CHT Rechtsanwälte GbR – Potsdamer Straße 58 – 10785 Berlin

Part I. Model Real Estate Purchase Contract [1]

for the sale of a single-family house (or two-family house or undeveloped plot of land)

In the case of the sale of condominium ownership or part ownership („Wohnungseigentum", „Teileigentum"), our explanations in **Part II. (Supplementary information on real estate purchase contracts for condominium or part ownership)** apply in addition to this model purchase contract **(Part I.)**.

Model in the form of the so-called direct payment variant (i.e. without notary escrow account) [2]

Before me, the signing notary public

Dr. Patrick Hollmann

with the official seat in Berlin,
Potsdamer Straße 58, 10785 Berlin,

appeared today: [3]

1. Mr...

- the appeared person 1. hereinafter also referred to as **„Vendor"** or **„Seller"** -,

2. Mrs...

- the appeared person 2. hereinafter also referred to as **„Buyer" / „Purchaser"**-.

Those present identified themselves by means of valid official photo identification. [4] If applicable (in the case of foreign participants): The appeared person ... assured that he was fluent in the German language, of which the notary was personally convinced by having a short conversation. [4a]

When questioned, the parties involved declared that neither the notary nor one of the lawyers working in his firm is or was active as a lawyer for one of the parties in the matter to be notarised. They further declared (each party involved for itself and for the party or parties represented by it, if applicable) that the parties involved and the beneficial owners were not politically exposed persons, their family members or persons known to be close to them within the meaning of Article 1 (12-14) of the Money Laundering Act (GwG) [5] and that the contracting parties were each acting for their own account.

All contracting parties declare that they do not conclude the purchase contract in the exercise of a commercial or independent professional activity, but as consumers within the meaning of § 13 BGB. [6]

The persons appearing - acting as stated above - requested the notarisation of a

Purchase Agreement

of the following content:

§ 1 Current situation[7]

(1) The Seller is the owner of the property entered in the land register of the local court of

...Folio...

registered property:

Serial no. ... - Plot ..., Parcel ..., Size: sqm,
Building and open space/traffic area ...[8]

The plot is developed with a single-family house.

The aforementioned property shall hereinafter be referred to only as the **„Property"** or **„object of purchase"**.

According to information provided by the parties, the object of purchase does not include any shares in private oads, etc. (which may still be to be sold), which have been entered on another land register Folio. [9]

(2) The land register is encumbered as follows:

Section II: [10]

Section III: [11]

The notary has inspected the electronic land register on ... and discussed the entries. *(currently being inspected before notarisation)*

§ 2 Sale

The Seller sells the object of purchase to the Buyer, in the case of several to each at identical shares. [12]

If applicable (only if the parties expressly wish to be recorded):
Included in the sale [13] *and included in the purchase price stated in § 3 are those movable objects which are listed in Annex 1 attached to this contract of sale, the notary read out* **Annex 1**, *those present referred to it and approved it.*

The parties also estimate the value of these objects vis-à-vis the real estate transfer tax office at € [14] .....

Any event of default relating to the purchase of the movable objects shall have no effect on the Purchase Agreement for the Property. [15] *The parties agree that ownership of these objects passes to the buyer upon payment of the purchase price owed.*

§ 3 Purchase price and due date for payment [16]

(1) The purchase price amounts to

€
(in words: Euro). [17]

(2) The notary shall notify the Buyer (with a copy to the Seller) in writing [18] as soon as the following conditions have been met:

a) The priority notice of conveyance [19] has been registered, with a rank not lower than the encumbrances mentioned in § 1 (2) as well as any other encumbrances in the creation of which the Buyer has participated.

b) The notary has been provided with all approvals and negative clearance certificates that may be required for the effectiveness and execution of this agreement, with the exception of the tax clearance certificate. [20]

c) The notary has been provided with all documents on the discharge of encumbrances which are registered in the land register with a higher rank, or with the same rank, as the priority notice, and which are not to be taken over by the Buyer. [21] Their use may only be dependent on payment requirements which are covered by purchase price.

(3) *The purchase price shall be due for payment after expiry of two weeks from the receipt by the Buyer of the above notification from the notary.* [22]
If applicable: *However, the purchase price shall not be due for payment prior to ...*[23] *Payments shall be made by bank transfer and in such a way that the purchase price is credited not later than on the due date, otherwise the Buyer shall be in default of payment.* [24]

The Buyer shall first pay the purchase price to redeem the encumbrances in favour of beneficiaries with real rights which are not taken over, at the requested sum, i.e. the Buyer shall not pay this part of the purchase price tot he Seller, but directly to the beneficiaries to be redeemed, in accordance with the written notification from the notary yet to be issued (which will contain both the sums tob e redeemed and the recipients` account data).[25] The notary and the Buyer shall not be obligated do verify whether the requested redemtion claims are correct. The remaining amount of the purchase price is to be transferred to the following account specified by the Seller:

Account holder:
IBAN: .....

> *Notarys note: Please inform us of the account holder and the account details before the date of notarisation! For money laundering reasons, only accounts with the Seller or a person appearing in the deed (or their spouse or relative in the first or second degree) - i.e. no third persons - as account holders are tob e specified. Foreign accounts outside the EU may only be specified if the Seller concerned has his domicile/habitual residence/registered office there. Please ask the notary in advance whether further exceptions are possible.*

The notary pointed out the prohibition of cash payments and that only a bank transfer of money of the purchase price has a fulfilment effect. [26]

§ 4 Submission to enforcement proceedings [27]

(1) The Buyer submits to the Seller‘s immediate enforcement of this deed on account of the obligation to pay the purchase price plus default interest in accordance with section 288 (1) of the German Civil Code (Bürgerliches Gesetzbuch - BGB) from the date of issue of the enforceable copy. *If applicable:* The Seller submits to immediate compulsory execution from this deed due to his obligation to vacate and procure possession of the object of purchase. [28]

(2) Upon application, an enforceable copy may be issued to the respective entitled person without further proof.

(3) Several parties who are obliged to make the same payment owe and are liable - also within the scope of the submission to enforcement - as joint and several debtors.

§ 5 Handover, development costs

(1) Possession [28], benefits [29], risks [30], charges [31] and duties of care and liability for the Property[32] shall pass to the Buyer from the calendar day following the crediting of the purchase price (also if weekend / public holiday), *if applicable:* at the earliest, however, from ...on (hereinafter „**transfer date**“). The Property shall be handed over to the Buyer free of any actual use or rights of use of the Seller or third parties [33]) and cleared of objects not sold with it. Within 2 weeks after the transfer date, the Seller shall hand over to the Buyer all documents in his possession relating to the Property [34]

(2) The Seller shall bear development contributions and other resident contributions for building work [35] insofar as such measures have been carried out to date or the Seller has received a cost notice for such contributions before the transfer date; otherwise these shall be borne by the Buyer.

§ 6 Defects in title and quality

(1) The Seller owes the transfer of ownership of he Property free of encumbrances, except in as far as the Buyer has cooperated in the creation of such encumbrances or if provided for otherwise in this contract, however, the Seller ist not obligated to transfer the Property free from any easements and obligations to build and maintain which are not registered in the land register.[36] The Seller guarantees though, that he is not aware of any such easements or obligations as well as of any unfulfilled official requirements. *The Buyer does not take over any encumbrances currently registered in the land register, with the exception of the encumbrances registered in Section II, no. .....* **The parties approve of, and apply fort he deletion of all encumbrances in the land register, including any future encumbrances which are not taken over by the Buyer.**

(2) The Buyer has inspected the object of purchase in detail and is buying it in its current age-related condition; all rights of the Buyer due to a material defect in the Property and any movable property sold with it are excluded (not, however, for such material defects that arise between notarisation and the transfer date, provided they are not based on normal wear and tear).[37] Descriptions of the Property in brokerage exposés do not constitute advertising by the seller and are not deemed to be agreed or owed and do not constitute a material defect.

(3) Exclusions or limitations of liability in this purchase contract do not apply to any quality agreements or guarantees/ warranties contained in this document and not in the case of culpable injury to life and limb and not otherwise in the case of gross negligence or intent by a contractual party, its legal representatives or vicarious agents. [38]

(4) The Seller warrants that insurance cover against fire, storm and mains water damage exists and is maintained until the transfer of ownership to the Buyer; copies of the policy(ies) are to be handed over to the Buyer without delay; as of

the day of handover, the Buyer shall bear the premiums and notify the insurance company of the transfer of risk to him without delay. Subject to the condition precedent of the day of handover, the Seller shall assign to the Buyer accepting this all possible claims against third parties (e.g. property insurers, contractors) to which the Seller is (or will be) entitled on account of defects or damage to the object of purchase, but not insofar as these occur between the conclusion of the purchase contract and the day of handover. [39]

§ 7 Priority notice of conveyance [40]

(1) The Seller hereby approves of the entry in the land register of a priority notice (subject to a resolutary condition) for the benefit oft he Buyer in the specified acquisition relationship. The resolutary condition is the receipt by the land registry of a deed from the notary in which the notary declares the occurrence of the resolutary condition.

The Buyer approves of the deletion upon registration of the change in title of the priority notice entered for his/her benefit, provided that no lower -ranking entries continue to exist in the registration of which she/he has not participated. [41]

(2) The notary shall be irrevocably requested by all parties to bring about the occurrence of the resolutary condition [42] pursuant to section (1) sentence 2 if the parties instruct the notary to do so in text form or if the Seller declares to him in writing that he has withdrawn due to non-payment of the purchase price and the Buyer does not prove to the notary within four weeks upon written request that the purchase price has been paid in full. If the Buyer proves to the notary that a part of the purchase price has been paid, the notary may only declare the occurrence of the resolutory condition concurrently against reimbursement of the amount already paid. The notary is not obliged to initiate the cancellation if the Buyer presents reasons according to which the reserved claim has not expired.

(3) The assignment of the claim to transfer of ownership of the Property is excluded. [43]

§ 8 Agreement on the transfer of ownership (conveyance [44]

The parties agree on the transfer of ownership in the specified acquisition relationship. However, they at this time do not approve and apply for the registration of the change of ownership in the land register. Rather, they irrevocably authorise the notary for this purpose and beyond their deaths and instruct him to initiate the transfer in accordance with this power of attorney by personal deed only when he has received proof of the purchase price credit and conclusive evidence of a non-cash purchase price payment within the meaning of § 16a GwG. For this purpose, (i) the Seller undertakes to immediately confirm the crediting of the purchase price in writing [44a] and (ii) the Buyer undertakes to immediately submit the bank statements or bank confirmations showing a non-cash purchase price payment in full [44b]. The power of attorney is unlimited in relation to third parties.

§ 9 Authorisation for Buyer to encumber the Property [45], Implementing authorisation

(1) The Seller is obligated to cooperate in the mortgaging of the Property even before the transfer of ownership. He therefore authorises the Buyer to encumber the Property in the rank prior to the priority notice in favour of the Buyer with liens and in-rem declarations of submission to enforcement proceedings (also pursuant to § 800 of the Civil Procedure Code - ZPO) in unlimited sums in favour of lenders subject to German financial services supervision as well as to make all declarations and approvals required for registration and submission to execution in rem, also with regard to rank, and also to make corresponding declarations of security/collateral purpose. The above powers of attorney shall only apply if the following agreed provisions are reproduced at least in essence in the document establishing the lien:

The lien (land charge) creditor may only realise or keep the lien as security/collateral in as far as he has actually made payments with redemption effect on the Buyer's purchase price debt; deviating security/collateral agreements shall only apply from the so-called „reference date", i.e. from complete fulfilment of the purchase price claim, in any case from the transfer of ownership. The Buyer shall indemnify the seller against all costs and other consequences relating to the creation of the lien. All ownership rights and restitution claims associated with these liens shall be transferred by the Seller to the Buyer with effect from the reference date.

The notary shall notify the lien creditor of the above restriction of the security/collateral purpose agreement and send him a copy of the purchase agreement.

> **Note to the Buyer:** If you have already received the documents (form) required for the notarial land charge notarisation from your financing bank at the notarisation date of the purchase contract and would like to save time by notarising the land charge directly after the protocollation of the purchase contract, please send them to us in advance of the desired notarisation date (do not only bring them to the notarisation date), as we have to process these documents before they can be used. Otherwise, the land charge can also be notarised by you at a later separate appointment without any problems and without additional costs.

(2) The parties irrevocably authorise the notary's employees (without creating any personal liability to them) Mrs ... and Mrs … : to make and receive all declarations (also declarations of conveyance) necessary or useful for the execution of this purchase agreement, including all declarations of rank, in particular to approve and apply for land register entries and deletions of all kinds. The authorised representatives are also authorised to make additions or amendments to this contract; internally, this must be agreed in advance between the authorised representatives and the parties.

(3) All of the above powers of attorney in § 9 are granted with exemption from the restrictions of § 181 BGB (insofar as

the acting parties can be exempted from them), beyond the death [46] of the issuing parties and with the right to grant sub-authorisations. They may only be exercised before the officiating notary, his representative or another notary of his firm, in particular Mrs. Notary Claudia Carl.

(4) The parties commission and authorise the notary to represent them without restriction in the land register proceedings and to obtain and receive (also in accordance with section 875 (2) of the Civil Code - BGB) the declarations, approvals and encumbrance release documents required for the effectiveness or for the execution of this deed as well as to make and withdraw all applications and declarations, also in part, which are expedient for the execution of this deed in the land register.

§ 10 Costs and taxes [47]

The Buyer shall bear the real estate transfer tax as well as the costs of the notarisation and its execution, however, the Seller shall bear the additional costs arising due to the cancellation of encumbrances not taken over (above all, any trustee and execution fees of the notary triggered thereby, cancellation costs of the land registry). The costs of any required confirmation of power of attorney or declaration of approval shall be borne by the respective represented party itself.

§ 11 Notes

The notary also explained in particular:

• the statutory rights of first refusal and the approvals and negative clearance certificates to be obtained in respect of this contract; [48]

• that the transfer of ownership to the Buyer requires, among other things, the existence of the tax clearance certificate, which the tax office sends directly to the notary after payment of the real property transfer tax; [49]

• the legally mandatory joint and several liability of all parties for costs of this contract and its execution [50] as well as the liability of the respective owner for any outstanding public charges;

• the nature of the register obligations to build and maintain, which he has not reviewed; [51]

• that the parties should point out to the notary (on the basis of special regulations that may then be mandatory) in good before notarisation if the purchased building/apartment was newly built or comprehensively (comparable to a new building) extended or (core) renovated less than five years ago; the parties declare that this is not the case here; [52]

• that all agreements must be correctly and completely notarised, otherwise the whole contract may be null and void; [53]

• that he has not given tax advice and generally advises the use of a tax advisor before notarisation [54]

§ 12 Final provisions

(1) In the event that a statutory right of first refusal is validly exercised, both parties shall be entitled to withdraw from the contract; claims for damages shall be mutually excluded in this respect. [55]

According to the Seller‘s assurance, there are no surface waters on the object of purchase and there are no fishing rights that could be (co-)sold; the notary informed that a declaration of waiver of pre-emption rights according to state fishing laws therefore did not have to be obtained here.

