Foreigners in Italy

Foreigners are, of course, persons who are not Italian citizens.
However, in the present age of globalisation this negative definition is no longer sufficient to identify the juridical rules applying to “non-Italians”.
In fact, different rules apply to “Community” foreigners, that is, to citizens of countries belonging to the European Union, compared to “non-Community” citizens. But the latter should also be further distinguished as between those in possession of a stay permit for reasons of work (what are called “resident aliens”) and the others (those who are legally resident or not legally resident: see hereafter for further explanations).
Accordingly it is fundamental to distinguish, first of all, what “type” of “foreigner” we are referring to, in order to pinpoint thereafter the rules that the Italian law applies and to answer possible questions asked.
In particular, the rules governing the juridical condition of foreigner in Italy is principally regulated by the following norms:
- as regards the so-called “condition of reciprocity”: art. 10 of the Italian Constitution; art. 16 of the Provisions dealing with the law in general (so-called pre-laws); on the basis of this principle, a foreign citizen who is not a resident alien may perform an act only if an Italian is empowered to perform such an act in the country from which the foreigner comes;
- as regards foreigners who are physical persons: Legislative decree no. 286 dated 25/07/1998 (Single Text of the provisions on the disciplining of immigration and norms on the condition of foreigners - as modified by Legislative Decree no. 380 dated 19/10/1998 and by Legislative Decree no. 113 dated 13/04/1999), hereafter indicated merely by the term “Single Text on foreigners”; Decree President of the Republic no. 394 dated 31/08/1999 (regulation implementing the Single Text on the subject of foreigners); what is known as the Bossi-Fini law;
- as regards the Italian system of international private law (conflicts of law): act no. 218 dated 31/05/1995;
- as regards foreign companies: act no. 218 (art. 25) dated 31/05/1995; arts. 2506 et seqq. of the Civil Code;
- as regards citizenship: act no. 91 dated 05/02/1992; Decree President of the Republic no. 572 dated 12/10/1993; art. 19 of act 218/1995;
- as regards the so-called Legalisation and the Apostille: Decree President of the Republic no. 445 dated 28/12/2000 and Hague Convention of 05/10/1961 on the “Apostille”;
- as regards stateless persons: the Convention of New York of 28/09/1954; act no. 306 dated 01/02/1962; act no. 91 dated 05/02/1992 (art. 16) and Decree President of the Republic no. 572 (Implementing regulation) dated 12/10/1993, art. 17.

Citizens of the European Union (commonly known as “Community citizens”)

In the framework of the European Union the following principles apply:
- freedom of circulation for persons, goods, services and capital (arts. 45 to 48 of the EEC Treaty)
- freedom of competition (freedom of market).

Accordingly: the citizen of the European Union (commonly called “Community” citizen) has substantially the same rights as the Italian citizen, without any limitations which are not explicitly foreseen by the EC norms (for example the possibility of exercising the various professions in the different countries of the European Union are specifically disciplined).
In other words, neither the principle of reciprocity, nor the Single Text on the juridical condition of foreigner, nor any other special norms in any way conflicting with the fundamental principles and norms of the EC apply to the Community citizen, save any more favourable conditions that may be foreseen.

Citizens of countries not belonging to the European Union (what are known as "non-Community" citizens)

"Non-Community" foreigners may have a variety of different relations with our country: there are ordinary tourists, those staying in our country for longer periods of time (for example for reasons of study, or medical treatment, etc.), that is, with a view to living there stably.

Italian law regulates these various hypotheses in different ways, in particular distinguishing the non-EU citizens into those who are, to use the English term, "resident aliens" from those who are "legally resident" and from those who are "not legally resident".

The rules are fundamentally different, so that is very important to distinguish them on the basis of the strict criteria laid down by the law.

However, it should be underlined that, in any case, Italy recognises and guarantees fundamental human rights to any foreigner– even if not a resident alien and not legally resident.

Non-EU foreigners who are "resident aliens"

In general, the Italian law foresees that a non-EU foreigner may acquire rights in Italy – and may in particular undertake the purchase of a house (or other real property) – only if the country to which the foreigner belongs allows the Italian citizen present in that country to do likewise. This is known as a "condition of reciprocity".

However, in the last few years, the law has changed substantially, to such an extent as ascribe to the non-EU citizen who is a "resident alien" in Italy (or else, under certain conditions, in some other country of the Union) practically the same rights as Italian citizens, even in the absence of any such condition of reciprocity.

A "resident alien" is the non-EU foreigner in possession of:

a) a stay card; or else

b) a stay permit for:

- reasons of subordinate or autonomous work
- running an individual business
- for family reasons (family members conforming to the rules for stay purposes).

