



Fall | 22



# INTERNATIONAL LAWYERS NETWORK



**BRAUNEIS KLAUSER PRÄNDL RECHTSANWÄLTE  
BUYING AND SELLING REAL ESTATE IN AUSTRIA**

**ILN REAL ESTATE GROUP**

This guide offers an overview of legal aspects of buying and selling real estate in the requisite jurisdictions. It is meant as an introduction to these marketplaces and does not offer specific legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship, or its equivalent in the requisite jurisdiction.

Neither the International Lawyers Network or its employees, nor any of the contributing law firms or their partners or employees accepts any liability for anything contained in this guide or to any reader who relies on its content. Before concrete actions or decisions are taken, the reader should seek specific legal advice. The contributing member firms of the International Lawyers Network can advise in relation to questions regarding this guide in their respective jurisdictions and look forward to assisting. Please do not, however, share any confidential information with a member firm without first contacting that firm.

This guide describes the law in force in the requisite jurisdictions at the dates of preparation. This may be some time ago and the reader should bear in mind that statutes, regulations, and rules are subject to change. No duty to update information is assumed by the ILN, its member firms, or the authors of this guide.

The information in this guide may be considered legal advertising.

Each contributing law firm is the owner of the copyright in its contribution. All rights reserved.

## KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER AUSTRIAN LAW

### I. Introduction

There are many considerations that a buyer/seller of real estates should make before buying or selling a property. The following article is intended to give a brief overview of the most important "Must-Knows" when selling or buying real estate in Austria.

### II. Preliminary clarifications for the buying or sale of real estate

- What type of property should be bought or sold and what special features need to be considered?
- Who draws up the sales agreement?
- How is the purchase financed? Must banks or third parties be involved?
- Do I need official approvals?
- What are the risks and who has to take them?
- What do I have to pay special attention to when buying / selling the selected property?
- How can I protect myself best?

### III. Most important types of property acquisition

In the Austrian market, following typical types of real estate transactions may be described:

- **Purchase of an undeveloped plot of land**  
Plots of land are often bought for the purposes of construction. In this regard, first and foremost the relevant Austrian zoning and construction rules should be checked, to ensure that the desired building may indeed be developed on the given land.
- **Purchase of a developed plot of land:**  
As a rule, buildings located on a plot of land are considered part of the land and

treated as part of the land plot. This means that, in general, with the purchase of the land, the purchaser automatically acquires the building(s) as well (so-called "superficies solo credit").

- **Purchase of a condominium property:**

Condominium ownership is the right granted to the owner or an ownership partnership to exclusively use and dispose of an independent apartment, other independent premises, or a parking space.

The transfer of ownership of real estate may also be administered in the form of a donation (see below), an exchange agreement or in the course of an inheritance.

### IV. Formal Requirements

It is necessary to conclude a valid contract of sale (purchase), i.e., an agreement between the contracting parties on the object of purchase and the purchase price.

However, for the necessary execution of the agreement in the land register a written contract is required; the signatures on this agreement have to be certified by a notary public or a court.

### V. Central issues in a purchase agreements

The following points should in any case be part of a property purchase agreement:

- a. The contracting parties;
- b. the purchase price and the payment terms;
- c. accurate description of the property, i.e., the plot of land (including registration details in the land register), any inventory, fixtures and fittings and equipment of the

- building or apartment as well as existing easements, mortgages etc;
- d. date of the handover to the buyer;
- e. real estate tax + court registration fee;
- f. warranties on the object of purchase;
- g. declaration of citizenship and/or conditions for the granting of a land transfer licence;
- h. confirmation of the owner/seller that the transfer of ownership may be registered in the land register („Aufsandungserklärung“);
- i. Handover and takeover of the object of purchase, including the date for the transfer of risks and recklessness, benefits, burdens, and advantages to the buyer;
- j. Energy certificate: When selling buildings or objects for use (i.e., houses, flats, or business premises), an energy certificate must be presented and issued. The obligation lies with the seller.

## **VI. Austrian Land Register**

The Austrian Land Register (Grundbuch) is a public registry administered by the Austrian Courts where all land plots and existing rights in rem are recorded. The person who is registered in the land register is legally considered as its owner. The entry in the land register is the mode of acquiring ownership of real estate and rights similar to real estate in Austria. The entry in the land register thus assumes the function of ownership in the context of immovable property.

Since the land register is public extracts can be requested by all citizens for a small fee.

The land register consists of three main parts:

- **A Sheet**  
This section lists general data, and, for example, easements connected with the property.
- **B Sheet**  
This section provides information about the ownership of the property.
- **C Sheet**  
In the C sheet of the land register, all encumbrances (e.g., liens) of the individual property objects are listed.

## **VII. Transfer of Ownership**

The purchase contract contains a so-called “Aufsandungserklärung” (declaration of transfer of ownership) by the seller, with which the change of ownership may be carried out in the land register.

To ensure that the purchase price is transferred to the seller after the registration of the ownership in favour of the buyer, the contracting parties mostly agree on a fiduciary deposit of the purchase price with a trustee (attorney-at-law or a notary public). The contracting parties therefore conclude a trust agreement with the trustee according to which the trustee is obliged to transfer the purchase price after the fulfilment of all conditions stated in the purchase contract / trust agreement, which usually include the encumbrance-free recording of the buyer's title in the land register as well as the payment of any taxes and court fees.

**Note a special rule in Vienna:** Since July 1, 2000, Viennese attorneys-at-law are obliged to process the trust funds entrusted to them exclusively via electronically specially secured escrow accounts. These accounts may only be used after the Vienna Bar Association has given its (electronic) "seal of approval". Other

dispositions (especially cash withdrawals) are excluded and technically not possible.

