# Planning Permission by Curative Statute

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## SUMMARY

Land use in Italy, when it involves construction, is governed by rigid regulations that lay down the need for permits and authorizations to construct a building according to a specific project.

Building laws, which are normally passed by local authorities (municipal), make it possible to use only certain parts of the land that is divided into agricultural areas, building areas with varying degrees of density permitted and areas where building is not allowed.

Permits and authorizations are granted by public Authorities – usually the Municipality – and they are subject to checks to ensure that the projects comply with building limits, prescriptions and all other rules relating to safety, environment and landscape protection, as well as with the remittance of sums of money for the construction of infrastructure (schools, roads, markets, etc.).

In Italy, building laws were only introduced at the beginning of the 1900s, and over time, they have become ever more detailed, rigid and at times even conditioned by constraints to such an extent that any building activity carried out without a permit is considered a fully-fledged offence and all sale contracts concerning the real estate are considered void.

The enormous demographic, economic and social development that occurred in Italy from the '60s on generated a considerable increase in construction all over the country, but particularly in the cities.

This context led to a situation whereby, because of the impossibility to comply with the legislation, many buildings throughout the country were constructed, raised in height or enlarged with extensions without the prescribed authorizations.

This phenomenon spread to such an extent (xx million rooms) that, also for fiscal registration reasons, the Parliament passed a law aimed at granting an ex post authorization, named "sanatoria edilizia" (curative statute for building).

This allowed persons who had constructed a building without the necessary permits and authorizations to obtain a permit ex post thanks to this remission by paying a fine to the State (by way of payment and extinguishment of offence) and building charges to the Municipality where the unauthorized building was located.

The obtaining of the authorization makes the real estate saleable and it permits its sale through a regular contract.

My paper will offer critical observations and comments (cost / benefit) on this law and will illustrate a number of concrete examples from the historical and capital city, Rome.

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## 1. INTRODUCTION

Land use in Italy, when it involves construction, is governed by rigid regulations that require permits and authorizations to construct a building according to a specific project.
Building laws, which are normally passed by local authorities (the Municipality), envisage different uses for the land according to the area: agricultural area, building areas with varying degrees of density allowed and areas where building is not allowed at all.

## 2. CORE TECHNICAL LEGISLATION

National legislation lays down that each individual Municipality must adopt a building development plan which is called the General Town Plan for the Municipality.
The most important and meaningful technical provisions that regulate the use of the Italian territory to date can be summarized, for purely indicative purposes, as follows:

**a) –** ***Presently, the following are considered homogeneous territorial areas:***

A) parts of the territory where there are built-up areas or parts thereof, which have an artistic or historic character or are of special environmental value, including neighbouring areas that because of these characteristics can be considered an integral part of the built-up areas themselves;

B) parts of the territory that are partially or totally built-up, other than those in *A)*: areas are considered partially built-up when existing buildings stand on minimum 12.5% (one eighth) of the surface area and when the construction density exceeds 1.5 cu. m./sq. m.;

C) parts of the territory reserved for new urban settlements, which are not built-up or where the pre-existing development does not reach the limits of surface area and density in *B)*;

D) parts of the territory reserved for new industrial plants, industrial estates or the like;

E) parts of the territory reserved for facilities or plants of general interest;

F) parts of the territory where, because of their social-environmental nature and importance building is not allowed.

**b*) – Ratios between areas reserved for residential settlements and those that are public, public green areas, parking areas or areas reserved for community activities.***

For residential settlements, the maximum ratio is set in such a way as to ensure that for each inhabitant or future inhabitant there is a mandatory minimum 18 sq. m. for public areas, areas reserved for community activities, public green or parking, excluding areas reserved for roadways.

This overall quantity is normally distributed as follows:

*a*) 4.50 sq. m. for education: crèches, nursery schools and compulsory education schools;

*b*) 2 sq. m. for facilities of common interest: religious, cultural, social, care, health, administrative, for public services (Post Offices, civil defence, etc.) etc.;

*c*) 9 sq. m. for public areas to be used for parks and those equipped for games and sports, which can effectively be used for such ends excluding green strips along the roads;

*d*) 2.50 sq. m. for parking.