It is important to underline that "resident alien" is a different and more restricted concept than "legally resident".

Only the "resident alien" benefits from a treatment legally equivalent to that of the Italian citizen and may acquire rights in Italy even in the absence of the condition of reciprocity, while the foreigner who is only "legally resident" (that is one who is legitimately staying in our country, but who is not in possession of the aforesaid documents: for further information, see: foreigner not legally resident) of course enjoys all the fundamental rights recognised to persons, but – for example- may not purchase a house in Italy unless the condition of reciprocity exists, that is, if his/her national law does not allow an Italian citizen to purchase a house in his/her country.

Non-EU foreigners who are "not resident aliens"

Even if legally resident in Italy (that is, having entered Italy in a legal manner), the status of "resident alien" (who accordingly may purchase property in Italy only on a "condition of reciprocity") cannot be extended to the non-EU foreigner corresponding to:

a) an ordinary entry visa;

b) a stay of short duration (visits, business, tourism, justice, waiting to emigrate to some other country, exercise of worship, stay in a clinic, or in religious or civil institutions, hospitals, or other forms of living together);

c) stay for study purposes (even if such a permit envisages the possibility of working to a limited extent);

d) stay for reasons of social protection.

Non-EU foreigner married to Italian citizen (or citizen of the European Union)
The regulation on the condition of foreigners (Decree President of the Republic 394/1999 does not deal directly with the foreigner married to an Italian citizen (or EU citizen); however the relative disciplining may be found in Arts. 9 and 30 of the Single Text on foreigners (Decree President of the Republic 286/1999?);
a) art. 9: a stay permit may even be required of a foreigner married to, or who is the under-age son/daughter of, an Italian or EU citizen;
b) art. 30, 1b): a foreigner who has qualified as a resident alien for at least one year, who marries in the State an Italian citizen, an EU citizen or another resident alien is granted a stay permit for family reasons;
c) art. 30, 4: a foreigner who effects a family reunion with an Italian or EU citizen or holder of a stay permit is granted a stay permit.
(The foreigner who requests the right of reunion with a family member who is a resident alien must also demonstrate the availability of a lodging and an income; whereas the family member of an Italian or EU citizen may enter together with him/her without having to demonstrate these requirements).
It is considered that, since the stay permit for family reasons likewise attributes the working capacity corresponding to that of the spouse or relative with whom he/she is reuniting, the juridical capacity of the foreign spouse is comparable with that of the Italian or EU citizen with whom he/she is connected, and thus attributes general capacity to the spouse of an Italian (or EU) citizen.
In the same way the norms foreseen by Decree President of the Republic no. 1656 of 30 December 1965, as modified by Legislative Decree no. 358 of 2 August 1999, continue to apply to the spouse of an Italian (or EU) citizen, save, however, any more favourable norms foreseen by the Single Text on foreigners or by its implementing regulation (Decree President of the Republic 394/1999) (art. 28 of the Single Text).

Foreigners who are minors
For the Italian law all persons who are not yet eighteen years of age are “minors” – and as such incapable of carrying out effective juridical acts.
According to the Italian law, precisely on account of their young age, minors deserve particular protection, since not yet capable of providing for themselves on their own, either materially or morally.
However, when such “young people” are foreigners (or children of foreigners), the Italian law foresees that a check should be made to ascertain whether their “national law” considers them as “incapable” and accordingly if, in order to participate in juridical acts, a judge’s authorisation and/or the intervention of adults presumably acting to safeguard these same young people is required (arts. 23 et seqq. of law 218/1995).
However, our system of international private law foresees that, if the law regulating a given act lays down any particular prescriptions for capacity, this law should be applied even in derogation of the national law of the young person’s own country.
In addition, this same law 218/1995 accepts what is known as the “referring back”: that is to say, it is possible that the national law of the young person (referred to by virtue of art. 23 of law 218/1995) “refers back” the question of capacity (that is, establishing whether a young person should or should not be considered capable) to the law regulating the act in which the minor is required to participate, that is to the law of the place in which the goods which are the purpose of the act itself are located. Thus it happens that, in such cases, reference may once more be made to the Italian law, considering incapable only those who are under eighteen years of age.

