



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **Italy**

### **REAL ESTATE**

#### **Contributor**

Studio Legale Cappelli RCCD



#### **Alessandro Vespa**

Partner | [alessandro.vespa@crccdlex.com](mailto:alessandro.vespa@crccdlex.com)

#### **Isabella Fasci**

Associate | [isabella.fasci@crccdlex.com](mailto:isabella.fasci@crccdlex.com)

This country-specific Q&A provides an overview of real estate laws and regulations applicable in Italy.

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# ITALY

## REAL ESTATE



### 1. Overview

A Real Estate department in an Italian law firm provides strong legal focus on transactions (either by means of asset deals or by means of share deals) involving significant real estate assets and portfolios such as office buildings, residential and logistics developments as well as retail units. It also includes matters relating to leasing and real estate finance.

The lawyers involved usually assist Italian or foreign Clients (mainly, institutional companies (private and public), banks, investors, management companies on behalf of real estate AIF) and it is committed in several activities, from due diligence process to assistance in all preliminary stages of a transaction up to closing and post-closing activities.

### 2. What is the main legislation relating to real estate ownership?

Real estate transactions are mainly regulated by the provisions of the Italian Civil Code and by three fundamental *lex specialis*, namely:

- (i) Law no. 431/1998 (governing leases of residential units);
- (ii) Law no. 392/1978 (regulating commercial leases); and
- (iii) Presidential Decree no. 380/2001 – Building and construction consolidated Act (governing zoning and town planning aspects).
- (iv) Law No. 1150/42 (as amended by Law No. 1187/1968) governing urban planning matters jointly with the regional urban planning Laws issued and approved by each Region of the Republic Italy;
- (v) Legislative Decree No. 152/2006 (Environmental consolidated Act).

### 3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2022 or are there any major anticipated new laws which are expected to materially impact them in the near future?

Budget Law 2023 approved, for the first time in a while, the real estate property tax (“IMU”) payment exemption for real assets unlawfully occupied. The efficacy of the exemption is subject to the criminal complaint by the owner of the real asset to the competent judicial authority.

The draft of the Budget Law 2024 (to be approved by 31 December 2023) forecast to increase from 21% to 26% the flat tax on dividends deriving from residential lease agreement as of 1 January 2024. Such an increase should apply in case of leases of more than one asset. Therefore, in case of lease of one asset only, the flat tax should remain on 21%.

As far as the Laws commonly known as “Superbonus 110%”, approved by means of Law Decree 34/2020 (a tax deduction for expenses incurred for the implementation of specific works aimed at energy efficiency and static consolidation of buildings) is concerned, certain amendments concerning, in particular, the percentage of the deduction have been approved and, namely.

- 110% of the expenses incurred in 2020, 2021 and 2022;
- 90% of the expenses incurred in 2023;
- 70%, of expenses incurred in 2024.

### 4. How is ownership of real estate proved?

Ownership title over a real asset can be proved by inspecting the competent Real Estate Registers available to anyone.

Filing a notarial deed within the competent Register ("*Conservatoria dei Registri Immobiliari*") ensure its publicity and it is mandatory for the purposes of enforceability against third parties.

Extremely useful for proving ownership is also a 20-year notarial report prepared by a Public Notary, which is the only document able to give conclusive evidence on the ownership title over a property and any encumbrances existing thereon.

## 5. Are there any restrictions on who can own real estate?

Generally, there are no restrictions, under an individual standpoint, on who can own property in Italy.

According to the principle of reciprocity, foreign nationals may exercise the civil rights granted to Italian citizens. The requirement of reciprocity does not apply to: (i) non-EU citizens residing in Italy with a regular residence permit; (ii) stateless persons or refugees who have been residing in Italy for at least 3 years; and (iii) EU citizens or citizens of countries whose investments in Italy are permitted by bilateral investment treaties.

On the other hand, foreign companies willing to acquire an asset located in Italy are required to register for VAT and to be registered within the Companies' Register

## 6. What types of proprietary interests in real estate can be created?

Ownership title can be acquired in two ways:

(i) by derivative title, which involves the succession of a right already belonging to another person (e.g. sale and purchase, donation, succession to the estate of deceased person); and

(ii) by original title, which results in the creation of a new right independent of the right of a previous owner (e.g. prescription ("*usucapione*").

