

OUTLINE OF ANCILLARY EXPENSES

and additional information

for the **purchase** or **sale**
of real property

**ÖSTERREICHISCHER VERBAND DER IMMOBILIENTREUHÄNDER[AUSTRIAN
ASSOCIATION OF REAL ESTATE EXPERTS]**

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General terms and conditions pursuant to Section 10 IMVO [Real Estate Broker Regulation] 1996 BGBl. [Federal Law Gazette] No. 297/1996 recommended by the Federal Chamber of Commerce Austria, Section for Real Estate Experts and Escrow Agents.
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I. Ancillary expenses in the case of purchase agreements

1. **Real property transfer tax**3.5% of the amount of the consideration (discounts or exemption possible in special cases)
2. **Land Register registration fee**(title to property) 1%
3. **Costs of drafting of agreement and registration in the Land Register** as agreed within the scope of the fee regulations of the person who prepared the contract as well as cash expenses for certifications and stamp duties.
4. **Cost of proceedings and administrative charges for real property transactions proceedings** (differ from province to province)
5. **Housing loans for condominium property and owner-occupied houses - transfer to purchaser:** in addition to the regular redemption instalment extraordinary redemption up to 50% of the outstanding principal or early redemption possible. The purchaser does not have any legal title to be transferred the housing loan.
6. **Adjacent property charges, if any,** pursuant to the municipal bill of charges (development costs and costs of preparing the plot for construction) as well as connection charges and connection costs (electricity, gas, water, sewer, telephone, etc.)
7. **Commission (maximum commission as provided for by law)**

(A) in case of purchase, sale or exchange of

- **real properties or shares in real properties**
- shares in real property which is subject to condominium ownership or with respect to which condominium ownership is going to be established pursuant to an agreement

- **business enterprises** of any kind

consideration for **structures/buildings** on land owned by a third party

at a value of

- up to EURO 36.336,42 4% each
- EURO 36.336,43 to EURO 48.448,49 EURO 1.453,46
- from EURO 48.448,50 3% each

by both parties (seller and purchaser)

plus 20% VAT in each case

(B) in case of options:

- **50% of the commission pursuant to item 7.A above,** which will be taken into account in case the person who was granted the option purchases the property.

II. Ancillary expenses in the case of mortgage loans

1. **Fees payable on the loan agreement** 0.8%
in the case of **credits in current account** with a term of up to 5 years 1.5%
2. **Land Register registration fee** 1.2%
3. **General order of priorities** for pledging..... 0.6%
4. **Costs of drafting of the contractual document/debt instrument** pursuant to the fee regulations of the person who prepared the document
5. **Cash expenses** for certifications and stamp duties pursuant to fee regulations
6. **Cost of evaluation, if any,** pursuant to the expert fee regulations
7. **Commission:** must not exceed 2% of the amount of the loan if the transaction is a transaction within the meaning of Section 15 para 1 IMVO(Immobilienmaklerverordnung). If there is no such connection the commission or other remuneration must not exceed 5% of the amount of the loan.

III. Legal basis of the broker's commission

Section 6 paras 1, 3 and 4, Section 7 para 7, Sections 10 and 15 *Maklergesetz* [Austrian Broker Statute]

Section 6 (1) The client is obliged to pay a commission if the transaction is concluded with a third party due to the broker's activity pursuant to the contract.

(3) The broker is entitled to the commission even if, due to his activities, the transaction to be brought about pursuant to the contract is not entered into, but another transaction is entered into, the economic purpose of which is equivalent to the original transaction.

(4) The broker shall not be entitled to a commission if he himself becomes a contracting party to the transaction. This shall also apply if the transaction entered into with a third party is the economic equivalent to a conclusion of the transaction by the broker himself. In the event of any other close familial or economic relationship between the broker and the third party which might impair the safeguarding of the interests of the client, the broker shall only be entitled to a commission if he immediately notifies the client of such close relationship.

Section 7 (1) The entitlement to a commission shall come into existence when the transaction becomes legally effective. The broker shall not be entitled to any advance.