In general, as far as the protection of minors is concerned, for the Italian law these are generally entrusted to the legal protection of their parents; or, if the latter are not available for any reason, to that of guardians appointed by the judiciary authority. Art. 36 of law 218/1995 however lays down that even relations between parents and children are – in principle – regulated by the national law of the young person.
Art. 42 of act 218/1995 however foresees that the protection of minors is in any case regulated by the relative Convention of The Hague of 05/10/1961, made executive in Italy by act 742/1980 (deposited on 22/02/1995).
The Convention foresees that protective measures for the minor are issued by the authorities of the country of "habitual residence" of the minor him/herself. No exact definition exists either of what these protective measures are, or of how the "minor's habitual residence" is established. For the former point, it is considered that the norm should be interpreted in a broad manner, encompassing all such provisions as have the aim and result of protecting the minor: Thus, the appointment of a guardian or trustee, temporary custody in a family or institution, and provisions relative to the minor in case of separation or divorce of his/her parents.
Measures relative to adoption and to alimony are excluded, since the Convention foresees special rules for these.
In order to pinpoint the residence, reference is made exclusively to the place in which the minor – and no other subject, even his/her parents – has his/her affections and interests.
The Convention also applies to those who are considered minors only by their own national law, even if they belong to countries which have not adhered to the Convention.
Any cautionary measures adopted by the minor's country of origin constitute an exception to the foregoing.
Finally, it should be remembered that Italy has also adhered to the Hague Convention of 25 October 1980 on the civil aspects of the international kidnapping of minors.

Foreigner with more than one citizenship

In the case of persons with more than one citizenship, in order to assess what their juridical condition in Italy is (that is, what "type" of foreigner they are), by applying our system of international private law (law 218/1995, conflicts of law) it is considered that:

- if the various citizenships also include the Italian : he/she is considered as an Italian citizen;
- if the person has more than one citizenship but not the Italian: art. 19 of law 218/1995 is applied, and accordingly the law of the country with which the person has the closest ties is applied.

Stateless persons

The juridical disciplining of stateless persons is laid down, in principle, by the Convention of New York of 28/09/1954; by act no. 306 of 01/02/1962; by act no. 91 (art. 16) of 05/02/1992 and by Decree President of the Republic no. 572 (Implementing Regulation), dated 12/10/1993, art. 17.
The Convention foresees that the same treatment reserved to foreigners in general is applied to stateless persons, and that in any case they are exonerated from the need to observe the condition of reciprocity after three years of residence.
As regards access to property ownership and the carrying out of working activities, the Convention (arts. 13 and 17-19) foresees that States grant stateless persons the most favourable treatment possible and in any case not inferior to that reserved to foreigners in general.
The non-resident stateless person is considered a Foreigner by the country in which he/she resides; the stateless person resident for less than three years is considered simply as a foreigner, but is not liable to the condition of reciprocity.
When a norm from our system of international private law makes reference to the national law of a person, for the stateless person (as for the refugee) the law of the country in which he/she has his/her domicile is applied, or in its absence, the law of the state of residence (art. 19 of act 218/1995).

In addition, it should be considered that the more favourable rules are applied to the legally resident stateless person, which – as we have seen – is a much wider concept than that of non-EU resident alien.

Foreign companies in Italy

In very simple (deliberately reductive) terms, companies which were not set up in Italy are considered as foreign (art. 25 of law 218/95).

Italian law considers that the rules of the State in which they were set up applies to such companies. However – beyond such norms – Italian law likewise applies to these companies if and insofar as the companies establish their administrative office or else carry out their principal activity in Italy.

This means that if the company has its administrative office or its principal activity in Italy, it should be entered in the Italian Register of Companies, with the adoption of by-laws that are compatible with Italian company norms. However, it should be pointed out that fulfilment of such obligations is not necessary in itself in order for the foreign company to carry out its activity in Italy, since – according to the foremost experts – recognition of the existence of the company as such is already implicit in arts. 16 of the pre-laws and 25 of act 218/1995, referred to heretofore.

Nevertheless, until such conditions have been fulfilled, in the case of a foreign company (undoubtedly if non-Community, and with some doubt if Community), those who have acted in its name are themselves personally and unlimitedly liable.

If the foreign company only sets up a secondary office in Italy, that is if it has a stable agency in Italy, the controls laid down are more limited. In fact only the norms on the publicising of corporate acts and disclosure of the name of their representative in Italy (on pain of the unlimited liability of those working for the company), apply.

As regards the acquisition of rights, art. 16 of the provisions implementing the Civil Code (the so-called pre-laws) is applied, which makes verification of the condition of reciprocity obligatory also for foreign juridical persons.

Companies set up in the European Union and which have their registered office, central administration or the centre of their main activity there are considered as legally equivalent, to all effects, to physical persons who are EU citizens (art. 48 EC).

For EU companies, art. 101-*quater* of the implementing measures of the Civil Code likewise foresees that, if they have more than one secondary office in Italy, the publicising requirements may be implemented with the Register of Companies of only one of them, depositing with the others only certification of having implemented such a first deposit.

