



## **GUIDE TO REAL ESTATE INVESTMENT IN ITALY**

by

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### **Preliminary contract of sale, contract of sale, advanced deposit and prelazione of immovable property in Italy**

#### **The Preliminary Contract (*Contratto Preliminare* or *Compromesso*)**

If the seller accepts the purchase offer of the buyer, the parties shall have then to sign a preliminary contract so called *Contratto Preliminare* or *Compromesso*.

At this point it is advisable that buyer shall seek legal advice of an Italian law firm skilled in real estate services which shall draft the *Contratto Preliminare*.

The **Preliminary Contract** is binding upon both vendor and buyer, it doesn't however confer final ownership nor does it preclude the rights or claims of third parties over the property, it stipulates that both parties agree to buy and sell the property and concur on the terms and conditions of the sale, it also stipulates the movable as well as the immovable elements of the real estate to be purchased.

On signing, the buyer will usually pay a deposit of between 5% and 10% of the purchase price.

As per Italian Civil Code the Preliminary Contract has binding effects, in fact, though property sale is not complete by a *Compromesso*, it forces the parties to complete a final Sale Contract (the *Rogito*).

The *Compromesso* can be registered in order to protect at least in part the deal against the rights of third parties; for registration of *Preliminary Contract*

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is necessary to pay for this, but it's worth doing particularly if there is to be a long delay between *Compromesso and Rogito*.

The Preliminary Contract should also contain:

- full description of the parties
- identification details of the property, including the cadastral reference of the outbuildings for the exclusive use of the buyer
- details relating to the building license or the request of the building license, it is necessary the mention of any burden connected with the building license;
- technical data relating to the building, it is necessary a summary of the technical data in the Preliminary Contract that will be described in a detailed attachment concerning technical specifications (*Capitolato*), such specifications cannot be modified without the agreement of both parties;
- deadline for completion;
- method of payment: in fact, the entire price should be declared, also specifying the amounts paid as a deposit, all payments should be executed by using bank transfers or other means that are traceable and that will leave a clear trail;
- details of the bank guarantee: the bank guarantee should be delivered at the signing of the Preliminary Contract, such a guarantee should be issued prior to or upon the signing of the Preliminary Contract;
- the presence of mortgages or any other type of burden: in fact, in case of presence of a mortgage opened by the construction company covering an entire compound that shall be parcelled out amongst several buyers, the notary will not be entitled to certify the Contract of Sale until the parceling out of the said mortgage to the individual buyers has been completed;
- the presence of the contractors together with proof of their identities;
- the preliminary contract must also contain the following attachments:

A. technical specifications of the property, detailing all the materials to be used in the construction, a list of agreed finishes and fitments;

B. copy of the plan submitted to file the request for the building license.



A Preliminary Contract not in compliance with the aforementioned requirements could be affected by nullity on grounds of it contrasting with mandatory rules, since the above mentioned legal requirements are set in order to protect the interests of the buyer, the invalidity of the preliminary contract can be objected to only by the buyer.

## **Deposit**

The advanced deposit of price could be 5% or it may be much larger, i.e. over 20% or 30% in this case it has the advantage of forcing the sale because a vendor is less likely to pull out if he has to refund twice 30 per cent as a penalty for killing the sale.

## **The Rogito**

The final stage is the signature of the Contract of Sale, the *Rogito* (it is equivalent of completion in a UK property transaction).

For completion the buyer will need to have the tax code number (*Codice Fiscale*), so that, it is necessary to ask to the Italian solicitor to arrange in order to get the release of the tax code number.

It is also necessary to provide a passport or other valid identification document.

If at the date of signature for the completion (data del *Rogito*) the buyer won't be able to be present at the allotted date of signing it shall be possible to assign the power of attorney to a lawyer in Italy.

The release of power of attorney means to confer temporarily the legal rights on a third party (the Italian solicitor) giving him the proxy power to sign any legal documents that would normally require the signature of the buyer.

## **The Prelazione**



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As per the principle of *Prelazione*, third parties has the right to buy, it allows neighbors adjoining the land first refusal on the property at the asking price.

This principle was designed for rural areas where a small farmer might wish to expand his farm.

The *Prelazione* is officially permitted in favor of real farmers (called *Coltivatori Diretti*).

After the Preliminary Contract is signed by the parties, it must be sent to all neighboring farmers, they have 30 days to decide whether to purchase the property at the same price of the *Compromesso*.

It is not possible to ask to neighboring farmers to waive this right.

If no neighboring farmers ask for *Prelazione*, the buyer can proceed with the *Rogito*.

It is not advisable to under-declare the price to be paid for the purchase of the property because, anyway, the notary would know the real price of the property and because if the neighboring farmers would discover the disparity, the Contract of sale can be challenged within a year.

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