Among ownership derivative titles, the major property interests (so called "*diritti reali maggiori*") that are usually created over an asset include: (i) full ownership (*piena proprietà*); (ii) bare ownership (*nuda proprietà*), which is the right that remains to the owner of a real asset but on which another party has been granted a right of usufruct; (iii) the surface right ("*diritto di superficie*"), which is the right to build and maintain an asset on, or under, the plot of land or a building owned by a third party. Among ownership original title, prescription (*usucapione*) is the most common,

consisting in acquiring ownership and other in rem rights of enjoyment through either by an uninterrupted possession for a period of twenty years or by an uninterrupted good-faith possession for a period of ten years in case of good-faith purchase.

There are also minor property interests such as: (i) right of usufruct ("*diritto di usufrutto*") (ii) emphyteusis (*enfiteusi*), conferring a broad right of use and disposal of a property, by improving it and by paying a rent to the owner; (iii) the right of habitation (*diritto di abitazione*), by giving to the holder the right to inhabit a house limited to his and his family's needs, (iv) the right of use (*diritto d'uso*), which is a right in rem over another party's property, which confers on the holder the right to use it and derive the profits thereof for the satisfaction of his own needs and those of his family and (v) easements (*servitù*) burdening a property in order to provide another property, owned by a different person/entity, with a direct advantage (*utilità*).

## 7. Is ownership of real estate and the buildings on it separate?

Ownership right over a property extends to the subsoil and the surface above it. Ownership of the land, therefore, includes the buildings constructed thereon and their pertinences.

Differently, in case of a surface right, the owner of a plot of land or a building may grant to a third party the right to build, maintain and own a property on such a land, or to acquire ownership title over the property separately from the land upon the expiry of the relevant term.

## 8. What are common ownership structures for ownership of commercial real estate?

The most commonly used ownership structures of commercial assets are closed-end real estate alternative investment funds (REIFs), managed by institutional asset management companies.

Mention should also be made to:

(i) SICAFs, companies whose sole purpose is the collective investment of equity. The establishment of a SICAF must be authorized by the Bank of Italy;

(ii) Real estate company (commonly, joint-stock company and limited liability company);

(iii) SPVs incorporated pursuant to article 7.2 of Law 130/1999 ("*Securitization Law*"), companies whose purpose is to purchase real estate asset and to issue

notes on the market in order to finance the acquisition of the real asset. The notes are repaid with the subsequent resale of the real asset (*cartolarizzazioni immobiliari*);

(iv) listed real estate investment companies (so-called "SIIQs"), introduced by Law no. 296/2006, which are joint-stock companies, Italian resident and whose (a) main purpose is the letting of real estate and (b) shares must be traded on regulated markets; and

(v) unlisted real estate investment companies (so called "SIINQs"), which differ from SIIQs by not being traded on regulated markets.

### 9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

Due diligence process involves a detailed analysis on ownership title, third parties rights, occupancy status, town planning, building law, fit for use and environmental law aspects.

It starts with an in-dept analysis of the documentation provided, as a result of a Q&A process, and its findings will be included in the transaction document(s), by tailoring, inter alia, the seller's representations and warranties and the relevant indemnity obligations.

### 10. What legal issues (if any) cannot be covered by usual legal due diligence?

A legal due diligence process does not cover financial, commercial, technical aspects, unless otherwise agreed with the client; in such a case, experts in these fields shall be appointed in order to evaluate the transaction's overall risk and the profitability of the investment, through a market comparison with similar asset class.

### 11. What is the usual process for transfer of commercial real estate?

As per common practice, a first step includes the exchange a letter of intent or a non-binding offer in order to, preliminary, set the terms and conditions of the envisaged transaction.

Once the main terms of the transaction have been settled among parties, legal advisors start to draft a preliminary sale and purchase agreement or a binding offer. Among others, preliminary sale and purchase agreement set forth all the activities the parties shall duly perform between signing, closing and post-closing. Generally, preliminary sale and purchase agreement

provides a set of seller's representations and warranties regarding the asset with a relating indemnity obligation in charge of the seller.