In the case of transfer to Italy of the "EU" companies within the Community, a very recent sentence of the Court of Justice of the European Communities (sent. C-208/00 of 05/11/2002, known as Überseering) has laid down (here too in deliberately simplified terms) that individual State rules – albeit in the permanent diversity of disciplining allowed – may not lead to unjustified compressions of the fundamental principle of freedom of circulation of companies – as of physical persons of the Community – within the European area.

The civil law notary for foreigners in Italy

When is a civil law notary needed?

The areas of intervention of the Italian civil law notary concern mainly:

a) the purchase of a house or other real estate;
b) the formalisation of a loan contract with a Bank;
c) the preparation of proxies empowering third party representation;
d) modification of property relations between spouses;
e) the request for judge's authorisations for under-age children;
f) the donation of goods;

g) the constitution, modification and all the necessary acts of a company;
h) the receipt and use of foreign acts.
In all of these cases, do not hesitate to consult your civil law notary and to ask him all the questions you like, explaining all your doubts relative to what you want to do. He will give you all the explanations necessary for choosing serenely and confidently.

Purchasing a house
As a first approximation, our law permits the purchase of real estate by foreigners with the following different procedures:
1) foreigner who is not a "resident alien": only if the condition of reciprocity exists;
2) foreigner who is a "resident alien", his/her family members and stateless persons in Italy for less than three years: with stay permit for specific reasons, or with stay card;
3) EU or EFTA citizen and stateless person resident for more than three years: without limits.
It immediately becomes clear that it is necessary – in order to know what documents are required concretely in order to acquire rights in Italy – to pinpoint to which of these categories a foreigner belongs.
For further information, see "*What foreigners*".

Tax concessions for foreigners connected with the purchase of what is known as the "first house"
The Italian law aims at facilitating and encouraging the purchase of a main home (referred to as the first house), by reducing in various ways the taxes for those buying it. In particular, at the time of purchase, buyers pay 3% (registration fee), if buying from a private subject, or else 4% (VAT) if buying from a business or a company (save certain particular cases), plus the mortgage and land register taxes on a fixed basis (at present amounting in all to 336.00 Euro).
For foreigners, the same rules apply as those pertaining in general for the foreigner buying a house: if he can purchase the house, he can also take advantage of the concessions applying to a "first house".
In fact art. 40 of the Single Text 286/98 foresees what is known as the right of having access to a house of first residence (for further information, see "*Purchasing a house*").
Foreigners who are resident aliens who are entered in the employment office lists or who carry out subordinate or autonomous jobs are entitled to have access, in conditions of parity with Italian citizens, to public residential building units and to the special credit regarding building, reinstatement, purchase and tenancy of the first house for residence.
Another tax concession connected with purchase of the "first house" concerns the possibility of detracting (to a certain extent) from your income tax the interest paid on the loans stipulated for purchase of what is called the first house.
Finally, the income produced by the "first house" is not liable to any income tax.

Requesting funding (loan) from the Bank
On the same conditions which pertain for purchasing a house, a foreigner may apply to a bank for a loan, in Italy.

Setting up a company in Italy
On the same conditions with which he can purchase a house, a foreigner can participate and set up a **company** in Italy.

Creating an association
On the same conditions with which he can purchase a house, a foreigner can join up with other persons (Italian and/or foreign) for carrying out together a whole variety of different projects and objectives.

Preparing a proxy
A person cannot always express directly his/her own will: for example because he/she is abroad, or in any case distant from the place where a given act or contract has to be concluded.
In such cases, recourse may be had to a proxy, that is to say, a document which gives a person the power of carrying out a material or legal act in place of another person.
For example, if a husband is abroad and it is necessary to urgently conclude the act for purchase of a house, the husband – before leaving or else from abroad – may give his wife a proxy so that the wife can conclude the contract on behalf of them both.
If the proxy arrives from abroad, all the rules relative to a foreign act, will be applied.

Making a will
A foreigner can make a will, that is, indicate in an official document who he/she intends to leave his/her own goods after his/her death.

Donations
A foreigner can give as a gift his/her own goods to whoever he/she likes during his/her lifetime, that is, make donations.

Foreign act
By foreign act is meant the act drawn up and compiled abroad by foreign authorities, even if in the Italian language, which in order to be used in Italy requires legalisation or what is known as the "Apostille".

