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Buying Real Estate in Germany – An Overview

1. General information

In Germany, **anybody can buy real estate** who has a valid passport and the purchase funds that will be needed. Owning a property in Germany does not give one a right to immigrate to the country, however. So if you intend to buy property in Germany in order to live here, make sure first to get a visa for being a permanent resident in the country. For the sole process of buying the property, in particular signing the necessary documents, no special visa or other permits are required.

Otherwise the necessary preparations as to **finding and examining** the property do not differ significantly from the US or the UK. Depending on the size of the investment a thorough research should be undertaken as to the location, first of all. This is likely to be the most important aspect nowadays. The price which the seller requires to be paid needs to be verified carefully, preferably with a surveyor or an estimator, or by comparing similar objects. Costs of a value estimation are usually borne by the party buying the real estate. In some cases, the estate agent involved in the sales process has already an estimation of price in his files.

Of course it is very important to **have the property inspected carefully**, if not by oneself, then by a well experienced person in the area. This can be a real estate consultant or someone who knows what points to look for. Any renovations or repairs

of damages need to be checked into. The ground sometimes is wet and the house needs to be dried out in the cellar area which may become expensive. The roof should be checked by an expert or a good eye before buying. The age of the heating system is another important point. Lots of restrictions and new laws have been passed over the last years here on energy issues. Checking the property carefully is particularly important as a liability of defects by the seller is regularly excluded in the notarial contract ("sold as is"). It is also necessary to check if any movable items should remain in the object and be sold to the buyer, e.g. kitchen, lamps or curtains. An appropriate price can be set out in the contract for these items in order to reduce sales tax on real estate – if the financing bank agrees to that.

In case of **buying an apartment**, another point is the study of the minutes of the annual meetings of all apartment owners in the house. The importance of these minutes cannot be overstressed. Any and all problems relating to the house community and the house itself – in particular with regard to future costs – should be discussed in these meetings and reflected in the minutes of the meetings, normally done by the property manager (Verwalter). Any accompanying papers - like the official declaration of partition (Teilungserklärung) should also be looked into.

If the property is rented, any **rental contracts** are to be examined and the actual rental situation, too. Especially so-called non-payers amongst the tenants have to be verified. In addition, it is important to know if there are any disputes with the tenant pending.

Next, the actual resale value needs to be estimated. Could the property be sold well again and for what price? What would be the possible ways and channels to sell the object again? This being answered, the calculations of the living space (in square meters) and of other areas presented on paper should be verified at the actual location.

2. Financing

All factors being well aligned, the financing needs to be secured. In Germany, real estate is usually financed by a bank loan which is set out in a **credit agreement**. This agreement is signed in a meeting at the bank and needs no special form. To secure the payments, however, banks usually require the buyer to enter a **mortgage** (lien, landcharge) (**Grundschuld**) in the land register of the property concerned. This can

only be done before a notary who will take care of the necessary procedures in cooperation with the financing bank. The mortgage is usually recorded right after the sales contract.

German real estate financing can be done either with mortgage banks, savings and loan associations or with any other commercial bank or financing institute (Sparkasse, Volksbank, Insurance company, Bausparkasse). Financing is **usually done for about 60-80% of the purchase price** by mortgage loan. In most cases, anything above that up to 100% of the price needs to be secured either by additional securities like insurance (with actually that exact value) or other financial securities that have to be deposited at the financing bank. Sometimes it can be done based on the income of the person or company alone buying but that case is rare as of today.

Financing foreigners not resident in Germany and not earning their money in Germany is possible under certain circumstances but cannot be expected to exceed 60% of the buying price.

Financing – signing the loan agreement - should always be secured before any contract of purchase is signed. Sometimes one can sign a reservation which holds good for an agreed-upon period of time, e.g. enough time to get the financing secured. However, the only binding document is the notarial purchase deed.

3. The purchase contract

Then the notary is called on by the parties – or the estate agent - to work out a draft of the purchase contract. This is done by phone or – better - in a **first meeting** in the notary's office where all parties should be present if possible. After answering any questions and discussing the wishes of the parties with regard to the sale, the notary usually sends the **draft contract** to all parties.

This draft can and should also be given in English, but only by a qualified translator. Thus there is enough time to study it carefully and discuss any changes and additions. Only in very urgent cases the notarization should be done without a previous draft.

Then the notary meeting for **signing the deed of purchase** is being agreed upon. Sales contracts on real estate are largely standard agreements. Furthermore the notary is a holder of a public office and has to be neutral by law. Thus there must be no fear of having a special unfavourable contract either with regard to the buyer or

the seller. The notary must inform about any special clauses in the contract that might be critical from a legal point of view. The notary will not check, however, if the sale makes sense from an economical point of view. He will therefore not control if the sales price is appropriate, the conditions of the sales object or the ability of the buyer to pay the sales price.