Section 10 (1) The entitlement to a commission and the claim for reimbursement of additional expenses shall arise when they have been incurred.

Special commission agreements

Section 15 (1) An agreement according to which the client is required to pay an amount, for instance as compensation for or reimbursement of expenses incurred and professional services rendered, even if there is no successful conclusion of a deal attributable to the broker, shall only be permissible up to the amount of the agreed or locally customary commission and only in the event that

1. the transaction described in the broker agreement is not entered into contrary to good faith because the client - contrary to the course of the negotiations up to that point - fails to take any action that would be required for the conclusion of the deal without important reason;
 2. a transaction is entered into with the third party solicited by the broker the purpose of which is not equivalent to the original transaction if conclusion of the transaction is the result of the broker's activities;
 3. the transaction described in the broker agreement is not entered into with the client but with a different person because the client informed such person of the business opportunity made known to him by the broker or if the transaction is not entered into with the third party but with a different person because the third party notified the latter of such business opportunity or
 4. the transaction is not entered into with the third party because a statutory or contractual right of first refusal, resale or a right to succeed is exercised.
- (2) Such a payment may, in the case of sole broker agreements, be agreed upon if:
1. the sole broker agreement is terminated early by the client in violation of the contract and without important reason;
 2. the transaction was entered into during the term of the sole broker agreement in violation of the contract through the activities of a different broker instructed by the client; or
 3. the transaction was entered into during the term of the sole broker agreement in a way other than by the activities of a different broker instructed by the client.

- (3) Payments pursuant to para 1 and para 2 shall be considered remuneration (*Vergütungsbetrag*) within the meaning of Section 1336 ABGB [Austrian General Civil Code].

An agreement pursuant to Section 15 Maklergesetz [Broker Statute] must be made in writing in the case of broker agreements involving consumers.

IV. Consumer protection provisions

Section 30b *Konsumentenschutzgesetz* [Austrian Consumer Protection Act]. Prior to conclusion of a broker agreement the real estate broker shall, with the due diligence of a prudent real estate broker, deliver to the client who is a consumer a **written outline** stating that he is acting in the capacity of a broker as well as listing the costs, including the commission, that will probably be incurred by the consumer due to conclusion of the transaction in question. The amount of the commission shall be stated separately; in the event of a close economic or familial close relationship within the meaning of Section 6 para 4 third sentence *Maklergesetz* the client shall be notified thereof. If the real estate broker, by virtue of business practices, may act as dual broker, the said outline shall also contain information to this effect. In the event that the facts and circumstances change considerably the real estate broker shall adjust the outline accordingly. If the broker does not fulfil these duties at the latest before the client makes a contractual statement with respect to the transaction in question, Section 3 para 4 *Maklergesetz* shall apply.

Due to established business practices real estate brokers may also act as dual brokers without explicit consent of the client. If, pursuant to the client's instruction, the real estate broker is acting on behalf of only one party of the transaction in question, he shall inform the third party to this effect.

V. Tax effects in the case of a sale

1. Gain on sale and speculative gain

tax payable by the seller pursuant to personal income tax law.

- (a) In the case of a sale of real property which is part of business property, taxable gain on sale may arise, depending on book value and sales proceeds.
- (b) In the case of a sale of a property which is part of a private property (with or without buildings) within 10 years of acquisition for consideration (speculation period), the **income from speculative transactions** (speculative gains) is subject to payment of personal income tax by the seller.

In order to **determine the speculative gain** the sales proceeds minus the cost of sale must be compared to the former cost of acquisition (plus maintenance and construction expenses) and minus tax-exempt subsidies within the meaning of Section 28 para 6 *Einkommenssteuergesetz* ("EStG") [Austrian Personal Income Tax Act] 1988.

The **speculation period** is extended from 10 to 15 years if within 10 years of acquisition construction expenses (improvements such as installation of a lift) were written off in partial amounts pursuant to Section 28 para 3 EStG 1988. If such expenses were written off in partial amounts in accordance with the provisions of Section 28 para 3 EStG 1972, which applied until 31 December 1988, the 10-year speculation period shall apply.