(2) Should individual provisions of this deed be invalid, the remaining provisions shall remain valid. [56]

(3) Amendments, supplements and the cancellation of this contract must be made in writing in order to be effective, unless this purchase contract expressly permits text form or unless they are required to be notarised by law. [57]

(4) The parties agree to e-mail communication by the notary within the scope of the execution of the contract together with the sending of the copy of the purchase contract in digital form.

The above transaction together with any handwritten amendments by the notary to the original, were read out to the persons appearing by the notary, approved by the persons appearing and signed by their own hands and by the notary as follows: ...

Notary`s note: *The purchase contract is regularly binding and irrevocable after completion of the notarisation by signature, if no rights of withdrawal have been agreed.* [58]

Part II.
(Supplementary information on real estate purchase contracts for condominium or part ownership)

If condominium ownership is to be sold, then our explanations in this **Part II**. apply in addition to **Part I**. For the sake of simplicity, we will speak overall only of „condominium ownership" („Wohnungseigentum") or „condominium"; the same rules also apply to so-called part ownership – „Teileigentum" (for this term see explanation [59]

Our notarial model contract of purchase for the sale of condominiums differs essentially only in §§ 1, 4 and 5 from the model purchase contract fort the sale of a single-family house (Part I.). These deviating §§ 1, 4 and 5 are printed below and (only in the places deviating from Part I.) provided with supplementary explanations. **Therefore, also in the case of the sale of condominiums, first/additionally read our explanations on the model purchase contract for the sale of a single-family house in Part I., namely also on §§ 1, 4 and 5 there.**

Excerpts from our notarial
Model contract of purchase for the sale of condominium ownership (§§ 1, 4 u. 5):
…

§ 1 Current situation

(1) The Seller is the owner of the residential property entered in the land register of the local court ... of

... Folio no. ... [60]

registered … /**10,000th of a co-ownership share**
(„Miteigentumsanteil")

on the property

Serial. No. 1 -plot ..., land parcel ..., size: ... sqm,
Building and open space
...

combined with the **sole ownership** („Sondereigentum") of **condominium/apartment no.** … [61]

If applicable:
combinded with condominium no. … are the **special rights of use („Sondernutzungsrecht")** *to cellar room no. … as well as to parking space no. … and garden no. ...* [62]

The aforementioned co-ownership share together with all rights associated therewith shall hereinafter only be referred to as the **„object of purchase"** or **„Property"**.

(2) The land register is encumbered as follows:

Section II: …

Section III: …

The notary has inspected the electronic land register at ..... and discussed the entries. *(currently being viewed before notarisation)*

Property administrator consent is/is not required. [63] The administrator (shall receive a copy of the purchase contract from the notary) is currently the company: ... , address: ....

According to the parties, the object of purchase does not include any real estate registered on another land register Folio that may also be sold (e.g. shares in private roads, parking spaces, etc.).

§§ 2-3 (see Part I.: Model purchase contract fort the sale of a single-family house)

§ 4 Submission to enforcement proceedings

(1) The Buyer submits to immediate enforcement of this deed against the Seller on account of its obligation to pay the purchase price plus default interest pursuant to section 288 (1) of the German Civil Code (Bürgerliches Gesetzbuch - BGB) therefrom from the date of issue of the enforceable copy, and on account of its obligation to pay the housing allowance (house money) up to the amount of 18 times the current monthly housing allowance of € .... against the condominium owners' association to the immediate enforcement of this deed. [64] *If applicable: The Seller submits to immediate compulsory execution from this deed due to his obligation to vacate and procure possession of the object of purchase.*

(2) Upon application, enforceable copies may be issued to the respective beneficiary without further proof.

(3) Several parties who are obliged to perform the same service owe and are liable - also within the scope of the submission to enforcement - as joint and several debtors.

§ 5 Handover, development costs

(1) Possession, benefits, risks, charges and duties of care and liability for the Property shall pass to the Buyer on the calendar day following the crediting of the purchase price (also if weekend / public holiday) (hereinafter referred to as **„transfer date"**). The Property shall be handed over to the Buyer free of any actual use and rights of use of the Seller or third parties and cleared of objects not sold with it. The Seller shall be obliged to maintain proper management until then. The Seller assures that there is no right of first refusal of a tenant (§ 577 BGB) because the object of purchase is not rented.

(2) The Buyer shall enter into all rights and obligations associated with the Property with effect from the transfer date, in particular the declaration of apportionment and community regulations, the binding resolutions and the property administrator's agreement. [65] He undertakes to impose the obligations assumed by him pursuant to the preceding sentence, together with the obligation to submit to compulsory enforcement vis-à-vis the condominium owners' association on account of the then current housing allowance amount for 18 months, on his purchaser in the event of a resale of the object of purchase and to oblige the purchaser in turn to impose them on further future purchasers with an obligation to pass them on. [66] The Seller warrants that no payment to the community of owners and the administrator will be open fort he period up until the transfer date.

After preparation of the annual housing allowance statement by the administrator for the financial year of the transfer date, the Seller and the Buyer shall be obliged to settle any subsequent payments / refunds relating to this financial year among themselves proportionately in accordance with the ratio of their periods of possession in the corresponding financial year if they cannot be clearly allocated. However, insofar as consumption costs are determined by measurement and allocated accordingly, they shall be borne by the Seller until the transfer date, thereafter by the buyer. Reimbursements concerning business years prior to the transfer date are in the internal relationship solely due to the Seller, who also has to make any subsequent payments concerning such business years. [67]

The Seller warrants that there are no unpaid special contributions („Sonderumlagen") decided upon in relation to the object of purchase. Future extra contributions shall be borne by the Seller insofar as they are due before the transfer date, otherwise they shall be borne by the Buyer. [68]

The Seller authorises the Buyer with effect from the transfer date to exercise the rights of a special owner of the object of purchase (especially voting rights in owners' meetings). [69]

Where appropriate: (the inclusion of such a regulation is, however, not helpful anymore (redundant) since 16.09.2020):

The maintenance reserve („Instandhaltungsrücklage") attributable to the object of purchase amounts to € ..... according to the information provided by the Seller/annual statement at ... [70]

(3) The Seller shall bear development contributions and other resident contributions for building work insofar as such measures have been carried out to date or the Seller has received a cost notice for such contributions before the transfer date; otherwise these shall be borne by the Buyer.

§§ 6-12 (see Part I.: Model purchase contract fort the sale of a single-family house)

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[1] Use of this model sales contract

Our Model Real Estate Purchase Contract represents a simple standard case. The following explanations of the Purchase Contract are intended to make the „legalese" (legal language) of a real estate purchase contract more understandable for you. Our explanations offer a **rough orientation for the standard case,** they are not conclusive or complete legal information. The explanations do not replace your personal questions to the notary, which you can also ask during the notarisation hearing. In addition, or in a different (shorter) form of presentation, you will find explanations in our **Leaflet-for-buyers** and **Leaflet-for-sellers**, which are available and can be downloaded as a PDF on our homepage at www.**cht-legal.com**.

[2] Formation of purchase contract via so-called direct payment or via notary's escrow account?

Nowadays, payment of the purchase price to a so-called notary's escrow account is no longer regularly agreed and, as a rule, this would also no longer be legally permissible, even if all parties wished to do so. Instead, almost every notarial real estate purchase contract provides - in accordance with the legal requirements - for the buyer to transfer the purchase price directly to the seller himself or to any creditors/ banks of the seller to be redeemed (so-called **direct payment)**. Direct payment is regularly just as secure as via a notary's escrow account, because a direct payment will be initiated only after written „release" and instructions from the notary. This also saves the parties the notary's additional fee (custody fee) that would otherwise be incurred. The use of notary escrow accounts is nowadays regarded by the legislator as a „gateway" for money laundering to be prevented. Many years ago, however, the use of notary escrow accounts was still widespread in notarial practice.

In-depth knowledge:

Formation of the purchase contract via so-called direct payment or via notary's escrow account?

According to the law (§ 57 BeurkG), the notary is now generally no longer permitted to set up a notary escrow account. This applies even in the case of an emphatically consensual wish of the contracting parties. Courts rule that the notary must „reject" the parties' wish.

In particular, the mere existence of the following circumstances does not, as a rule, permit the establishment of a notary escrow account: The mere residence of a party abroad; the necessity to discharge many different land charges of the seller; the desire of the parties for a notary escrow account out of convenience or out of the mistaken belief that a notary escrow account is „safer".

The main application of a recognised legitimate interest for setting up a notary escrow account is the buyer's wish to move into the property himself within a very short time (e.g. two weeks after notarisation). Experience shows that a direct payment (secured for the buyer) would not be possible within such a short time (e.g. the land registry office will not enter a so-called priority notice in the land register protecting the buyer so quickly; see explanation [19]. However, a seller is not willing to hand over the property before payment of the purchase price and thus without setting up a notary's escrow account it would not be possible for the buyer to move into the property quickly. The notary's escrow account can help here if the seller is ready to hand over the property after merely depositing („interim parking") the purchase price in a notary's escrow account. However, the seller does not receive the purchase price any earlier than he would receive it from the buyer himself in the case of a direct payment.

Why is a notary escrow account generally not safer than a direct payment?

The use of a notary's escrow account means that the buyer transfers the purchase price to a trust account (notary's escrow account, account holder is the notary) at the time agreed in the purchase contract. The later payment from the notary's escrow account to the seller or to the seller's banks, if applicable, is then arranged by the notary. However, this only takes place after the so-called pay-out/payment prerequisites have occurred. These (payment) preconditions are identical to those that must always be waited for in the case of a so-called direct payment by the buyer before transferring the purchase price to the seller. In both cases (payment from the notary's escrow account by the notary or direct payment by the buyer to the seller) it is equally the notary (and not the buyer) who assumes the responsibility for a secured payment. Finally, in the case of the so-called direct payment, the buyer only initiates a transfer of the purchase price when the notary has first responsibly checked the occurrence of all (payment) preconditions and has certified this to the buyer in writing by means of the so-called notarial due date notification („notarielle Fälligkeitsmitteilung") in accordance with § 3 (2) (explanation [22]). Since, therefore, the „giving away" of the purchase price to the seller - with or without a notary's escrow account - depends on the same preconditions and the same time must be waited for this and since - with or without a notary's escrow account - it is the notary (and not the buyer) who is responsible/liable for checking/certifying the occurrence of these preconditions:

A notary's escrow account is regularly no more secure than a direct payment, but only leads to a generally unnecessary „interim parking" of the purchase price in a notary's account and additional notary's costs (custody fees) as well as bank charges and possibly negative interest on the part of the bank. The notary's escrow account can only offer „more" security in certain exceptional cases, e.g. if a compulsory auction of the property to be sold has already been scheduled or if the sale is carried out by an executor of a will, etc.

Why does the seller receive the purchase price just as late as in the case of a direct payment, even when using a notary's escrow account?

Earlier pay-outs/payments to the seller (without waiting for the occurrence of the payment prerequisites) - be it by the notary when using a notary's escrow account or be it by the buyer himself in case of a so-called direct payment - would

be a high risk for the buyer (so-called unsecured advance payment („ungesicherte Vorleistung"). The enforceability of an acquisition of ownership of the property by the buyer (with the agreed freedom from encumbrances in the land register) would then not yet be guaranteed with the transfer of the purchase price.

What are the disadvantages of a direct payment?

The disadvantage of direct payment for the buyer may be a certain „inconvenience" that he may have to transfer different parts of the purchase price to different accounts (to be shared by the notary), - whereas with a notary's escrow account he can be content with a single transfer of the entire purchase price to the notary's escrow account. Also, in the case of a direct payment, the earliest possible transfer date of the property cannot be predicted with legal certainty. In the case of a so-called direct payment, the transfer of the property to the buyer always takes place after the purchase price has been credited to the seller (and not already with the „interim parking" of the money on a notary's escrow account). However, how quickly the notary can make the purchase price due for (secure) payment to the seller (i.e. how quickly the payment prerequisites occur) is primarily not within the notary's sphere of influence and can only be roughly and non-bindingly „estimated" in individual cases on the basis of empirical values (explanation [22]).

[3] Particularities if a party cannot appear in person at the notarisation appointment

Ideally, all sellers and all buyers should appear in person at the notary's office for notarisation of the purchase contract. However, this is unfortunately not always possible, e.g. if the residence of one party is locally distant.

Then there are various ways in which a party can be represented by another person. A trusted person should be chosen as the representative. In particular, there are the following possibilities for representation:

In-depth knowledge:

How can a contracting party who is not present at the notarisation be represented?

Option 1: **Representation on the basis of an existing notarial power of attorney deed**

If a certified/notarised power of attorney exists, please send us a copy in advance, e.g. by e-mail, so that we can check whether it is sufficient. It is then mandatory to bring the original (if the notary/public authority has only **certified** („unterschriftsbeglaubigt") the signature of the principal - „**certified power of attorney**" – „unterschriftsbeglaubigte Vollmacht") or a so-called authorised notarial „copy" (in the meaning of the german word „Ausfertigung", not only in the meaning of „beglaubigte Kopie") (if the notary has read the power of attorney document to the principal, i.e. it has been „**protocolled**" - „**protocolled power of attorney**") to the notarisation appointment.

The authorised **notarial copy** (in the german meaning of „Ausfertigung") of a notarised power of attorney is only suitable if it bears a so-called execution note specifically addressed to the desired representative: „This copy is issued to Mr. ...., signature and seal of the notary of the power of attorney document".

Option 2: **representation without power of attorney**

If there is no sufficient notarial power of attorney, it is possible to have another person act on one's behalf without a power of attorney („**vollmachtlose Vertretung**"). After notarisation of the purchase contract, the party represented without power of attorney must additionally approve the purchase contract before a notary public in order to make the purchase contract effective. We send the draft for such a post-approval after the purchase contract has been notarised and the represented party then goes with this draft to any notary and signs the approval before him. This notary sends us back the declaration of approval certified by his signature and thus the contract of sale is now effectively post-approved. The represented party does not have to be able to speak German for the post-approval, because it is a mere „signature certification". If the subsequent approval is only possible abroad, we will inform you on request how to proceed. As long as we have not received the subsequent approval, the purchase contract is (pending) invalid.

A similar procedure must be carried out if the representative represents the represented party at notarisation on the basis of an alleged verbally granted power of attorney („**mündlich versicherte Vollmacht**"). In this case, however, the representative is liable to the contracting party for the fact that the power of attorney was actually granted orally. In this case, not the validity of the contract, but only its execution in the land register, depends on the subsequent submission of the power of attorney confirmation/re-approval certified by a notary.

Particularities, if exceptionally a so-called **consumer contract („Verbrauchervertrag")** should exist (these particularities then apply to all types of representation):If a natural person (consumer, § 13 BGB) wants to be represented by someone else and if on the other side of the purchase contract a **GmbH (Limited liability company), GmbH & Co. KG, KG, OHG or similar** (entrepreneur, § 14 BGB) is opposed to the consumer on the other side of the purchase contract, then this is referred to as a so-called consumer contract; in such a case, the consumer may at most be represented by so-called genuine persons of trust (relatives, close friends, lawyer, tax advisor; **not:** estate agents, the other party to the purchase contract, notary's clerks etc.). Most of the parties involved are aware of the further special complication of so-called consumer contracts: For the protection of the consumer, notarisations may then only take place after the consumer has received the draft of the purchase contract from the notary more than 2 weeks ago (2-week „waiting period", § 17 Paragraph 2a BeurkG).

