

99154021000000

Purchasing and selling of immovable property, including any conditions and obligations related to taxation, ownership, or use of such property, including its use as a secondary residence

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<https://fimportal.de/xzufi-services/102837925/B100019>

Modul	Sachverhalt
Leistungsschlüssel	99154021000000
Leistungsbezeichnung I	Purchasing and selling of immovable property, including any conditions and obligations related to taxation, ownership, or use of such property, including its use as a secondary residence
Leistungsbezeichnung II	Conditions and obligations relating to the purchase and sale of real estate
Typisierung	11 - SDG: Allgemeine Rechte und Pflichten
Quellredaktion	Bund
Freigabestatus Katalog	unbestimmter Freigabestatus

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Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt
Leistungsgruppierung	SDG allgemeine Rechte und Pflichten (154)
Verrichtungskennung	
SDG-Informationsbereich	Kauf und Verkauf von Immobilien, einschließlich aller Bedingungen und Pflichten im Zusammenhang mit der Besteuerung, dem Eigentum oder der Nutzung von Immobilien (auch als Zweitwohnsitz)
Lagen Portalverbund	Hausbau und Immobilienerwerb (1050100), Grundsteuer und Grunderwerbsteuer (1060400)
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	25.01.2023
Fachlich freigegeben durch	Federal Ministry of Justice Federal Ministry of Finance
Handlungsgrundlage	https://www.gesetze-im-internet.de/grestg_1983/index.html https://www.gesetze-im-internet.de/bgb/ https://www.gesetze-im-internet.de/grstg_1973/index.html https://www.gesetze-im-internet.de/bmg/BJNR108410013.html https://www.gesetze-im-internet.de/beurkg/
Teaser	This section provides information on the applicable regulations for the purchase and sale of real estate.
Volltext	<p>Conditions and procedure for the acquisition of real estate</p> <p>German law distinguishes between the legal transaction governed by the law of obligations, the purchase agreement, and the disposal in rem in the form of the transfer of property, also known as the transfer of ownership.</p> <p>Purchase deed</p>

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Establishment of a purchase agreement on real estate and contractual obligations

In Germany, the purchase of real estate is subject to the general sales regulations under Sections 433 et seqq. of the German Civil Code. A purchase agreement on real estate obliges the seller, under Section 433(1) sentence 1 of the German Civil Code, to transfer the real estate and the ownership of the real estate to the buyer. In doing so, the seller must ensure that the real estate is free of material defects and defects of title for the buyer in line with Section 433(1) sentence 2 of the German Civil Code. The buyer is required pay the seller the agreed purchase price, in accordance with Section 433(2) of the German Civil Code.

To ensure the purchase agreement is legally valid, the contracting parties must reach an amicable arrangement on the essential elements of the purchase agreement (*essentialia negotii*). These include the following:

- the object of purchase
- the purchase price, and
- the designation of the contracting parties.

In the case of immovable property, reference to the appropriate land register folio is sufficient to enable the plot of land to be adequately identified. The condition is that only the plot of land in question is registered on it. In the case of a purchase contract for condominium ownership, a distinction must be made according to whether the division of the building has already been completed in the land register or not. According to Section 1(2) of the German Condominium Act (*Wohnungseigentumsgesetz, WEG*), condominium ownership means the separate ownership of a separate flat in connection with the co-ownership share in the common property, i.e. the land and parts of the building. If an entry has already been made in the land register, it is also sufficient to refer to the corresponding folio in the so-called residential land register. The inventory of the residential land register shows which co-ownership share is the object of

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purchase and with which separate property it is connected. Additional separate information on the number, type and layout of the rooms as well as on the size of the living space is not required for the purchase agreement to be legally valid. If the division into condominium ownership has not yet taken place in the land registry, reference may be made to the deed of partition to identify the object of purchase.

The purchase agreement is established by the offer of one contracting party and the acceptance of this offer by the other contracting party. The offer to conclude a contract may originate from the seller or buyer. An offer must at least identify the real estate that will be the object of the contract and the purchase price to be paid.

Requirement for a notarial act

Every contract which involves an obligation to transfer or acquire ownership of real property requires a notarial act according to Section 311b(1) sentence 1 of the German Civil Code. The requirement for a notarial act serves to protect against the hasty and rash conclusion of a contract and to adequately inform the parties.

