

Leaflet for Sellers

Information on notarisation and processing of the contract of sale of your 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 seller 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.

The buyer may ask you to itemise the price of accessories/movables as a separate item in the contract of sale as this might give him the possibility of saving property transfer tax. This is not detrimental to your position as the seller.

2. How and when will I be paid the purchase price?

The notary public is required to ensure that you will only receive the purchase price once transfer of ownership to the buyer as agreed in the contract in return for payment of the purchase price is sufficiently guaranteed. Thus, a number of fundamental prerequisites must first be fulfilled before you receive the purchase price. These prerequisites will be detailed in your contract of sale.

An important prerequisite for the purchase price being due is that all necessary 'documents releasing the property from encumbrances' have been obtained by the notary public in a form that satisfies the criteria of the Land Registry. These encumbrances primarily include any security interest in real property still entered in the land register (land charges/mortgages) – usually in favour of a bank with which you took out a pertinent loan. As a rule, such encumbrances will be cancelled as part of implementation of the contract of sale.

You can rely on being paid the purchase price irrespective of whether the contract of sale provides for payment to be made initially into a notarial trust account or, instead, direct payment to you. Payment into a notarial trust account is only necessary in exceptions; in these cases the notary public will automatically provide for payment into a notarial trust account to be provided for in the draft contract of sale.

3. How does releasing the property from encumbrances work?

As a rule, the buyer wants 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 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 that it may only be used after payment of the balance in the amount named. In order to ensure that the contract goes through without a hitch, you should ensure sufficiently in advance of notarisation that the purchase price will suffice to redeem to amount of the loan still outstanding together with any pre-payment penalty required by the bank or that the amount not covered can be provided by you at short notice elsewhere. Before or shortly after the date of notarisation, please notify us in writing (by e-mail) of the reference numbers of the loan(s), the name, address and contact persons (if known) of the banks that are still entered in the land register with a security interest in your real property; this will enable us to then contact the bank in question for the purpose of obtaining the cancellation authorisations.

The notary public will ensure that the amount demanded by your bank will be paid to it by the buyer directly and that the balance of the purchase price is transferred to your account. Please furnish your bank account details ahead of notarisation if possible or provide these details in writing after notarisation.

4. How does the buyer obtain financing of the purchase price?

To enable the buyer to raise the amount of the purchase price, as a rule the seller will consent to a loan being taken out against the property with the bank providing the buyer with financing ahead of transfer of ownership and will grant a power of attorney for this purpose. This does not pose any risk for the seller, as the notary public will ensure that the buyer will only be able to use the loan obtained to pay the purchase price but not for any other purposes (e.g., to buy a yacht).

5. Am I 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.

6. 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 the buyer is to be provided with the keys to the contractual property and is now entitled to any rental income as far as his relationship with the seller is concerned. In other words, the buyer is the 'de facto owner' once he has paid the purchase price in full (or deposited it in a notarial trust account). As a rule, ownership in formal terms only passes to the buyer several months later when the buyer is entered in the land register as the owner.

For example, your building insurance and the land tax department (tax office) will, even after the purchase price has been paid in full/transfer of possession, still contact you directly for payment of premiums/land taxes as in formal terms you are still the owner. However, you are entitled to be reimbursed by the buyer for these costs for the period as of transfer of possession/payment of the purchase price in full.

7. Who pays the costs of the contract?

Both the fees of the notary public and the charges of the Land Registry are by law, uniform throughout Germany and are not negotiable. All notaries public are bound by the statutory code of costs. 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).

8. What happens to my 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 is automatically transferred from the seller to the buyer by force of law (cf. 95 ff. VVG – German Insurance Contracts Act). The buyer has 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.

III.

Time schedule after notarisation of your 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.

IV.

What will happen after notarisation?

In addition to conducting actual notarisation, 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.

V.

Just one more thing:

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 (URKUNDENUMMER): 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.

Concluding information

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.

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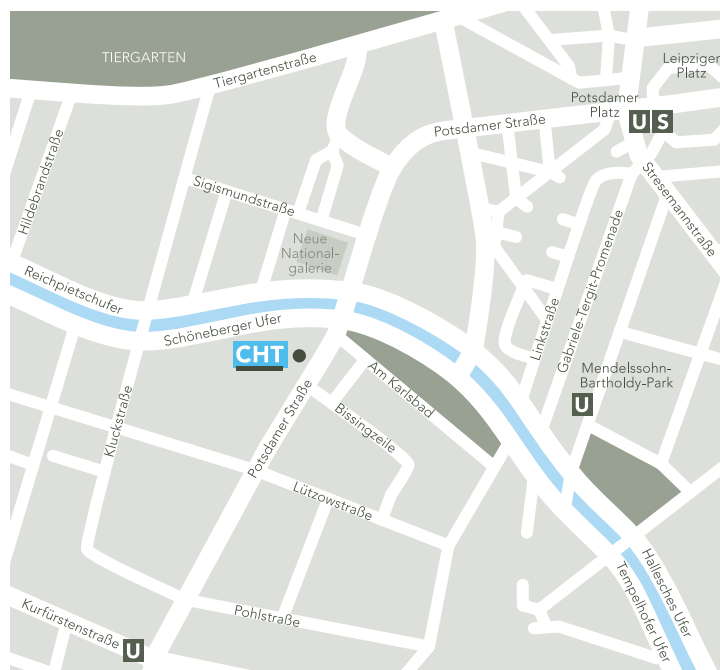
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