[4] What documents do you need to bring to the notarisation?

Valid photo ID in the original
Please bring your valid passport to the notarisation. A valid identity card is sufficient instead for all EU citizens, citizens of Switzerland and citizens of the European Economic Area (Norway, Iceland, Liechtenstein). Mere copies or documents

such as driving licences are not sufficient.

Tax identification numbers of seller and buyer („steuerliche Identifikationsnummer")
In addition, please inform us of your German tax identification number (consisting of 11 digits) - preferably by e-mail - ideally before the notarisation date (you will find this, for example, on the annual tax certificate from your tax office). Please do not confuse this with your income tax number. If you forget to give us the number before or at the time of notarisation, you can give it to us later. Until then, however, the notary is prohibited from providing any party with certified copies of the purchase contract.

In-depth knowledge:

Tax identification number („steuerliche Identifikationsnummer")/ business identification number („Wirtschaftsidentifikationsnummer")

The identification number of companies is called a „business identification number". If such a number has not yet been assigned to your company by the tax office, we require your written declaration to this effect (so-called negative declaration).

If you do not have a German tax identification number, please inform us of your foreign tax identification number and write to us truthfully by e-mail that you do not have a German tax identification number. A German tax ID is only not issued to those who (i) neither have their actual residence (ii) nor their habitual residence (iii) nor are registered in Germany with their main residence/sole residence according to the population register (iv) nor are liable to pay tax in Germany in any way.

[4a] Required German language skills

All persons appearing at the notarisation must be fluent in German. According to case law, each party must be able to express his or her thoughts „clearly and distinctly" in German. Since the deed may otherwise be invalid, the notary must make sure of this before notarisation if there are signs of a foreign reference (e.g. a foreign passport). Please inform us in **advance of a notarisation** if a party does not have sufficient German language skills.

If a representative appointed by a party to the purchase contract (authorised/powerless) appears instead of the party to the purchase contract, only the language skills of this representative are relevant.

Example of insufficient German language skills:
Only the wife of two buying spouses speaks fluent German. However, she explains to the notary that her husband understands everything because she translated and explained everything to him before the notarisation. She will also answer his questions during the notarisation and translate for him if necessary. And... her husband also understands „some" German.

What is the procedure if a party does not speak German fluently?

In-depth knowledge:

What is the procedure if a party is not proficient in German?

Notary himself translates into English
If the party involved is sufficiently proficient in English, we can prepare or execute the notarisation in two languages, German and English, if desired. The notary will then translate the deed himself orally at the notarisation meeting. To assist the notary with the translation, we prepare a non-binding (not completely accurate) translation into English in advance, which we send to you in advance for your guidance. Such an assignment will incur additional notarial costs as stipulated by law, which are higher the higher the purchase price. Please feel free to ask us about these if required.

The party involved organises an interpreter
Alternatively, the party not sufficiently proficient in German can organise and commission an interpreter himself/herself and at his/her own expense and bring him/her to the notarisation meeting. The notary's office itself does not organise and commission interpreters. The interpreter must be a **state-certified interpreter** who must translate the entire text (word by word) of the deed orally during the notarisation. It is not relevant whether the interpreter additionally prepares a written translation text for the party involved.

[5] Money laundering obligations

What many people might not know: for some time now, every notary is legally obliged, similar to banks, to classify every real estate purchase contract into money laundering risk classes and to „report" certain purchase contracts to the so-called Financial Intelligence Unit (FIU), without being allowed to inform the parties involved. For an obligation of he notary to report it is sufficient, for example, if a party resides in a certain (money laundering risk) country. In cases of higher money laundering risk, the notary is obliged to collect information on the source of funds/income etc. from all parties involved (seller and buyer) by questionnaire and to clarify this further if necessary. These are obligations of all parties involved and of the notary. The notary himself is liable to a fine if he does not collect this information from you in the specified cases and does not document this properly in his files. Therefore, please understand if notaries should ask you these questions. If you are interested, you can read the details in the so-called GwGMeldV-Immobilien and in the GwG (Geldwäschegesetz - Money Laundering Act) - both of which are available on the internet.
Since 1st April 2023, the parties must immediately prove to the notary under the MLA (money launderinf act, „GwG") that the purchase price was paid „non-cash", otherwise this may lead, among other things, to a „secret" suspicion of money laundering by the notary to the competent anti-money laundering office FIU (cf. explanation **[44b]**)

[6] Are the parties acting as consumers or as entrepreneurs?

As a rule, natural persons always act as „consumers" („Verbraucher") within the meaning of § 13 BGB when concluding a purchase contract. The same regularly applies to civil law partnerships (GbR), unless the group of partners also consists of a company (e.g. a GmbH). On the other hand, legal persons and trading companies (GmbH, OHG, KG, GmbH & Co. KG etc.) always act as „entrepreneurs" (§ 14 BGB – „Unternehmer"). Why is this distinction important?

In-depth knowledge:

so-called consumer contract („Verbrauchervertrag")

If an entrepreneur (e.g. as a buyer) faces a consumer (e.g. as a seller), then a so-called **consumer contract** („Verbrauchervertrag") exists and then

- notarisation may only take place if the consumer has received the draft contract directly from the notary's office more than 2 weeks ago (so-called waiting period, § 17 (2a) BeurkG);

- the consumer must be personally present at the notarisation or may at most be represented by genuinely trusted persons (relatives, good friends, lawyers, tax advisors; but not: estate agents, notary clerks, etc.) (§ 17 Para. 2a BeurkG);

- the contents of the purchase contract are, according to the law (§ 310 BGB), generally considered to be general terms and conditions of business („allgemeine Geschäftsbedingungen") provided by the entrepreneur and are thus subject to the supplementary effectiveness barriers of §§ 307-309 BGB to the detriment of the entrepreneur.

[7] Current situation: in § 1, the land register data on the property, including land register encumbrances, are reproduced.

... as they are entered in the land register, i.e. it is more or less a copy from the land register. The notary will have taken a current look at the electronically kept land register at the time of notarisation.

[8] Type of use

The „type of use" („Nutzungsart") of the property stated in the land register is generally not of decisive importance.

In-depth knowledge:

Type of use (§ 1)

The type of use indicated in the land register (e.g. building and open space, garden land, recreational area, arable land) is often not kept up to date and is therefore often of no significance. It is not uncommon, for example, for building land to be listed in the land register as garden land or arable land. In this respect, it is not the entry in the land register but rather the development plan or the information provided by the building authority that is decisive for the question of whether land can be built on.

„Traffic area" means that the plot of land has been dedicated in whole/part to the public as a traffic area (e.g. road, pavement) (i.e. the state has the right of access to this area similar to an owner and is responsible for it); it is quite normal that, for example, in the case of a building plot, a partial area is dedicated as a traffic area (this is usually a public area located outside the fenced plot of land, such as a pavement, etc.).

[9] Is the property (exceptionally) only accessible via a private road?

Some properties are only accessible via privately owned paths or roads. As a rule, these are co-owned by all owners of adjoining properties, who can only gain access to their property via this path. Each adjoining owner is then only co-owner of a certain fraction (e.g. 3/100ths) of such common areas. The sentence in the model purchase contract is merely intended to prevent the contracting parties from forgetting to transfer such fractional ownership of private paths to the buyer as well. Without reference by the parties, the notary cannot know about the existence of such a private path if the path is not recorded in the land register of the actual purchase property (but in another land register).

[10] Encumbrances in Section II of the land register

In section II of the land register all possible encumbrances are entered, with the exception of mortgages (mortgages, land charges and annuity debts), the latter are entered in section III.

In-depth knowledge:

Encumbrances in Section II of the land register (§ 1 (2))

Many encumbrances entered in Section II of the land register are encumbrances that are to be taken over by a buyer, i.e. they are not deleted (e.g. rights of way that allow the owner of a property in the rear to cross the purchase property or easements for energy supply companies that allow them to lay supply lines). Sometimes there are entries in Section II that are more than 100 years old, which are often outdated in terms of content, but nevertheless cannot be deleted and must be taken over by the buyer.

However, certain other encumbrances registered in section II are usually to be deleted by the seller in the course of the execution of the purchase contract (e.g. registered residential rights, usufructuary rights or priority notices).

In § 6 (1) - legal and material defects - **all possible encumbrances in section II or III of the land register are explicitly listed, which are to be taken over by a buyer**; all encumbrances not mentioned there are to be brought to cancellation by the seller - with the help of the notary.

[11] Encumbrances in section III of the land register

Only mortgages (mortgages, land charges and annuity debts) are entered in section III of the land register. All other encumbrances in the land register are entered in section II. How ist he procedure if mortgages from the seller‘s banks are still entered in section III of the land register?

In-depth knowledge:

Encumbrances in Section III of the land register (§ 1 (2))

Why are the seller‘s mortgages still registered at the time of sale?

In most cases, when a property is sold, mortgages are still registered in section III if the seller had taken out a loan himself to finance his purchase at the time. Banks have financing loans secured by such mortgages. The land register does not show the current amount of the seller‘s loan, because only the original loan amount is registered - even if the loan has been almost completely repaid in the meantime.

How is it ensured that the buyer does not take over these mortgages of the seller, i.e. that they are deleted?

Encumbrances in section III of the land register are regularly not taken over by the buyer, but deleted within the scope of the execution of the purchase contract. The notary takes care of this (§ 3 (3)) by requesting the seller‘s bank to send the necessary deletion authorisation to his attention after notarisation of the purchase contract. The bank registered in section III (so-called **land charge creditor** – „Grundschuldgläubigerin“) then sends the deletion authorisation to the notary with notification of the concrete payment amount (redemption amount – „Ablösebetrag“) which it can still claim from the seller for the purpose of settling the loan. This redemption amount is usually made up of the seller‘s outstanding loan debt plus a so-called early repayment fee („Vorfälligkeitsentschädigung“) to be borne by the seller. The bank then allows the notary to submit its deletion authorisation to the land registry for deletion, but only as soon as it has received from the buyer its so-called redemption amount from the purchase price to the account named by it.

Within the scope of his notification to the buyer of the occurrence of the purchase price due date conditions (cf. § 3 (2)) - so-called **notarial due date notification** („notarielle Fälligkeitsmitteilung“) - the notary also informs the buyer of which part of the purchase price (redemption amount) the buyer must pay to the seller‘s bank (together with account details) and which part of the purchase price he must pay to the seller himself.

The seller‘s still existing loan is thus repaid by the buyer from parts of the purchase price (according to precise instructions from the notary, who informs the buyer of the account data and amounts). In this way, the buyer can be sure that the notary can have the lien on the property that is still registered deleted from the land register after payment of the purchase price. The notary may only make the purchase price due for payment to the buyer if the amount of the agreed purchase price is sufficient to fully offset the redemption amount notified by the seller‘s bank. In order to ensure the execution of the purchase agreement also for the buyer, the buyer and the notary may consider the redemption amount notified by the seller‘s bank as binding and fixed. It is up to and at the risk of the seller to subsequently assert claims against his bank, if necessary, if the redemption amount demanded by his bank appears to him to be too high.

The seller is legally responsible to the buyer for ensuring that his bank forwards the deletion documents to the notary public within a reasonable period of time after the notary public has requested them.

[12] Buyer majority

If several persons are acting as buyers, they can specify here the percentage shares (fractions) („Bruchteile“) in which they would like to acquire the property, whereby an acquisition at identical shares is usually desired, i.e. in the case of two buyers in 1/2 each. Please let us know if the buyers wish to purchase at different shares (e.g. buyer 1 at 3/10 and buyer 2 at 7/10 etc.).

In the case of a majority of buyers, acquisition by fractional shares is almost always the chosen and simplest form of acquisition. Other forms of acquisition (e.g. acquisition in the form of a new or existing limited liability company or acquisition in the form of a new or existing civil law partnership) are of course possible, but should only be chosen after consultation with the respective tax advisor. If desired, supplementary provisions can be included in the purchase agreement in the event of acquisition by several purchasers in fractional shares.

In-depth knowledge:

Acquisition by several purchasers in fractions („Bruchteile“) (§ 2)

The co-ownership share (fractions) in the property purchased by each of you as purchasers (usually in the case of two purchasers - e.g. married couples - each purchases ½ of the co-ownership share in the property) constitutes an independent property in the land register. **Each of you can therefore sell or encumber his or her co-ownership share to a third party in the future, even against the will of the other.** You also have **no mutual rights of first refusal to** it. According to the law, each of them (after their death also each of their heirs) may at any time and without cause demand the dissolution of their co-ownership community in the property by way of a so-called partition auction („Teilungsversteigerung“), which results in the entire property being auctioned off.

In practice, however, buyers usually leave it at these legal regulations, whether for reasons of cost or ignorance of the legal situation. However, if you wish to change this legal situation, there is a possibility to do so. For this purpose, at your request, a mutual right of first refusal can be stipulated in the notarial purchase contract and it can also be stipulated that the partition auction of the entire property, which is otherwise possible at any time without reason, is permanently excluded. Then the partition auction can only be demanded for so-called important reasons, e.g. if the other purchaser becomes insolvent or third party foreclosure measures take place with regard to the co-ownership shares. Please inform us in advance of the notarisation if you would like such provisions to be included in the purchase contract.

The appointment of the right of first refusal together with the agreed exclusion of the possibility of a partition auction at any time i**ncrease the business value of the deed** (and thus the **notarial fees)** by approx. 60 % (with two purchasers) compared to the pure sale. The land register fees then increase by at least approx. 2/3.

[13] What is actually included in the sale of the property?

Also sold together with the property, even without separate mention, are all the buildings standing on it as well as the items permanently attached to the building or the property (e.g. central heating system, awnings, floor coverings, flowers/shrubs/trees planted in the property, fencing, sanitary facilities, carport, blinds, cooker, generally also fitted kitchen, built-in cupboards, spotlights, lighting attached to the ceiling/wall) and the statutory accessories pursuant to § 98 BGB (e.g. existing oil stocks for heating). A vendor may therefore not remove the aforementioned items after notarisation of the purchase contract, i.e. dismantle sinks, dig up plants, etc.

Other objects are not included in the sale unless a co-sale is expressly agreed in the contract of sale (this applies, for example, to garden furniture, garden equipment, sandpit, swing, lamps that serve more as furnishings, furniture, curtains, washing machine, dishwasher, etc.). If you would like to sell such movable objects, **please send us a list of the objects in advance of the notarisation**, which can then be taken as an attachment to the purchase contract.

In-depth knowledge:

Co-sale of movable property (§ 2)

What is the advantage or disadvantage of expressly stating in the purchase contract the co-sale of movable objects and further stating which part of the purchase price is attributable to these co-sold movable objects named in the purchase contract?

Advantage: The tax office does not charge real estate transfer tax on this partial amount of the total purchase price; the buyer can therefore possibly save money in this way. Please note that the value of the movable property sold with the property must then be stated in the purchase contract by all parties for the purpose of forwarding it to the tax office. In your own interest (avoiding involvement in tax fraud!), only state realistic market values that take into account the age and condition of the items.

Example: In the purchase contract it is agreed that of the total purchase price (€ 500,000.00) € 20,000.00 are allotted to the sold refrigerator, the leather sofa and the Sony television. Then the buyer saves the payment of the real estate transfer tax on these € 20,000.00, i.e. € 1,200.00 for a property located in Berlin (the real estate transfer tax in Berlin is - as of 01.01.2022 - 6%) or € 1,300.00 for a property located in Brandenburg (the real estate transfer tax in Brandenburg is - as of 01.01.2022 - 6.5%).

