



Foreign real estate investments in Germany - unlimited opportunities?

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The German real estate market continues to be seen as one of the most stable investment destinations in Europe. It offers great opportunities for investors who are seeking the security of a European economic powerhouse together with a real estate market that has both stable core assets and hidden gems for those who have a higher risk profile. Interest rates have remained low and cities such as Munich, Hamburg and Frankfurt have strong local microeconomic climates that have helped ensure stable and — despite declining in recent years — still attractive yields for investors looking for safe-haven investments.

But Germany offers more than that. Highly educated employees, comprehensive infrastructure, low inflation, economic and political stability and the lack of restriction on foreigners purchasing property make Germany an attractive destination for real estate investors from all over the world.

This article highlights the opportunities available for foreign investors seeking to profit from the real estate market in Germany and the legal requirements and procedures that must be followed in order for them to do so.

No country-related restrictions

Full ownership is the most complete and comprehensive right over real estate in Germany. Ownership of the property includes ownership of all constituent parts of the property (notwendige Bestandteile), including all buildings located there and everything above and beneath the surface of the land (unless the rights have been granted to a third party). Ownership is registered in the land register and that is proof of ownership to everyone with a legitimate interest.

Unlike many other countries, Germany does not generally impose limitations on foreign real estate investments. There is also no difference between ownership by a natural person and a legal entity, simplifying investments from foreign states and jurisdictions.

Only a few restrictions affect certain purchasers regardless of their nationality. Due to reasons of national and governmental interest, acquisition of agricultural property, property located in publicly announced land reallocation areas or urban improvement areas and transfer of property within the territory of the former German Democratic Republic may be subject to the requirement for a public permit authorizing the transfer. In addition, the local authority or municipality may have a legal right of pre-emption to acquire the land. However, this right is usually waived.

In summary, there are no country-related restrictions when purchasing property in Germany and the same rules apply for every party interested in property acquisition.

Acquisition of ownership

In Germany there are in principle two ways of acquiring property. Either the property can be acquired directly (asset deal) or the legal entity owning the property is purchased, accompanied by a transfer of the ownership (share deal). In order to be valid, agreements for the transfer of property must generally be in the form of a notarial deed. The deed must cover all relevant aspects of the acquisition. Any kind of side letter or agreement that amends the contents of the notarial deed either orally or in writing may result in the purchase agreement being invalid. Additionally, every property in Germany is recorded in the land register. To complete the transfer of ownership, the new owner must be registered in the relevant land register. The change of ownership is effective from the date of registration.

As mentioned above, a public permit may be required prior to a transfer of property. The permit is usually requested by the notary. The notary also applies for the waiver of the local authority's pre-emptive right (also referred to above) and the tax clearance certificate. The latter is issued by the tax authorities after the payment of any real estate transfer tax (RETT) which may be payable on the transfer.

Besides permits and notarial certification, foreign investors assigning a legal representative to act in Germany must bear in mind the legal provisions regarding power of representation. The document authorizing the representative must be in German and foreign investors need a certificate evidencing their corporate status (Existenzbescheinigung) and representation (Vertretungsbescheinigung). These documents must be notarially certified in the same way as the purchasing contract in order to be valid. In addition, if they are certified by a foreign notary, an apostille has to be attached to the documents.

It is then common practice to authorize the notary who notarized the transaction to make all necessary (public) applications and declarations in order to effect the transfer of the property. Notaries are entitled to be paid pursuant to a legally binding fee order. The law prohibits any agreement on lower notarial fees; however, fees are capped at a transaction value of €60 million. Notaries are regularly investigated to ensure that the fee order is observed. The declaration of transfer of ownership itself must be contained in a notarial deed issued by a public German notary. Transaction costs for the transfer of property to cover registration fees, notarization, etc. can be estimated at 1.5 percent of the purchase price. RETT currently varies between 3.5 percent to 6.5 percent, depending on the German Federal State. This excludes costs for due diligence and the involvement of lawyers and technical experts. There are ways to avoid RETT; however, tax reforms are currently being enacted in order to reduce the available tax prevention schemes.

Outlook

It is clear that the German real estate market is an investment-friendly stronghold located in the heart of Europe. Foreign investors are not faced with any particular restrictions but instead enjoy equal rights and obligations when it comes to acquiring property. Due to the growth in the number of city dwellers, increasing rent levels and a secure and attractive environment, real estate owners can profit and grow accordingly. In short, the German real estate market is a place for every serious investor to take an active part. What are you waiting for?

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