signed anyway, if the agency assures you that the property owner(seller) has agreed to resolve all problems by the day set for the Final contract, or rather the property owner(seller) declares in the Proposta dacquisto and subsequently on the Compromesso a phrase similar to:

il venditore dichiara che limmobile identificato nella seguente proposta verra trasferito allatto notarile con ogni pertinenza, servitu attiva e passiva , libero da oneri, vincoli, vizi, evizioni, trascrizioni pregiudizievoli, pignoramenti, iscrizioni ipotecarie ed in regola con la normativa edilizia urbanistica e catastale.

When you sign the purchase offer, you have to pay a sum of money called a Caparra confirmatoria (a deposit) usually by a non negotiable cheque in the property owners (sellers) name, this deposit confirms the buyer's intention to purchase the property. The agency will present the cheque to the property owner(seller) if your Proposta dacquisto has been fully accepted or otherwise they will return it to you. All purchase offers are legally binding for the buyer up to a certain date (usually 15 days), and by which date the seller must communicate through the agency his acceptance or non-acceptance. If the seller accepts the offer, and the buyer then pulls out he loses the deposit ,but if the seller decides to pull out, he is obliged to not only return the original deposit but also the same amount again. The amount you are bound to pay as a Caparra Confirmatoria varies from one agency to another and it is relative to the cost of the property you wish to buy. On average this amount fluctuates between 500 and 5.000, but if you happen to buy a property that costs 1,000,000, then 5.000 would not be considered an adequate commitment by either party. We would recommend paying at the most, 5% of the offer price. There is no cause for concern because the commitment has already been made with the Proposta dacquisto(the Purchase Offer). At the signing of the Compromesso you shall be asked to make a larger down payment, during this step the buyer will also need to sign a document for the payment of the agencies fees payment. It is obvious that you have to pay these fees only if the offer is accepted by the seller; this must be clearly spelled out in the document ,subject to your approval. Some agencies allow you to pay their agencies fees when the Compromesso is signed, or at the moment of the Final Contract(Atto notarile). However you should know that under Italian law an agency is allowed to ask for its fees when a transaction is completed thanks to its mediation (Civil code art. 1755, 1756, 1757, 1758) so even as the Proposta dacquisto(Purchase Offer) is accepted by the seller. That being stated, we advise you to be very careful what you sign; ask for an uncut translation of the Purchase Offer (proposta daquisito) and Preliminary Contract (compromesso) and if you have any doubts, seek the advice of a building surveyor or lawyer/solicitor.

HERE you can ask for our forms translated into English

If you have any doubts or queries about something you can contact us HERE

2. Compromesso (the Preliminary Contract)

Its correct name should be Preliminare di compravendita (the Preliminary Contract) but it is commonly known as the Compromesso. In the Preliminary Contract all the details that are later formalized on the Rogito (notarial deed) are determined. The Compromesso is the most crucial moment in the negotiations, when you need to pay attention in clarifying all doubtful points. Theoretically speaking there should not be any obligation to draft this contract, and you should move directly to the Rogito (notarial deed), but unless it is a contract of sale among trustworthy people or a simulated sale between relatives, we advise you to do this intermediate stage. To start drawing up the Preliminary Contract (which can be done privately by hiring your own notary and paying him for the documentation, or as usual with an agency or at the sellers private residence) you need to be absolutely clear on the following points:

- price of the property
- terms of payment
- precise identification of the borders of the house and appurtenances.
- date of notarial deed (rogito)

If a Purchase Offer (proposta daquisito) has been completed there should not be any problems because the matter has already been defined and is irrevocable. Otherwise it is necessary to make a clear agreement.

On the day of the preliminary contract you will discuss all other details in order to clarify and identify these details, arranging in particular the following:

- Payment plan
- The absence (or presence) of encumbrances of any sort
- The compliance with building regulations and licences
- The possible application for amnesty for infringement of local building regulations (Condono)
- The existence of confirmatory deposit(Caparra confirmatoria) or penalty deposit (caparra penitenziale) or acconto

In the Preliminary contract (compromesso) you can affix any adjustments and clauses without reservation: there are no problems because the compromesso is a private document, it is a simple sale agreement . However blank lines are not to be left above the signature or inside the document, always put a line through any part not used as you would with any other document or form.

3. Atto notarile/Rogito (The Final Contract/notarial deed)

This is the final document, the true bill of sale. All doubts must already have been clarified and sorted out during the Compromesso which will be the base used for the drawing up of the deeds by the notary. It is crucial that the notarial deed is in keeping with all agreements made in the compromesso.

In this phase you have the guarantee of being assisted by a super partes (impartial) professional: the Notary.

The notary is the only professional entitled to transfer legal title (deeds) of property in Italy. Although the notary is normally chosen by the buyer, he is an independent public officer, charged with the duty of drafting the Purchase Deed (Rogito), finalizing the sale, ensuring that title passes legally between the parties, and registering the property in the Land and Property Registers.

The transference of title can be done in two ways: a private deed or a public document/record, the important formal distinction between these is that if a property is purchased through a private deed, the notary only records the declarations of the contractual parties and confirms their identities and attests to the validity of their signatures. When purchasing through a public document/record, the notary guarantees that he/she would have checked and verified the content and truthfulness of all of the contractual parties statements. However, a meticulous notary will check and verify all points in the documentation regarding the sale of a property, disregarding the way that the original deed had been drawn up and chose the best way to draw up the new deeds, to enable the client to legitimately sell the property. Of course it is always best to expressly charge the notary to verify all points.