At the meeting the notary will **read the deed to all parties** in full, with any needed translator present. All persons – sellers, buyers, translator, estate agent - should therefore be present, and must show their legal papers (passport). If a company is buying, the person signing the contract needs to bring his legalization papers from the company (authorization and an excerpt from the Chamber of Commerce entries showing the authorization status) plus passport. Please check with the notary when a company is buying. If it is impossible for a party to be present at the signing date a power of attorney or a consent document will be required. Please check with the notary for the necessary procedure before.

The contract needs to be **personally signed** after the notary has read it out. It is a legal requirement that the notary reads the buying contract out loud and in full. If any of the parties does not understand the German language, it must be translated orally in English by a qualified translator by law. This requirement cannot be waived and it is absolutely not recommended that the notary does the translation himself as he is not qualified as a translator and very often problems occur later as to what is written in the contract and what he actually translated. Furthermore the notary will and must charge an additional fee for his translation which is much higher than the translator`s fee.

It is the task of the notary to ensure that all parties understand what they sign. Arising questions need to be answered. After making any changes or additions the deed is being signed by the parties, the translator and the notary. The notarization of a standard sales contract plus mortgage (with translation) usually takes about 1 to 1,5 hours.

This contract is **irrevocable after signing**. Unlike other contracts it cannot be revoked i.e. within the next two weeks. What is written here is the agreed-upon purchase and all conditions thereof. In particular the sales price, the mode and time of payment, the time of transfer of possession to the new owner, any needed repairs or other actions to be done by the seller and any other specifications are set out in

the contract. If financing is needed the **mortgage (Grundschuld)**, which is also prepared by the notary, is being read after the purchase contract, too. Shortly after the recording date the notary will send copies of the agreements to all parties concerned including the financing bank.

4. Execution of the contract

In Germany the **notary is fully responsible for the execution** of the contract. It is therefore the notary who will perform the next steps needed like any applications to the so-called Grundbuch - the land title register - without which no sale of property can be done. In most cases a priority notice (Vormerkung) is entered for the buyer into the land register shortly after the contract is signed. Furthermore any mortgage needed by the buyer is entered, too. The notary will also make sure that any old entries in the land title register, e.g. encumbrances like old mortgages of the seller, are cancelled and the right of pre-emption by the community is checked. He will finally collect any official permissions and statements for the execution of the contract.

After the notary has made sure that all the requirements set out in the contract for the sales price being due are fulfilled, he will inform the parties (and if necessary the bank financing the sales price), about that (**notice of maturity**). When the price is paid (by the buyer or by his financing bank) and this is confirmed by the seller, the notary will take care of the entry of the new owners in the land register. This is the legal transfer of title. In standard cases the sales price is due about four to six weeks after the notarization. And then it usually takes some time for the land title register to enter the new owner in the register. So it is realistic to calculate about 8-12 weeks for the whole process.

This time frame however has no bearing on when you can take over the house as your own. This – the **moment of transfer of possession** - is usually the moment when the sales price is paid in full to the seller (normally about 4-6 weeks after the signing, as described). Of course you can agree on another date earlier or later than that. E.g. the seller can agree that transfer of possession is taking place right after signing the contract. For safety reasons the sales price should however be paid before the keys are given to the buyer.

The date of transfer of possession is agreed upon in the purchase deed. From an economic point of view you are the owner of the property from that date on: You have the right of moving into the object, doing any construction, renovation and repairs and collecting the rent from a possible tenant. You are also responsible for all costs, taxes and insurances from that date on. It is only the legal procedure of **entering the buyer`s name into the land title register** that takes longer.

5. Costs and fees

The costs and taxes of buying real estate in Germany are usually **borne by the buyer**. Only the costs of deleting old encumbrances in the land title register are borne by the seller.

After the purchase contract is valid a possible **real estate agent's commission** has to be paid, if an agent was involved in the process. This ranges between 3,5% and 6% of the buying price, including VAT. Sometimes the buyer has to pay the commission, sometimes the seller and sometimes both parties – depending on the agreement with the realtor.

About four weeks after the contract was signed the **purchase tax on real estate** needs to be paid. The German tax office (Finanzamt) will inform the buyer about the amount and the date due. The amount is exactly 5% of the buying price stated in the contract. When requested the tax must be paid within short time as otherwise the tax office will not issue the clearance certificate - an important paper for transferring title.

Within the same period of time the **fee for the notary and the land title register** have to be paid. The notary gets a fee for the sales contract and for the mortgage (one bill). The land title register collects a fee for entering the priority notice and the mortgage (one bill) and the transfer of title (another separate bill). These bills are sent by the Landesjustizkasse. All in all these fees comprise about 2,5 % of the buying price of the real estate. Unfortunately VAT forms do not find application for these costs by law.