From this point of view, the deed drawn up by Italian consulates or embassies abroad are not considered "foreign", even if the parties thereto are foreigners. If drawn up in a foreign language, the foreign deed must also be accompanied by its "translation".
In fact, more precisely, the obligation of legalisation for the foreign act is at present foreseen by art. 33 of Single Text no. 445 of 28/12/2000 (regarding administrative documentation).
Very concisely then, on the basis of this norm, acts formed abroad:
- by foreign authorities: are legalised by the Italian diplomatic or consular authorities in the State of formation of the document;
- by our diplomatic or consular representations: they do not have to be legalised. Our consuls may receive acts: between Italians; between Italians and foreigners; or else even between foreigners only, if intended for use in Italy.
However, in certain cases international treaties may decide otherwise (Hague Convention of 5 October 1961).
If the "foreign" acts are drawn up in a foreign language, they must be accompanied by a translation certified by our consular or diplomatic authority, or else by an official translator (however in practice this figure does not exist, so that it will be a reliable translator, such as: a translator entered in the register of the Court; or else a competent Public Official, such as even the notary him/herself, as explicitly authorised by art. 68 of the Notarial Regulations.

Translation of the foreign act
The foreign act, if drawn up in a language other than Italian, must be accompanied by a translation into Italian certified as faithful to the foreign text: either by the competent Italian diplomatic or consular authority; or else by an official translator (who may even be the Italian civil law notary who knows the foreign language in question).

Notarial deposit

The "formal" depositing of a deed with a civil law notary, that is imposed by the law (art. 33 of Decree President of the Republic 445/2000; art. 106 Notarial Law) or else requested by a person, has the purpose and result of imposing first of all a control of the legitimacy of the deed deposited (that is verification that its contents are not contrary to imperative norms of the law) and in addition ensures its conservation in time.
However, control of the content of the foreign act should be implemented with reference to what we call international public order, that is, with the prohibition of receiving in deposit only foreign acts which violate principles that the Italian system considers fundamental for the maintenance of its own political, economic and social structure.

Legalisation
Legalisation is an essential requirement in order for a foreign act to produce its legal effects in Italy. It consists merely in the official attestation – made by the competent Italian consular or diplomatic authority abroad – of the legal qualification of the public official who has signed the act and of the authenticity of his signature. If the act is issued by a foreign authority in Italy, it must be legalised by the Prefect in whose circumscription the foreign authority itself is based (with the exception of Val d'Aosta, for which the President of the Region is competent, and the Provinces of Trento and Bolzano, for which the Government Commissioner is competent). Whereas legalisation does not concern the validity or efficacy of the act in the country from which it originates, and in this sense it is much less than a notarial certification, since legalisation (like the Apostille) does not imply any control or acceptance of the content of the document.
Accordingly, the absence of legalisation implies that the act (though it is valid and effective in its country of origin) cannot produce effects in Italy and cannot be utilised by a civil law notary.
In particular, a foreign public deed is not valid as such, but merely as an unauthenticated private contract.
If the Italian act should be used abroad, legalisation – if required by the foreign authorities – must be done by the Public Attorney of the Court of the circumscription where the civil law notary receiving or authenticating the deed is based. The signature of the Public Attorney, in it turn, is legalised by the foreign Consulate coming within his jurisdiction. This is foreseen by articles 30-31-33 of Decree President of the Republic no. 445 of 28/12/2000, which took effect on 7 March 2001.
Legalisation is not necessary when the country from which the foreign act originates had adhered to the Hague Convention of 5 October 1961 on the "Apostille", that is to an international, bilateral or plurilateral agreement excluding this. The Convention of Brussels of 1987, relative to exemption from the "Apostille" in relations between the countries of the European Union, has still not been ratified by all the countries of the Union, and is accordingly in force only between some of them (for the moment it is in force only between Belgium, Denmark, France, Ireland and Italy).

Apostille
This is simplified – but absolutely rigid – form of legalisation (in the sense that it must correspond exactly to the model deposited as an attachment to the Hague Convention of 5/10/1961 which foresees it). It is in force between the countries which have adhered to the Hague Convention of 5 October 1961 and replaces legalisation between these countries exclusively.
Like legalisation, the Apostille too is indispensable in order for the foreign act to have effect in Italy.
Like legalisation, the Apostille consists of attestation of the legal qualification of the public official (or functionary) who has undersigned the deed, and of the authenticity of his seal or stamp. It does not concern the validity or efficacy of the act in the country of origin.
Each country adhering indicates which are the competent authorities to issue the Apostille. As far as Italy is concerned: for notarial, judiciary and civil status acts, the Public Attorney in the Courts in whose circumscription the acts are formed is competent. For administrative acts (signed by the Mayor, etc.) on the other hand, the Prefect of the place in which the act is issued is competent (with

the exception of Val d'Aosta, where the President of the Region is competent, and the Provinces of Trento and Bolzano, where the Government Commissioner is competent).
The "Apostille" is not necessary when the country from which the foreign deed originates has adhered to an international, bilateral or plurilateral convention excluding it.

