

Leaflet for Buyers

Information on notarisation and processing of your contract to buy a property, using the example of a contract of sale by means of direct payment (without a notarial trust account)

I .

What will happen prior to and during notarisation?

We will already have inspected the land register prior to notarisation and, as a rule, provided you with the draft contract. If you have any questions, you can discuss them ahead of notarisation at any time with one of our legal secretaries or with the notary public, or raise them during notarisation. Contracts of sale of property are complicated legal documents. Your contract is an individualised set of agreements designed for your specific situation and contains everything necessary to protect your position. The notary public will ensure that all legal risks are avoided to the greatest possible extent. Notaries public have strict liability and are insured for all cases of liability. The entire text of the contract of sale will be read out to you by the notary public at notarisation and the sections that are important for you will be explained. Reading out of the entire text is required by law. As a rule, when reading out the text the notary public will correct any typing errors in the document by hand during the 'reading out' and can, at the request of the parties, make changes to the content during notarisation. In other words, it is not necessary for typing errors/ data contained in the draft to be corrected in full prior to notarisation.

Please bring a valid ID card or passport with you to notarisation unless you are a person already known to the notary public from a previous notarisation. Please let us know your tax identification number or (if you are a legal entity, trading company, a self-employed member of a liberal profession or a sole proprietorship) your 'business identification number' and your place of business. The 2010 German Tax Amendment Act requires the notary public to also send this data to the property transfer tax department of the relevant German tax office.

II .

Information for the buyer on the salient points of the contract of sale to be notarised

1. What exactly is being sold?

- All objects affixed to the land or the building are always sold along with the land (buildings on the land, central heating system, built-in kitchen, awnings, flooring, sanitary facilities, carport/garage, cooker, blinds, prefabricated wooden house if it is on the foundations at least due to its high self-weight);
- 'Accessories' are also included in the sale (unless explicitly excluded in the contract of sale). Examples of accessories are: sauna, heating oil reserves, parabolic antennas that are not permanently affixed;

- Other movable are not included in the sale unless explicitly agreed to the contrary in the contract of sale. In cases of doubt, garden furniture and equipment, a sand-pit and swing, lamps and furniture are not included in the sale.

If the contract of sale states that a specified portion of the purchase price accounts for accessories or movable items, this amount is not, as a rule, subject to property transfer tax: as a result no property transfer tax is payable on this separate amount. If you would like an itemised list in order to reduce such tax liability, please send the notary's office a list by e-mail sufficiently in advance of the date of notarisation; this list should show the accessories/movables that are to be itemised separately (e.g. 'garden tools, heating oil reserves, kitchen furniture') and their portion of the purchase price in total. Provided that the items do not account for more than 5–10 % of the purchase price, they will have a better chance of being recognised by the tax office. Please bear in mind that the list may not include any items that are permanently affixed to the building (see above).

You should not agree any separate purchase price for movable items in the contract of sale without first consulting the bank that is financing your purchase. Banks are often not prepared to provide financing for such items. If a tax advantage can indeed be obtained in the individual cases is something you should best discuss with your tax advisor ahead of notarisation. The notary public will not provide any advice on tax matters.

2. How and when do I have to pay the purchase price? Am I certain to become the owner once I have paid?

We will only send you notification that the purchase price is due for payment once it is sure that, provided that you render payment to the seller in conformity with the contract (above all without any encumbrances still entered in the land register and not to be assumed by you such as land charges or similar), you will acquire ownership of the property. Once you have received this written notification, you can pay the purchase price into the account(s) of the seller and/or any banks still entered in the land register named in the notification. You are not required to nor should you transfer the purchase price until you have received notification that the purchase price is due for payment. The time within which the purchase price is to be paid after you have received our notification that it is due for payment is indicated in the contract of sale.

1. How does releasing the property from encumbrances work?

As a rule, you as the buyer will want to acquire the property without any encumbrances in section II or section III of the land register. Another agreement only takes place if (at least in section II of the land register) encumbrances/ restrictions have to be assumed as they cannot be cancelled (e.g. rights of way to a property located behind the property being sold or old restrictions that are decades

old and no longer of relevance but at the time were intended to ensure the uniformity to the building structures; such old restrictions are typically found in the Berlin districts of Frohnau, Zehlendorf and Dahlem, as these were previously designed as residential or garden areas).

