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The Italian Closing process

The closing process for a home purchase in Italy can be briefly described as the definitive and official moment of a long – and sometimes stressful - procedure started with the chosen of a property.

As said by a famous writer “all those hours spent negotiating, late evening spent crunching the numbers, long days spent walking through and assessing the property, sleepless nights spent waiting for loan approval, the time spent dealing with your partners and handling investors it is scheduled to come to end on closing day”.

But first there are such many elements which need to be monitored for getting the best result when a private person is involved in the last moment of his purchase or – as usually named – in the “completion”. Here you have a rough guide for the completion by all the necessary steps to be performed.

The present article will be focused especially on the following basics necessary to satisfactory perform the acquisition of a residential unit in Italy after the client already paid his deposit for the property and the development has been built:

- The power of attorney
- The snag of the property
- The public officer
- The payment for your purchase
- The deed of sale

The Power of Attorney

The first step to take is the decision concerning either to be physically present or not the day of the closing. Indeed in all legal systems a part can sign himself the final agreement or be officially represented by an attorney. You may or may not want to have an attorney present, depending on how comfortable you are with the process but it has to be noted expert attorneys commonly handle residential real estate closing and having the official assistance of an attorney is advantageous because many things can be wrong during a closing. Also with all the complex language that's used in closing paperwork an attorney can help you wade through it all.

According to the above mentioned reasons you will need to “formally” engage your lawyer (who hopefully is expert with international real estate transactions) for representing you and acting on your behalf by a power of attorney to purchase an house. It is very important to take care that in the power of attorney must be indicated the exact identification numbers of your property (the so called “dati catastali”) otherwise you could give to your attorney the power to buy on your name a different unit!

More exactly a Power of Attorney is a legal document which gives the person you choose the power to manage your assets and financial affairs. The document must be signed by you while you have the required legal capacity to give your agent clear and concise instructions. Moreover please note that to buy a estate in Italy you need to make sure that your document is ‘legalized’. This Foreign Office certificate, for some countries as UK, is known as an “Apostille” and it is attached under the

terms of the Hague Convention. The “Apostille” is a marginal note that must be written on the original certificate released by qualified authorities and confirms that the signature, seal or stamp in the document is original.

The Snag of the Property

Most home sales contracts entitle buyers to a walk-through inspection of the property some days before closing. This is to ensure that the seller has built the property and left it in the condition specified in the sales contract. Therefore it is necessary to perform a snagging inspection by a detailed snag list before closing.

In USA and in UK it is very common to agree before closing something similar to a retention fee which is usually around the 10% of the purchase price that the buyer is entitled to hold until the single apartment and/or the building is totally completed but actually this practice is not ruled under the Italian law.

On the other hand if there are any major problems which come out by the snag, the buyer can ask to delay the closing or – better – the inclusion in the deed of sale of a so called “clausola penale” (which is a penalty for each single day of delay) or as in USA or in UK request that the seller deposit money into an escrow account to cover the necessary repairs until the transaction completes. Indeed the seller must provide the property to the purchase without any defects and any hidden construction problem. About this step finally it has to be recommended to take care at this time about the costs concerning the utilities connection.

The Public Officer

In Italy (instead of in USA or in UK where all real estate transactions are basically completed by attorneys) it is necessary the intervention of a civil law notary to legally transfer a property and therefore to officially perform the closing by a deed of sale. The notary is a "public officer" who performs "public functions", this means that he is vested by the State with public authority and faith, which allows him to draw "public deeds". In the Italian legal system the purchaser can choose the notary but on the other hand usually for the sales of apartments included in building to be built this professional is always the same one and he is chosen by the builder because it makes the

procedure easier. In any case first it is necessary to check the preliminary agreement signed by the seller and the buyer. Indeed it is very common to set the following clause in a preliminary agreement: “The place, date and name of the Notary who will execute the final deed will be communicated by the vendor to the buyer”. It is shown as in this case no influence can have the intention of the purchaser about.

Especially in case of notary chosen by the seller it is recommend to previously obtain a copy or a sample draft of the contract that will be signed at the closing. This way your solicitor will have the chance to check each single clause protecting your investment and ensure the correspondence between preliminary and final agreement (although for any eventual misleading the liability will be of the notary who as above mentioned is a neutral professional and has to guarantee the public authority of the final contract). By the way, you have the right to review this document before closing, and you may want to so you have some additional time to clear up any mistakes and resolve problems.

The Payment for your purchase

Since 2006 in Italy (also) for the purchase of an home it is necessary to set all means of payment before the deed of sale. The Italian law issued the 4th August 2006 with number 248 is finalized against the money laundering therefore each single mean of payment has to be agreed between the seller and the buyer otherwise the public officer cannot draft the final contract and put his seal on it. More exactly as regards payments made after 4 July 2006, Article 35, Paragraph 22 of decree-law no. 223 of 2006 obliges both parties - vendor and purchaser - to make a declaration in place of an attested affidavit with details of the means of payment for the transaction.

In this view it has to be taken in consideration the procedure and the time necessary for any payment. About the buyer can pay the balance essentially by cheque or by wire transfer. The first tool is a written order given by the customer to his bank to pay a certain sum of money of his current account to the beneficiary named in the cheque. The second one probably gives major guarantee but from abroad it takes usually 2 or 3 days therefore eventually it has to be done on time for the closing.

The procedure for the payment turns out very complicated in case of mortgage required by the buyer. Here we can simply say that generally it is necessary first a checking on the property made

by a notary (the so called “relazione notarile preliminare”) and also a estimation of the unit. Then it has to be noted after the sign of the mortgage contract normally it takes (at least) eleven days for the payment of the Italian mortgage by the Bank. Anyway the procedure to get a loan in Italy can be very different depending on the case. It should straightway be pointed out that a loan in concrete terms is accompanied by various different clauses (such as the amount and terms of the loan, and what the lender can do if you fail to make payments) which cannot always be immediately understood, but which are necessary for regulating all the relations between the parties for the duration foreseen.

The Deed of Sale

Finally the day of the deed of sale all parties – likely their solicitors - will sign the papers in front of the notary officially closing the deal and the ownership of the property will be legally transferred to the buyer. It's also your opportunity to make any last-minute changes to the transaction although usually the preliminary agreement and the deed of sale must have the same identical content.

It is very important to say at the closing is required not only that the agreement of the parties is expressed in written form but also the observance of certain essential rules, the presence of certain fundamental requirements and the contextual fulfillment of certain particular obligations such as the assignment of a fiscal code for the foreigners and according to Italian law 151/1975 a declaration about the matrimonial property arrangements. Also when a property conveyance takes place, the Italian Tax Laws stipulate the payment of certain taxes and charges and the performance of other important tasks such as the registration of the transfer, the transcription of the contract and the so called “voltura catastale“.

Finally it is purchaser right require a copy of the notarized property conveyance which is useful to demonstrate the new ownership of the property and to point out all the obligations for both parties (vendor and purchaser) . About the deed of sale will registered for fiscal reason at “Agenzia delle entrate” within 20 days and mainly within 30 days at the Land Registry Office where then it is possible to check if the unit has been sold to anyone else.