Patrimonial regimes between spouses
The patrimonial regime is the sum-total of rules disciplining the property and the procedures of administration of the goods purchased by a married couple for as long as the marriage lasts and when the marriage is dissolved for any reason (death, divorce).
In other words the patrimonial regime indicates the rights which each of the spouses has over the goods purchased (by one or the other of them, or by both) during the marriage, both for as long as the marriage lasts, and in the case of dissolution.
In Italy the "normal" regime established between a married couple (unless they make some other explicit choice) is the "legal communion" of goods. The spouses may however opt for the "separation of goods" (which should not be confused with the "legal separation" of the couple), or else for a regime of communion but with particular rules ("conventional communion").
This choice influences both the possibility of selling or mortgaging goods without the consent of the other spouse, and the rules for the division of goods in the case of dissolution of the marriage.
On the basis of art. 30 of act 218/95, foreign citizens resident in Italy may also choose one of the patrimonial regimes foreseen by the Italian law, and this may facilitate their insertion into ordinary life in Italy.
Considering the influence it may have on the most important contracts, and also in order to protect the weaker spouse, the choice of patrimonial regime or its modification does not always receive the attention it deserves.

Legal communion
Legal communion of goods is the patrimonial regime that the Italian law "automatically" applies to marriage, while leaving the spouses free to choose different rules (such as separation of goods or conventional communion).

In brief, legal communion foresees that, in principle, all the goods purchased by the spouses during the marriage, even if formally made out to one only, in actual fact belong to both. This means that in order to sell them, gift them, establish a mortgage on them or in any way dispose of them the agreement of both spouses is required and the value of the goods themselves falls for one half to each spouse. In summary, only goods of a strictly personal or professional nature and remuneration for the work of each, are excluded from the foregoing.

Separation of goods
This is the patrimonial regime according to which two spouses continue to purchase goods, after their marriage, exactly as if they were not a married couple. The goods purchased by each spouse remain his/her own personal property, without the other being able to advance any claim over such goods.
Of course the spouses may also purchase a good for which each pays half, but each will be empowered to resell (or to gift) his/her part even without the consent of the other (in contrast to what happens with the legal communion of goods).

What does "public act" mean?
In countries of Romanist tradition (which are different from the countries of Anglo-Saxon tradition), the law ascribes a special importance and efficacy to the acts written by a civil law notary (of Latin type).

In fact art. 2699 of the Civil Code defines textually the public act as the "document drawn up, with the formalities required, by a civil law notary or other public official authorised to attribute public faith to him in the place where the act is formed".
"Public faith" is a particular efficacy of the notarial public deed, which counts first and foremost as a proof of the right that a person has acquired (and as such is explicitly recognised by the Conventions of Brussels, San Sebastian and Lugano on the jurisdiction and execution of sentences in the civil and commercial field). Accordingly all the most important acts economically and socially (from the purchase of a house, to the creation of a company or an association, to a will, to recognition of a natural child) and possibly also their depositing and/or translation in all the continental law countries must be done in the presence of a civil law notary .

What is a "mortgage"?
A mortgage is a guarantee for those who have to ensure payment and/or repayment of the sums in question by some other person.
The most frequent case is that of the Bank which lends money for the purchase of a house, granting a certain sum of money as a loan, and which in order to be sure that the loan (plus the interests) will be paid back, sets up a mortgage on the house purchased with its money (or else on some other property).
If the debtor, that is the person who has to pay back the loan, does not punctually pay off the sums agreed in order to gradually repay the loan, the mortgage gives the Bank the right to request a judge to sell the house and, out of the price thus obtained, pay back the Bank in full, returning any sum in excess to the debtor.
The sum which is indicated in the loan contract as the specific sum of the mortgages accordingly represents the maximum sum that the Bank can require of the judge in the case of forced sale of the house, on the clear understanding that in any case the Bank can only ask for the sum that effectively still has to be paid back to it.

Can a foreigner buy a house in Italy?
As a first approximation, our law permits the purchase of property by foreigners according to the following different procedures:
1) foreigner "not a resident alien" : only if the condition of reciprocity exists;
2) "resident alien", or his/her family members and stateless persons in Italy for at least three years: with stay permit for specific reasons, or with stay card;
3) EU or EFTA citizen or stateless person resident for over three years: without limits.
It is straightway apparent, that it is necessary – in order to know what documents will be needed concretely in order to acquire rights in Italy – to pinpoint which of these categories a foreigner belongs to.
For further information, see "What foreigners".

