

# Notaries, Property and Business in Italy:

## *A Practical Guide*





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Buying a house in Italy may seem like a complicated and uphill process. Having an expert and qualified guide is essential to successfully purchase a property.

Working with an OID-NAR member means having an agent who knows the needs of the foreign client, knows the English language and can guarantee a high professional and ethical standard.

Thanks to our network of real estate professionals, we can provide specific legal and technical assistance for every need.

Connecting with our associates means working with OID-NAR member who have at least 10 years of experience in the Italian real estate market, with additional training in order to serve and protect American buyers.

## **WHAT YOU WILL FIND WITH US:**

Real estate expertise (due diligence and correct appraisals)

- Legal assistance
- Technical assistance
- Relocation assistance

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# ***OID BOARD OF DIRECTOR***



***Alessandro Pasqual***

President

+39 3407703657

[presidente@osservatorioimmobiliaredigitale.it](mailto:presidente@osservatorioimmobiliaredigitale.it)



***Ilaria Profumi***

Training manager

+39 3450530525

[formazione@osservatorioimmobiliaredigitale.it](mailto:formazione@osservatorioimmobiliaredigitale.it)



***Halyna Ponomarova***

Treasurer

+ 39 3356077461

[amministrazione@osservatorioimmobiliaredigitale.it](mailto:amministrazione@osservatorioimmobiliaredigitale.it)



***Giuseppe Iannò***

Vice-president

+32 3289727786

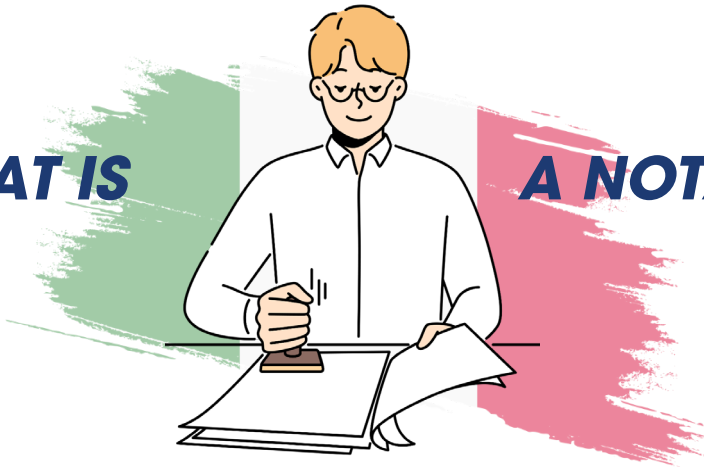
[info@osservatorioimmobiliaredigitale.it](mailto:info@osservatorioimmobiliaredigitale.it)



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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 transaction; important changes in company structure, whether it be a one-person firm or a corporate entity, mortgages contracts and loans.

The Italian notary is subject to stringent checks by the State that help further in create 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.

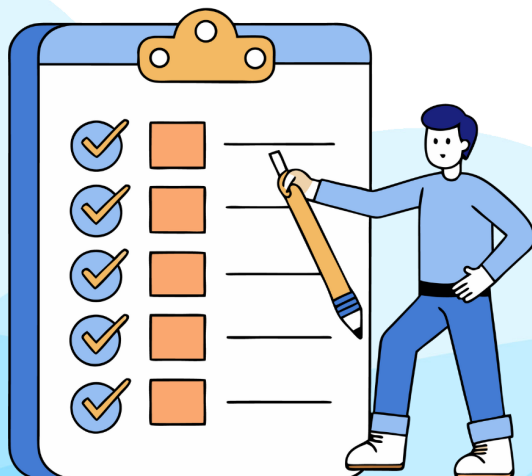
**On behalf of the State, the Italian notary collects the taxes linked to all deeds (registration tax, mortgage and cadastral taxes, etc.).**

## 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 identify the parties, and their will and the legal power to act and sign the contract.

**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.





## 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.

## 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 at the Bank of Italy.

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

If the contract involves foreign people, it might be written in the language spoken by the customer. In that case, the contract must be in double language, and an interpreter chosen by the buyer who pays for the cost of the transaction, must intervene, translating all the documents.

**TIPS: Power of attorney can be given to an Italian person, saving you all the translation costs.**

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 notary al 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 titles he has drawn up so they do not run the risk of being lost.

The preservation of notarial deeds is assured even after the notary who created them ceases his professional activity. The titles 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

**TIPS: The contracts made by a notary are public, you can access to them paying a small fee.**



## ***RESPONSIBILITIES OF THE NOTARY***

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.

**TIPS: The notary is not responsible for the technical aspects of the transferred property. He checks the validity of the documents but, since he hasn't physically seen the property, he can't assess its urban planning compliance.**

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.



# ***RIGHTS & DUTIES OF THE CLIENT***

## ***What are the client's Rights?***

- 1)** 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.
- 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**

The notary must be chosen by the parties by mutual agreement or, failing that, by the party who is obliged to pay the costs. **In Italy, usually, the buyer choose and pays the notary.**

# **THE LEGAL STATUS OF FOREIGNERS IN ITALY**



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 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**.

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. Laws 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 formalization of the transaction in question.



# HOW TO MANAGE “BUREAUCRACY” DOCUMENTS IN ITALY

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 “legalization”**, whereby those authorities certify that the document in question was lawfully produced in its state of origin and its content is therefore reliable.

Many nations have allowed legalization to be replaced, as regards documents from another signatory nation, **by the appending of an Apostille**, rendering the document valid in the foreign country.



**TIPS: First thing to do when you are physically in Italy in to apply for “CODICE FISCALE”. Without it you can’t do anything.**



## After 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.



# ***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 things required by law for the establishment of companies and then forwarding all necessary documentation to the online businesses register.

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, 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, labor), 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 monetize 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.

It is sufficient to obtain a VAT number and register the company with the Chamber of Commerce in whose jurisdiction it has its headquarters.

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, trade marks, 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 organization; 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 consist of organizations 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** (LLC) (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.)

The Srl is certainly the company type most widely used in Italy. Although in the past it was used for small companies, it is now also used for companies of considerable size, since it offers greater organizational flexibility and limited liability.

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 characterizes an "s.r.l." and so allow the shareholders to mold 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 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 sha-



## 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 where 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.)**

The 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 notarized 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 one partner, cannot demand payment of a debt directly to the 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 characterized 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 is included in the company 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.



