

GUIDE TO BUYING PROPERTY IN AUSTRIA







Contents

A guide to buying in Austria	4
Procedure for purchasing property	7
Ownership and the associated purchasing costs	10
Contacts	12

A guide to buying in Austria

Buying in Austria is a relatively uncomplicated process, but we would always recommend that you engage the services of a reputable agent who can assist with understanding the tax and legal structure, finding a suitable financial institution and eventually managing your property investment.

This document has been created to guide potential purchasers on how to buy a property in Austria. It does not seek to provide or replace legal advice, which you should obtain, nor intended to have any contractual effect.

In order to acquire ownership in Austrian properties, a signed written purchase agreement, notarised by a public notary, is required. The buyer must then apply for registration of ownership in the Land Register; ownership is acquired with the registration of the buyer's title in the Land Register. The Austrian Land Register is a public electronic register in which all properties are identified by a specific registration number. All rights in this matter concerning a property are registered. Information contained in the Land Register enjoys specific legal protection, i.e. a purchaser may rely on the correctness of the information contained in the register in good faith. It is, therefore, advisable to obtain all information from the Land Register before acquiring real estate.

STEP BY STEP FOR INTERNATIONAL INVESTORS

1

COMMISSIONING OF REAL ESTATE AGENCY

The real estate agent establishes contact between the seller and the prospective buyer and mediates between them.

2

SELECTION OF THE PROPERTY & FINANCING

The agent supports and provides the buyer with the necessary information on the property and conditions of the purchase and organises site inspections.

3

DUE DILIGENCE EXAMINATION

Depending on the scope and type of the property (in particular whether it is a business or private purchase), it is highly advisable to carry out a technical, economic, tax and legal due diligence.

4

SALES NEGOTIATIONS

Once the advisors have completed the due diligence, the purchase agreement is to be negotiated on that basis. At this stage, the seller often issues a priority notice, which secures the potential buyer in the land register.

5

ESCROW ACCOUNT

In order to secure a seller and purchaser in the best possible way, the payment of the purchase price via a trust account is market standard.

6

SIGNING

The purchase contract must be signed by the buyer and seller in the presence of a notary, who certifies the signatures of the parties.

7

PUBLIC LEGAL APPROVALS

Depending on the transaction, it may be necessary to obtain public law approvals and this is different for EU and Non-EU citizens (please see page 7 for further details). Typical cases are property divisions, approval by the land traffic authority in certain instances or approval by the nursing courts if minors are involved.

8

CLOSING

Once the contract has been signed and all conditions precedent have been met, the application for incorporation of the ownership can be filed with the Land Register.





Procedure for purchasing property

ACQUISITION OF REAL ESTATE IN AUSTRIA BY EU CITIZENS

Citizens of EU member states are entitled to acquire property without restrictions; however, acquisition of farmland is restricted in most of Austria's nine provinces. Some provinces (Bundesländer) do not allow the purchase of real estate in certain zones when the property will not serve as the owner's permanent residence.

When acquiring only a part of a property, and depending on the property's characteristics, there are two different legal possibilities of ownership:

- The co-ownership (a share in a property) without exclusive ownership of an exact part of the building
- Exclusive ownership of an apartment in the form of a condominium (Wohnungseigentum)

Apart from real estate ownership, other arrangements are common, such as legal concepts where ownership of a building is different from ownership of land (Superstructure = Superädifikat, Building right = Baurecht), as well as simple (long-term) tenancy agreements and property leasing. Furthermore, servitudes (easements) can be created in real estate, whereby a distinction is made between personal servitudes and servitudes in favour of the owner of a specific land parcel.

ACQUISITION OF REAL ESTATE IN AUSTRIA BY NON-EU CITIZENS

Generally, non-EU citizens are allowed to acquire real estate if they apply for a special permit at the Land Transfer Authorities beforehand. The requirements for obtaining a special permit are regulated within the nine provincial land transfer laws. The restrictions imposed vary from province to province and mainly depend on how the real estate is zoned. In addition, approval is required dependant on the type of contract and the rights and obligations involved.