Can a foreigner receive tax concessions, such as the "first house"?
In general, the Italian law tries to facilitate and encourage the purchase of a person's own house (what is known as the "first house"), by reducing in various ways the payable by the buyer.
For foreigners, the same rules apply as those envisaged for anyone buying a house: if he can buy a house, he can also take advantage of the concessions for the "first house" (to know more, see "**Purchasing a house**").
In fact, art. 40 of the Single Text on foreigners explicitly foresees that "foreigners who are resident aliens and who are entered in the lists of the employment office or carry out an activity of subordinate or autonomous work are entitled to benefit, on conditions of parity with Italian citizens, from the public residential building units foreseen and to special credit conditions for building, reinstatement, purchase and lease of the first house for residence purposes".

Another tax concession connected with the purchase of the "first house" concerns the possibility of detracting (to a certain extent) from income tax payable the interests paid on loans stipulated for the purchase of such a first house.
Finally, the income produced by the "first house" is not liable to income tax.

Can a foreigner who speaks no Italian participate in a notarial act?
According to notarial law, notarial acts must be written in the Italian language (art. 54).
However this does not mean that foreigners who speak no Italian cannot make contracts – in the form of a notarial act – in Italy.
In fact notarial law foresees that when the parties do not know the Italian language, the notarial act may also be written in a foreign language (which all the persons participating in the act know), if and providing such language is known by the witness and by the civil law notary.
Whereas, if the civil law notary does not know the foreign language, then the act can and must be carried out with the intervention of an interpreter, who reads out to the persons concerned the translation of the act drawn up by the notary public and guarantees that these same persons have understood clearly the content and legal consequences thereof.
The public act which is written in Italian but concerns a contract between persons who do not speak Italian, or a language known by the civil law notary is null, that is, it cannot produce any of the effects that the parties expect (fore example, it does not permit purchase of a house, it does not effectively conclude a loan contract, it does not imply the effective registration of a mortgage).

What documents are required for a foreigner?
Stay permit and stay card.
Stay permit
The stay permit is the document issued to the foreigner who has to remain in the territory of the State for a period of over 30 days (art. 5 of Legislative Decree 286/1998; art. 10 of Decree President of the Republic. 394/1999).
If issued for given peremptory reasons, the stay permit attributes to the foreigner the condition of "resident alien", which in practice "equalises" him with the Italian citizen, recognising him to possess almost all the same rights as the latter.
Non-EU citizens with stay permit for the following reasons are considered as resident aliens:
a) reasons of work:
- autonomous or subordinate
- running of an individual enterprise (in actual fact this does not exist in autonomous form, but should be included in stays for reasons of work)
b) family reasons, however connected to stay permits for the reasons indicated under a).
Whereas if issued for different reasons, the stay permit does not give the non-EU foreigner rights similar to the Italian citizen, unless what is known as the condition of reciprocity exists.
Stay card
(art. 9 of Legislative Decree 286/1998)
This is an administrative document which enables the foreigner to stay regularly in Italy, with the possibility of benefiting from practically equal rights to those of Italian citizens.
It is more advantageous than the stay permit because:
- it is for an indefinite duration and accordingly does not require renewals;
- it permits the carrying out of all licit activities, save those that the law explicitly forbids for a foreigner or reserves to an Italian citizen;
- it allows access to services and entitlements of the public administration.
However it is only issued in the presence of stricter presuppositions than those required for the stay permit:
- to a resident alien who has been in Italy for at least 5 years, with stay permit renewable without limits, who can demonstrate that he/she has an adequate income;

- to a co-habiting foreign spouse of an Italian citizen or of an EU citizen resident in Italy, or who has the requisites for family reunion (arts. 29 and 30 of the Single Text 286/98).
- It constitutes a valid identity document for 5 years from its issue.

If a foreigner has more than one citizenship, which one holds good?
In the case of persons with more than one citizenship, in order to assess what his/her juridical condition in Italy is (that is, what "type" of foreigner he/she is), by applying our system of international private law (law 218/1995, *conflicts of law*) it is considered that:
- if among the various citizenships there is the Italian: he/she is considered an Italian citizen;
- if the person has more than one citizenship but not the Italian: art. 19 of law 218/1995 is applied, and accordingly the law of the country with which the person in question has his/her closest ties holds good.

Can a foreign act be used in Italy?
Yes, a foreign act, that is a document formed abroad, may be validly used in Italy, but must have certain specific characteristics.
Meanwhile, all Italian consulates abroad can receive acts which are to be used in Italy, even if all participants thereto are foreigners.
Whereas, if the act is written in a foreign language, first of all it should have a translation into Italian, which may be made by an interpreter abroad and certified as correct by an Italian consulate, or else it could be made by an Italian civil law notary who knows the foreign language in question.
In addition, it must be legalised or else must have the Apostille. However certain international agreements exist between the various States (for example Italy, Austria, France and Germany) which make even the Apostille superfluous.
Finally, the foreign document should be deposited with a notary public (or the notarial Archives of the city in question). This deposit is not necessary when the foreign document is attached to the act of an Italian civil law notary , for example in the case of a proxy.