Following the signing of the preliminary agreement, the parties shall then execute a notarial transfer deed by virtue of which the ownership title over the real asset will be transferred in favour of the purchaser.

### 12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Confirmed.

Share transfer generally takes place in case of sale of hotels and retail centres/ parks since the public license for performing the relevant activities is owned by the target company, which, in turn, also owns the real estate asset where the activity is performed. Share transfer normally occur, therefore, when the target company owns either the real asset or the relevant licenses.

Another way transfer is the contribution in kind of a real asset into a company or a real estate investment fund in exchange of shares of the company or units of the fund.

Asset transfer generally take place for office, logistics and residential asset, in most cases leased to third-party tenants.

### 13. On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer?

The purchase of leased assets automatically entails the purchaser's step-in into both the obligations and rights arising from the lease, so that the purchaser is in the same position as the previous landlord, without the need to enter into a specific agreement.

### 14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

With regard to the rights that can be created over real assets, in rem rights of enjoyment ("*diritti reali di godimento*") and in rem guarantee rights ("*diritti reali di garanzia*") are a legal figure of fundamental importance in the Italian legal system. The former do not transfer ownership, but they grant to the entitled party the right to use an asset, such as usufruct, right of use and habitation, surface right, emphyteusis and easements.

In rem guarantee rights, on the contrary, provide a security for a specific obligation, by granting the holder the right to secure the obligation by enforcing the guarantee, such as pledge (for movable assets) and the mortgage (for real assets and movable registered asset).

In order to be effective vis à vis third parties, mortgage shall be enrolled within the competent Real Estate Registers.

Specific remedial actions include, by way of example (i) an action to claim usufruct against anyone who owns the property, aimed at restoring the usufructuary's possession, or (ii) an enforcement sale process in case of a mortgaged property.

### **15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised**

In the Italian legal system such a situation arises through the pactum fiduciae, whereby the settlor transfers a real estate asset to the trustee, who undertakes to preserve and manage it in accordance with certain conditions and subsequently to transfer it back to the settlor or to a third party. This agreement produces an in rem right in favor of the trustee and binding obligations in favor of the settlor. The former consists in the transfer of the real estate asset to the trustee, the latter in the trustee's obligation to manage the real estate asset in accordance with the settlor's instructions and transferring it back to the latter.

Italian legal system does not specifically recognize this type of agreement, so the Hague Convention on the Law Applicable to Trusts and on their Recognition is the only source of recognition for the split of legal and beneficial ownership of real estate.

### **16. Is public disclosure of the ultimate beneficial owners of real estate required?**

The Ministerial Decree issued on September 29, 2023 implemented the Anti-Money Laundering Decree 231/2007: beneficial owners are now required to electronically report their status in the so called Beneficial Ownership Register, a special section of the Companies' Register.

Details of the beneficial owner and further information – depending on whether such owners are enterprises with legal personality, private legal entities or trusts – have to be reported.

Failure or delay in complying with the beneficial

ownership disclosure requirements will result in the application of the penalty (up to Euro 1,032).

## **17. What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?**

### Taxes related to real estate ownership

Property tax ("IMU") is levied on the possession of real estate assets. The taxable base depends on whether the real estate asset is a building, an agricultural land or a land for residential or business property. With specific reference to the buildings, real estate tax is calculated as follows:

1. based on the 105% of the income as reported into the cadastral registry on January 1st of the related year;
2. apply a percentage ranging from 55% to 160%, based on the technical classification of the property;
3. on the above, apply the tax rate, that is generally 0,86% but could be up to 1,14% based on the Municipality where the real estate asset is located.

Starting from 2022, inventory buildings owned by construction companies are exempt for real estate tax purposes, unless if leased to third parties, previously, the rate was ranging from 0,1% to 0,25% based on the Municipality.

The real estate tax paid by the companies is fully deductible for corporate income tax purposes from 2022 (previously only 60%), instead, for regional tax purposes the real estate tax is not deductible.