Non-EU citizens are entitled to acquire real estate in Austria when the province where the real estate is located has (i) social, (ii) economic or (iii) cultural interest in the acquisition of real estate by a non-EU citizen. While the economic (e.g. establishment or take-over of a big company, creation of jobs) or cultural interest (e.g. famous singers, artists etc.) can be proven only in special situations, the term "social interest" is interpreted broadly by the Land Transfer Authorities. For example, according to the Vienna and Lower Austrian land transfer laws, the provincial government always has a social interest in the acquisition of real estate by non-EU citizens, if the persons have residence permits in Austria. However, the interpretation of the term "social interest" can vary from province to province.

Please note that in some parts of Austria (in particular Salzburg, Tyrol, Carinthia, etc.) further restrictions apply to the sale of properties to Non-EU-citizens and to the sale of agricultural land. In such cases, additional permissions from the Land Transfer Authority have to be obtained. The purchase of real estate in Vienna for investment purposes by foreign nationals may also be restricted but implemented easily when structured in the correct way.

While in principle under the Vienna Land Transfer Act an approval for the purchase of real estate by foreigners is required, such restriction does not apply to (i) companies, which qualify as EU-companies (e.g. British limited, Slovakian s.r.o. or Cypriot LLC), and (ii) for Austrian companies whose sole shareholder is a further Austrian or EU-company (double-tier-structure). Also, non-EU-citizens can, therefore, purchase real estate in Austria without an approval if this is done by either (i) a legal entity having its seat within the EU, or (ii) a double tier company structure with, e.g., an Austrian GmbH (Company with Limited Liability; Gesellschaft mit beschränkter Haftung) held by another Austrian GmbH, even if such buying entities are ultimately owned by non-EU nationals.

ACQUISITION OF REAL ESTATE IN AUSTRIA BY COMPANIES OR LEGAL ENTITIES

Austrian legal entities can acquire real estate in Austria, but if non-EU citizens hold the majority (more than 50%) of the legal entity's shares, the legal entity qualifies as a foreign company and must apply for a special permit in order to be able to acquire real estate in Austria.

Exceptions apply for a so-called "two-tiered structure". In some provinces (Bundesländer) of Austria (e.g. Vienna), an Austrian legal entity (LE1), which is fully held by another Austrian legal entity (LE2), is not qualified as a foreign company, even if the LE2 is 100% held by non-EU citizens. In this case, the LE1 does not have to obtain a special permit for the acquisition of real estate in Austria.

Legal entities registered in the EU or EEA are not qualified as foreign companies and can acquire real estate in Austria. The shareholder structure of these legal entities has no relevance.

The assessment as to whether a permit has to be obtained for a real estate transaction should be carried out by a legal advisor due to the complexity of the matter and the different regulations.

PROTECTION OF THE BUYER

The transfer of ownership rights of an individual real estate or building requires two steps – A legal title and registration in the Land Register. The title may be either a notarised purchase contract or an official document, for example, a court order in the case of inheritance. The title then needs to be registered with the land registry to complete the transfer of ownership.

It is also possible for buyers to ensure an acquisition at an early stage (e.g. by entering into a provisional contract before a due diligence report is prepared) by signing a provisional contract and registering a priority notice (Rangordnungsbeschluss) with the land registry. For a period of one year after issuance of the priority notice, the holder of this notice, when registering a purchase contract, is entitled to have interim entries ranking after the notice be deleted from the Land Registry.

Any right in rem regarding real estate has to be granted by the owner of the property and registered with the land registry, which is only possible with a notarized document - protecting property rights against third-party intervention. The registered owner must be informed of changes in the register and, in case of unlawful activities, will be entitled to appeal the decision of the court forming the basis of the entry. Furthermore, the owners may take legal action to defend their property against unlawful third party intervention (e.g. intrusion).

PROTECTION OF THE SELLER

A seller can secure their real estate rights before full payment of the purchase price is received through either a notary, or an attorney acting as fiduciary to handle the transaction. Property ownership for the purchaser will be registered with the Land Registry only when the payment has been transferred to the fiduciary.

