

## GERMAN LAW NEWSFLASH – DECEMBER 2014

### NEW DEVELOPMENTS WITH REGARD TO FEES FOR REAL ESTATE AGENTS

The government decided to pass a draft bill that shall change the rules of the fees of real estate agents. In the future the party who contracts the real estate agent shall pay. In this context further changes shall be implemented concerning the law on the agency of housing (Gesetz zur Regelung der Wohnungsvermittlung - WoVermRG).

#### HOW IT USED TO BE

In the past it used to be common practice, that the person looking for an apartment was the one to pay for the real estate agent although the apartment owner respectively the landlord may have instructed the agent. In particular, in areas where there is pressure on the housing market, applicants for housing paid the real estate agent fees, because otherwise they would not have been considered any longer for the housing they applied for. In these areas it is quite rare that available apartments are not offered via a real estate agent. Therefore, people looking for apartments in areas with a strained housing market did not have much of a choice than paying the fee for the agent.

#### HOW IT IS NOW

On 1 October 2014, the Federal Government passed the draft bill that shall implement changes concerning the fees of real estate agents. Pursuant to the draft bill, the party who contracts the real estate agent shall pay. This principle is common in most other areas of law, but so far it was not in relation to the law on agency for housing.

- Agency agreements on housing shall be concluded in text form (including email) in order to be valid.
- Real estate agent agreements for payment by the person looking for housing shall only be concluded if - exclusively on the basis of the agreement - the real estate agent provides the person looking for housing with the exact apartment for the finally concluded lease.
- If the landlord has instructed the real estate agent, to look for a suitable tenant for a specific apartment, the tenant shall never be obliged to pay the fee of the agent. Any agreement that intends to pass the obligation to pay the



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real estate agent's fee on to the tenant shall be invalid.

Any violations of real estate agents against the ban to request payment from persons looking for housing may be punished by a fine.

These changes are expected to come into force in the beginning of 2015. Various real estate agents have criticized the draft bill. They argue that landlords would pass on the costs for the fees to the tenant in another way. The government disagrees, because the draft bill also suggests the implementation of the new rental price break (Mietpreisbremse, cf. our News Flash May 2014). Therefore, the government argues, it would be difficult to pass on the real estate agent's fee via the rent. Given the majority of the CDU/SPD coalition, the new law can be expected to swiftly pass parliament.

#### **HOW IT WILL BE IN THE FUTURE**

The draft bill implements the principle that is already common in most other areas of law: The party who orders shall pay. Implementing this principle will improve the situation for consumers, who are not forced to pay for a service they did not order. It is expected to also be an advantage for international companies and entrepreneurs, who buy and sell real estate in Germany: There will be no more confusion concerning the question as to who shall pay the real estate agent. For a number of real estate agents the new law will be challenging. In particular, real estate agents who are only focused on rental apartments and who are usually not instructed by the owner may have to rethink their business model. Real estate agents with a broader approach to different types of real estate and who are often contracted by the owners are expected to be less affected by the new draft bill. It remains to be seen, if and to which extent the real estate agent market may consolidate in view of the new law.

*This newsflash was originally published by Magnusson Berlin LLP, of which Dr. Thomas Kaiser-Stockmann is also the Managing Partner.*