### Taxes related to the transfer of a real estate

The sale of residential buildings made by the builder or by the company that carried out the building renovation interventions listed under art. 3, par. 1, lett. c), d), f) of Decree No. 380/2001 after 5 years from the completion of the construction or of the interventions, is exempt from VAT and subject to a 9% registration tax (which may be reduced to 2%, should the requirements for the "prima casa" tax incentive to apply be met) on i) the value of the property transferred or ii) the price agreed by the parties of the transaction, where the value of the buildings has not been determined or where the price is higher than the value. The mortgage and cadastral taxes apply at Euro 50.00 each.

Where the sale of residential buildings is made the builder or by the company that carried out the building

renovation interventions listed under art. 3, par. 1, lett. c), d), f) of Decree No. 380/2001 within 5 years from the completion of the construction or of the interventions, the transfer is subject to VAT; in this case, registration, mortgage and cadastral tax will apply in the amount of Euro 200.00 each.

Where the sale of residential buildings is made by a VAT-person other than those mentioned above, the transaction will be VAT-exempt and subject to a 9% registration tax (which may be reduced by 2%, should the requirements for the "prima casa" tax incentive to apply be met) on i) the value of the property transferred or ii) the price agreed by the parties of the transaction, where the value of the buildings has not been determined or where the price is higher than the value. The mortgage and cadastral taxes apply at Euro 50.00 each.

In case the seller is a private individual, the transfer of residential buildings is out of the scope of VAT, but the transaction will be subject to a 9% registration tax (which may be reduced to 2%, should the requirements for the "prima casa" tax incentive to apply be met) on i) the value of the property transferred or ii) the price agreed by the parties of the transaction, where the value of the buildings has not been determined or where the price is higher than the value. The mortgage and cadastral taxes are equal to Euro 50.00 each.

About instrumental buildings, the sale made by the builder or by the company that carried out the building renovation interventions listed under art. 3, par. 1, lett. c), d), f) of Decree No. 380/2001 within 5 years from the completion of the construction or of the interventions is subject to VAT. Registration tax will apply in the amount of Euro 200.00, while the mortgage tax is equal to 3% and the cadastral tax is 1% (reduced by 1,5% and 0,5% in case the purchaser is a REIF or a SICAF) of i) the value of the property transferred or ii) the price agreed by the parties of the transaction, where the value of the buildings has not been determined or where the price is higher than the value.

Where the sale is made by i) the builder or by the company that carried out the building renovation interventions listed under art. 3, par. 1, lett. c), d), f) of Decree No. 380/2001 after 5 years from the completion of the construction or of the interventions, or ii) from a VAT-person other than the ones described above, the transaction will be VAT-exempt unless the seller has opt for VAT to apply. Whether or not VAT applies, registration tax, cadastral and mortgage tax will apply in the same amount provided for sales of instrumental buildings made by the builder or by the company that carried out the building renovation interventions listed

under art. 3, par. 1, lett. c), d), f) of Decree No. 380/2001 within 5 years from the completion of the construction or of the interventions.

Should the seller of an instrumental building be a private individual, the transaction would be out of the scope of VAT, while a 9% registration tax is 9% of i) the value of the property transferred or ii) the price agreed by the parties of the transaction, where the value of the buildings has not been determined or where the price is higher than the value. Mortgage and cadastral taxes are of Euro 50.00 each.

In the transactions described above, VAT ordinarily applies at a 22% rate, but lower rates may apply in certain cases.

#### Taxes related to the lease of a real estate asset

The lease of residential buildings by the construction company that carried out the building renovation interventions listed under art. 3, par. 1, lett. c), d), f) of Decree No. 380/2001 after 5 years from the completion of the construction or of the interventions, is exempt from VAT and subject to a 2% registration tax on the yearly rent; however, the lessor may opt for VAT to apply and, in this case, the registration tax would be equal to Euro 200.00.

The lease of residential buildings made by a VAT-person other than the builder or by the company that carried out the building renovation interventions is exempt from VAT and subject to a 2% registration tax on the yearly rent of the real asset.

