



## Legitimate status of the property, what is it?

Legitimate status of the property, the rules introduced by the Simplifications decree.

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The issue of the town **planning regularity** of the properties being sold is one of the most delicate and debated, starting with the question relating to the marketability of **the asset that does not comply** with the town planning and building permits issued at the construction deed, or in moments subsequent to the deed the realization of interventions subject to building permits.

This aspect, it is evident, is often the face of a dispute between the seller and the buyer, who can complain about the irregularities for which the latter is liable in the event of a dispute by the Public Authorities; disputes that have been the subject of various rulings of the Court of Cassation which have identified the causes of nullity of the deed of sale and the responsibilities of the parties (seller, mediator, notary).

### Legitimate state and Simplifications decree

To try to resolve this situation, and to give certainty to the **regularity of the property** to the urban planning, building and cadastral requirements, the Law Decree no. 16.07.2020 intervened. 76 (Simplification Decree), converted with amendments by Law 11.09.2020 n. 120, which in the context of the introduction, with article 10, of a series of rules aimed at simplifying and accelerating building procedures and reducing the burdens on citizens and businesses, amending **art. 9 bis of the Consolidated Law on construction (Presidential Decree 380/2001)**, has inserted paragraph 1-bis relating to the legitimate status of a property, defined as the status "the one established by the qualification that provided for its construction or that it legitimized the same and the one that governed the last building intervention that affected the entire building or real estate unit, integrated with any subsequent titles that enabled partial interventions".

To complete this provision, there was the introduction of art. 34 bis in Presidential Decree 380/2001, which provides that the **sworn declaration** declaring the executive tolerances carried out during construction work on the property is attached to the deeds of "transfer or establishment, or dissolution of the communion, of real rights".

Therefore a **qualified professional** must certify that the property is in the legitimate state, and that therefore there are no differences with the building title with which it was built or with which subsequent interventions were carried out that may have changed the original situation, excluding cases of discrepancies (tolerances not exceeding 2%).

A totally new perspective compared to the one present up to now, in which it was the seller of the property who had to declare in deeds the details of the building permit or application for amnesty (art.40 l. 47/85 and subsequently art.46 DPR 380 / 01 for buildings whose construction began after 17.03.1985), the cadastral compliance of the property (art. 52 paragraph 1-bis l. 52/85).

### Legitimate state and properties that do not require a building title

And in cases where at the time of construction it was not necessary to acquire a building permit for the construction? The new paragraph 1-bis also deals with this hypothesis, providing that "For buildings built in an era in which it was not mandatory to acquire the building permit, the

legitimate status is that which can be inferred from the cadastral information of the first installation, or from other supporting documents, such as photographs, cartographic extracts, archival documents, or other public or private deeds, of which the provenance is proven, and from the qualification that governed the last building intervention that involved the entire property or real estate unit, integrated with any subsequent titles that enabled partial interventions".

This is not an infrequent case, relating to those buildings built before 1942, that is, prior to law 1150/42, or even after this and until September 1, 1967 for buildings built outside built-up areas: in fact the law of 1942 provided that outside the built-up areas there was no general obligation to apply for a building permit, unless the municipal building regulations expressly provided for it.

In all these cases of lack of the building permit, the aforementioned tools must be used for the drafting of the sworn declaration.

## Uses of the declaration of legitimate status of the property

As mentioned, the provision of art. 9-bis paragraph 1-bis Presidential Decree no. 380/01 must be read in combination with art. 34 bis, which indicates which subjects can draw up the certificate of legitimate status (qualified technicians) and for which uses it is required:

- for the presentation of new applications, communications and building reports (within the same forms);
- for acts of transfer, constitution, or dissolution of the community of real rights (with a specific sworn declaration).

In any case, the certification will indicate the executive tolerances made in previous interventions, which not constituting by express provision of art. 34-bis building violations, will not invalidate the legitimate status of the property.

However, the two regulations do not have an **obligation to produce the certification** by the seller when buying and selling the property: nevertheless the buyer could request it, in order to verify the building regularity of the property he buys, without prejudice to the obligations for the seller referred to in art. 46 of the same Presidential Decree 380, under penalty of nullity of the deed (for buildings built after 17.03.1985).

Source: <https://www.condominioweb.com/stato-legittimo-dellimmobile-le-norme-introdotte-dal-decreto-semplificazioni.17488>

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