

## Outline of Ancillary Expenses and additional information for the purchase or sale of real property

This form being given to you by Mr./Mrs.

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.

**ÖVI form no. 13K/4/2012** 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. **GZ 2012/03/30 - Mag.Rü/Pe**



### 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)..... **1,1%**
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. **Costs for the declaration and self-assessment of the real estate gains tax by the legal counsel or notary**, as agreed in the fee provisions of the respective drafter of the title deed.
5. **Cost of proceedings and administrative charges for real property transactions proceedings** (differ from province to province)
6. **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.
7. **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.)
8. **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**

\* threshold provision pursuant to Sec. 12 (4) Real Estate Brokers Act

#### (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. **Land Register registration fee** ..... 1.2%
2. **General order of priorities** for pledging..... 0.6%
3. **Costs of drafting of the contractual document/debt instrument** pursuant to the fee regulations of the person who prepared the document
4. **Cash expenses** for certifications and stamp duties pursuant to fee regulations
5. **Cost of evaluation, if any**, pursuant to the expert fee regulations
6. **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. Energy performance certificate

The *Act on the Presentation of the Energy Performance Certificate* (EAVG) provides that in the event a building or an object of usage is **sold**, the seller has to present to the buyer an **Energy Performance Certificate** in due time before the contractual declaration and hand it to the buyer if the agreement is closed. At the time of presentation, the **Energy Performance Certificate** may not be older than 10 years.

As of December 1, 2012 (when the Act on the Presentation of the Energy Performance Certificate will enter into force) advertisements in print and electronic media must specify the thermal heat requirements (*Heizwärmebedarf* or *HWB*) and the overall energy efficiency factor (*Gesamtenergieeffizienzfaktor* or *fGEE*). Both, seller and broker will be subject to this obligation.

Starting on December 1, 2012, the buyer must be given the original or a complete copy of the Energy Performance Certificate, no later than 14 days after conclusion of the agreement. In the event the seller fails to provide it, the buyer is entitled to procure the Energy Performance Certificate, provided he / she has requested the certificate from the seller in vain. The buyer can then opt to either claim reasonable expenses for the certificate at court, or file a court request for the hand-over of the certificate.

The seller may choose to hand-over either an **Energy Performance Certificate** on the **overall energy efficiency** of the object or of a comparable object within the same building, or on the entire building. With regard to one-family homes, the requirement to present and hand-over an energy certificate will be satisfied by means of an energy certificate for a comparable building. The author of the Energy Performance Certificate must, however, confirm such comparability.

The Energy Performance Certificate must be compliant with the respective provincial regulations and is designed to create comparable information on the standard energy consumption of an object. The calculation of energy indicators is based on pre-defined conditions and standard parameters which are not user-dependent, resulting in the fact that there may be considerable deviations when the property / object is actually used.

If no Energy Performance Certificate is presented, Sec. 5 EAVG provides that an overall energy performance corresponding to the age and type of the building has been agreed.

There is no obligation to present an Energy Performance Certificate until December 1, 2012 for those buildings or objects of use, if no Energy Performance Certificate is required under the applicable provincial Building Codes. As of December 1, 2012 there will be an Austrian-wide list of exemptions from this requirement, however, historical monuments and listed buildings, for instance, will no longer be exempted from this obligation.

The new EAVG 2012 going into effect on December 1, 2012, will also include administrative penalty provisions. Both the seller and the broker who fail to state the HWB and fGEE values in an advertisement are subject to a fine of up to EUR 1,450. Brokers will only be excused if they have informed the seller of the subject obligation, requesting both indicators and the procurement of an Energy Efficiency Certificate, which the seller refused to supply. Moreover, the seller faces an administrative penalty of up to EUR 1,450 if he/she fails to present and / or hand-over the Energy Performance Certificate.

## IV. 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.***

## **V. Consumer protection provisions**

Section 30b *Konsumentenschutzgesetz* [Austrian Consumer Protection Act] (1). 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.

(2) The real estate broker shall provide to the client all information required in Section 3 para 3 of the Maklergesetz in writing. This includes all circumstances and conditions which are significant for the evaluation of the transaction in question.

**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.*

## VI. Tax effects in the case of a sale

### 1. Tax on Real Estate Gains and Speculations Gains

Gains from the sale of privately-held real estate have been subject to taxation since April 1, 2012, regardless of the time held. With regard to real estate which was sold **after March 31, 2012** there is a distinction between those properties that were previously purchased **on/after April 1, 2002 (or April 1, 1997)** and those purchased before that date ("old cases").