It is assumed that for each inhabitant or future inhabitant there are on average 25 sq. m. of gross inhabitable surface area (equal to approximately 80 cu. m.).

**c) – *Construction density limits.***

Mandatory construction density limits for the various homogeneous territorial areas are as follows:

1) Zone *A*): for conservative redevelopment operations and other conservative transformations, the construction density of land must not exceed the pre-existing density, calculated without taking into account superstructures that are recent and have no artistic-historic value;

for new constructions that may be authorised, construction density must not exceed 50% of the average construction density in the area and must in no case exceed 5 cu. m./sq. m.;

2) Zone *B*): territorial and construction densities are set within the framework of town planning and take into account health requirements and urban decongestion.

Construction densities must not exceed the following limits:

7 cu. m./sq. m for municipalities with more than 200,000 inhabitants;

6 cu. m./sq. m for municipalities with 200,000 to 50,000 inhabitants;

5 cu. m./sq. m. for municipalities with less than 50,000 inhabitants.

3) Zone *C*): there are no special construction density limits for this area.

4) Zone *E*): the maximum construction density for dwellings is set at 0.03 cu. m. per sq. m.

**d) – *Height limitations for buildings.***

Maximum heights for buildings in the various homogeneous territorial areas are as follows:

1) Zone *A*): for conservative redevelopment operations, the pre-existing building heights must not be exceeded.

For possible transformations or new constructions that may be authorised, the maximum height of each building must not exceed the height of surrounding buildings with an artistic-historic character.

2) Zone *B*): the maximum height of the new buildings must not exceed the height of the pre-existing and surrounding buildings, except for buildings of special importance.

3) Zone *C*): where adjoining or in direct line of vision of areas of type *A*, the maximum height of new buildings must not exceed a height that is compatible with that of buildings in area *A* mentioned above.

4) Buildings in other areas: the maximum height is laid down in the town plans.

**e) – *Minimum distance between buildings.***

The minimum distances between buildings for the various homogeneous territorial areas are as follows:

1) Zone *A*): for conservative redevelopment operations and possible restructuring, the distance between buildings must not be less than that between pre-existing buildings, calculated without taking into account any additional buildings that are recent and have no historic, artistic or environmental value;

2) For new buildings in other areas, there is a mandatory absolute minimum distance of 10 m. between a windowed wall and the wall of a building situated opposite it;

3) Zone *C*): there is also a mandatory minimum distance between windowed walls situated opposite each other, which is equal to the height of the highest building, with a minimum of 10 m.

The minimum distances between buildings – between which there are streets reserved for vehicles (excluding blind alleys and streets serving a single building or settlement) - must be equal to the width of the street plus:

5 lm. per side, for streets with a width of less than 7 lm;

7.50 lm. per side, for streets with a width between 7 lm. and 15 lm.;

10 lm. per side, for streets with a width exceeding 15 lm.;

In relation to the technical provisions above, each activity that entails a construction transformation of the land (new buildings, enlargements, etc.) requires prior authorization issued by the Municipal Authorities.
The mandatory permits and authorizations are granted by public Authorities – usually the Municipality – and they are subject to checks to ensure that projects are duly drafted and submitted and that they comply with building limits, with the prescriptions mentioned above and with all other rules relating to safety, environment and landscape protection, and to ascertain the remittance of the sums of money for administrative costs and for the construction of infrastructure and various services such as schools, roads, markets, etc..

In Italy, building laws were only introduced at the beginning of the 1900s, and over time, they have become more and more detailed, more rigid and at times conditioned by constraints to such an extent that any building work carried out without a permit is considered a fully-fledged civil and criminal offence, which makes all contracts of sale relating to such unauthorized buildings null and void.

**f ) –** ***Nullity of legal acts relating to buildings***

Indeed, acts, be they public or private, pertaining to the sale of real rights relating to buildings or parts thereof, whose construction began after the entry into force of this law are null and void and cannot be stipulated unless the details of the planning permit or the permission by curative statute are quoted therein as declared by the seller.

Construction work carried out in total non-conformity with the permit is work which proves to have been carried out in a manner completely different from that of authorized construction work, in other words it exceeds the volume limits indicated in the building plan.

Once a Mayor has ascertained that the work has been carried out without a permit or in total non-conformity with the permit, he shall order its demolition.

