

# A Guide to Selling Italian Property



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Selling property in Italy involves a complex procedure that needs careful consideration. Where possible, a solicitor with experience in Italian conveyancing should be engaged to measure and manage the risks that may result from the process.

The sale of real estate process in Italy is divided into three key phases:

- 1) Putting the property on the market;
- 2) Completion of the preliminary contract; and
- 3) Completion of the sale.

*Porta Lawyers will provide all of the required services through our Brisbane based Italian Registered Lawyer, **Fabrizio Fiorino**. There is no need for you to engage further services in Italy.*

## 1. Putting the Property on the Market

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Property can either be put on the market through an estate agency or privately.

To commence the process of selling your property, it should be put on the market via an estate agency or by private sale.

It is important that when appointing an Italian registered real estate agent you ensure they are qualified with the local Chamber of Commerce. On consultation, it is vital that you discuss their fees, generally charged on a commission (Provvigione) basis at 3% of the total sale price.

Additionally, early on in the conveyance process, it is imperative that you assess other aspects such as brokerage fees, minimum sale price, duration of the agency period and its exclusivity.

A “*Proposta Irrevocabile d’Acquisto*” (Reservation Offer) will generally be signed (by both the buyer and seller) as the first legally binding document alongside a deposit towards the property. The reservation offer removes the property from the market for a period of 15 days to allow for the buyer to conduct due diligence against the property exclusively.

Due diligence is conducted to discover a variety of things, including:

<b>The Legitimacy of the Property</b>	Whether or not the property exists and if the seller actually has the right to sell the property.
<b>Mortgages</b>	To determine if there are any outstanding mortgages or charges against the property, third party rights, and undisclosed costs.
<b>Compliance</b>	To establish if the property complies with local plans and building regulations.
<b>Habitation</b>	The building must hold a “ <i>Certificato di Abitabilità</i> ” certificate to be deemed safe to inhabit persons, unless it is being sold for reconstruction purposes.
<b>Compliance with Tax Legislation</b>	The seller must have lodged all tax returns and paid tax (even from previous years). If the seller has not complied with tax legislation then the sale is considered illegal.
<b>A Vendor that Owns a Company</b>	No application for bankruptcy or actual bankruptcy should be against the vendor (individual or company seller).
<b>Flats</b>	All Government service fees have been paid if the property is a block of flats.

## 2. Preliminary Contract

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“*Contratto Preliminare di Vendita*” (preliminary contract) is the second stage of selling property in Italy.

At this stage, the seller must confirm that the preliminary contract outlines statements that are true to the best of his/her knowledge, no false statements have been made, full disclosure has been given and inquiries raised by the buyer have been truthfully answered.

The buyer will generally make a deposit between 10-30% of the total sale price of the property. This gives the seller a financial safeguard if the buyer terminates for no legal reason, forfeiting their deposit. If the seller withdraws from the sale contract, and/or in legal breach of the preliminary contract, the buyer is entitled to reimbursement of the full deposit (potentially double if they decide to file a motion in court for breach of contract).

Additionally, breach of legislation during the preliminary contract period may incur large penalties. It is important that all properties comply with applicable planning and building regulations to avoid these fines.

It is mandatory that the seller of the property acquires a “*Certificato di Abitabilità*” (certificate of habitability) to ensure that the property is safe to live in. It is recommended that this document is attained prior to the preliminary contract and the deposit.

The Public Notary requires the certificate of habitability to complete the Contract of Sale unless the buyers accept, in writing, to purchase the property without the certificate.

All disclosures such as outstanding payments of taxes or breaches need to be specified in the preliminary contract.

Where the property is subject to a mortgage, the seller has the responsibility to remove it and cancel the corresponding entry in the Title Registry Office prior to completing the sale.

Where property for sale is a villa or land with statutory farming pre-emption rights (*prelazione agraria*), all farmers, tenants and neighbours that are in the immediate neighbourhood are required by law to be notified of the anticipated sale of a property. Those with pre-emption rights have the first option to purchase agriculture property. It is required that prior to the preliminary contract being signed, a copy must be served on those with pre-emption right where a decision can be made by the entitled within the statutory term (typically 30 days).

All aspects of property sale hold potential serious legal consequences for the seller if not carried out correctly.

### 3. Sale Completion

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The completion of a sale generally takes place in the office of a Public Notary (state officials legally permitted to transfer ownership titles of Italian property), forming the third and final stage of the conveyance process.

The Public Notary must act on neutral grounds when completing a sale, where they are not able to be a substitute solicitor for either party involved in the transaction. This is to ensure that the Notary does not act in favour of either party.

Original documents must be produced prior to the completion of the sale. These documents include:

- Deed of Sale or the Italian Inheritance Tax Return duly lodged with the Authorities;
- Relevant planning and building licences with an Energy Performance Certificate;
- A certificate of habitability; and
- Any other required documentation.

The sale is deemed completed once all parties have provided the Public Notary with information relevant to the sale price and the real estate agent appointed. This information will be included in the Deed of Sale, drawn up by the Public Notary and affirmed under oath (*Dichiarazione in atto pubblico*) by both the buyer and seller, completing the conveyance procedure.

The seller may be subject to Italian tax capital gains tax after the sale. However, no tax is levied in Italy on a seller if the property has been owned for more than five years.

**Disclaimer:** *Statements made in this guide are intended for generic practical and introductory explanation purposes only. Statements do not constitute formal legal advice. Porta Lawyers accept neither liability nor responsibility for any statement contained herein.*