

## GERMAN LAW NEWSFLASH – June 2016

# BAN ON REAL ESTATE AGENT FEES FOR APPLICANTS

Dear all,

with this we are presenting you our monthly newsflash dealing with new regulations regarding the changes of rules for real estate agent fees a year ago. The act regulates that the party who hired a real estate agent also has to pay the fee for the same. That change had quite some consequences over the past year.

We hope that it evokes your interest and as you know any kind of remark is always welcome.

Best as always,

Thomas & Team

### How it used to be

In Germany for decades it was common practice that the person who was searching an apartment had to pay the fee for the real estate agent, although he didn't necessarily mandate the agent. Especially in times when the housing market was under pressure applicants were basically forced to pay the fee because otherwise they had no chance to ever get an apartment. To make matters worse, all most all landlords hired agents to rent their apartments since they did not have to pay the fee anyhow. As a consequence applicants only rarely had the chance to rent apartments directly from the landlord. That regulation which mainly benefited landlords was changed a year ago in June 2015 by the new legislation.

### What is new

The new law adopted common international practice that the person who hired the real estate agent has to pay the fee, which in most cases is the landlord. This change had quite some impact on the housing market and the business possibilities for real estate agents. More and more landlords



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rather rent their apartments themselves to save money or hire the agent with best offer. This has resulted in a lot more competition on the real estate market. Real estate agents have to offer their services for a lot less than they could before change of the regulation. As a consequence, the total revenue in the renting market for real estate agents decreased about 50% in the beginning and now is about 20 % less than it used to be. Until now this doesn't mean that agencies had to close down their business, but they definitely had to cut down employment to some extent. However, the new regulation saves applicants for apartments a lot of money, since they had to pay up to two monthly rents for real estate agents they did not even hire in the first place. Further, the change resulted in an increase of new websites. These enable landlords to present their apartments and houses to a large number of applicants and make it easier for applicants to find and compare apartments according to certain criteria. There are even websites which only show offers without any real estate agency fees. All these websites usually charge less than real estate agents used to. It also became more common again to rent an apartment directly from the landlord instead of hiring agencies. This development makes the renting business more personal and gives landlords and applicants the possibility to find the best match. This is particularly important, if the landlord is a private person and not renting a lot of apartments. Many agencies now focus more on real estate sales, because in that market they still can charge the applicants so the sellers still hire agents quite often. This meets with the still increasing prices for flat property in certain areas of Germany. Nonetheless some of the agents try to evade the act by for example promising an applicant the apartment if he in return signs a declaration that he hired the agent and will pay the fee or they try to charge other hidden fees which didn't exist before but fortunately these cases are the exception.

### What does it mean for the future

The real estate agent fee regulation on the contrary to the capping limit (the so called *Mietpreisbremse*) is working well in practice. It is a simple concept which is easy to understand and implement and there are effective sanctions. If landlords or agents breach the regulations, there are fines up to 25.000 EUR in each case. As a result there aren't many attempts to charge the applicant who didn't hire the agent. Therefore, it is

to be expected that the new principle will remain in force in the future. It further remains to be seen, if the same principle will also be implemented for real estate sales. Why should what works well in the renting business, not also be applied for the sales business?

**tklegal Berlin LLP** is a German law firm and notarial office, with a focus on Corporate and M&A and Real Estate law and transactions. Feel free to contact us with any questions or comments.

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