The lease of an instrumental building made by a VAT subject is exempt from VAT and subject to a 1% registration tax on the yearly rent of the asset. However, the lessor may opt for VAT to apply; in this case, registration tax still applies at 1% of the amount of the rent of the real asset.

Leases of residential or instrumental buildings made by a non-VAT person are out of the scope of VAT; they are subject to a 2% registration tax on the yearly rent of the asset.

In the transactions described above, VAT ordinarily applies at a 22% rate, but lower rates may apply in certain cases.

### **18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?**

The main mandatory provisions applicable to commercial



property lease agreements (regulated by Law no. 392 dated 27 July 1978, the "Tenancy Law"), are the following:

- **Term and renewal:** not less than 6 years (9 years for hotel leases), automatically renewed for further 6-year periods (9 years for hotel leases), unless terminated by a party. At the expiration of the first 6-year period, the landlord is entitled to terminate the property lease agreement exclusively where (a) it intends to occupy the premises for its own use or (b) it intends to renovate the leased premises; these restrictions do not apply at the expiration of the subsequent terms;

- **withdrawal:** the landlord and the tenant are not entitled to withdraw from the property lease agreement before the expiration date; the tenant is entitled to withdraw from the property lease agreement before the expiration date upon occurrence of the so called "serious reasons"; withdrawal for serious grounds applies regardless of its inclusion in the lease;

- **rent indexation:** the rental indexation of commercial lease agreements having an initial term not longer than the minimum required by the law (i.e., 6 years), may not exceed 75% of the variation of the ISTAT index; whereas the rental indexation for commercial leases having an initial term longer than the aforementioned minimum term may exceed 75% of the variation of the ISTAT index;

- **sublease of the premises and assignment of the contract:** the tenant is entitled to sublease the unit or to assign the lease agreement - also without the landlord's consent - in the event the sublease or assignment takes place in the context of a sale or lease of the going concern of the tenant, which the property lease agreement is a part of;

- should the activity of the tenant involve dealings with the general public of customers, such as in the case of retail units, the following additional mandatory provisions apply:

(i) **goodwill indemnity:** in case of termination of the commercial lease agreement by the landlord, the tenant is entitled to a goodwill indemnity corresponding to 18 times the amount of the stabilized monthly rent. The amount of the goodwill indemnity is doubled in the event the real estate unit is leased to another tenant operating the same activity of the previous one. The tenant is not entitled to any goodwill indemnity in the event that the property lease agreement is terminated for breach or withdrawal by the latter;

(ii) **pre-emption rights in favour of the tenant:** should the landlord decide to sell the leased premises

during the term of the lease or to re-lease it at the expiration of the property lease agreement, the tenant is entitled, as the case may be, to a pre-emption right to purchase the premises or to lease it at the same terms and conditions.

Please note that according to article 79, paragraph 3, of the Tenancy Law, for leases having an annual rent equal or higher than Euro 250,000, the provisions of such a Tenancy Law can be entirely derogated by the Parties.

## 19. How are use, planning and zoning restrictions on real estate regulated?

Town planning matters are regulated by Law No. 1150/42 (as amended by Law No. 1187/1968) as well as by the regionals urban planning laws approved by each Region.

The main legal instrument is the General Municipal Regulatory Plan (the so-called "*Piano Regolatore Generale Comunale*" ("**PRGC**"), through which the local authority provides for the planning of the municipal territory, striking a balance with the environmental conditions and the needs of the citizens.

The PRGC includes the identification of the areas to be used for building major public

works under the responsibility of the State or the Municipality, named "primary" urbanisation works. Moreover, zoning regulations split the territorial context into homogeneous areas and assign to each of them a specific urban purpose. As per building aspects, the regulations in force are contained in Presidential Decree no. 380/2001, that distinguishes various types of building activities and relevant building permits, depending on the type and the intensity of the works, including, inter alia, notification of commencement of work; notification of commencement of work with technical affidavit; express building permit.

## 20. Who can be liable for environmental contamination on real estate?

Paragraphs 1 and 2 of Section 192 of Legislative Decree No. 152 of 2006 ("TUA"), prohibit littering and uncontrolled deposit of waste on and in the ground, as well as the introduction of waste of any kind into surface and underground waters. Any person who breaches the above prohibitions shall remove, recover or dispose the waste and restore the state of the sites, jointly and severally with the owner and with the holders of rights of use over the area, whether they could be considered as responsible as a result of fraud or negligence.