Disadvantage: Movable property does not usually constitute valuable collateral (security) for banks, so this can worsen the so-called mortgage lending value of the purchase property (with the consequence of less favourable loan conditions or rejection of the financing). Without prior consultation with the financing bank, the buyer should not agree on the co-sale of movable property **or at least not indicate a separate purchase price for movable property in the purchase contract.**

Am I allowed to conceal from the notary that certain movable objects (which are not automatically considered to be included in the sale anyway, see above) are to be included in the sale? Can‘t the seller and buyer simply conclude a contract of sale for movable property themselves without a notary - in private writing - in addition to the notarial real estate purchase contract?

You must avoid this at all costs in your own interest. This applies at least to the extent that you and the other party are already in agreement when the purchase contract is notarised as to what else is to be sold and at what purchase price and if, in addition, the conclusion of the real estate purchase contract is dependent on the co-sale of the movable objects from the point of view of at least one party. Otherwise, such non-notarised ancillary agreements lead to the ineffectiveness of the real estate purchase contract! This can also mean the participation of all parties in a criminal loan fraud of the financing bank of the buyer, as the bank is thereby deceived about the mortgage lending value or more favourable loan conditions are thereby obtained.

[14] What part of the purchase price is attributable to the movables sold along with the goods?

Even though the tax offices usually do not make any objections, if the purchase price portion shown on the movable objects does not exceed 10 % of the total purchase price: No value may be used here that is higher than an approximate realistic market value of the used objects also sold. It is true that some parties are tempted to use a particularly high value here in order to save as much land transfer tax as possible (there is no land transfer tax on the movable property). But be careful: Please note that the value of the movable property sold with the purchase must then be stated by all parties in the purchase contract for the purpose of forwarding it to the tax office. In your own interest (avoiding involvement in tax fraud!), only state realistic market values that take into account the age and condition of the items.

[15] Contractual disturbances relating to the co-sale of movable property

This merely means that the sale of the real estate will continue even if, contrary to expectations, disputes between the parties subsequently arise only with regard to the movable objects sold along with the real estate.

[16] Purchase price and due date for payment

§ 3 primarily regulates that the purchase price is only to be paid by the buyer after the notary has certified that the prerequisites for a „secure payment" have been met. This will usually be the case approx. 5-10 weeks (property located in Berlin) or approx. 7-12 weeks (property located in Potsdam/Leipzig) after notarisation; the notary generally has no decisive influence on the duration.

[17] Purchase price

The determination of the purchase price is the sole responsibility of the parties. The notary does not check the appropriateness of the purchase price and the profitability of the transaction.

Only in the case of the purchase of **rented** real estate / **listed** real estate („Denkmalschutz") it might perhaps make sense in individual cases, for purely tax reasons, to split the purchase price in the purchase contract between the land and building portions.

In-depth knowledge :

Tax depreciation of the purchase price as so-called acquisition costs (§ 3 (1))

As the buyer, do I still have to/should I divide the purchase price in the purchase contract into a part that goes to the building and another part that goes to the land/property share?

As a rule, it is not necessary to break down the purchase price into the land and building portions in the purchase contract. As a rule, this may make sense in individual cases due to tax depreciation options (AfA - so-called depreciation for wear and tear in accordance with Section 7 (4) - (5a) EstG), at most in the case of the purchase of **rented** property or in special constellations (e.g. purchase of a listed property with the possibility of claiming so-called monument depreciation for tax purposes). The notary does not provide tax advice.

In the case of real estate purchases by private individuals for their own use, there is usually no possibility of claiming the acquisition costs of a property for tax purposes via the so-called AfA depreciation. An exception may be, for example, the purchase of a listed property (special depreciation). When buying rented real estate, on the other hand, the buyer can generally deduct the acquisition costs (but only insofar as they do not apply to the purchased property/property share, but only to the building/flat) - spread over a very long period of time. When buying a condominium, a share in the land of the property is always purchased at the same time.

Depreciation does not fail because no breakdown of the purchase price into the land and building portion is made in the purchase contract. This is because the tax office will then always automatically carry out a breakdown itself, in accordance with an Excel tool published by the Federal Ministry of Finance (see the website of the Federal Ministry of Finance – „Bundesfinanzministerium"). Only if you are afraid that the tax office might otherwise carry out the breakdown to your disadvantage (i.e. the purchase price share attributable to the land - which is not depreciable - is set too high), you can, as a precaution, have the purchase contract state which share of the purchase price is to be allocated to the land and which share of the purchase price is to be allocated to the building/apartment. The notary does not carry out this breakdown for you, but you (buyer) can inform the notary of the breakdown you want with concrete amounts (if necessary after consulting your tax advisor). If we are informed of a breakdown, we regularly include that the seller is not liable to the buyer for the tax recognition/correctness of this breakdown. However, the tax office will only accept those breakdowns made by them in the purchase contract which are not obviously incorrect (i.e. about which there is „no appreciable doubt", BFH ruling of 10.10.2000 - BStBl. 2001 II p. 183). The apportionment must be based on the market values for buildings/flats on the one hand and land on the other.

[18] Notarial purchase price due date notification

We send this so-called notarial purchase price due date notification to the buyer by registered letter and, as a rule, also by e-mail in advance (provided we have the e-mail data). The seller also receives notification by e-mail or post. The notice is sent a few weeks after notarisation, see explanation [22].

[19] Priority notice of conveyance („Eigentumsvormerkung") in favour of the buyer

The transfer of ownership in the land register to the buyer is only initiated after payment of the purchase price („property for money"). However, as a „preliminary stage" to the transfer of ownership, the notary arranges for the buyer to be entered in the land register (Section II of the land register) as the „preregistered future owner" after the purchase contract has been notarised (i.e. before the purchase price has been paid), cf. § 7. How quickly this preregistration is entered depends primarily on the speed of the respective land registry office/legal administrator (Berlin: usually 5-10 weeks).

With the registration of the priority notice of conveyance, the buyer acquires a protected legal position / expectation of acquiring ownership of the property with the promised freedom from encumbrances in the land register. Also, the seller can then no longer successfully resell the same property to another buyer. The land register then shows that the property has already been sold to the buyer.

For security reasons, the actual entry of the priority notice in the land register must be awaited before payment of the purchase price. Sometimes parties wish to change the contract insofar as a mere notary's certificate that the entry will „certainly" be made shortly (so-called „Sicherstellung") shall suffice, because the parties are interested in a quick occurrence of the due date. This would not sufficiently protect the buyer due to the legal „gap in protection".

In-depth knowledge:

Even in order to accelerate the execution of the purchase contract it is no wise decision not to wait for he entry oft he priority notice in the land register before payment, (§ 3 (2))

A buyer is strongly advised to wait for the actual registration of the priority notice in the land register before paying any part of the purchase price (this is provided for in our model purchase agreement). Only in exceptional cases may a notarial purchase agreement instead allow the mere „securing" or „guaranteeing" of the entry in the land register for the entry of the purchase price due date to be sufficient in order to allow the purchase price due date requirements to occur more quickly. This is because a mere „securing" of the registration would not protect the buyer to the same extent as a registration - due to possible impediments to registration that are not recognisable. For example, protection would then fail in the event of the seller's prior opening of insolvency proceedings, which would become known to the land registry even before the registration of the priority notice of title actually takes place, or in the event of preceding other applications for registration at the land registry, which are inadvertently not properly registered there. As a precautionary measure, a buyer should also clarify in advance with his financing bank whether the latter has any objections to the paying out a loan even if the priority notice of conveyance is merely „secured".

[20] Availability of all approvals and negative certificates required for the effectiveness and execution of the purchase contract, with the exception of the tax clearance certificate.

A wide variety of approvals and negative certificates may be required for the effectiveness and execution of the purchase contract, depending on the specific case. After notarisation, the notary automatically obtains the necessary documents, i.e. writes to the competent authorities. This includes (except in the case of **condominium purchase contracts**, as there are generally no state pre-emption rights there) as standard also obtaining the confirmations of the competent state authorities that no state pre-emption right exists/is exercised (negative certificate); this is usually only a „formality". Supplementary information on the documents to be obtained and the so-called tax clearance certificate („steuerliche Unbedenklichkeitsbescheinigung"):

In-depth knowledge:

Documents required for effectiveness and execution, § 3 (2).

In the normal case of a land purchase contract, no „approvals" are required after notarisation, but only the declarations to be obtained by the notary from the competent state authorities that they are not exercising a statutory pre-emptive right or that they are not entitled to such a right („**negative certificate**"). The cases in which the state is entitled to a pre-emptive right and exercises such a right are fortunately very rare. The notary is not responsible for checking whether such a pre-emptive right is relevant in the specific case at all; rather, he must always - for every land purchase contract - request and wait for the negative certificate. To be more precise, even several negative certificates have to be obtained, as there are different pre-emption rights at federal or state level. For the extremely rare case of the exercise of a state right of first refusal, notarial purchase contracts provide a right of withdrawal for the seller, because in this case, which is not his fault, he cannot transfer the property to the state and to the buyer at the same time (cf. § 12 (1)). The rescission then has the consequence that only the purchase contract with the state remains in force. In the case of the sale of condominiums, such negative certificates are generally not to be obtained in the absence of the existence of state pre-emption rights.

Depending on the specific individual case, in addition to the negative certificate, „**approvals**" may also have to be obtained from the notary as a prerequisite for the due date, e.g. if the property is located in a redevelopment area – „Sanierungsgebiet" (approval under redevelopment law) or if a contracting party was represented by a representative without power of representation at the time of notarisation (approval of the represented party) or in the case of the sale of condominium property (if it is noted in the land register that transfer of ownerships require the consent of the administrator), cf. part II. § 1 or explanation **[63]**.

The „**tax clearance certificate**" („steuerliche Unbedenklichkeitsbescheinigung"), on the other hand, is not a prerequisite for the due date of the purchase price (but only for the transfer of ownership to the buyer after payment of the purchase price). This is a certificate issued by the tax office to the notary that the buyer has paid the real estate transfer tax for the purchase to the tax office. The tax office itself sends this certificate to the notary as soon as the real estate transfer tax has been paid. The tax office is informed by the notary about the conclusion of the purchase contract after notarisation and then sends the buyer (usually within 2-12 weeks after the purchase contract becomes effective) the land transfer tax notice with a one-month payment deadline.

[21] Encumbrance release documents/cancellation permits

It is even the rule (unobjectionable for a buyer) that, at the time of sale, mortgages for the seller's banks are still entered in section III of the land register. Such land register encumbrances are regularly not taken over by the buyer, but are cancelled by the notary within the scope of the notarial execution of the purchase contract. How this works in practice in detail can be read under In-depth knowledge in explanation **[11]**.

Before the purchase price is made due for payment, the notary further ensures that other land register encumbrances, which the buyer does not have to take over according to the purchase contract, are also deleted (e.g. if a right of residence or a usufructuary right for the parents of the seller should still be entered in section II of the land register).

[22] Purchase price due date notification of the notary

The purchase price is not to be paid already two weeks after notarisation, but only two weeks after the notary has sent the so-called purchase price due date notification to the buyer.

Before the buyer pays the purchase price, he must be assured that he will also become the owner of the property upon payment, without any undesired encumbrances in the land register. This protection of the buyer does not come into effect with the notarisation of the purchase contract. Rather, the notary only arranges the necessary security steps with the competent authorities after the date of notarisation. If a contracting party was not present at the notarisation meeting, but a representative without power of attorney was present on his behalf, the notary initiates the necessary safeguarding steps only after receipt of the approval oft the represented party in due form.

The security is only given as soon as the notary certifies to the buyer the occurrence of the due date prerequisites listed in § 3 (2) (so-called due date notification of the notary – „notarielle Fälligkeitsmitteilung"), only then „the traffic light for secure payment is green".

As a rule, the parties are interested in a quick occurrence of the due date so that the seller receives the purchase price and the buyer in return receives possession of the property. A time period of approx. 5-10 weeks after notarisation (or after receipt of the approvals in the case of notarisation with representatives without power of attorney) is within the completely regular range and cannot regularly be accelerated. The time taken is essentially not within the notary's sphere of influence, but rather that of the offices/authorities contacted by him (e.g. land registry office, property administrator in the case of condominium sales, public authorities, the seller's banks to be redeemed).

Please refrain from sending **interim status enquiries to the** notary's office during the regular processing times mentioned above (what is taking so long?). Which specific due date requirements are still missing?) so that we can bundle our capacities for effective support of all contracts notarised with us. As soon as all requirements are met, we automatically notify the parties without delay anyway.

In-depth knowledge:

How long does it take until the notary can certify that the purchase price is due, i.e. the „traffic light for safe payment is green"? (§ 3 (3))

In the case of the purchase of real estate located in Berlin, this usually takes approx. 5-10 weeks from the notarisation of the purchase contract or from the receipt of the approvals by the notary in the case of notarisation of contracting parties represented without power of attorney. If the property is located in another federal state, this period may be shorter or longer, depending on the federal state/land register district. In some land register districts 3-4 months processing time is still „normal". The Potsdam and Leipzig land registry offices usually have long processing times. Various special features of your specific purchase contract or the land register situation can also lead to longer periods of time (e.g. in the case of pre-emptive rights noted in the land register). If the notary gives you dates or time periods, these are always non-binding estimates based on his experience. The notary applies to the competent authorities to take the necessary steps. It is not up to the notary when the competent authorities (e.g. the seller's bank or the land registry or the municipality or, **in the case of condominium sales**, **the property administrator**) will comply with his request. The notary can also remind the competent authorities in writing at most after certain time intervals, but he is not responsible for enforcement in the event of refusal/delay. For example, it is the legal responsibility of the seller vis-à-vis a buyer that his bank promptly provides the notary with the necessary deletion authorisations for the deletion of mortgages at the latter's request or that (in the case of **condominium sales**) the condominium administrator promptly provides the notary with any necessary administrator approval and proof of his administrator status. Only the seller himself has the possibility to exert legal influence against his bank/the administrator. Calls by notaries' offices, for example to land registry offices/public authorities within these regular execution times, are regularly pointless.

[23] Agreement of a payment date

All agreed payment dates must always be subject to the proviso that the notary has sent the notarial due date notification by then and thus a **secure payment** directly to the seller has become possible at all by the desired payment date. However, since it can never be predicted with certainty by when the notary will be able to send his due date notification, it is not possible to agree on a **latest payment date** (i.e. irrespective of whether the payment prerequisites listed in § 3 (2) have occurred by then). In addition, the buyer's financing banks would probably not be willing to pay out the financing loan at that point. If payment is desired as quickly as possible, the parties therefore regularly leave it at a due date of 2 (or 1) week(s) after receipt of the notary's due date notice.

If, on the other hand, the purchase price is not to be due as soon as possible, but in any case not before a certain date - **earliest desired payment date** - (e.g. because the seller can only move out of the property in a few months and the purchase price is to be paid to him only shortly before), this can be regulated *(„The purchase price is due for payment two weeks after receipt of the notarial due date notification by the buyer, **but at the earliest on** ....")*.

