



PROPERTY PROBLEMS SOLVED

This month, *Avv. Fabio Pucciarelli* looks at the legal provisions that apply to spouses living or owning property abroad, in order to prevent any unwelcome surprises

WHEN TWO PEOPLE, married to each other according to the law of their own country, decide to buy a property abroad or to live permanently in another country, it is inevitable that some questions will arise. What happens to their status as a married couple? Which legislative provisions will govern their ownership of a property abroad? What if they each have a different nationality? Under Italian law, both the personal and economic relationships of a married couple are governed by the law of the country of which they are citizens. In the event that they are citizens of more than one country, these aspects of the marital relationship are subject to the law of the country in which they reside for the majority of their time.

The legislative decision to create a close connection between these two aspects of the spousal relationship makes it clear that in the process of verifying the couple's common residence (i.e. the place where they have their permanent home), attention is focused on personal elements, whereas the location of any property owned by the couple would probably be irrelevant.

As the Italian legal system does not provide for documentary evidence to prove the location of the common residence, such evidence is not usually easy to adduce; most of the authorities on the subject refer to a declaration from the parties, that can also be documented separately. In the event that there is no common residence – and this is less unusual than might be thought – other authorities are of the opinion that it is sensible to consider the place where the marriage was contracted as the place of common residence, but only when the location coincides with the citizenship or the residency of one of the parties to the marriage.

In theory, therefore, a husband and wife will bring to Italy their own national law as regards both their personal and economic relationship. However, while this respects the cultural identity of foreigners, it could be regarded as introducing a legal tangle in Italy. What actually happens is that, in the case of places with a common law system, for example



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Britain, its former colonies and many states of the United States, moveable assets are subject to the law of the place of the owner's domicile, while immovable assets (i.e. houses and land) are regarded as being subject to the law of the country in which they are located – this is known as the *lex rei sitae*.

So, if a British couple decide to buy and live in a house in Italy, the logical conclusion is that they will hold the property in common, community of property being a typically Italian legal device, the related rules of which are unexpected for most foreigners and may seem unnecessarily complicated.

Discussions with a lawyer will help people to understand all the implications of this device and find the answers to questions concerning purchase of a house in the name of one spouse only, the sale of one spouse's share in the house, who can make decisions regarding the long-term renting of the house, and the reasons for the winding up of a joint ownership.

In theory, it is possible for people to sign a notarised agreement that subjects their economic relationship to the law of the country of which one of them is a citizen or in which at least one of them is resident – this is known as the *professio iuris*. However, it could be regarded as a solution that in many cases seems not to solve the problems. In this era of globalisation, it is very hard to conceive that individuals can travel the world bringing with them their own national law; the signing of a notarial deed is a complex course of action that requires the assistance of skilled professionals. The best way to avoid legal situations

with which foreigners may find difficulty reconciling themselves would be a reformation of Italian law in this regard, which would be very welcome from the perspective of the European Union.

Refugees and stateless persons should refer to the law of the state where they are either domiciled or resident. Gay couples who have signed a partnership contract will find that this is not recognised under Italian law, and they will enter into any contract for the purchase of property in Italy as separate individuals. 