The fact that the parties are required to appoint a notary highlights that this is not a usual everyday transaction. The notarial act has an advisory and protective role. In this case, the intention is not just to ensure that the contracts comply with the statutory provisions and are valid (the guarantee of validity). The notarial act also provides unambiguous proof of the agreements reached (the evidentiary function). The notarial act serves to prevent dispute and lawsuits and so also relieves the burden on the courts. Section 311b(1) sentence 1 of the German Civil Code applies for all transfer and acquisition transactions concerning real property and therefore also non-material shares in real property, flat and partial ownership.

The obligation to notarise covers not only the payment of the purchase price and the sale of the property, but also all collateral agreements, which according to the

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intention of the parties are to be part of the contract under the law of obligations. Such collateral agreements may, for example, concern agreements concerning the quality of the property within the meaning of the Section 434(1), first sentence of the German Civil Code. The notarisation should take place before the parties become legally bound. Therefore, the notarisation requirement also extends to legal transactions that indirectly establish sales and acquisition obligations. These include, for example, the conclusion of reservation agreements with brokers or the granting of irrevocable power of attorney for the sale or acquisition of property.

Notarisation is in principle provided for as a simultaneous authentication. This means that the seller and buyer appear before the notary in notarial appointment, where they conclude the purchase agreement by offering and accepting it. The notary documents the declarations of both contracting parties in a record. The purchase agreement enters into force with the completion of the record by the notary.

According to Section 128 of the German Civil Code it is also possible that first the offer to conclude the purchase contract and then the acceptance of the offer is notarised by a notary. This means that the declarations of the contracting parties are notarised in two separate notarial meetings. For this type of notarisation, the offer is first documented in the record.

Binding offer

The offer takes effect once it is received by the person with whom the purchase agreement is to be concluded. An offer signed before a notary public is received when a certified copy of the record in which the offer was documented is received. Under Section 145 of the German Civil Code, the person offering to enter into a contract with another person is bound by the offer for a certain period of time, unless this binding effect has been waived. Under Section 148 of the German Civil Code, the period of time within which the offer can be accepted may be expressly defined by

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offeror. If no period of time is defined for the acceptance of the offer, the offer can only be accepted up to the point in time at which the offeror can expect to receive a response under ordinary circumstances (Section 147 of the German Civil Code). According to case law, this time period usually amounts to four weeks for property transactions.

Under Section 146 of the German Civil Code, the offer expires if it is rejected or not accepted in good time. The offer lapses upon expiration, after which acceptance of the offer is no longer possible. Under Section 152 of the German Civil Code, the purchase agreement takes effect upon notarisation

of the acceptance, if the offer has not expired at the time of acceptance. Under Section 150(2) of the German Civil Code, late acceptance of an offer is considered to be a new offer which, due to the form to be complied with under Section 311b(1) sentence 1 of the German Civil Code, cannot be accepted implicitly - for instance by payment of the purchase price.

Organisation of the procedure and provision of information by the notary

For the purposes of contract preparation, the notary discusses the desired terms of the contract with the contracting parties, explains the regulatory options and points out the inherent risks and contractual alternatives. The notary also takes care the preparation of the draft purchase agreement in accordance with the requests of the contracting parties, usually without this resulting in any additional costs. In addition, the notary consults the land register before notarisation in order to inform the buyer and the seller of existing legal relationships (Section 21 of the German Notarisation Act (BeurkG)).

Expiry of the notarial appointment

As part of the notarisation, the notary identifies the parties (Section 10 BeurkG) and establishes their legal capacity (Section 11 BeurkG). In addition, further due diligence measures may be considered in order to

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exclude any existing risk of money laundering. The purchase agreement for real estate is then read out in full to all parties present (Section 13 BeurkG). The reading out of the contract is an integral part of the contract certification, which cannot be waived. If a contracting party cannot attend the notarisation, this party may appoint a representative for the conclusion of a contract. The notary also explains the legal significance of the intrinsic terms of the contract to the parties concerned, informs them of the legal consequences (Section 17 BeurkG) and refers to important aspects, such as existing approval requirements (Section 18 BeurkG), the necessity of a clearance certificate from the tax authorities (Section 19 BeurkG) and the statutory pre-emption rights (Section 20 BeurkG). Addenda and amendments to the intrinsic terms of the contract may also take place in this respect after receiving expert advice from the notary. At the end of the notarisation, the purchase agreement for real estate is signed by all parties in attendance and the notary, at which points it becomes legally valid and binding (Section 13 BeurkG).