If the seller acquired the real property **free of charge** (e.g. as a gift or inheritance) the speculation period is calculated as of the time of acquisition by the legal predecessor. The speculation tax payable by the seller will be reduced by the inheritance tax or gift tax paid at the time of acquisition upon an application to this effect.

2. Exemptions in case of speculative gains

- (a) Income from the sale of owner-occupied houses or condominium flats (including land) which have been the domicile of the seller since the time of their acquisition, but in any case for at least 2 years, are exempt from taxation.
- (b) In the case of buildings constructed by the owner himself the part of the speculative gain attributable to the value of the building is not subject to taxation.
- (c) In the case of a sale of land without buildings the gain on sale decreases by 10% per year upon expiration of a period of five years after acquisition.

3. Special income from letting and leasing

If within 15 years prior to the sale of a building **construction expenses** (improvements) were written off over 10 years or 15 years pursuant to Section 28 para 3 EStG 1988 or over 10 years pursuant to Section 28 para 2 EStG 1972 or set off against non-taxable reserves, the seller shall subsequently pay tax on the difference between such increased depreciation and the calculated "normal depreciation for wear and tear" for construction expenses as "special income from letting". If since the first year for which the construction expenses were written off in partial amounts of one tenth or one fifteenth, at least six more years have passed, upon application such "special income" shall be equally allocated over a period of three years starting with the year of assessment to which the expenses have to be attributed.

4. Loss of the depreciation of one tenth or one fifteenth

If the seller has filed an application for depreciation of cost of maintenance, repair and construction in partial amounts pursuant to Section 28 paras 2, 3 and 4 EStG 1988 or pursuant to Section 28 para 2 EStG 1972 (depreciation of one tenth or one fifteenth, respectively), the right of depreciation of the one tenth or one fifteenth amounts not claimed at the time of the sale will be lost for both the seller and the buyer (special regulation in case of acquisition *mortis causa*).

5. Input tax adjustment and value added tax

Amounts of input tax resulting from cost of acquisition and construction as well as from large repairs are required to be adjusted pro rata in the case of transfers *inter vivos* within the subsequent nine years. In the case of entrepreneurial use of the property by the legal successor (e.g. by letting all flats of a building) input tax adjustments may be avoided by invoicing 20% value added tax in addition to the purchase price. Since the value added tax is part of the purchase price, this fact must be referred to in the purchase agreement.

6. Sale of real estate consisting of woodland

The hidden reserves from the standing wood will be disclosed and subject to tax.

VI. Rights to rescind contracts

1. Rescission of contract pertaining to real estate pursuant to Section 30a *Konsumentenschutzgesetz* ("KSchG") [Austrian Consumer Protection Act]

A **client** who is a **consumer** (Section 1 KSchG) and

- has made a contractual statement on the day of the first visit to the premises,
- and if such statement refers to the acquisition of a tenancy right, any other right to use a property or to ownership, namely
- to a flat, a detached (one-family) house or a property suitable for construction of a detached (one-family) house and if
- the same is intended to be used for covering the consumer's own urgent need for accommodation or of that of a close relative;

may declare **within one week in writing that he rescinds such contractual statement.**

The **time period begins** to run only when the consumer has received a duplicate of the contractual statement and information regarding the right to rescind the same, i.e. either on the day after he made the statement or, if the duplicate including the information on the right to rescind the contractual statement was delivered later on, at such later point in time. In any case **the right to rescind the contractual statement expires** not later than one month after the date of the first visit.

Agreements on the payment of a down payment, forfeit money or the like prior to expiration of the period allowed for rescission pursuant to Section 30 a KSchG shall be ineffective.

2. Right of rescission in the case of door-to-door selling pursuant to Section 3 KSchG

A **client** who is a consumer (Section 1 KSchG) and has made a contractual statement

- outside the offices of the real estate broker
- and has not brought about the business relationship with the real estate broker for the purpose of concluding the contract himself

may declare to rescind the statement in writing until conclusion of the contract or thereafter within one week. The period only begins to run when the consumer is given a document containing name and address of the entrepreneur, the information necessary to identify the contract and an information about the right to rescind the contract.

