

KAPP & PARTNER
RECHTSANWÄLTE GMBH

KAPP

WWW.KAPP.AT

Development Contract Law (Bauträgervertragsgesetz: BTVG)

Mag. Raffaella LÖDL

Mag. Mario KAPP

- ⊙ Main principles
- ⊙ Intent/ purpose of the law
- ⊙ Security models
- ⊙ The “Land register security model”
- ⊙ Procedure/contract execution
- ⊙ Summary
- ⊙ Discussion



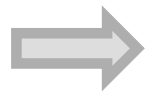
Principles and range of application

- ◎ Sale/Purchase of i.e an apartment, that is **under construction**
- ◎ Special Austrian law: The Development Contract Act (Bau-träger-vertragsgesetz: BTVG) – since 1997
- ◎ The law applies to real estate contracts in which the buyer makes **payments** of more than EUR 150 per square meter of floor space **before** the **property is completed.**
- ◎ Mandatory regime for “B2C” (alterable for “B2B” transactions)



Intent and purpose of the law

- ⊙ Difference to a general purchase of an existing property?



The outstanding construction

- ⊙ **Possible risks:**

- ⊙ Insolvency of the developer
- ⊙ Failed Completion

INSOLVENCY



- ⊙ **Therefore:** The law seeks to protect the buyers from losing their advance payments

- ◎ Special contract, which is governed by The Development Contract Act
- ◎ Security obligation's of the developer
- ◎ Main options:
 - a) **most common:** record in the land register in combination with a payment schedule ("Land register Model")
 - b) deposit of a bank guarantee/ mortgage (on a different real estate)



The "Land register security model" I

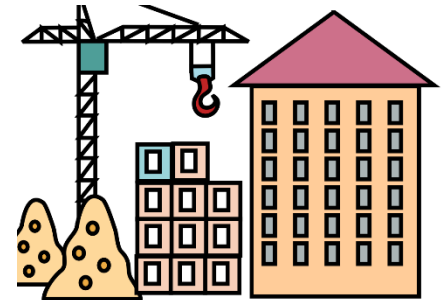
- ◎ "The Land register security model"
- ◎ Two main ingredients
 - ◎ **1.** record in the land register (no payments before registry!)
 - ◎ **2.** payment schedule: payment is made
 - according to the progress of the construction
 - based on notifications of the progress in construction from a surveyor (court-certified expert)



Payment Schedule B (§ 10 BTVG)

Percentage of the purchase price

- | | | |
|---------|-------------|---|
| 1. rate | 10% | Start of construction |
| 2. rate | 30% | Completion of shell and roof |
| 3. rate | 20% | Completion of rough installations |
| 4. rate | 12 % | Completion of the facade and windows |
| 5. rate | 17 % | Completion and handover of the i.e appartement |
| 6. rate | 9 % | Completion of the entire housing complex |
| 7. rate | 3 % | 3 years from handover (secure for warranty claims!) |



The "Land register security model" II

- ⊙ Obligation to appoint a **trustee** (lawyer or a notary)
- ⊙ Main tasks:
 - ⊙ information about the contract execution
 - ⊙ supervisory duties (payments/ building progress)
 - ⊙ "interface function"
 - Developer
 - Buyer
 - Surveyor (notifications of the progress in construction)



Procedure/contract execution)



- ⊙ The buyer has to pay before the building is finished
- ⊙ The buyer transfers the purchase price to an escrow agent
- ⊙ The escrow agent fulfils payments to the constructor according to the payment schedule
- ⊙ **BUT:** Payments only based on notifications of the progress in construction from a surveyor (personal liability!)

- ◎ Main purpose: Protection for buyers and payments in advance
- ◎ Escrow agent forms a link between constructor and buyer
- ◎ cooperation with a surveyor
- ◎ Payment schedule!



- ⊙ Is there a similar legal model in your jurisdiction?
 - ⊙ Similarities/Differences?



Thank you for
your attention



Mag. Raffaella LÖDL



Mag. Mario KAPP

KAPP & PARTNER
Rechtsanwälte GmbH (Austria)

office@kapp.at

www.kapp.at