Purchase agreement for real estate between businesses and consumers

If a business as well as a consumer are involved in the purchase agreement for real estate, the notary must take steps to ensure that the legal declarations of the consumer are issued before the notary in person or by a trusted person. In addition, the notary must take steps to ensure that the consumer is given adequate time and opportunity to examine the matter to be notarised. This is generally done by making the text of the legal transaction available to the consumer two weeks prior to the authentication (Section 17(2a) sentence 2, number 1 and 2 BeurkG). The legal deadline should allow sufficient time for the parties:

- to study the draft agreement in detail
- to fully understand the value of the transacted object and its suitability
- to verify the impact in terms of taxation
- to carry out structural investigations and
- to examine any matters which are not examined or

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attended to in advance by the notary.

With regard to the notarial obligation to provide information, the splitting of a purchase agreement for real estate into offer and acceptance is only acceptable if a sufficiently important reason exists, as this can lead to lacking or incomplete information of the parties. If the splitting is objectively justified, the notary must structure the procedure so that the offer is issued by the party in greater need of information and protection, so that this party receives comprehensive notarial advice with regard to the offer and the proposed agreement.

Consequences of non-compliance with the notarisation requirement

The consequence of non-compliance with the mandatory notarial form specified under Section 311b(1) sentence 1 of the German Civil Code is the nullity of the purchase agreement in accordance with Section 125, sentence 1 of the German Civil Code. The agreement does not establish any rights and obligations for the contracting parties. However, if the ownership of the real estate has been transferred from the seller to the buyer by way of a transfer of property and entry of the buyer in the land register, the nullity of the purchase agreement is remedied and the contract and all of its content is valid in accordance with Section 311b(1) sentence 2 of the German Civil Code. However, the remedying of the formal defect does not apply retrospectively at the time of conclusion of the contract.

Transfer of property to the buyer by way of conveyance of property to the buyer and entry of the buyer in the land register

The notarisation of the purchase agreement as a contractual sales transaction does not result in the buyer acquiring ownership of the property. Rather, the transfer of ownership to the buyer requires a transaction in rem, which presupposes:

- an amicable arrangement between the contracting

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parties on the transfer of ownership to the buyer (completion of sale), which must be declared before a notary (Section 873(1) and Section 925(1) of the German Civil Code)

- the entry of the buyer in the land register as the legal owner of the real estate.

The conveyance is usually signed before a notary public together with the purchase agreement. For the buyer to be entered in the land register as the legal owner, evidence of the conveyance of property must be submitted to the land registry office by means of a publicly certified form (Section 29(1) GBO (Land Registry Act)). Any corresponding land registry permits must also be submitted in this form (Section 19 GBO). As a rule, the notary is authorised and assigned to register the transfer in the land register (in particular, declaration of approvals and submission of the necessary applications to the land registry).

Costs associated with a purchase agreement for real estate

Under the statutory provision in Section 448(2) of the German Civil Code, the buyer of real estate must bear:

- the costs of the notarisation of the purchase agreement and
- of the conveyance
- the costs of the entry in the land register and
- the costs necessary for registration.

According to the case law, the costs of notarising the purchase agreement also include the real estate transfer tax, as this is inseparably linked with the purchase procedure.

The seller is required to bear the costs relating to the delivery of the property in accordance with Section 448(1) of the German Civil Code. The aforementioned statutory settlements of costs are not mandatory. Different arrangements can be made between the parties in the purchase agreement.

Other professional groups that may be involved in the

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purchase agreement for real estate

Besides notaries, lawyers may also advise buyers or sellers within the scope of the transaction. Lawyers may also represent buyers or sellers. This applies in particular if the interests of a single contracting party are to be represented. Notaries are indeed not the representatives of a single party, but must advise all the parties involved independently and impartially.

Lawyers are independent in the administration of justice and must provide independent advice and representation in all legal matters. They are subject to a variety of professional regulations, in particular the Federal Lawyers Act (Bundesrechtsanwaltsordnung).

