

Outline of Ancillary Expenses

and additional information

for the **Tenant/Landlord**

Lessee/Lessor

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

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General terms and conditions pursuant to Section 10 IMV [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 tenancy agreements (*Mietverträge*)

1. **Fees payable on tenancy agreements** (Section 33 item 5 *Gebührengesetz* ("GebG") [Austrian Fees Act]):
1% of the gross rent (including VAT) payable during the term of contract; maximum: 18 times the annual value; in case of an indefinite term of contract 1% of three times the annual value. From 1 July 1999 onwards the landlord/lessor (or, as his representative, the broker, property manager, attorney or notary or other party) is obliged to calculate and pay the fee himself. In case of **tenancy agreements** with a fixed term on buildings or parts of buildings **the major purpose of which is housing**, the fees are limited to three times the annual value as of that point in time.
2. **Costs of execution of agreement** as agreed within the scope of the fee regulations of the respective person who prepared the contract.
3. **Commission**
The calculation of the commission is based on the gross rent, which consists of:
 - *basic rent or subrent;*
 - *pro-rata service charges and regular public charges;*
 - *share in special expenses (e.g. lift), if any; and*
 - *any remuneration for furniture or equipment rented together with the premises or other additional services of the landlord.*

| <i>(A) Services of real estate brokers who are not at the same time managers of the property where the premises are located</i> | Maximum commission plus 20% VAT in case of main tenancy agreements (<i>Hauptmietverträgen</i>) or sub-tenancy agreements (<i>Untermietverträgen</i>) on flats, detached (one-family) houses and business premises of all kinds | |
|--|--|---|
| Term of contract | Landlord | Tenant |
| <ul style="list-style-type: none"> • indefinite period/period of more than three years | 3 monthly gross rents plus 5% of the special consideration, if applicable | 3 monthly gross rents |
| <ul style="list-style-type: none"> • period of exactly 3 years | 3 monthly gross rents plus 5% of the special consideration, if applicable --- | 2 monthly gross rents |
| <ul style="list-style-type: none"> • in the case of renewal to more than 3 years or an indefinite period | | supplementary commission of 1 monthly gross rent (total of 3 monthly gross rents) |
| <p>Terms of tenancy agreements regarding business premises as well as dwellings to which the Austrian Rent Act will not apply (e.g. holiday property or flats in detached or semi-detached houses) may be fixed individually.</p> <p>If the period is less than 2 years, 1 monthly gross rent can be agreed upon with the tenant. In the case of a minimum period of two and a maximum period for 3 years 2 monthly gross rents can be agreed upon. In the case of renewal supplementary commission may be agreed upon. It may be agreed upon that tenants of business premises are obliged to pay the landlords fees.</p> | | |
| <i>(B) sub-tenancy agreements on individual rooms for residential purposes, independent of term</i> | 1 monthly gross rent | 1 monthly gross rent |

| | | |
|---|---|-----------------------|
| <i>(C) services of real estate brokers who are at the same time managers of the property where the premises are located</i> | Maximum commission plus 20% VAT in case of main tenancy agreements or sub-tenancy agreements on flats (also condominium flats if the client is the majority owner of the real property) | |
| Term of contract | Landlord | Tenant |
| • indefinite period of time/ period of 3 or more years | 2 monthly gross rents plus 5% of the special consideration, if applicable | 2 monthly gross rents |
| Main tenancy agreements or sub-tenancy agreements on business premises or condominium flats (unless the client is majority owner of the property) and sub-tenancy agreement on individual rooms for residential purposes are subject to the same regulation that applies to the commission payable to the real estate broker who is not at the same time manager of the building concerned - see (A) above. | | |

In order to calculate the basis of calculation of the commission the value added tax must not be included in the gross rent. The heating costs are also not to be included if the transaction concerns a tenancy relationship pertaining to a flat, in case of which pursuant to the tenancy law regulations the amount of the rent may not be agreed upon freely (reasonable rent, reference value rent).

In addition, a commission for special compensation in an amount of up to 5% can be agreed with the previous tenant.

II. Ancillary expenses in the case of lease agreements (Pachtverträge)

1. **Fees payable on lease agreements** (Section 33 item 5 *Gebührengesetz* ("GebG") [Austrian Fees Act]) 1% of the gross rent payable during the term of contract; in the case of an indefinite term of contract 1% of three times the annual value.
2. **Costs of drafting the agreement** according to the fee regulations of the person who prepared the contract.
3. **Commission**

(a) Leases, in particular in agriculture and forestry

In the case of leasing of properties or parts of properties a commission may be agreed with both clients which is fixed at a percentage of the rent payable during the term of the lease.

In the case of an **indefinite term of lease** 5% of the rent payable for 5 years.

In case of a **fixed term** of

- up to 6 years 5%
- up to 12 years 4%
- up to 24 years 3%
- more than 24 years 2%

in each case plus 20% VAT.

In the case of appurtenances an additional commission of 3% of the value plus 20% VAT may be agreed upon.

(b) Lease of businesses

In the case of an **indefinite term of lease** 3 times the monthly rent.

In the case of a **fixed term of lease** of

- up to 5 years 5%
- up to 10 years 4%
- more than 10 years 3%

in each case plus 20% VAT.

In case of compensation for investments or furniture/equipment a commission of 5% of the amount paid by the lessee therefore may be agreed with the lessor or the previous lessee.

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 Act]

Section 6 (1) The client is obliged to pay a commission in cases where 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 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. Rights to rescind contracts

1. Rescission of contract pertaining to real estate pursuant to Section 30 a *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,
- 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 is 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.