The TUA makes a clear distinction between the subject responsible for the pollution and the owner of the site who has not caused such a pollution. The latter has only a financial liability limited to the value of the site after the restoration work has been carried out by the public authority and it has the right to claim the polluter to be restored of the costs paid for restoration works. On the other hand, the polluter has criminal and an administrative liability. The whole regulation is based on the so-called "polluter pays" principle, as explicitly codified in Article 191(2) of the TFEU.

## **21. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?**

Buildings are legally required to have their energy performance assessed. The Interministerial Decree of 26 June 2015 sets out the minimum energy performance requirements for buildings and the procedures for calculating energy performance according to their intended use.

In case of existing buildings, the energy performance requirement generally applies when significant works are performed, such as changes to the heating system, insulation or windows.

The owner is required to provide a valid Energy Performance Certificate ("EPC") to the potential purchaser or tenant of an asset; failure to do so, an administrative penalty up to Euro 18.000,00 shall be borne by the owner.

## **22. Is expropriation of real estate possible?**

Properties may be expropriated in case of primary public interest as set forth under Section 42, paragraph 3 of the Italian Constitution.

When a property is expropriated by means an administrative procedure, the State becomes the new owner.

The expropriation procedure mainly requires the creation of a lien on the property and the definition of the amount of compensation provided for. The matter consists of three main stages a) issuance of the preliminary expropriation order; b) issuance of the declaration of public utility; c) issuance of the expropriation decree.

## **23. Is it possible to create mortgages over real estate and how are these protected and enforced?**

A lender may establish a mortgage on the borrower's real estate assets in order to secure its obligations, by granting the right to: (i) enforce the guarantee by attaching the real asset; and (ii) to be firstly reimbursed as a consequence of the purchase price earned from the sale enforcement proceeding.

In order to establish a mortgage on a real estate asset, it is necessary to register it within the Real Estate Registers.

Mortgage can be of three types:

- voluntary, when the purchaser of an asset requests a loan from a credit institution;
- judicial, through a judicial authority decision; and
- legal, when a transfer deed is intended to guarantee the correct fulfilment of the obligations arising from the deed itself.

## **24. Are there material registration costs associated with the creation of mortgages over real estate?**

The registration costs are the following:

- (i) registration tax of 0.50% to be calculated on the amount secured through the mortgage, where the mortgage is provided by a party other than the debtor; otherwise, a 200.00 registration tax applies;
- (ii) mortgage tax of 2% (in the case of registration) to be calculated on the amount secured through the mortgage;
- (iii) nominal stamp duty;
- (iv) notaries' fees;

Upon occurrence of certain conditions and in relation to certain kind of real estate finance transactions, it is possible to avoid paying all of these taxes by applying the substitute tax (*imposta sostitutiva*), currently at a flat rate of 0.25% of the principal amount of the loan from time to time drawn down.

## **25. Is it possible to create a trust structure for mortgage security over real estate?**



Confirmed.

In Italy, trusts are governed by the Law of ratification of the Hague Convention on the Law Applicable to Trusts (Law No. 364/1989), as amended.

To create a trust structure for a mortgage security, certain steps are usually followed; firstly, the owner of the real asset (i.e., the settlor) establishes the trust and through a deed of trust, which is an agreement outlining

the terms and conditions of the trust, transfers ownership of the real asset to the trustee (an individual or legal entity). Said trust deed shall include provisions for mortgage security on the real asset, implying the registration / filing of the mortgage within the Real Estate Registries. As a consequence, the trustee becomes the owner of the real asset and holds it on behalf of the beneficiary, who is the person or entity benefiting from the trust.

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## Contributors

**Alessandro Vespa**  
**Partner**

[alessandro.vespa@crccdlex.com](mailto:alessandro.vespa@crccdlex.com)



**Isabella Fasci**  
**Associate**

[isabella.fasci@crccdlex.com](mailto:isabella.fasci@crccdlex.com)