[24] What rights does the seller have in the event of non-payment of the purchase price?

In the event that a buyer fails to pay the purchase price on time, the seller may, on the basis of the submission to compulsory enforcement in § 4 (1), quite quickly initiate enforcement measures with the help of the bailiff („Gerichtsvollzieher") for the purpose of collecting the purchase price. The other existing rights in case of default of payment are comprehensively regulated by law (BGB). The inclusion of further provisions on this in the purchase contract is therefore usually superfluous. *What are my rights under the law? May I then ask the notary for advice/help?*

In-depth knowledge:

Rights of the seller in case of non-payment of the purchase price, § 3 (3)

In the event of default in payment of the purchase price, the seller shall be entitled to the following rights in particular (in addition to the possibility of collecting the purchase price by way of compulsory enforcement pursuant to § 4 (1) - see explanation **[27]** -) in accordance with the statutory provisions (the following explanations only serve as a rough overview and do not make an examination of the specific individual case by the seller „in the case of the cases" unnecessary):

Compensation for the damage caused by delay

The buyer has to compensate the seller for all damage caused by the delayed payment (e.g. interest damage due to the now delayed repayment of a seller's loan from the purchase price), but at least interest on arrears in the legally regulated amount (among private individuals: 5% interest p.a. above the respective changing so-called base interest rate - the current base interest rate can be found on the website of the Deutsche Bundesbank), §§ 286 para. 1, 288 para. 1, § 247 BGB.

Withdrawal from the purchase contract, so-called major damages

Instead of enforcing the collection of the purchase price with the help of the bailiff, a seller may also decide (in accordance with the statutory provisions, i.e. usually mainly after setting a reasonable grace period in advance) to withdraw from the purchase contract (§ 323 BGB) and/or to claim so-called major damages (cf. §§ 280, 281 BGB). This can lead to the buyer having to compensate the seller for all damages suffered, including lost profit. As a rule, the notary is not competent to receive declarations of withdrawal, so that you must deliver them directly to the other party to the contract.

Who will help me if the other party to the contract behaves in breach of contract? Can I turn to the notary for help?

As an official, the notary is obliged by **law to be strictly impartial and neutral.** In this sense, he must also execute the notarised contract. Of course, we take this obligation seriously. **This includes, among other things, that the notary is not allowed to give information/advice to either the seller or the buyer after the notarisation on what to do now or what legal possibilities exist if the other party does not properly fulfil its obligations.** The same applies to questions as to whether the other party is in default or how a certain clause in the purchase contract is to be interpreted/understood, as the seller and buyer interpret the clause differently.

The strict legal requirement of neutrality is occasionally met with incomprehension by some parties - due to ignorance of the strict legal requirements („The notary must know best, after all he drafted the contract" or „I just want to know what rights I have now" etc.). If the parties are in dispute or one party does not fulfil its obligations, then the parties must settle this among themselves or, if necessary, each party must/may hire its own lawyer to represent its interests. According to the law, this lawyer may not be someone who is employed in our office (the office of the notarising notary).

In the event of a breach of contract by the other party - if no amicable solution can be reached with the other party - it is better for each party to mandate a lawyer in order to avoid costly „formal errors".

[25] Redemption of the beneficiaries in rem still entered in the land register (= usually the seller's financing banks).

You can read in detail how the redemption of the seller's mortgages still registered in the land register in section III works in practice under In-depth knowledge in explanation **[11]**.

[26] Prohibition of cash payments

Since 1st April 2023, „cash payments" (payments with cash, crypto values, gold, platinum or precious stones) are prohibited by law according to § 16a GwG (money laundering act) and no longer have a fulfilment effect, i.e. they do not reduce the purchase price debt. This also applies to cash down payments that may have been made before notarisation. The parties involved must also prove to the notary that the purchase price was not paid in cash (cf. § 8 or explanation **[44b]**)

[27] Subjection to execution

§ 4 helps the seller if the buyer does not pay the purchase price on time. § 4 enables the seller to then enforce payment of the purchase price without the need for protracted court action against the buyer with the help of the bailiff („Gerichtsvollzieher"). This possibility is in addition to the possibilities then available under the law anyway (cf. explanation **[24]**).

In the same way, here (in the case of real estate occupied by the seller himself), the seller's submission to execution can also be included (because of his obligation to hand over the real estate after payment of the purchase price). *How does enforcement work with the help of the enforcement clause in the purchase contract?*

In-depth knowledge:

How does enforcement work with the help of the enforcement clause in the purchase contract? (§ 4)

Normally (i.e. without a notarial submission to enforcement), you can only initiate enforcement measures against another person after you have successfully sued them in court and obtained a judgement. This can take months/years and be costly. Only the court judgment obtained in this way is then an „enforcement title", i.e. the prerequisite for being able to pursue actual enforcement - e.g. seizure of accounts, imposition of state fines, imprisonment, etc. (with the help of

the bailiff).

The notarial enforcement clause contained in the purchase contract saves the seller the time and trouble of legal proceedings. The notarial purchase contract itself is - similar to a court judgement - a suitable „enforcement title".

If the purchase price is not received by the seller on time, the seller can demand that the notary issue an „**enforceable copy**" („vollstreckbare Ausfertigung") of the purchase contract. The seller can then - as from a court payment judgment - initiate all compulsory enforcement proceedings permitted by law. For this purpose, however, the seller will then usually turn to a lawyer who will support him in initiating these measures (**since the notary is subject to strict neutrality according to the law, our law firm may not advise or support you in this case, for more detailed knowledge see** explanation **[24]**). For example, your lawyer can then have the buyer's accounts seized via a state bailiff.

In addition to the purchase price, interest on arrears that have accrued since the issuance of the enforceable copy of the purchase agreement shall be enforceable in the amount specified in **§ 288 para. 1 BGB** (5% interest p.a. above the respective so-called base interest rate). The respective valid base interest rate (§ 247 BGB) is published on the website of the Deutsche Bundesbank.

If the seller has submitted to foreclosure **because of the handing over of the property**, then the buyer can have the seller removed from the property with the help of the bailiff.

However, the implementation of enforcement measures takes time, so that enforcement success is rarely likely to occur sooner than after 2-3 months.

What if a contracting party wrongfully initiates enforcement?

Wrongfully initiated foreclosures from sales contracts occur only very rarely in practice. However, if, for example, the seller were to initiate an attachment of an account even though the full purchase price has been paid, the buyer could stop this enforcement immediately by filing a so-called enforcement counterclaim together with an urgent application. The seller would then be liable for damages to the buyer and would also have to bear the costs of the action.

[28] Transfer of possession

Transfer of possession: The buyer can demand the transfer of possession from the seller concurrently with the crediting of the purchase price (one day later). The seller has to make sure himself that the money has been received in full, e.g. by checking his account online or by contacting the bank to be redeemed. The notary does not check this and consequently does not issue any confirmations or the like as to whether the purchase price has been paid in full or when a handover is to take place.

The obligation to „hand over" (granting of actual control over the property) always includes (a special mention in the purchase contract is superfluous) the handing over of all existing keys, the removal of all movable property not sold with the property and the leaving of the rooms in a „broom-clean" (roughly cleaned) condition. Essential components of the property and movable property sold with the property may not be removed (for these terms see explanation **[13]**). Some parties draw up a handover protocol to be signed upon handover, in which they record the day of handover of possession, the consumption meter readings and the keys handed over. However, there is no obligation to do so.

If it is to be agreed that the property is to be handed over to the buyer **before the purchase price has been credited** (e.g. because the buyer is in urgent need of a new „place to stay"), this requires special provisions in the purchase contract in order to protect the seller from an otherwise „unsecured advance payment". Talk to the notary about this in good time. It is often advisable to deposit the purchase price in advance in a notary's escrow account. Only the payment to the seller will then be made later, namely as soon as the conditions for payment are met (they correspond to the due date conditions in § 3 (2)).

With possession (§ 5), legal ownership (§ 8) does not yet pass to the buyer at the same time. *What does this mean?*

In-depth knowledge:

With possession (§ 5), legal ownership (§ 8) does not yet pass to the buyer at the same time. What does this mean? (§ 5 (1))

The acquisition of possession (actual control of the property, holding the house keys in the hands) and ownership do not take place at the same time. Ownership does not pass to the buyer until approx. 2-12 weeks after payment of the purchase price and acquisition of possession. The reason for the temporal discrepancy is that the parties themselves can take **possession** immediately after payment of the purchase price, whereas the legal **ownership** is only legally effected with the transfer of ownership in the name of the buyer in the **land register** by the employee of the land registry office (Rechtspfleger). Although the notary also submits the corresponding transfer application to the land registry immediately upon payment of the purchase price (more precisely: upon confirmation of receipt of the purchase price by the seller and after it has been proven tot he notary that the purchase price has not fully/partially been paid in cash, cf. § 8), the processing times of the land registry lead to a temporal discrepancy between the acquisition of possession and ownership.

However, the seller and the buyer **pretend to each other** (with regard to all rights and obligations) through § 5 (1) sentence 1 that the buyer had already become the legal owner on the day of transfer. Therefore, a buyer already „feels" like an owner with the acquisition of possession and regularly does not notice any changes due to his later acquisition of ownership (entry in the land register). Only third parties not involved in the purchase contract (e.g. public authorities, tax office - land tax office -, insurance companies) are not interested in this internal agreement between seller and buyer, they always only contact the person who is (still) registered as owner in the land register, i.e. the legal owner, for all matters concerning the property. Also, the buyer is only in a position to transfer the property to a third party once legal ownership has been transferred to him in the land register (but he can enter into the obligation to do so in a purchase

contract beforehand).

Example 1: On 1 November, possession, road safety obligations, etc. have been transferred to the buyer. On 15 November, a pedestrian breaks his leg on the icy pavement in front of the property because no one has gritted the pavement. On 01 December, the buyer is registered as the legal owner in the land register.

The pedestrian can claim damages from the seller because it is always the owner, who is still registered in the land register, who is responsible for traffic safety in relation to third parties. The internal agreements between seller and buyer do not have an effect to the detriment of the pedestrian. However, since the seller and the buyer, according to the contract of sale, place themselves in such a way as if the buyer had already been the legal owner on the date of transfer of possession (1.11.) and thus on the day of damage (15.11.), the buyer must reimburse the seller for the payment.

Example 2: The buyer does not pay a homeowners insurance premium due after the transfer of possession (although he is obliged to do so according to § 5 (1)). However, the insurance company will continue to send reminders (for paying the premium) to the seller as long as he is still registered as owner in the land register. The seller must then forward the reminder to the buyer and ask him to settle.

[29] Transition of benefits („Nutzungen")

Transfer of benefits: on the transfer date, the „economic ownership" is transferred to the buyer, i.e. all advantages granted by his use/possession, e.g. the right to rent out for his own account.

[30] Transition of risks („Gefahr")

Transfer of risks: any accidental deterioration of the property is at the risk of the buyer from the day of handover (e.g. flood/fire damage).

[31] Transfer of charges („Lasten")

Transfer of charges: From the day of transfer, the buyer has to bear the „charges" of the property. This includes, above all, the payment of property tax, premiums for building insurance (e.g. against fire, flood and pipe damage), waste disposal, rainwater and sewage charges and, in the case of the sale of **condominiums**, the monthly housing allowance (= „house money" – „Wohngeld").

Usually the seller has already partially paid such regularly recurring charges in advance for the future, i.e. also for a period in which (with handover) the seller is no longer responsible for such payments but the buyer (in the internal relationship). From the day of handover onwards, he can demand pro rata reimbursement from the buyer in accordance with § 103 BGB and will then approach the buyer independently (the notary is not responsible for this). Reimbursement of costs therefore takes place insofar as the property tax/premium/housing allowance etc. paid in advance by the seller relates to the period from the transfer date (§ 103 BGB).

Example: the seller has paid the property tax for the full calendar year in advance in January. The transfer date is 1 July. The seller can therefore demand reimbursement from the buyer of half of the property tax paid (i.e. insofar as it relates to the period 01.07.-31.12.).

[32] Transfer of duties of care and liability fort he property („Verkehrssicherungspflicht")

Transfer of duties of care and liability fort he property: From the day of handover, the Buyer shall be responsible for clearing and gritting public footpaths etc. in place of the Seller.

[33] Transfer free of rights of use

This means, above all, that the seller guarantees that the property will be handed over unrented and unleased.

[34] Documents to be handed over

This includes, for example, building plans, floor plans, building permits, operating instructions for the heating system, etc. that are still available to the seller. These are usually documents/file folders for which the seller no longer has any use after the transfer of the property. Since the seller is only obliged to hand over such documents that he still has in his possession, this obligation to hand them over does not constitute a risk for him. If, on the other hand, in individual cases it is particularly important to a buyer that he definitely receives very specific documents, then he should clarify with the seller before notarisation whether these documents are still available and then the parties can ask the notary to list these documents very specifically in the contract (then we need - preferably by e-mail - a specific list in which the documents are described very precisely, e.g. by date, issuing authority, file number, etc.).

The energy certificate („Energieausweis"), on the other hand, must be handed over earlier according to mandatory statutory law. It is an obligation under public law that is subject to a fine (it is not possible to waive this in the purchase contract) that the seller must hand over a valid energy certificate for the building to the buyer in the original or as a copy at the latest immediately after conclusion of the purchase contract, § 80 para. 4 sentence 1 GEG (Building Energy Saving Act – „Gebäudeenergieeinspargesetz"). Exceptions apply, for example, to properties that are listed buildings.

[35] Development and other resident contributions („Erschließungs- und Anliegerbeiträge")

This regulation only covers construction and redesign measures carried out by the state that take place **outside the sold property,** namely on public areas (road land, pedestrian walkway, etc.). If the sold property is already fully developed with a road, pavement, etc. and connection to the public supply and disposal network (this is the case with most sales), then the short-term incurrence of such fees is probably not to be expected and this regulation in the purchase contract is then of no significance.

In-depth knowledge:

The municipality may allocate costs for the construction and renewal (not for maintenance) of roads, paths, parking areas and other public facilities as well as costs for connections of the property to the public supply network (gas, water, electricity, sewerage) to the owners of the adjacent properties on a pro rata basis. This only covers connections up to the boundary of the private property, i.e. not up to the house itself. Even in the case of fully developed plots of land, such contributions may be incurred through the construction of additional facilities such as additional street lighting or footpaths/cycleways or through improvements to the road, etc. The municipality may charge such costs at least in part and in full. The municipality may pass on such costs at least partially and proportionately to the owners of the adjoining properties.

After construction, it sometimes takes years until the municipality sends the corresponding cost notices to the adjacent owners. However, since the municipality always demands the costs from the person who is the owner at the time the cost notice is issued, an internal cost allocation regulation between the seller and the buyer is required in the purchase contract. If the purchase contract did not contain a provision to this effect, the seller would be fully responsible for the costs in relation to the buyer according to § 436 BGB (German Civil Code), as long as only the „first cut of the spade" of such remodelling measures had taken place by the date of notarisation (even if the construction measures were not completed until years later). In most cases, our regulation in the purchase contract, according to which the seller is responsible for the costs (only) according to the state of construction on the date of notarisation (and additionally for all cost notices received until the date of tranfer), should be in the best interests of the buyer.