If the party responsible for the abuse does not proceed to demolish the construction and restore the state of the area within a period of ninety days from the order, the construction and the plot of land become property of the Municipality.

Once failure to comply with the order to demolish has been ascertained within the set time limit and has been notified to the party concerned, ownership of the construction and the plot of land on which it stands are transferred free of charge to the Municipality (expropriation).

Indeed, the enormous demographic, economic and social development that occurred in Italy from the ‘60s on generated a considerable increase in construction all over the country, and particularly in the cities.
This context led to a situation whereby, despite the strict legislation, because persons could not or would not comply with the legislation, many buildings throughout the country were constructed, raised in height or enlarged without the prescribed authorizations issued by the Competent Authorities.
This phenomenon spread to such an extent (20/25 million rooms to date) that, also for fiscal registration reasons, Parliament passed a series of laws aimed at granting an ex post authorization, named “sanatoria edilizia” (curative statute for constructions).

## 3. CURATIVE STATUTE LAWS FOR UNAUTHORIZED BUILDING WORKS

At present, the main legal provisions that were and still are referred to in order to obtain planning permission by curative statute are the following:

- Law N° 47 of 28 February 1985;
- Law N° 724 of 23 December 1994;
- Law N° 326 of 24 November 2003 and following modifications and supplements.

***a) Curative statute procedure for unauthorized building works.***

By law, owners may apply for a permit or an authorisation by curative statute for buildings and other works completed before 31 March 2003 and carried out:

*a*) without the licence, the building permit or the authorisation to build that is laid down by law or regulations, or in breach of these;

*b*) on the basis of a licence or a building permit or an authorisation that has been cancelled, has expired or has become ineffectual, or that is involved in judicial or administrative annulment proceedings or forfeiture declaration proceedings.

Buildings are considered completed when the shell and the roofing are complete, in other words, when the interior of the buildings already standing or of the buildings with a non-residential destination is functionally complete.

The ritual filing for a pardon has allowed persons who had constructed a building without the necessary permits and authorizations to obtain a permit ex post by curative statute, by paying a fine to the State (by way of payment and extinguishment of the offence) and administrative charges to the Municipality where the unauthorized construction was built.
The granting of an authorization by curative statute has the effect of extinguishing the offence but above all of making the property marketable and sellable with a regular contract.

**b*) Sum of money to be paid to the Inland Revenue by way of fine.***

Interested parties shall receive the permit or authorization by curative statute for unauthorized building works after having paid a sum of money to the inland revenue by way of fine, the entity of which depends on the part of the construction that was built illegally and is set according to the provisions of a dedicated table annexed to the Law, which takes into account the abuse committed and the completion date of the unauthorized building.

The sum of money due by way of fine, as per the annexed table, is multiplied by 1.2, by 2 or by 3 according to whether the surface area of the unauthorized building exceeds 400, 800 or 1,200 meters respectively.

**c*) – Charges to be paid to the Municipality***

Interested parties shall pay special charges to the Municipality (an example of this will be illustrated very shortly).

**d*) – Effects of the payment of the fine and of the curative statute procedure***

Submission of the application within the set deadline, as well as proof of payment of the sums of money to be paid suspends the criminal proceeding and the proceeding for administrative penalty enforcement.

Full settlement extinguishes the offences. It also extinguishes all proceedings for administrative penalty enforcement.

**e*) – Recording on the land registry.***

Work completed before the date of entry into force of this law and not recorded on the land registry, as well as non-registered variations, shall be reported within 90 days of the entry into force of this law after having paid all charges required by the provisions in force.

In order to obtain planning permission by curative statute, as well as paying the moneys due to the State and the administrative charges due to the Municipality concerned, it is necessary to submit the following technical documents:
The filed pardon application, plan details (detailed pre- and post- floor plans, sections and views), land registry recording and photographic material and proof of payment of the fines and the administrative charges.

## 4. CONCLUSIONS

By way of conclusion, I would like to point out that the natural consequence of the Law that legalizes unauthorized building works is that the latter acquire a new real estate value. From the point of view of marketing and selling the building works, this new value obviously includes the value of the original land if the construction was completely unauthorized and the value of the part of building that may have already existed.

## CONTACTS

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