Usually, the seller warrants for the property to be free of liens and encumbrances, but is not liable for potential defects or any of its special conditions or characteristics. The seller's liability may therefore be excluded in the sale agreement as far as permissible under mandatory law. It will depend on the circumstances of the case and whether, or not, one or both parties in the purchase agreement are entrepreneurs.



Ownership and the associated purchasing costs

ATTORNEY, NOTARY, TRANSACTION

Although purchase agreements for real estate may be concluded orally, foreign buyers should always be aware that a written and notarised purchase contract has to be filed with the Land Registry or at the respective court in order to duly register the contract and to transfer the ownership. The role of the notary (who can be chosen freely) may be limited to the notarisation of the signatures.

In Austria, the entire transaction of transferring property ownership - from preparing a due diligence report, drafting the contract, issuing transfer tax declarations, to handling the escrow account including fiduciary services for the banks involved, and registering the property - is done either by an attorney or a notary. In Austria, both professions are highly regulated; regarding the safety of escrow amounts, both professions have mandatory insurance.

For attorneys-at-law, the transaction has to be executed according to the escrow statute of the relevant Bar Association In Vienna ("Elektronisches Anwaltliches Treuhandbuche der Rechtsanwaltskammer Wien") where the escrow amount is specifically insured against fraud.

The fees depend on the purchase price and on the services provided by the attorney/notary in connection with the real estate transaction - usually 2-3% of the purchase price plus 20% VAT is the market standard for drawing up the contract, acting as fiduciary and registration with the Land Registry. There is also a smaller fee for notarisation of the signatures. Those services range from notarisation of the signatures and/or drawing up of the contract, to acting as fiduciary. Notary/attorney fees are prescribed by law but are freely negotiable.

In regards to the land transfer tax and registration fee, all parties may agree on how to start these costs, however in most cases, the buyer pays the taxes and duties.

LAND REGISTER

The Land Register, which is an official database, contains three sections for each real estate listed:

- Section A: General information on the real estate plots
- Section B: Information on ownership and substantial right restrictions
- Section C: Information on mortgages and other encumbrances

All documents, on which registrations are based, are collected by the Land Registry and open to the public. All land register entries are deemed legally correct.

REAL ESTATE AGENT

The function of an Austrian agent is to establish contact between the seller and the (prospective) buyer and to mediate between them. The agent supports the negotiations and provides the buyer with the necessary information on the property and conditions of the purchase.

The commission fee is generally due upon signing of the purchase agreement. Usual fees are:

- Seller - up to 3% of the purchase price plus 20% VAT
- Buyer - 3% of the purchase price plus 20% VAT

PROPERTY TAXES AND USAGE RIGHTS

The transfer of ownership in real estate triggers a 3.5% land transfer tax and a registration fee of 1.1%, both based on the purchase price. The seller and the purchaser are jointly and severally liable towards the tax office, but according to market practice, the purchaser usually bears these amounts. In case of a share deal, i.e. the transfer of shares in a company, which holds real estate, a land transfer tax of only 0.5% applies. This is calculated from the fair value of the property held by the company transferred (and no registration fee as there happens no change of ownership in the Land Register). Furthermore, please note the registration of a mortgage on a property triggers an additional registration fee of 1.2% of the mortgage amount registered.

Generally, roughly 10% of the purchase price must be calculated as side costs of an acquisition of real estate in Austria (including land transfer taxes and registration fees, broker commission, lawyer and notary fees).



CONTACTS



ALEX KOCH DE GOOREYND

International Residential, Knight Frank LLP

+44 20 7861 1109

alex.kdeg@knightfrank.com



OLIVER BANKS

International Residential, Knight Frank

+44 20 7861 5484

oliver.banks@knightfrank.com



MASSIMO SACCOMANNO

Senior Broker, Otto Immobilien GmbH

+43 1 512 77 77 323

m.saccomanno@otto.at



CARMEN HAUPTMANN

International Network Management, Otto Immobilien GmbH

+43 1 512 77 77 338

c.hauptmann@otto.at

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