### VIII. Financing

The usual way of financing real estate in Austria is through a bank loan/mortgage for at least part of the purchase price. In this case, the bank usually insists on a lien as collateral which is to be entered in the land register at the same time as the registration of ownership of the purchaser.

### IX. Condominium ownership („Wohnungseigentum“)

A special rule applies to condominium ownership. Here, the owners of a property or owner partnerships (each consisting of two natural persons) acquire the right to exclusively use and solely dispose of independent apartments or other independent premises or parking spaces for vehicles in an apartment building or other building complex.

The basic law on condominium ownership is called the „Wohnungseigentumsgesetz - WEG“. The WEG contains detailed regulations on the establishment and administration of condominium ownership. For its establishment, a written agreement of all co-owners of a building complex is required. The exclusive right of use (condominium ownership) of the co-owners comes into existence upon registration in the land register.

As far as the management of the general parts of the property is concerned (e.g., staircase, garden), the condominium owners together form the community of owners („Wohnungseigentümergeinschaft“). This community of owners is a separate legal entity under private law that can act on behalf of the individual owners of one apartment building.

### X. Setting a right to build („Baurecht“)

A building right („Baurecht“) is the right to establish a building on another person's property. The purpose of the building right is the utilisation of the property without the owner having to relinquish his ownership rights. The owner of the building right has to pay an agreed monthly or yearly fee for the use of the property („Bauzins“) to the property owner.

The so called „Baurecht“ is created by registration in the land register of the property and may be granted for a term of not less than 10, but not more than 100 years. If the building right expires, the building reverts to the owner of the real estate and any lien on it (the building) is transferred to the property.

### XI. Buildings on third-party land („Superädifikate“)

Buildings erected on land owned by others („Superädifikate“) are structures (buildings) placed on another person's land with the intention that they should not remain on said land indefinitely. This lack of intention to firmly attach the building to the ground and leave it there indefinitely allows a building to belong to the builder and not to the landowner (this is a similar situation as the before mentioned „Baurecht“).

Example: Someone rents/leases a plot of land on a lake and builds his own bathing hut on it. This so-called „Superädifikat“ is one of the exceptions to the principle that the landowner automatically also owns everything that is built on his land plot. In this case, therefore, ownership of the land and ownership of the building are separate.

### XII. Tax Effects

The purchase of real estate is subject to Austrian Real Estate Transfer Tax („Grunderwerbsteuer“) at a tax rate of

generally 3.5% of the purchase price. Furthermore, a court registration fee of 1.1% of the purchase price is charged for the registration of new ownership rights in the land register.

The prerequisite for the registration of the ownership right in the land register is, in addition to the already mentioned documents, the proof that the real estate transfer tax has been paid to the responsible tax office (so-called clearance certificate). The processing with the financial authorities is regularly carried out by the trustee (attorney at law or notary public) who draws up the purchase contract.

Since April 1, 2012, earnings from the sale of private real estate are subject to the Austrian Real Estate Income Tax ("Immobilienvertragssteuer" - ImmoESt). The taxation is not based on the regular income tax rate, but on a special 30% tax rate (there are exceptions to this taxation, for example if the own residence is sold). For the purposes of real estate income tax, the term "property" refers to land and buildings, condominiums, and rights equivalent to real estate property, such as building rights.

### **XIII. Additional Costs**

In event of broker's commission;

Attorney or notary fees; the purchase contract is usually drawn up by a lawyer or a notary who normally also apply for the registration in the land register.

In most cases the attorney / notary also acts as trustee. The amount of the lawyer's or notary's fees is approximately 1-3% of the purchase price. In addition, it is possible to agree a lump sum.

Costs for authentication of signatures: In order to register the new ownership in the land

register, it is necessary that the signatures on the purchase contract and (if applicable) on the mortgage deed for the mortgage loan are certified by a court or notary public.

### **XIV. EU and other countries**

In general, EU/EEA citizens and entities are allowed to freely purchase and sale real estate in Austria, while non-EU/EEA citizens and entities may only purchase Austrian real estate with the permission of the competent Government Office. In this case, a corresponding application must be made to the authority that approves the acquisition.

In tourist zones there may be further restrictions for the purchase of real estate property.

### **XV. Donation**

The donation of a property (land, apartment, etc.) constitutes a contract that the donor and the donee (recipient) conclude with each other. The donation must be accepted by the donee. Thereby, certain formal requirements must be observed: The gift without immediate transfer requires according to Austrian Law a written contract in form of a notarial deed. If the property is handed over to the donee immediately, the signatures of all parties must be certified by a notary public for the transfer of ownership to be recorded in the land register.

From a tax point of view a donation and the purchase of real estate are quite comparable, but since the gratuitous transfer does not result in a capital gain of the seller, the donation generally does not incur Real Estate Income Tax. However, caution is required in the case of a so-called "mixed gift", i.e., if an - even if symbolic - consideration is paid for the property.

On the other hand, the donation of real estate is subject to Real Estate Transfer Tax as well as

to a court registration fee. The basis of assessment for the Real Estate Transfer Tax in the case of donations is the property value which is generally determined by an expert or through a government approved real estate price index. The tax rate is then graduated according to the value of the gift.

#### **XVI. Our Law Firm**

This Memorandum is for information purposes only and reflects Austrian law in January 2021.

This Memorandum does not constitute legal advice and cannot replace personal consultation on a case-by-case basis. If you have any further questions about real estate in Austria or need general legal advice, please contact Dr. Andreas Bauer, a.bauer@bkp.at, +43 1 532 12 10.

bkp Rechtsanwälte is one of the leading business law firms in Austria. We are specialized in consulting in all areas of business law with a distinctly international orientation. We assist our clients in the long term and find sustainable ways to achieve their desired objective.