What does legalisation mean?
Legalisation is an essential requirement in order for a foreign act to produce its legal effects in Italy. It merely consists of the official attestation – made by the competent Italian consular or diplomatic authority abroad – of the legal qualification of the public official who has signed the act and the authenticity of his signature. If the act is issued by a foreign authority in Italy, it must be legalised by the Prefect in whose circumscription the foreign authority itself is located (with the exception of Val d'Aosta, where the President of the Region is competent, and the Provinces of Trento and Bolzano, where the Government Commissioner is competent). On the contrary, legalisation does not affect the validity or efficacy of the act in its country of origin?? and in this sense it is much less than a notarial certification, since legalisation (like the Apostille) does not imply any control or acceptance of the content of the document.
The absence of legalisation therefore means that the act (although valid and effective in its country of origin) cannot produce effects in Italy and cannot be utilised by a civil law notary. In particular, a foreign public act is not valid as such, but only as an unauthenticated private contract.
If the Italian act is to be used abroad, legalisation – if required by the foreign authorities – must be effected by the Public Attorney to the Court in whose district the civil law notary receiving or authenticating the act is located. The signature of the Public Attorney, in turn, is legalised by the foreign Consulate in the context of which he resides. It is foreseen by articles 30-31-33 of Decree President of the Republic no. 445 dated 28/12/2000, taking effect as from 7 March 2001.
Legalisation is not necessary when the country from which the foreign act comes has adhered to the Hague Convention of 05/10/1961 on the "Apostille", or else to an international, bilateral or plurilateral convention that excludes this eventuality. The Convention of Brussels of 1987, relative to exemption from the "Apostille"in relations between the countries of the European Union, has still

not been ratified by all countries of the Union, and is accordingly in force only between a few of these (for the moment it is in force only between Belgium, Denmark, France, Ireland and Italy).

What is the Apostille?

It is a simplified – but absolutely rigid – form of legalisation (in the sense that it must have exactly all the formal characteristics indicated in the model attached to the Hague Convention of 05/10/1961 which rules it). It is in force between the countries which have adhered to the Hague Convention of 5 October 1961 and replaces legalisation, among these countries only.
Like legalisation, the Apostille too is indispensable in order for the foreign act to have effect in Italy.
Like legalisation, the Apostille consists of an attestation of the legal qualification of the public official (or functionary) who has undersigned the act, and the authenticity of his seal or stamp. It does not concern the validity or efficacy of the act in the country of origin.
Each adhering country indicates which of its authorities are competent for issuing the Apostille. As far as Italy is concerned: for notarial judiciary and civil status acts, the Public Attorney of the Courts in whose circumscription the acts are formed, is competent. For administrative acts (signed by the Mayor, etc.), instead, it is the Prefect of the place in which the act was issued that is competent (with the exception of Val d'Aosta, where the President of the Region is competent, and the Provinces of Trento and Bolzano, where the Government Commissioner is competent).
The Apostille is not necessary when the country from which the foreign act originates has adhered to an international, bilateral or plurilateral convention excluding it.

How much does a notarial public act cost?

In Italy the fees for notarial acts are divided into two parts:
1) the "advances", which concern all the sums of whatever type that the civil law notary pays over to the State in the form of taxes and duties of various types (stamp tax, registration fee, mortgage and land register taxes, etc.), and which usually represent the larger part of the total sum that the customer pays to the civil law notary; and
2) the "fee" proper that is the remuneration that the civil law notary receives for the activity carried out, on which VAT is thereafter applied.
The civil law notaries fee is laid down by the law, which indicates remuneration for the various types of acts and which cannot be either increased or reduced by the civil law notary (except within the limits indicated by the law).
Remuneration depends on the type of act, on the number of documents which it is necessary to consult or to draft, on the greater or lesser difficulty of the act itself and of the relative investigations, on the value for which the civil law notary assumes complete responsibility.
So that it is not necessary to indicate the exact cost of all acts in general, since that would be misleading: too many important variables exist!
However it is possible to make a "rough" estimate (albeit with certain variable items) when a customer provides all the necessary details.
In case discussion should arise on a fee, customers may refer to the Notarial District Boards of the province in which the civil law notary to which they went is located, which will check whether the fee (advances and fee proper) has been calculated correctly.

(from http://www.notariato.it/eng/home.aspx).