The notary always handles the payments of the registry, mortgage and cadastral taxes (but the cost of these taxes is charged to the buyer), he must also take care of the deeds transcription. If the notarial deed is no longer valid, due to a mistake he/she has made, you can seek legal action against the notary for professional misconduct.

The notarial deeds costs can vary a quite lot, according to the complications involved, mortgages and cadastral verifications and an offices prestige. The purchaser has the right to chose the public notary, because he has agreed to pay all the costs incurred for the transaction. When a foreigner is purchasing property in Italy, they will need an identity card or a passport (valid), an Italian tax code number (Codice Fiscale) and the availability of sufficient funds to cover any transaction. The seller should produce their title deeds, proof of identity (identity card, passport) and their tax code number.

An Italian Tax Code number (Codice Fiscale) is required to enable the notary to deal with all the post-completion formalities, and to comply with the various requirements of Italian tax law that are applicable to the owners of Italian real estate. It can be readily obtained by applying at the local tax office in person, in the case of individuals, the Codice Fiscale is a combination of sixteen letters and numbers, usually the tax office issues a card or a passbook containing all the relevant details. Finally, because Italian law requires that the deed be understood in its entirety by foreigners and Italians alike, it is necessary either that the notary commissions a translator to translate the uncut deed, or to nominate a person as procurer.

Power of Attorney (Procura) is required when the buyer is not going to attend to the completion of formalities in person, and wishes to enable someone else to attend and sign on his behalf. A Procura may also be required if the foreign buyer is not fluent in Italian, and therefore will not, normally be allowed by the notary to sign the completion documents, because he cannot readily understand them. In either case a third party should be empowered to sign for and on behalf of the foreign buyer.

Here you can download a copy of our Procura.

How much does it cost to buy property in Italy?

1. Taxes

The taxes chargeable to the buyer are calculated on the basis of the value declared during the rogito (notarial deed); but the Italian Revenue Service considers adequate a declared price equal to at least the valore catastale (cadastral value). Every property, here in Italy, has what is called a Rendita catastale which is the value given to the property by the Italian Revenue Service, and which is registered in the Property Registry (or at the Land Registry in the case of barns and rural buildings).

This value is updated, but does not follow the real property market; this is the reason why most properties have a very low declared value.

The buyer is obliged to pay the following :

- a. IVA (VAT)
- b. Imposta di registro (Registration tax)
- c. Imposta catastale e ipotecaria (Mortgage and cadastral tax)

a.IVA

VAT is applicable on property purchased from a construction/building company or association:

First property

Normal property

VAT

4%

10 %

/

Land

VAT

/

20%

b. Imposta di registro (Registration tax)

The registry tax is applicable to private purchases,

First property

Normal property

TAX

3%

7 %

/

Land

TAX

/

15%

The registry tax is calculated on the value declared at the signing of the rogito notarial deed.

c. Imposta catastale e ipotecaria (Mortgage and cadastral tax)

1. when you purchase from a company it is always 3%.
2. private purchases, as shown below :

First property

Normal property

Mortgage/Cadastral

3 %

/

Land

Mortgage/Cadastral

/

3%*

*The normal charge is calculated on 3% of the value of the land purchased, but there is a minimum charge of 340,00 (170,00 minimum charge for each tax)

2. Real estate agency

If you are buying through an agency, Italian law requires the payment of Agency fees, this commission varies from agency to agency.

We provide the following services:

technical-legal assistance until the purchase is completed

-free visits to properties (for viewing purposes)

-Full translation of documentation pertinent to the sale or purchase (Power of Attorney, Proposal form, Compromesso)

- Mother tongue interpreter

- Making various arrangements such as accompanying clients to arrange their Fiscal codes, help with the opening of

bank accounts ,the transference of names from prior owner to new owner for the electricity company, water company etc.

Glossary

Acconto= is the amount paid by the buyer to the seller at the moment of signing the Compromesso, as a down-payment . This sum will be refunded if the sales contract is not realized.

Caparra confirmatoria= is the most commonly used option and it is regulated by art.1385 of Italian Civil Code. If the deposit paid is defined as "Caparra Confirmatoria" , it means that if the seller changes his mind after having signed the contract and has received the deposit money from the buyer, he/she (the seller) will have to return the total amount back to the buyer, but not only the amount received (as a deposit) from him/her, but also the same amount again (Ex: a deposit of 5,000 is paid to the seller, another 5,000 will then have to be paid as a type of fine for defaulting on the contract, in total 10,000).

If instead, the buyer changes his/her mind after having signed the contract and paid the deposit, then he/she will lose the deposit. Alternatively, the injured party can ask for the dissolution of the contract and an award for damages sustained, or the execution(completion) of the contract (art. 2932 Italian civil code).

Caparra Penitenziale=is regulated by art.1385 of the Italian Civil Code. If the deposit is defined as a "Caparra Penitenziale " , it is the same on all points except, in this case the injured party cannot ask for either an award for damages sustained or the execution (completion) of the contract.

The Rendita Catastale is something which the property has been identified by at the moment of the registration at the property registry.

First property: This category is for people who have a residency permit for Italy and who will be to all intents and purposes permanent legal residents here (Italy), and who are purchasing their first property Italy.

Normal property: This category is for people who are purchasing their second property in Italy or who have no intention of becoming residents in Italy.