REAL ESTATE FORECLOSURE IN ITALY

Avv. Massimiliano Blasone

2 August 2019, Moscow

CIVIL ENFORCEMENT IN ITALY: DISTRIBUTION OF TASKS AND RESPONSIBILITIES

- **Judges:** Supervise enforcement; appoint professional sales delegates; control their activity; sign the property transfer decree; approve allocation of sale proceeds between creditors.
- **Delegated professionals:** Appointed by judges; may be notaries, attorneys or accountants. They: administer the sale of the foreclosed real estate, including drafting and publication of sales notices; organizing auctions; drafting transfer decrees; distribution of sales proceeds.
- **Judicial guardians:** Appointed by the judge (often, delegated professional perform this function). Responsible for the property after the attachment until the sale. From 2015 until February 2019, they have been evicting the old owners and the occupants from the property.
- **Judicial officers:** Civil servants who do the attachments forbidding the debtor to dispose of the assets which are subject to enforcement. Since February 2019, it is discussed whether judicial officers are also responsible for evicting the debtors from the estate.

REFORM IN CIVIL ENFORCEMENT AND ROLE OF THE DELEGATED PROFESSIONAL

- **1998 reform:** Legislation empowered judges to involve professionals, registered with their respective professional bodies, in real estate procedures. However, appointment of professional delegates was only optional for the judges and not all the courts did it.
- **2015 reform:** The appointment of of professional delegates (notary, attorney or accountant) became mandatory for all the Courts. By virtue of their appointment, these professionals act as representatives of the judge, as agents of enforcement.

ELECTRONIC SALES

- **Creation of the public sales portal:** Since 2018, all court-related sales must be advertised through a this portal. All professional delegates are required to post all notices of sales on this portal.
- **Introduction of electronic auctions:** In 2018, it became obligatory for professional delegates to manage court-related real estate sales through electronic auctions. There are many websites for online auctions that are operated by companies authorized by the Ministry of Justice. The judge chooses the particular website for each electronic sale, indicating it in the sale order.

EVICTIONS FROM FORECLOSED PROPERTY

- **2015 and 2016 legal amendments:** Evictions from foreclosed property no longer were the responsibility of judicial officers but of judicial guardians. Usually the professional sales delegate appointed by the judge would also be appointed as judicial guardian for the same sale.
- **2019 legal amendments :** In February 2019, Italy eliminated the rule that explicitly assigned evictions to the judicial guardians. Judges, however, are of the opinion that this legislative change does not prevent them from appoint judicial guardians in accordance with general principles.
- **Good practice in evictions:** Court of Trieste attributes a social role to the judicial guardian. In cases of eviction against socially "weak" people, judges order judicial guardians to relocate occupants by contacting social services. This will soon be facilitated by Memorandum of Understanding between the Court and municipality.

GOOD PRACTICES

- **Guidelines on good practice in real estate executions:** In 2017, the Superior Council of Magistracy approved these Guidelines. They provide judges, professional sales delegates and judicial guardians with instruments, which had proven efficient. In summary, they comprise uniform sample documents (decree of fixing a hearing, sales order, eviction order, transfer decree, a sample information for the debtors of their rights and duties, which the judicial guardians will have to deliver to them, etc.).
- **Results:** 2017, 2018 and 2019 data of the Ministry of Justice and of the Superior Council of Magistracy confirmed that the reforms had a profound and positive impact on the efficiency of real estate enforcement in Italy. Specifically, from 2017 to 2019 there has been an appr. 16% reduction in the average duration of enforcement.

THANK YOU

Contact:
studiolegaleblasone@yahoo.it