



PROPERTY QUESTIONS ANSWERED

This month, *Avv. Fabio Pucciarelli* explains the Italian Law of succession

BUYING A PROPERTY in a foreign country is an exciting experience, whether you're making a sound financial investment, establishing a base for holidays in the sun, or finally realising a long cherished dream of living abroad. However, it's obviously important to think of the legal practicalities of owning a property in a country that has an entirely different legal system from the one with which you are familiar. So what should you do to ensure that your property in Italy will be inherited by your loved ones?

Even if you have made a will in your home country, the law of succession in many countries, England and Wales included, applies only to assets held in that country – if, for example, you have a will in England, its provisions cannot be applied to the disposition of any assets held in Italy.

In practice Italian law will look to the law of the deceased's home country to determine the final disposition of any property belonging to that person. Italian law subjects the regulation of the succession to the national law of the deceased person. If the national law invoked is, for example, English law, a clear distinction between the type of asset in question becomes necessary: immovable assets (i.e. houses and land) in Italy are governed by Italian law, while moveable assets (i.e. furniture, money etc.) may be subject to the law of the home country, or even the law of a third country, depending on where the deceased was domiciled at the moment of death.

The Need for a Lawyer

It is therefore advisable to visit a lawyer in your home country to acquaint yourself with the situation regarding *universal succession*, or in the case of countries with a *secessionist system*, for example England, with the rules governing the assignment of immovable and moveable assets, particularly if some of them are located abroad.

If you have not already done so, make a will with a lawyer in your home country and then make one in Italy as soon as possible after completing the purchase of your property. This is important if you are to avoid leaving your heirs with the difficult and long-drawn-out task of administering an intestate succession in a foreign country, governed mainly by the law of that country.



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As the Italian law of succession is complex and has many specific requirements and unexpected implications, it is essential that you meet with an Italian lawyer with experience in this area.

One of the more unexpected aspects of the law of inheritance in Italy is the *law of necessary succession*. This automatically reserves a share of the entire inheritance to your spouse, any children you may have and, in some circumstances, even your parents. Your Italian lawyer will be able to describe the limitations this law places on your testamentary freedom. He will also explain about the spouse's lifelong right to inhabit the family home, regardless of any legal or testamentary provisions.

It is also important to be aware of the strict procedure for publishing a will (this necessitates the involvement of a notary, and is aimed mainly at the re-registration of the inherited assets in the names of the beneficiaries), of the system for making an inheritance tax return, and of the role and powers of any executors appointed by the testator.

Where There's a Will...

The important, complex process of making a will in Italy, just like that connected with the purchase of a house or land, is very formal and strict rules of procedure apply. Your lawyer will explain to you the form that a valid will must have, the provisions of the Italian legislation and international agreements that will apply to it, when the attendance of witnesses is required and when you will need the assistance of a notary. A lawyer will supervise you as you write your will, by hand, and preferably in your own language, in which situation you will be acting as a notary representing yourself.

Your lawyer will perform the necessary role of local consultant, will interpret your intentions and wishes, and will be a useful guide when choosing the most suitable legal vehicles in which to convey them. He will suggest when to opt

for devices that are structured to provide for the appointment of heirs, the making of individual bequests or even the setting up of trusts, depending on what will be the most feasible solution in your personal circumstances. 