#### 25% tax on the real estate gains

Those properties that were acquired as of **April 1, 2002 (or April 1, 1997 if production costs were partly appreciated over a shorter period)** are normally subject to a flat 25% **real estate gains tax rate**, based on the difference between purchase costs and sales proceeds. Maintenance costs and production costs after the purchase are deductible, however, to be added are any depreciation for purchasing and production costs and the special depreciation which was deducted in the process of calculating special income from letting and leasing (see details item 3 below), as well as partial deductibles for maintenance expenses which have not yet been accounted for.

For properties that were held for a period of over 10 years, the **tax rate** may be reduced by 2 percentage points each year to compensate for inflation, up to a cap of 50%, such that the speculations tax will be 12.5% as of the 35<sup>th</sup> year.

**NOTE:** It is primarily in the case of rented properties that the real estate gains can normally only be determined in cooperation between the tax adviser and the real estate broker. The declaration and payment of the real estate gains tax has to be made by the drafter of the sales agreement, no later than on the 15<sup>th</sup> day of the second month following the actual payment of the purchase price.

**"Old cases": 3.5 % or 15 % tax on the total purchase price.**

In the event the preceding purchase was **before April 1, 2002 (or in the event of partial deductibles made in accordance with Sec. 28 (3) Income Tax Act of April 1, 1997)** the **actual sales proceeds** will be taxed at a rate of 3.5%, or 15% if there was a re-designation or rezoning after Jan 1, 1988.

It is possible in any case to request a calculation of the speculative gain and to have it taxed at a rate of 25%, or using the applicable income tax rate.

## 2. Exemptions from the Real Estate Gains Tax

### A) For primary residences

There is no real estate gains tax if a property was used as a primary residence for at least two years without interruption, from the moment of acquisition to its sale, or if it was used as a primary residence for a period of at least five years during the last ten years without interruption.

### B) For self-made buildings

The exemption also applies to **self-made buildings** (seller is also principal / builder) if these buildings were not used to generate rental income during a period of 10 years prior to their sale.

### C) Further exemptions

Further exemptions are provided for exchanges in connection with the reallocation / consolidation of farmland and similar transactions, as well as the application of certain taxes to the speculations tax, such as land acquisition taxes, taxes on the income of foundations, and inheritance / gift taxes during a period of three years prior to the sales transaction.

Self-assessment of the tax and filing of the tax return must be made by the counsel online (via finanz-online) no later than on the 15<sup>th</sup> of the second month following the date the agreement was concluded.

## 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 the years from 1997 to 1999 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 outlays for maintenance, repair and construction in partial amounts pursuant to Section 28 paras 2, 3 and 4 EStG 1988 (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. Adjustment of VAT input tax and VAT

VAT input taxes resulting from purchase and production costs and from major repair work must be adjusted on a pro-rated basis during the following 19 years, if conveyed between living persons. For investment properties which were used before April 1, 2012 there are transitional provisions with a nine-year adjustment period. A legal successor using a property as an investment object, such as an apartment building, can avoid an adjustment of the VAT input tax, by adding 20% VAT to the sales price. As the VAT is part of the purchase price, a pertinent reference must be included 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.

### VII. 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 not expire** at all.

**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 buyer may withdraw from his/her contractual statement** if he/she does not receive the following information from the developer in writing until a week before concluding the contract:

1. the provisional content of the contract;
2. the provisional text of the agreement with the commercial bank in the event mandatory security is required to comply with Section 7 (6/2) of the Austrian Developers' Contract Act (Bauträgervertragsgesetz – BTVG, blocked account model);
3. the provisional text of the certification in accordance with Section 7 (6/3 c) of BTVG in the event mandatory security is required to comply with Sec. 7 (6/3) (solvency model in subsidized rental housing);

4. in the absence of the nomination of a trustee: the provisional text of the security (guarantee, insurance) to be issued in the event securities are required under the law of obligation (Sec. 8);

5. if applicable, the provisional text of the additional security according to Sec. 9 (4) to fulfill the mandatory security required by the developer by entry in the land register (Sections 9 and 10, installment plan A or B).

If the buyer does not receive the information listed under points 1-5 above including a written explanation of his / her right of withdrawal until at least one week before signing the contractual statement, he/she shall be entitled to **withdraw from the contract**. Withdrawal may be declared at any time before the contract becomes legally effective. After that withdrawal has to be declared within 14 days. The period of withdrawal begins on the date of receipt of the pertaining information, but not before the contract becomes legally effective. Notwithstanding the receipt of the information, the right of withdrawal will expire 6 weeks after the contract has become legally effective.

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.

**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.

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