Example: On the day of notarisation, a new cycle path to be created is ½ completed. In a few years, the buyer will receive a notice of costs from the municipality, according to which he (in addition to the other residents) will be claimed proportionately for the production of the cycle path construction costs. Based on the provisions in the purchase contract, he can now demand half of his costs from the seller.

Of course, the contracting parties can also agree on a different cost allocation in the purchase contract.

[36] Encumbrances to be assumed, defects of title

§ 6 (1) conclusively regulates whether and, if so, only which encumbrances entered in the land register the buyer must take over. The seller is liable to the buyer for ensuring that all other encumbrances entered in the land register can be deleted. Furthermore, the seller is already liable by law for the property being free of defects of title (§ 433 (1) sentence 2 BGB). This means his obligation to ensure that third parties cannot assert any rights or only the rights assumed by the buyer under the purchase contract with regard to the sold property (§ 435 BGB).

A legal defect would be given, for example, if the property would be rented out contrary to the information in the purchase contract or if a land register encumbrance not assumed by the buyer could not be deleted.

In-depth knowledge:

Encumbrances to be taken over, defects of title (§ 6 (1))

Whether or which land register encumbrances are taken over by the buyer depends on the specific individual case. Typically, no encumbrances are taken over in section III of the land register, but rather in section II (e.g. rights of way that allow the owner of a property in the rear to cross the purchase property or easements, e.g. for energy supply companies, that allow them to lay supply lines). Sometimes there are entries in section II that are more than 100 years old, which are often outdated in terms of content, but cannot be deleted and must be taken over by the buyer.

Encumbrances which the buyer himself has helped to create are always to be taken over. This concerns financing liens to be created by the buyer himself for his financing bank before the transfer of ownership (which the seller enables him to do according to § 9 (1)).

With regard to any building encumbrances and easements not entered in the land register, the seller assures that it has no knowledge of such encumbrances, but does not vouch for their non-existence.

Building encumbrances („Baulasten") are not recorded in the land register, but with the building authorities in the so-called building encumbrance register („Baulastenverzeichnis"). The notary does not inspect this. If necessary, sellers or buyers (with the seller's power of attorney) can inspect it themselves at the competent building authority („Bauamt") to be determined by them before notarisation or can obtain information there by telephone. A building charge is the obligation of a property owner vis-à-vis the building authority to do, refrain from doing or tolerate certain things concerning the property.

Example: : The property owner undertakes not to build on a certain area of his property close to the border so that the required minimum distances between buildings can be maintained („Abstandsflächenbaulast").

Easements not entered in the land register are extremely rare and practically impossible to find out about. These are,

among other things, so-called old-law easements, which were already created before 1900, i.e. before the creation of the land register, and were not entered in the land register. We have not yet experienced the occurrence of such easements in our notarial practice.

[37] Material defects

It is common practice in purchase contracts for second-hand real estate to exclude the seller‘s liability for material defects. However, the seller still has to remedy at his own expense any defects that arise in the period between notarisation and handover. Buyers should inspect the property thoroughly before the date of notarisation.

The seller is nevertheless legally liable if he did not disclose relevant material defects known to him (or thought possible by him) without being asked before conclusion of the purchase contract („fraudulent intent“). However, in the event of a dispute, the buyer would have to prove to the court that the seller was aware of the defects or that he had at least considered them possible. In practice, this proof is often not possible.

In addition, the seller is liable if he has „guaranteed“ certain things in the purchase contract or if the parties have agreed in the purchase contract that the property must have certain features as a mandatory quality (so-called quality agreement, „Beschaffenheitsvereinbarung“).

If defects should occur after notarisation, then the notary may not provide either the seller or the purchaser with information about which legal options now exist, but must abstain (principle of neutrality of the notary, cf. In-depth knowledge on explanation [24].

[38] Exception to the exclusion of liability in case of culpable injury to life and limb

It is stipulated by law that the provisions in § 6 (4) must be included in any case in such contracts in which (only) one/several seller person(s) is/are a legal entity (e.g. GmbH) or an entrepreneur within the meaning of § 14 BGB or, if for other reasons the purchase contract is a so-called general terms and conditions („allgemeine Geschäftsbedingungen“) of the seller. The reason is that the legislator has determined in § 309 no. 7 BGB that the seller‘s liability for material defects cannot otherwise be effectively excluded (if this wording, which is also printed in essence in the law in any case, is not included in the purchase contract). However, hardly any practical examples can be found for the injuries to life and limb mentioned in the content; they are probably almost exclusively of a theoretical nature.

[39] Transfer of residential buildings insurance

By law, the buyer becomes a party to the seller‘s existing residential building insurance (not: household contents insurance) upon transfer of ownership (not yet upon transfer of possession) (§ 95 para. 1 VVG). The assignment of the insurance claims agreed in the purchase contract also secures the buyer for possible damage claims that occur in the period between transfer of possession and transfer of ownership in the land register. The buyer must notify the insurance company of the sale without delay after the transfer date, otherwise the insurance company will be released from its obligation to pay benefits (§ 97 para. 1 sentence 2 VVG).

If the buyer does not wish to take over these insurances, he has a special right of termination vis-à-vis the insurance company, which he can only exercise within 1 month after the transfer of ownership in the land register (§ 95 para. 2 VVG). In the case of the sale of **condominiums**, there is no need for these assignments, because the buyer always automatically enters into the protection of the existing building insurance (the contractual partner of the building insurance is and remains only the condominium owners‘ association as such, of which the buyer becomes a member).

[40] Priority notice of conveyance („Eigentumsvormerkung“ = „Auflassungsvormerkung“)

The registration of a priority notice („Eigentumsvormerkung“ = „Auflassungsvormerkung“) in the land register is an essential prerequisite for the payment of the purchase price (cf. § 3 (2) a) of our model purchase contract, cf. explanation [19]). The land register then shows that the property has already been sold to the buyer. The buyer thus acquires a protected legal position/expectation of acquiring ownership of the property with the promised freedom from encumbrances in the land register and is protected against a subsequent insolvency of the seller. If undesired further entries of encumbrances in the land register should occur after the registration of the priority notice (this cannot be prevented even by a priority notice, as it cannot effect a „land register block“), then the buyer, as holder of the priority notice, can also demand the cancellation of these encumbrances directly from the entitled parties (section 888 (1) BGB).

[41] Cancellation of the priority notice with transfer of ownership

As soon as the buyer is registered as owner in the land register after payment of the purchase price, i.e. acquires the full right, he no longer needs the „preliminary stage“ of the merely „noted“ future owner (the priority notice of conveyance) and the priority notice can then be deleted.
Only in exceptional cases does the notary ensure that the priority notice continues to exist despite the transfer of ownership to the purchaser: namely, if its protective effect (explanation [40]) is still needed against new encumbrances that have been undesirably entered in the land register after the purchase contract has been certified.

[42] „Resolutary condition“ of the priority notice on title

What is a priority notice „subject to a resolutary condition“? This means that the priority notice is automatically „dis-

solved" again in the land register (i.e. deleted) if the notary applies for this at the land registry. Such a possibility to „dissolve" the priority notice is required to protect the seller if he has withdrawn from the purchase contract due to non-payment of the purchase price. **§ 7 does not regulate when or under which conditions the seller is entitled to such a right of withdrawal or how he has to exercise it**, this is rather regulated by law (BGB) and the seller has to observe the legal requirements, cf. in-depth knowledge on explanations **[24]**).

Rather, § 7 (2) only gives the seller (in the event of a withdrawal in accordance with the legal requirements) the supplementary option of having the notary delete („dissolve") the buyer's priority notice blocking „his" land register. As long as the priority notice is not deleted, the seller will in fact not be able to sell the property to a third party. The seller must then write to the notary (with the seller's signature) in compliance with the exact wording of § 7 (2) in order to have the priority notice cancelled.

[43] Exclusion of assignment

The agreed exclusion of assignment ensures that the seller himself only has to transfer ownership to the buyer known to him (and not to other persons named by the buyer after the purchase contract has been notarised). Initially, therefore, the buyer is entered in the land register as owner in any case. However, a resale of the property by the buyer remains possible of course.

[44] Conveyance

The agreement declared by the parties in § 8 (conveyance = „Auflassung") is a first prerequisite for the buyer to be registered in the land register as the new legal owner. However, the transfer of ownership may not take place before the purchase price has been paid. For this reason, the contracting parties do not yet make all declarations required for the transfer of ownership (land register approval and land register application) in the purchase contract. Rather, they authorise the notary, who only makes these declarations after he has received proof of the credit entry of the purchase price (cf. explanation **[44a]**) and proof of a non-cash payment (cf. explanation **[44b]**). This procedure of authorising the notary does not trigger any „extra" notarial costs in comparison to other contract-forming options for withholding the transfer of ownership.

[44a] Proof of the crediting of the purchase price

Proof shall be furnished by written confirmation of the seller to the notary that the full purchase price has been credited. The seller is obliged to provide this confirmation immediately after receipt of the purchase price.

„Written" confirmation requires a letter signed by all sellers, which can also be sent to the notary as a PDF/photo. Mere e-mail without signature is not sufficient. The sellers will receive a form for the purchase price receipt confirmation from us with the dispatch of the due date notification.

If parts of the purchase price do not go directly to the seller but to his banks to be redeemed (cf. § 3 (3)), it is the seller's task and duty to inform himself by immediate consultation with his banks about the complete payment of the purchase price and then to confirm this to the notary. The seller does not fulfil his duty if he confirms to the notary only those purchase price instalments which he himself has received, he himself has to confirm the „full purchase price receipt".

If a seller does not fulfil his obligation, the buyer can prove to the notary that the credit entry has been made, if necessary as a substitute, by submitting a so-called execution confirmation („Ausführungsbestätigung") from his bank (which must then be commissioned from his bank for a fee). Mere bank statements („Kontoauszüge") are not sufficient for this proof according to general opinion, as they cannot prove the succesful crediting of the recipient's account.

Since 1st April 2023, the transfer of ownership according to the Money Laundering Act (GwG) **additionally** requires proof of the „non-cash" purchase price payment, which can also be provided by mere bank statements (explanation **[44b]**). Please note that one proof does not make the other superfluous, but both proofs (purchase price credit note and „non-cash" payment) are always required to effect the transfer of ownership.

[44b] Proof of „non-cash" purchase price payment

Whereas in the past the seller's confirmation of receipt of the purchase price was sufficient to initiate the transfer of ownership, since 1st April 2023 the parties are additionally obliged pursuant to § 16a Money Laundering Act (Geldwäschegesetz) to send the notary (unsolicited) initially conclusive evidence of the complete „non-cash" purchase price payment (i.e. not by cash, crypto values, platinum, gold or precious stones). **This obligation is assumed by the buyer in the internal relationship between the parties to the purchase contract.** According to the law, the seller remains additionally entitled and obliged to this proof. **The notary does not take care of the procurement of this evidence**, this is the sole unsolicited task and duty of the parties, especially of the buyer.

The proof of the non-cash purchase price payment cannot be provided by mere confirmation of the parties involved, but by sending (electronic) bank statements and/or by transfer confirmations of the transferring or receiving banks to the notary. These proofs must add up to the full purchase price (at most with the exception of an amount of up to € 10,000.00).

If the buyer has to make several transfers of the purchase price (e.g. parts directly to the seller and parts to a bank of the seller for release from encumbrances), proof is required for each payment.

If part of the purchase price is not paid by the buyer himself but by a third party (e.g. the buyer‘s financing bank), the buyer should ensure in advance that his bank provides him or the notary with the necessary proof of non-cash payment for these payments in a timely manner.

Should the parties involved violate their obligation to provide this evidence in a timely manner (or the prohibition of cash payments), the notary may - in addition to withholding the transfer of ownership - be obliged to „secretly“ report suspicions of money laundering to the competent public anti-money laundering office (FIU).

[45] Authorisation for buyer to encumber the property

§ 9 (1) enables the buyer to raise the purchase price through a loan from his financing bank. The seller authorises the buyer to record a so-called (financing) lien (usually a land charge) for the financing bank before the notary and to have it recorded in the land register before the purchase price is paid. The common wording printed in italics in § 9 (1) ensures that the seller does not suffer any damage as a result. The mere inclusion of the regulations (encumbrance power) in § 9 (1) does not trigger any additional notarial costs, but only the later notarisation of the mortgage itself.
A financing bank of the buyer regularly makes the disbursement of the loan dependent on the prior notarial certification and registration (alternatively: notarial confirmation) of a so-called mortgage (land charge/mortgage) in the land register (section III) of the seller.

In-depth knowledge:

Authorisation for buyer to encumber the property (§ 9 (1))

Does the seller participate in the mortgage deed?

In order for the buyer‘s financing mortgage to be recorded in the land register, the consent of the seller as the still-owner is required. The consent is given in such a way that the seller grants the buyer in § 9 (1) the (encumbrance) power of attorney to notarise such mortgages also in the seller‘s name. This notarisation („creation of a land charge/mortgage“) takes place after the notarisation of the purchase contract (ideally immediately afterwards or a few days later). An appearance of the seller at this notarisation is not necessary (and not usual) due to the encumbrance power granted to the buyer. Rather, the buyer notarises the land charge/mortgage alone, in his own name and also in the name of and with the power of attorney of the seller.

How does the so-called security agreement protect the seller?

The so-called **security agreement** (in italics in § 9 (1) – „Sicherungsabrede“) protects the seller from risks that might otherwise be associated with enabling the registration of buyer banks (in the security agreement the banks are called „lien creditors“) in „his“ land register before he has received the purchase price. „Translated“, this security agreement mainly states that the buyer bank is obliged to have the lien (landcharge/mortgage) extinguished again if the seller withdraws from the purchase contract (e.g. due to non-payment of the purchase price) or if the contract is not executed for other reasons. It also states that the buyer‘s bank may not „realise“ the security right over real property before the purchase price has been credited in full, i.e. it may not call for a compulsory auction.

The buyer‘s bank therefore only gains „access“ to the property - despite entry in the land register - after the purchase price has been received in full. Then there is no longer any need for protection of the seller. This security agreement is also included in the mortgage/land charge deed and reliably brought to the attention of the buyer bank by the notary.

When does the buyer‘s financing bank pay out the loan?

After notarisation of the mortgage, the processing times of the land registry (usually approx. 2-4 weeks) must be waited for until it is actually entered in the land registry and the bank is thus ready to pay out. The buyer should therefore independently ensure that his bank sends the so-called land charge documents (bank specific model formular) to the notary in good time before the expected purchase price due date and that a notarisation appointment takes place. If the land charge is not notarised in time, the buyer can instruct the notary (for a fee) to prepare a so-called **notary confirmation** („Notarbestätigung“) for his bank (this makes waiting for the entry in the land register unnecessary and can already be issued by the notary approx. 3 days after the land charge has been notarised).

[46] Powers of attorney beyond death

If one of the contracting parties should die after the notarisation of the purchase contract, the execution of the purchase contract is not affected by this, and the powers of attorney granted to the notary and his notarial staff remain in force in the event of death. In this case, only the heirs of the deceased take over the position of the deceased, and they are irrevocably bound to all obligations in the purchase contract in the same way as the deceased himself.