After notarisation, the notary public will write to the 'seller' bank that still has a land charge/mortgage entered in the land register and request the bank to send him the necessary cancellation authorisation. Insofar as the security interest in the property still serves as collateral for loan amounts still owed to the bank, the bank will only furnish the cancellation authorisation on the trust condition to be complied with by the notary public, so that it may only be used after payment of the balance in the amount named.

4. How does creation of the land charge work for my bank (the bank financing the purchase price)?

To enable you to raise the amount of the purchase price, as a rule the contract of sale will contain a provision that the seller will consent to a loan being taken out against the property with the bank providing you with financing ahead of transfer of ownership and will grant you a power of attorney for this purpose in the contract of sale. This is tried-and-tested practice and does not present any risks for either contracting party. Your bank will provide you with a form for creation of the land charge. Please pass this form on to us. At the same time, you can make a further appointment with our legal secretaries for notarisation of the land charge.

2. Is the seller liable for material defects?

As a rule, the seller is not liable for any material defects to the property but, generally speaking, states that he does not assume any warranty for either the condition of the land or the 'old' building on the property. This is conventional practice and does not constitute any disadvantaging of the buyer. The position is different if the parties explicitly agree that the property sold is in a certified condition or the seller gives pertinent warranties or the seller is aware of a substantial defect and deliberately does not disclose such a defect. In such a case the seller will be liable for material defects in all cases.

1. Transfer of possession, uses, costs, risks

As a rule, the obligation to bear costs and burdens (e.g. management and maintenance fee, land tax, insurance premiums for the insurance of the residential building) and the obligation to render the property safe for use (duty to clear snow and ice and grit access area) pass to the buyer after the purchase price has been paid in full (or deposited in a notarial trust account). Vice versa, as of this time you are to be provided with the keys to the contractual property and are now entitled to any rental income as far as your relationship with the seller is concerned. In other words, you are the 'de facto owner' once you have paid the purchase price in full (or deposited it in a notarial trust account). As a rule, ownership in formal terms only passes to you several months later when you are entered in the land register as the owner. You will be

notified by us automatically once you have been entered in the land register as the owner.

3. Who pays the costs of the contract?

The costs of the contract are usually borne by the buyer.

As a rule, the seller only bears the fees of the notary public and Land Registry charges incurred for the cancellation of any encumbrances not assumed by the buyer (e.g. land charges, mortgages) and any bank charges incurred.

If a seller or a buyer is not present in person at notarisation, but is represented by another person, as a rule the party that was not present will bear the additional costs incurred (arising from the necessity of having the contract of sale authorised notarially at a later date).

4. What costs will I incur?

The costs of the Land Registry (for new entries and cancellations in the land register that arise from implementation of a contract of sale) and the fees of the notary public are by law uniform throughout Germany and are not negotiable. The amount of the property transfer tax depends upon the federal state of Germany in which the property is located (e.g.: 6% of the purchase price in Berlin). The higher the purchase price, the lower the percentage of costs due to the Land Registry and the notary public. Depending on the amount of the purchase price, the total costs of the notary public and the Land Registry are (as a very rough rule of thumb) between approx. 0.9 and 1.4% of the purchase price (without costs of creating the land charge and handling of the sale through a notarial trust account).

The following table gives you a general overview of the costs that rise in line with the higher amount of the purchase price (figures are not binding on your specific contract). All figures are in euro:

Purchase price in k€	Notary incl.	Extra costs of implementation via a notarial trust account incl. VAT	Land Registry	Property transfer tax (in Berlin: 6 %)
80	850.00	260.00	370.00	4.800,00
180	1.520,00	490.00	650.00	10.800,00
320	2.330,00	760.00	1.000,00	19.200,00
550	3.700,00	1.200,00	1.570,00	33.000,00
700	4.550,00	1.500,00	1.930,00	42.000,00
1200	7.400,00	2.500,00	3.130,00	72.000,00
2500	14.850,00	4.900,00	6.250,00	150.000,00

The above figures are not binding but can be significantly higher or lower in your specific case, particularly as the notary fees do not only depend on the purchase price but may also be dependent on further parameters. The table is intended to provide only a rough guide with approximate figures. However, if you wish, we will be pleased to calculate the costs that will apply to your specific case.

If the buyer takes out a loan to finance the purchase price (in part) and the bank providing such financing will require creation of a land charge, additional notarial fees and Land Registry costs (not contained in the table) will be incurred; together these will amount to approx. 0,5 – 0,8% of the nominal amount of the land charge (rough rule of thumb).