In case such an information is missing or wrong the **right to rescind will only expire** one month after complete performance of the contract by both parties.

Note:

If the consumer contacts the real estate broker him- or herself (e.g. on the basis of an advertisement), the consumer has established the contact independently and thus - regardless of where the contract was concluded - is not entitled to any right to rescind the contract pursuant to Section 3 KSchG.

3. The right to rescind the contract in case of non-occurrence of essential facts or circumstances (Section 3a KSchG)

The consumer may rescind his application for a contract or the contract itself in writing if

- with no initiative of his
- essential circumstances
- that were described by the entrepreneur as being likely
- have not occurred or have only occurred to a considerably smaller extent.

Essential circumstances are

- the necessary cooperation or consent of a third party,
- tax benefits, or
- public aid or a prospective loan.

The period for rescission of the contract is one week after the consumer is able to notice such non-occurrence if he was informed about such right to rescind the contract in writing. In any case, however, the right to rescind the contract will end one month after complete performance of the contract by both parties.

The consumer is not entitled to rescind the contract if

- in the course of the negotiations he knew or was required to have known about such non-occurrence;
- if the right to rescind the contract is negotiated in individual cases (not possible to include in a form); or
- if the contract was adjusted in an appropriate way.

4. The right to rescind a developer contract pursuant to Section 5 BTVG [Austrian Developer Contracts Act]

The Developer Contracts Act introduced regulations intended to protect persons acquiring rights to buildings, flats and/or business premises which are yet to be built and/or to be renovated thoroughly. The Statute is only applicable to developer contracts in case of which advance payments of more than ATS 2,000 (Euro 145,35) per sq.m. of usable space must be effected.

The purchaser may rescind his contractual statement if one week prior to such statement the developer has not informed him in writing of the following:

1. all essential information regarding the contents of the contract;
2. the prescribed text of the security to be issued to him if the purchaser's rights to refund, if any, are to be secured without appointment of an escrow agent;
3. the prescribed text of the liability statement of the Austrian *Gebietskörperschaft* [local, municipal, provincial or federal government body] or the respective statutory provision if the developer's security obligation pursuant to Section 7 para 6 subpara 2 is to be fulfilled;
4. the prescribed text of the agreements warranting an equivalent security if the security obligation pursuant to Section 7 para 6 subpara 3 is to be fulfilled;
5. the prescribed text of the agreement with the bank if the security obligation pursuant to Section 7 para 6 subpara 4 is to be fulfilled.

Rescission of the contract must be declared within one week. The **period for rescission commences** on the day on which the purchaser receives a duplicate or copy of his contractual statement and the information described under items 1 to 5 above as well as any information about his right to rescind the contract, all of the above in writing. The **right to rescind the contract expires** not later than one month after the purchaser made the contractual statement.

In addition, the purchaser may rescind his contractual statement if a residential construction subsidy on which the parties based the contract is not granted in full or to a substantial extent for reasons for which the purchaser is not responsible. Rescission of the contract must be declared within one week. The **period for rescission of the contract commences** as soon as the purchaser is informed of the fact that no residential construction subsidy will be granted and if at the same time or later he/she receives written information regarding the right to rescind the contract. The **right to rescind the contract expires** not later than one month after receipt of the information about the fact that no residential construction subsidy will be granted.

The purchaser may declare rescission of the contract vis-à-vis the developer or the escrow agent in writing.

A statement of rescission regarding a real estate transaction which is addressed to the real estate broker shall also apply to a broker agreement concluded in the course of making the contractual statement. Mailing of the statement of rescission on the last day of the period (date of postmark) is sufficient. The statement of rescission shall be deemed sufficient if a written document is sent which contains a contractual statement of only one party plus an additional statement showing the consumer's decline of the offer.

This form being given to you by Messrs.

who are acting as broker and are represented by Mr./Mrs.....

Pursuant to established business practises the broker may act as dual broker.

The broker does /does not have a close familial or business relationship to the third party.