[47] Costs and taxes

It is customary for the buyer to bear the costs of the land transfer tax as well as the notary and land registry costs for the purchase contract. As a rule, the seller only bears those costs that are necessary in order to bring about the promised deletion of encumbrances in the land register. If a party is represented without a power of attorney, it bears the costs of the necessary signature certification. The parties can theoretically make agreements deviating from this (matter of negotiation), but this is unusual in practice. § 10 is an internal cost allocation agreement between the parties.

When will the buyer receive which invoices from whom? What are the costs at the notary, land registry, public authorities

and tax office (land transfer tax)?

In-depth knowledge:

When does the buyer receive which invoices from whom? (§ 10)

The **notary** usually sends the buyer his invoice for the purchase contract a few days after the notarisation date with a 2-week payment period (at the same time as sending a copy of the notarised purchase contract). After the notarisation of a financing lien (land charge/mortgage) by the purchaser, the notary also invoices the fees incurred for this a few days later. Invoices issued by the notary are enforceable documents that allow for compulsory enforcement of the claim for payment even without a court judgment.

The **land registry** („Grundbuchamt") sends separate invoices to the buyer for each entry and deletion in the land register (entry of priority notice, transfer of ownership, deletion of priority notice) with a time delay, usually no earlier than four weeks after the date of notarisation. For the issuance of so-called negative certificates – „Negativzeugnisse" - (cf. In-depth-knowledge to explanation **[20]**), the competent **public authority** usually sends invoices to the buyer at the earliest 4 weeks after the date of notarisation. In the case of sale of condominiums, there is no invoice for a negative certificate, but the property administrator usually charges the purchaser a processing fee for the execution of the administrator's consent to the sale (if legally required).

The **tax office** („Finanzamt, Grunderwerbssteuerstelle") usually sends the buyer the real estate transfer tax notice 2-10 weeks after the purchase contract becomes effective, with a 1-month payment deadline.

If the buyer has commissioned an **estate agent**, his invoice will usually be sent to the buyer (and, if applicable, also to the seller) immediately after the purchase contract has become effective. According to the law (§ 652 BGB), commission claims of brokers become due for payment with the effectiveness of the purchase contract (i.e. not only with the due date of the purchase price), unless the buyer has agreed otherwise with the broker.

What are the costs at the notary, land registry, public authorities and tax office (land transfer tax)?

The amount of the costs of the **land registry** (for new entries and deletions in the land register, which take place in the context of the execution of a purchase contract) and of the **notary** are uniformly fixed by law throughout Germany and are not negotiable. There are no „cheap" or „expensive" notaries. The amount of land transfer tax depends on the federal state in which the property is located (e.g. Berlin 6.0 % of the purchase price, Brandenburg 6.5 %). The higher the purchase price, the lower the costs for the land registry and notary in percentage terms. Depending on the purchase price, the costs of the notary and the land registry **together** (very rough rule of thumb) are in the range of approx. 0.9-1.4 % of the purchase price (without the creation of a land charge and without processing via a notary's escrow account).

The following table gives you a rough overview (the information is not binding for your specific purchase contract) of the costs that rise in line with the higher amount of the purchase price; all figures are in euros:

Purchase price in EUR	Buyer costs for Notary incl. VAT	Additional costs for (more rarely) settlement via Notary escrow account incl. VAT	Grundbuchamt	Land transfer tax (in Berlin: 6%)
80.000	850,00	260,00	370,00	4.800,00
180.000	1.520,00	490,00	650,00	10.800,00
320.000	2.330,00	760,00	1.000,00	19.200,00
550.000	3.700,00	1.200,00	1.570,00	33.000,00
700.000	4.550,00	1.500,00	1.930,00	42.000,00
1.200.000	7.400,00	1.500,00	3.130,00	72.000,00
2.500.000	14.850,00	4.900,00	6.250,00	150.000,00

The above figures are not binding, but may be significantly higher or lower in your specific case, especially since the amount of the notary fees does not depend exclusively on the purchase price amount, but also on other parameters. The legal calculation of costs is quite complicated. For reasons of clarity, the table provides a rough guide using approximate sums. However, you are welcome to have the costs incurred in your case calculated by us.

If the buyer (partially) finances the purchase price and the financing bank is required to create a **mortgage/ land charge**, this will incur additional costs (not included in the table) for both the notary and the land registry, which together are in the range of approx. 0.5-0.8% of the nominal land charge amount (very rough rule of thumb).

The fees of **public authorities** for the granting of the so-called **negative certificate** to be obtained in the context of the sales contract amounts to usually approx. € 100.00. (Only the negative certificate, which is always to be obtained according to the building code (BauGB), is liable to pay costs, the further negative certificates are not). The **processing fee of the administrator** to be borne by the buyer for the completion of his disposal consent (if necessary) in the sale of **condominiums** is usually between 50 and 200 €.

Brokers regularly demand the customary local brokerage fee (regionally different, Berlin/Brandenburg: 7.14 % of the purchase price incl. VAT), but this is not subject to the notary‘s examination, but only to the parties‘ agreements with the broker. In many cases, the broker‘s fee must be paid by the seller and the buyer in equal parts by law (for example, in the case of the purchase of a single-family house/apartment by a non-commercial buyer).

[48] Statutory pre-emption rights, approvals to be obtained and negative certificates

See here In-depth-knowledge to explanation [20]. In the case of the sale of condominiums, there is no need for this passage due to the lack of existence of state pre-emption rights in this case.

[49] So-called tax clearance certificate („steuerliche Unbedenklichkeitsbescheinigung“)

The notary notifies the tax office - real estate transfer tax office - of the sale after the deed of sale has been notarised. The tax office then sends the buyer the notice of costs for the real estate transfer tax (real estate transfer tax notice – „Grunderwerbssteuerbscheid“) within 2-10 weeks after the purchase contract becomes effective, with a payment deadline of one month after receipt of the notice. After payment, the tax office sends the notary an official confirmation of payment („tax clearance certificate“ – „steuerliche Unbedenklichkeitsbescheinigung“). The land registry requires this clearance certificate for the transfer of ownership of the property to the buyer (no legal acquisition of ownership before payment of the land transfer tax).

[50] Joint and several liability of all parties for costs

All contracting parties are always personally liable to the notary and the land registry for the payment of all fees. The notary is (mandatory by law and not changeable) free to choose which party he claims for his costs. In doing so, however, he will regularly adhere to the internal cost distribution agreement of the parties in § 10, otherwise the parties must compensate each other accordingly.

[51] Register of building encumbrances

See here In-depth knowledge to explanation [36].

[52] Massive refurbishment or new construction carried out less than 5 years ago

The case law, which is hardly comprehensible for laypersons (and lawyers) in this respect, fakes (in very simplified terms) that structurally existing buildings/flats have not yet been erected! This applies to buildings/flats that were newly constructed or substantially (!) (core-)renovated less than 5 years ago (in the case of vacant properties) or less than 3 years ago (in the case of occupied properties). Please inform the notary about this immediately when commissioning the draft purchase contract so that he can draft your purchase contract properly. Such a draft is time-consuming, so that notarisation appointments cannot usually be made at very short notice.

In-depth knowledge:

Massive renovation work carried out less than 5 years ago or new construction (§ 11)

Such „new construction“ also includes core refurbishments (e.g. first-time attic conversion) or such comprehensive refurbishments which, due to the large number or type of services, come close to a core refurbishment in terms of their character (assessment in the individual case after concrete knowledge of all services performed is required). **Not included are mere renovation services below this threshold**, such as are usually carried out after a tenant has moved out (painting, laying parquet flooring, new fitted kitchen, repairs to windows and doors, renovation of electrical wiring, new bathroom, etc.).

If such a **„new building“** exists:

- **a building description, if necessary together with plans, must be included in the purchase contract.** If such a description is not available, the seller or the seller‘s architect will usually have to provide at least a simplified rough description of the building. Otherwise, the purchase contract could be invalid for lack of sufficient definiteness.

- **the exclusion of warranty for defects contained in standard notarial purchase contracts (§ 6 (2)) is ineffective (even in the case of a sale among private persons)** with the consequence that the seller is fully liable to the buyer in relation to the entire property (i.e. also in relation to the areas unaffected by renovation services). The seller is then liable to the buyer according to the statutory rules of the law on contracts for work and services (§§ 633ff. BGB) as if he had just built the property himself for the buyer as a contractor („construction company“) on the basis of a building contract, so the seller would have to make improvements in case of defects or pay damages in case of defects. The liability period is 5 years, starting from the time when the buyer accepts the work performances vis-à-vis the seller as essentially completed („Abnahme“). The 5-year liability period also starts anew if the seller himself had already accepted the construction from his construction company, for example, 2 years ago.

The seller‘s liability situation is not improved by assigning his own claims against his work contractors/ construction companies to the buyer; he would then nevertheless continue to be personally liable to the buyer for 5 years with his own assets for freedom from defects.

Is it possible for the seller to exclude liability?

If this far-reaching liability of the seller is to be avoided, this requires, according to case law, a special individual exclusion of liability agreement tailored to the individual case (individual agreement) under special, detailed instructions of the buyer by the notary about the far-reaching consequences of such a waiver of liability. Only in addition to this, the seller's claims against his work contractors (construction companies) are then regularly assigned to the buyer in the purchase contract.

The seller is strongly advised to provide the buyer with all documents relating to the construction in good time prior to the notarisation of the purchase contract, even if this may involve several folders (construction contracts, plans, acceptance reports, any requests for subsequent improvements, etc.). The buyer, in turn, should check these documents thoroughly, also in order to be able to check the „recoverability" of the claims assigned to him.

In consumer contracts (cf. In-depth knowldege on explanation **[6]**), in which the seller is a company (or another entrepreneur within the meaning of § 14 BGB), the seller's liability for new buildings cannot be effectively excluded at all.

[53] Ancillary agreements of the parties to the purchase contract

The parties must have all agreements that are essential for at least one party included in the text of the purchase contract. Otherwise this may lead to the invalidity of the entire purchase contract. Example: the parties agree on a higher purchase price or the co-sale of furniture outside the purchase contract, cf. in-depth knowledge on explanation **[13]**.

[54] Tax topics relevant to practice, no tax advice by the notary

The notary generally does not advise on tax issues and does not know the individual tax constellations of the parties involved.

As a rule, the following cases can be relevant from a practical tax point of view, which the party concerned will then clarify in detail directly with its tax advisor:

- If a seller sells a property (not used exclusively for own residential purposes) within 10 years of its purchase, he has to pay tax on the profit, § 23 para. 1 no. 1 EStG (so-called speculative profit). The beginning and the ending of the 10-year period are usually determined by the effectiveness of each of the purchase contracts.

- If a seller sells a total of more than 3 (non-inherited) properties within 5 years, this may constitute so-called commercial property trading for tax purposes. Depending on the amount of the profit, the tax office then assesses not only income tax, but the municipality also assesses trade tax. Depending on the specific individual case, the sale of less than 3 properties can also lead to commercial real estate trading.

[55] Right of rescission if the state should exercise a statutory right of first refusal

See here for more detailed knowledge on explanation **[20]**.

[56] So-called severability clause

Should it turn out after notarisation that any provision in the purchase contract is invalid, it would be presumed according to the legal rule of doubt - far from practice - that the invalidity of the entire purchase contract was intended for this case (§ 139 BGB). This presumption should regularly be reversed in sales contracts by the so-called severability clause. In many (not all) cases, this can „save" the validity of the rest of the purchase contract.

This one sentence in the purchase contract is sufficient to bring about this result.

[57] Changes after notarisation of the purchase contract

In practice, some time after notarisation, the parties sometimes agree that they wish/need to subsequently change certain contents of the purchase contract. Often such changes can be agreed privately by the parties themselves without the involvement of the notary, but sometimes they have to be notarised. If necessary, ask the notary. Even in the case of a privately written draft amendment, however, additional notary fees will be incurred if you ask the notary to check the content of your draft or to draw up a draft. More complex amendments should be drawn up by a professional (lawyer/notary). According to § 16a GwG, the parties are obliged to send the notary a copy of the signed amendment deed if the purchase price is affected. *What can a private amendment agreement look like (sample)?*

In-depth knowledge:

Model private letter amendment agreement

Amendment agreement

We amend the purchase contract dated ..... (UVZ-Nr. .... / ... of the notary ....., Berlin) as follows:

Contrary to the previous regulations in § 5 number (1) sentence 1, we agree that the **transfer** *date already occurs on ....., but not before the purchase price is credited.*

All other contents of the purchase contract remain unchanged.

(Place, date) ....., signatures of all parties

[58] Can a party still revoke the purchase contract after notarisation?

Once the purchase contract has been notarised, no contracting party can revoke the contract but is legally bound to it. The requirement of notarisation is intended to make this clear to all parties involved.

Essentially, there are only the following exceptions to this:

• if, exceptionally, rights of withdrawal from the purchase contract are expressly agreed in the purchase contract (such as, for example, the right of withdrawal often desired by the buyer in practice in the event of failure of his efforts to obtain bank financing)

or

• if a contracting party did not appear in person at the time of notarisation but was represented by a third party without presenting a power of attorney, i.e. without a power of attorney; then the party not present is not bound by the purchase contract until it has been subsequently approved;

or

• If one of the contracting parties does not fulfil its obligations to pay the purchase price or to transfer possession/ownership of the property as stipulated in the purchase contract (conduct in breach of contract), the other party is entitled to withdraw from the contract in accordance with the statutory provisions and to claim damages (§ 323 BGB). Additional agreements on this in the purchase contract are therefore usually superfluous. Compare in-depth knowledge on explanation [24].

[59] Difference between „condominium ownership" and „partial ownership"

The only difference is that partial ownership always serves purposes other than residential and may not be used for residential purposes (e.g. hobby room, business, shop, attic for storage). Our explanations therefore speak simplistically only of condominium ownership.

[60] Folio number of the flat, creation of condominium ownership

A separate flat land register Folio (with its own folio number) is created at the land registry for each flat.

How is condominium ownership created? What is the meaning of the terms „declaration of apportionment" („Teilungserklärung"), „community regulations" („Gemeinschaftsordnung"), „partition/division plans" („Aufteilungspläne") and „certificate of separation" („Abgeschlossenheitsbescheinigung")?

In-depth knowledge:

How is condominium ownership created? What is the meaning of the terms „declaration of apportionment" („Teilungserklärung"), „community regulations" („Gemeinschaftsordnung"), „partition/division plans" („Aufteilungspläne") and „certificate of separation" („Abgeschlossenheitsbescheinigung")? (Part II. § 1)

A condominium has been legally created and can be sold as soon as a separate condominium land register folio has been created for it by the land registry. But how does it get there? (highly simplified explanation)

First of all, there is always only one land register folio (one folio number) for the entire plot of land together with the standing apartment building and all flats together. The law states that flats located in an apartment building are not in themselves individually alienable/transferable, but only the entire property together with the entire building and all the flats therein (§ 93 BGB) jointly. The individual flats are not legally independently alienable properties, they are not „marketable" because there are no separate land register folios for them. Such apartment buildings are also referred to as „undivided" houses.

Deviating from this, the **Condominium Act (Wohnungseigentumsgesetz, WEG)** allows for the „division" into individually saleable, marketable flats (condominium ownership) by creating a separate condominium land register folio for each flat at the land registry.