9. What happens to the seller's building insurance?

The building insurer must be notified of the sale by either the seller or the buyer without delay. When ownership has been transferred to the buyer formally, the building insurance (insurance against fire etc.) is automatically transferred from the seller to the buyer by force of law (cf. 95 ff. VVG – German Insurance Contracts Act). You have the right to terminate the insurance policy after transfer of ownership with immediate effect or (if preferred) to the end of the current insurance period.

1. Is implementation via a notarial trust account safer for me than paying the seller directly?

Acquiring ownership (title) as agreed in the contract is ensured for you irrespective of whether it is provided for in the contract that payment first goes into a notarial trust account or instead payment is to be made to the seller directly. Payment into a notarial trust account is necessary in a few exceptional cases or permissible on account of a legitimate interest to be protected under the German notarialisation act (Beurkundungsgesetz). An example where implementation via a notarial trust account is permissible and can be a wise choice is that you want to move into the property as soon as possible. Without a notarial trust account, transfer of possession to you will typically only take place 6 – 12 weeks after notarialisation of the contract and the precise date of transfer of uses and burdens cannot, as a rule, be predicted without a notarial trust account.

III.

What will happen after notarialisation?

In addition to conducting actual notarialisation, the notary public has a number of further responsibilities in connection with implementing the contract of sale. For example, the notary public is obliged to notify the relevant tax office and the Valuation Committee (Gutachterausschuss) of the sale. It is his responsibility to ensure the priority notice of transfer of ownership, the land charge and transfer of ownership are entered in the land register in the proper manner and correctly. He will obtain all certificates, permission and clearance certificates required for implementation of the contract and ensure that both contracting parties are informed that the purchase price is due for payment, and has full liability for such notification being given (this is not necessary if a notarial trust account is to be used): Furthermore, he is responsible for ensuring that ownership (title) is not transferred before the purchase price due to the seller has been paid to him in full.

IV.

Please note:

The information contained in this leaflet is based on a standard contract of sale without any special features. Implementation may take substantially longer in individual cases. This could, for example, be the case if the seller has inherited the property but does not yet have an official certificate of inheritance. In such a case, transfer of possession, uses and burdens can be delayed by a further number of weeks/months. In cases such as these it might make sense for the buyer to provide for a notarial trust account to be set up for the contract of sale as this can ensure that possession, uses and burdens are transferred as soon as possible despite an implementation process that may be lengthy.

We will make every effort to implement your contract of sale as quickly as possible. However, please understand that our staff have a large number of different matters to handle. So if you need to make an enquiry, please give them your reference number (Aktenzeichen) and deed roll number (Urkundennummer): You will receive all necessary information and documents from us automatically. In cases of urgency, please contact the legal secretaries named in correspondence with you by telephone. They are fully familiar with your contract and are the persons best able to give you prompt information on the stage of implementation that your contract has reached. It goes without saying that the notary public will also answer any questions you may have personally.



V.

Time schedule after notarisation of the contract of sale

(rough estimate of times, which may be substantially longer in the individual case)

Start Notarisation of the contract of sale

approx. 1 week after notarisation

The contract of sale and priority notice of transfer of ownership are sent.

The buyer and the seller will each receive a certified copy of the contract of sale a few days after the date of notarisation. We will apply to the Land Registry for entry of a priority notice of transfer of ownership in the land register in favour of the buyer. Once the entry of the priority notice has been made in the land register (this is a public register), anyone can see that the buyer has a 'vested interest' in acquiring ownership.

approx. 2 weeks after notarisation

Creation of land charge:

If the buyer is financing the purchase price (in part) by means of a loan, he can make an appointment with the notary public for any time as of notarisation to create the notarised land charge necessary for extension of the loan. For this purpose, the buyer must first provide the notary public with his financing bank's form relevant for creation of the land charge.

approx. 4-9 weeks after notarisation

Property transfer tax notice

As a rule, the buyer will receive the property transfer tax notice from the relevant tax office within 4-9 weeks of the notarised contract of sale having legal effect. It is in the buyer's own interest to pay this tax without delay as the tax clearance certificate that is necessary for ownership to be transferred will only be issued once the tax has been paid.

approx. 4-10 weeks after notarisation

Notification that the purchase price is due for payment is sent.