What type of taxes need to be paid when purchasing real estate?

The purchase of real estate is subject to real estate transfer tax.

The real estate transfer tax is based on legal processes associated with domestic real estate, to the extent that they are intended to acquire ownership of the real estate or a position similar to ownership. This includes in particular contracts of sale and other legal transactions that establish a claim to the transfer of domestic real estate. Depending on the federal state, the tax rate is between 3.5% and 6.5%. Certain transactions are exempt from taxation, such as the acquisition of immovable property by the spouse or the partner of the transferor.

What type of taxes need to be paid when selling real estate, including on capital gains?

In the case of the sale of real estate merely in the context asset management, the private sale proceeds are subject to income tax, where applicable. This is the case if the period between acquisition and disposal is no longer than 10 years.

If the real estate is business property, the income from the sale is subject to income tax as well as trade tax.

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If the transferor is a corporate body, the income is subject to corporate tax and, potentially, trade tax.

What type of taxes need to be paid for the possession of ownership?

Property tax, income tax for income from rental and leasing or second home tax may be incurred during the period of ownership of real estate.

The property tax is levied on real property. This includes land, including buildings, and agricultural and forestry businesses. In principle, it is paid by the owners. In the case of renting, the property tax can be passed on to the tenants via the operating costs. The Federal Constitutional Court has declared the previous system of property tax valuation unconstitutional. It also decided that a new legal provision had to be made. However, the property tax can continue to be levied in its current form on a transitional basis until 31 December 2024. From 1 January 2025, property tax will then be levied on the basis of the new law.

If the real estate is rented or leased, the income from rental and lease are subject to income tax or corporate tax and, potentially, trade tax.

Some local governments charge a secondary residence tax for owning a secondary residence in the local authority area. The secondary residence tax is a local expenditure tax. To charge and structure the secondary residence tax, the local governments enact statutes that have their legal basis in the local tax legislation of the state governments.

https://www.gesetze-im-internet.de/bgb/_433.html

https://www.gesetze-im-internet.de/bgb/_873.html

https://www.gesetze-im-internet.de/bgb/_925.html

https://www.gesetze-im-internet.de/beurkg/_13.html

https://www.gesetze-im-internet.de/bgb/_152.html

https://www.gesetze-im-internet.de/beurkg/_11.html

https://www.gesetze-im-internet.de/beurkg/_10.html

https://www.gesetze-im-internet.de/beurkg/_20.html

https://www.gesetze-im-internet.de/beurkg/_18.html

https://www.gesetze-im-internet.de/bgb/_145.html

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https://www.gesetze-im-internet.de/bgb/_148.html
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https://www.gesetze-im-internet.de/beurkg/_17.html
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https://www.gesetze-im-internet.de/bgb/_311b.html
https://www.gesetze-im-internet.de/beurkg/_21.html
https://www.gesetze-im-internet.de/bgb/_146.html
https://www.gesetze-im-internet.de/bgb/_147.html
https://www.gesetze-im-internet.de/bgb/_448.html

Erforderliche Unterlagen
Voraussetzungen
Kosten
Verfahrensablauf
Bearbeitungsdauer
Frist
**weiterführende
Informationen**

Regulations on the obligation to register and exceptions thereto can be found, inter alia, in section 17, paragraphs 1 and 3, as well as section 23 and section 27 of the Federal Registration Act (Bundesmeldegesetz, BMG).
<https://www.gesetze-im-internet.de/bmg/BJNR108410013.html>
<https://www.gesetze-im-internet.de/beurkg/>
<https://www.gesetze-im-internet.de/bgb/>
https://www.gesetze-im-internet.de/grestg_1983/index.html
<https://www.gesetze-im-internet.de/bmg/BJNR108410013.html>
https://www.gesetze-im-internet.de/grstg_1973/index.html

Hinweise

Modul	Sachverhalt
Rechtsbehelf	
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	Purchasing and selling of immovable property, including any conditions and obligations related to taxation, ownership, or use of such property, including its use as a secondary residence, Kauf und Verkauf von Immobilien, einschließlich aller Bedingungen und Pflichten im Zusammenhang mit der Besteuerung, dem Eigentum oder der Nutzung von Immobilien (auch als Zweitwohnsitz)