In order to achieve this, the property owner must first have the building authority certify that all flats in the apartment building are „self-contained" – „abgeschlossen" (so-called **certificate of separation, „Abgeschlossenheitsbescheinigung"**), i.e. structurally separated from the other flats (by ceilings, walls, lockable door, etc.) and that household management is possible in them due to the presence of bathrooms, toilets, etc. This certificate is then accompanied by architect's plans stamped by the building authorities which contain, among other things, the floor plans of all the flats in the house as well as views of the building (**so-called partition plans or division plans – „Aufteilungspläne"**). In these partition plans, one can recognise the individual different condominiums by the fact that all rooms belonging to it are marked with the same circled number, e.g. all rooms of condominium no. 1 are marked with a circled number „1", all rooms of condominium no. 2 are marked with a circled number „2", and so on.

With this certificate of separation and the partition plans, the property owner then goes to the notary and notarises a so-called **declaration of apportionment („Teilungserklärung").** The so-called „separating owner" („teilender Eigentümer") stipulates that the property and the apartment building are to be legally „separated" into flats that can be sold individually and that the land registry is to create a separate flat land register folio for each individual flat. He refers to the partition plans, because they show which rooms belong to which flats. In the declaration of apportionment he also specifies by means of a so-called **co-ownership list/partition list („Aufteilungsliste"/"Miteigentumsliste")** with which flat in each case how many co-ownership shares in the so-called **common property („Gemeinschaftseigen-**

tum") are to be connected. This concerns common areas such as the plot of land, staircase, central heating, façade, etc. As a rule, the size of the co-ownership shares is based on the ratio of the flat sizes to each other. Deviating arrangements are possible, but rare.

In addition to the declaration of apportionment („Teilungserklärung"), the so-called **community regulations („Gemeinschaftsordnung")** are usually also recorded (usually even in the same deed as the declaration of apportionment, but then as a separate part/section). The community rules regulate the rights and duties of all condominium owners among each other. **The Condominium Act (Wohnungseigentumsgesetz - „WEG")** itself already contains such regulations. In practice, however, these statutory regulations are almost always supplemented by community regulations or, partially, regulated in a way that deviates from the law. Whereas, for example, the law provides that each condominium owner has the same voting rights at owners' meetings (so-called head voting rights), almost all community regulations provide that the voting rights are based on the respective co-ownership shares of the flat and thus on the size of the flat and the share in the common costs. In the community regulations, so-called **special rights of use („Sondernutzungsrechte")** can also be established for areas/rooms in common ownership and assigned to a flat (e.g. garden areas, cellar compartments, parking spaces). This means that only the condominium owner concerned has the right to use these areas/rooms. It hardly differs in effect from „sole ownership" (condominium ownership) and can also be sold in isolation (without a flat), but only to other condominium owners.

When a flat purchase contract is notarised, the notary does not usually have the declaration of apportionment, community regulations, partition/division plans, etc. and does not have to check/inspect them. He could not even retrieve these documents electronically, because they are only deposited in „paper form" at the respective land registry, the so-called partition plans often even in large formats (DIN A1/DIN A2) that cannot be copied easily. In many cases the **property administrator** (cf. explanation **[63]**) has copies of these documents (often not of the partition plans) and makes them available to the seller if required. Otherwise, the seller can inspect these documents directly on site at the land registry or grant the buyer corresponding private written authority to inspect them.

[61] Condominium ownership consists of sole ownership and common property

The special feature of condominium ownership is that there are both common areas and facilities on the property to which all condominium owners are jointly entitled (each in fractions) (so-called **common property – „Gemeinschaftseigentum"**, e.g. land, central heating, façade, staircase, etc.) and the apartment itself, which is in the sole ownership of the respective condominium owner (so-called **special property, „Sondereigentum").**

With the sale of the respective co-ownership share, the flat connected to it is always automatically sold as well; an isolated sale of only the flat or only the co-ownership share is not possible.

The larger the flat, the larger the associated co-ownership share in the common property. As a rule, both the amount of the monthly house charge for the flat and the voting rights in owners' meetings are based on the size of the co-ownership shares and thus on the size of the flat. Only very rarely is this stipulated differently in the community regulations.

How is condominium ownership created? What is the meaning of the terms „declaration of apportionment" („Teilungserklärung"), „community regulations" („Gemeinschaftsordnung"), „partition/division plans" („Aufteilungspläne") and „certificate of separation" („Abgeschlossenheitsbescheinigung")? (see in-depth knowledge on explanation **[60]**)

[62] Cellar rooms, parking spaces etc., special rights of use

The allocation of cellar rooms, parking spaces, garden areas etc. for the sole use of the respective owner of a flat may be regulated differently.

(1) It may be **special property** (sole ownership, „**Sondereigentum**") (rather rare). In this case, these areas/rooms are not marked as „special right of use" in the land register or in the purchase contract (Part II. § 1 (1)), but as „special property" (e.g. „special property in flat no. 12 including cellar").

(2) It may be a so-called reified („verdinglichtes") **right of special use („Sondernutzungsrecht")**. This can be recognised by the fact that the allocation to the flat is noted directly in the land register and thus also in the contract of sale (§ Part II. § 1 (1)). Unfortunately, such a note is not always printed in the land register itself. Alternatively, a look at the so-called **community regulations** can show whether a real allocation of these special rights of use to the flat is stipulated there. „Special right of use" means that only the condominium owner in question is entitled to the permanent right of use of areas/rooms in the common property. It gives a **strong legal position**, hardly differs in effect from „sole ownership" (condominium ownership) and can also be sold in isolation (without a flat), but only to other condominium owners.

(3) In practice (especially in old buildings), however, basement rooms or parking spaces are usually neither in the special ownership nor has a reified right of special use been allocated to certain flats according to the land register/community regulations. Rather, they have been used for exclusive use - often for decades - on the basis of mere allocation by the property administrator or on the basis of mere condominium owner resolutions. One also speaks of **„special rights of use (only) under the law of obligations" („schuldrechtliche Sondernutzungsrechte") /"usage regulations" („Gebrauchsregelungen")**. In these cases, the legal continuity of an exclusive right of use is never ensured, so that a seller will not vouch for it in the purchase contract. In actual practice, however, no one is likely to question such sole rights of use that have been lived with for years (even by the buyer as the new owner) if there is a cellar room or parking space etc. for each flat. In this case, all other flat owners also have an interest in the exclusive use of cellar rooms.

[63] Consent of the property administrator

The **property administrator („Wohnungseigentumsverwalter"** or **„Verwalter"**) is the legal representative of the condominium owners' association. He takes care of the administration of the common property (not of the respective

sole property = special property), which is co-owned by all condominium owners, including the conclusion of necessary insurances, maintenance, collection of the monthly house payments.

The **property administrator („Wohnungseigentumsverwalter")** *is not to be confused with a so-called special property administrator („Sondereigentumsverwalter")***: each condominium owner may additionally voluntarily** *commission any special property administrator only with the administration of his or her special property (flat) for the purpose of taking care of an existing residential tenancy.*

In most cases, the community regulations stipulate that the sale of flats requires the consent of the property administrator. This will be noted in the condominium land register and is stated in the purchase contract in Part II, § 1 (1). The **administrator is regularly obliged to give this consent, so it is usually only a „formality".**

The administrator may only refuse consent if there is an „**important reason**" in the **person of the buyer**. For example, if it is known that the purchaser has already failed to pay his house payments in other condominium owners' associations, etc. On the other hand, any arrears in house payments on the part of the **seller** do not justify a refusal of consent.

After notarisation of the purchase contract, the notary automatically writes to the administrator and asks him to send his consent together with his administrator's certificate, each in an authenticated form. The **contract of sale only becomes effective with the granting of consent, the purchase price may only then be made due by the notary (and only after additional proper presentation of the administrator's certificate)**. *How long may the administrator take with this?*

In-depth knowledge:

How long may the administrator take to give his consent and present his certificate of administrator to the notary? (Part II. § 1 (2))

The administrator is obliged to give the notary consent including his administrator's certificate according to § 26 section 3 WEG in each case in an authenticated form without delay (as a rule within approx. 2-4 weeks) (so-called obligation to deliver), after he has received all the information he requires for the consent decision. Otherwise he is liable to the seller (not the buyer) for the damage caused by the delay (e.g. interest damage due to delayed payment of the purchase price). Administrators are obliged to take precautionary measures in advance to ensure that they can immediately present (!) administrator's certificates suitable for the land register (cf. inter alia Judge at the Court of Appeal Dr Oliver Elzer, „Pflichten und Rechte eines Verwalters bei einer Veräußerungszustimmung nach § 12 WEG"; OLG Düsseldorf ZNotP 2004, 201; Expert Opinion of the German Notary Institute No. 101695).

Some administrators point out that they have failed to have a (certified) copy of the administrator's appointment resolution made and that their only original is deposited with the land registry itself. **A reference to a deposit at the land registry is not sufficient, because the administrator has the duty to provide proof in the same form directly to the notary for every sale by sending it to him.** Professional administrators are aware of this obligation and keep certified administrator's certificates in stock or always enclose a certified copy with their administrator's consent. If the administrator has neglected to keep his own certified copies, the administrator (!) must immediately obtain the missing documents at the latest on the occasion of the sale by going to the land registry or via the notary at the time (where he has certified his administrator's certificate) and send them to the notary of the purchase contract. It is sometimes difficult for the parties to the purchase contract to understand why some administrators shy away from the effort involved or take their time.

If the administrator refuses to submit his proof of administration because he (wrongly) believes that it is sufficient that he has deposited it with the land registry, then the seller (or the buyer with the seller's private power of attorney) can, if necessary, go to the land registry himself and make copies or - if necessary with the help of a lawyer (this must not be someone from our office) - influence the administrator. The notary of the purchase contract himself does not go to the land registry offices to search for any administrator's records that may be deposited there. Obtaining them is the task of the administrator or, if necessary, of the seller. Administrator records are also not available to notaries electronically at the land registry.

[64] Housing allowance, compulsory submission to the condominium owners' association

Each condominium owner bears proportionately (usually in proportion to the size of his co-ownership shares and thus in proportion to the size of his flat) the **ancillary costs („Nebenkosten")** of the condominium owners' association (such as costs for electricity, central heating, waste disposal, caretaker, gardening, water, sewage, administration, maintenance). Once a year, the condominium owners' meeting decides in the so-called **economic plan („Wirtschaftsplan")** which **monthly advance payments** on the expected ancillary costs are to be paid in the coming year, including a precautionary monthly maintenance reserve – „Instandhaltungsrücklage" (together called „**housing allowance**" or **„housmoney" = „Wohngeld" = „Hausgeld"**). For each year, the condominium manager then prepares a so-called **annual statement („Jahresabrechnung")**. This shows the actual costs incurred for the year, which are offset against the advance payments (hosing allowances) already made. After the annual settlement, owners either receive a refund or they have to make an additional payment (if the house money already paid was not sufficient to cover the costs).

What is this amount/subjection to enforcement against the condominium owners' association about?

The compulsory enforcement regulated here with regard to the housing allowance only becomes significant if the buyer (!) does not pay the monthly house money owed by him in the future. On the other hand, the clause does not mean that the seller is in debt for the house money. With the help of this clause, the condominium owners' association can collect/enforce the buyer's possible future house money debts quite quickly - similar to a court judgement - i.e. without having to take him to court for a long time.

However, the amount of this simplified collection option is limited to housing allowance debts for a maximum of 18 months. If the buyer does not pay the housing allowances for more than 18 months, the condominium owners' associa-

tion would have to sue for these additional housing costs in court. The clause in the purchase contract does not change the fact that house money is still only owed in monthly instalments (i.e. not the housing costs for 18 months „in one go").

For good reason, condominium owners' associations usually require that each (future) condominium owner notarise such a submission to compulsory enforcement of the housing allowances. Such an obligation may arise from the community regulations („Gemeinschaftsordnung") or from condominium owners' resolutions („Eigentümerbeschlüsse"), so that such a clause should regularly be included in the purchase contract as a precaution. If this is forgotten, the administrator is entitled to refuse his consent to the sale (disputed), cf. on administrator consent Explanation **[63]**. All co-owners have an interest in a quickly realisable collectability in the case of defaulting house money debtors. As long as house money debts are not collected, all other co-owners must bear them instead.

[65] Entry of the buyer into rights and obligations from the declaration of apportionment, community regulations, resolutions, administrator's contract

Already from the date of transfer (of possession), the parties put themselves in such a position as if the buyer had already become a condominium owner; legally, the change of ownership then occurs with the entry as the new owner in the condominium land register.

In addition to the Condominium Act („WEG"), the rights and duties of a condominium owner are essentially derived from the declaration of apportionment and the community regulations, cf. on these terms in-depth knowledge on explanation **[60]**.

In addition, a purchaser must, above all, accept all resolutions passed by the condominium owners' meeting in the past. The administrator keeps a so-called collection of resolutions („**Beschlusssammlung**") and must give each condominium owner or a third party authorised by the condominium owner access to the collection of resolutions (§ 24 (7), sentence 8 WEG).

[66] Obligation to pass on this contractual passage in the event of future resale by the buyer

If the buyer wishes to resell the purchased flat at a later date, he must ensure that the aforementioned obligations are also passed on to the purchaser. For this purpose, he can simply have the same contract components included in the later purchase contract by the notary then commissioned.

[67] Internal compensation obligation of the parties of back payments and refunds

This contractual passage ensures a fair settlement in the event that the condominium owners' association has to make additional payment claims or refunds. For example, the seller alone is to be responsible if there are reimbursement payments (e.g. overpayment of house money) or additional claims (e.g. obligation to make additional contributions because the costs were higher than the house money received) for previous years.

[68] Special contributions

Special contributions („Sonderumlagen") are sometimes decided by the owners' meeting if there is a need for liquidity for common tasks because the house funds or the maintenance reserve are not sufficient. This can be the case, for example, if major renovation work/acquisitions are pending. A special contribution („Sonderumlage") is an agreed obligation of the condominium owners to pay a certain amount to the condominium owners' association (in addition to the monthly house money owed). The amount of the payment and the payment date (due date) are determined in the special contribution resolution.

The seller and the buyer agree between themselves in the purchase contract that the buyer shall only be responsible for such special contributions which are only decided after the date of notarisation and, moreover, only become due for payment after the transfer date (Part II. § 5 (1)). The Seller shall indemnify the Purchaser against any other special contributions.

[69] Authorisation

According to the law, the buyer could only participate in owners' meetings and vote after the transfer of legal ownership in his name in the land register. Through this authorisation, the time is brought forward to the day of transfer (of possession).

[70] Maintenance reserve

The inclusion of this provision in a purchase contract is now superfluous.

The maintenance reserve („Instandhaltungsrücklage") is the amount accumulated by the condominium owners' association for possible future maintenance needs of the common property (part of the monthly owed house money). In the past, a buyer did not have to pay real estate transfer tax on the purchase price in the amount of the existing maintenance reserve, so the amount was usually stated in the purchase contract. However, since a court ruling of the Federal Fiscal Court of 16 September 2020, it is no longer necessary to state this in the purchase contract, according to which it is no longer possible to save land transfer tax in this respect.

The maintenance reserve „sticks" inseparably to the sold condominium and is automatically transferred to the buyer with it; it cannot be „taken out" by the seller. No provisions on the transfer of the maintenance reserve are required in

the purchase contract. The maintenance reserve is part of the so-called association assets of the condominium owners' association, into which every buyer enters with the purchase of the condominium.

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