The office of the notary public will only send the buyer (the seller will receive a copy) notification that the purchase price is due for payment after he (notary public) can guarantee the buyer that he will indeed acquire ownership as agreed in the contract after paying the purchase price. The notary public cannot guarantee transfer of ownership in accordance with the terms of the contract until entry of the priority notice of transfer of ownership with the agreed rank is ensured and he has obtained all documents required by the contract for transfer of ownership (e.g. the cancellation authorisations for all encumbrances still entered in the land register and not assumed by the buyer; in the case of sale of a condominium any permission that is required from the management company of the association of owners; in the case of sale of land the clearance certificate of the relevant local authority stating that it will not make use of its statutory right of pre-emption etc.).

▶ Once the buyer has received written notification from the notary public that the purchase price is due, he can pay the purchase price without incurring any risks. The time by which he must pay at the latest is set in the contract of sale. In the written notification that the purchase price is due for payment the notary public will, if applicable, explicitly draw the attention of the buyer to any requirement that he is not to pay the entire purchase price to the seller but, for example, part of the purchase price to the 'seller's bank' still entered in the land register and the balance into the account named by the seller. The buyer will be provided with all details (including the relevant bank account details) in the written notification that the purchase price is due for payment.

approx. 6-12 weeks after notarisation

Transfer of burdens and uses

Once the purchase price has been paid in full, the buyer will be the 'de facto owner', since as of this time possession, uses, burdens and the obligation to keep the property safe for use will pass to him.

Application for the entry of transfer of ownership in the land register

After confirmation that the seller has received the purchase price in full, we will submit the application to the Land Registry for transfer of ownership to the buyer.

approx. 5-12 months after notarisation

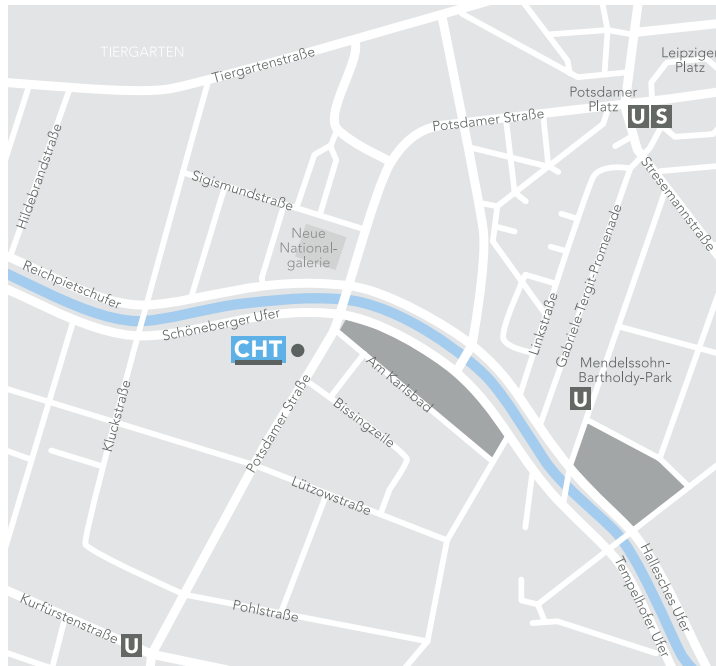
Transfer of ownership

The buyer will be entered in the land register (a public register) as the new owner of the property. The buyer and the seller will be provided with written notification by the office of the notary public that the entry has been made. The building insurance will be transferred to the buyer when the entry of transfer of ownership is made. Either the seller or the buyer must notify the building insurer of the transfer of ownership in writing without delay after the entry of transfer of ownership has been made. The buyer has the right to terminate the building insurance within one month of the entry of transfer of ownership having been made and can choose between with immediate effect or with effect as of the end of the current insurance period.

Notification of the land tax department

The buyer is obliged to notify the tax office (land tax department) of the change of ownership within three months of the entry of transfer of ownership having been made.

Date of information: 2019



Address:

CHT Rechtsanwälte GbR
Potsdamer Straße 58
(opposite the
New National Gallery)
10785 Berlin

www.cht-legal.com

T +49 30 2000589-0

F +49 30 2000589-10

E notariat@cht-legal.com

Our clients can park in the courtyard directly free of charge. Parking is accessible via Schöneberger Ufer 51–53. Please note our information about the parking spaces on our homepage.