
HILDEBRANDT & MÄDER

- RECHTSANWÄLTE UND NOTAR -

RAe HILDEBRANDT & MÄDER – CLAYALLEE 84 - 14195 BERLIN

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- RECHTSANWALT · NOTAR

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DATUM: 13.07.2012

Model Purchase Contract

Model

Property Purchase Agreement

- without notary public's escrow account -

The following persons appeared in front of the notary public, Dr. Klaus Hildebrandt:

1.

2.

3.

- the appeared identify themselves by presentation of their valid identification papers with photograph -

On being questioned, the appeared explain that the acting notary public and the persons associated with him for mutual exercise of occupation were not yet concerned with this matter as lawyers. ⁽¹⁾

The appeared confirm that they have received the draft agreement from the notary public before today's notarisation with the indication to notify the notary public of any amendments desired by them, to take advantage of consultation by the notary public by telephone or consultation in a preliminary discussion.

The appeared now declare for my record:

I. LANDREGISTERCONTENT ⁽²⁾

The notary public inspected the land register on

According to this, the following is entered in the land register of
Local court
Sheet
The site, building and open spaces
Plot
Land parcel
with a size of m²

Sect. I: ⁽³⁾

Sect. II: ⁽⁴⁾

Sect. II: ⁽⁵⁾

II. PURCHASE AGREEMENT ⁽⁶⁾

The appeared now conclude the following purchase agreement.

Section 1 Object of purchase and purchase price

The appeared under 1)

- hereinafter referred to as the “**Vendor**” -

shall sell the site ⁽⁷⁾ stated under I. with all buildings and other components and all accessories – hereinafter referred to as the “**site**” or the “**object of purchase**” -

to the appeared under 2.) and 3.) -in case of several purchasers in equal parts - ⁽⁸⁾

- hereinafter referred to as the “**Purchaser**”.

The Vendor undertakes to deliver the site in sect. II and III of the land register free of encumbrances with the exception of the encumbrance in sect. II ser. no. which the Purchaser accepts without any purchase prices reduction right.

The purchase price ⁽¹⁰⁾ amounts to
(in words: euro _____).

Section 2 Purchase price payment ⁽¹²⁾

The Purchaser shall pay the aforementioned purchase price directly to the Vendor by
⁽¹³⁾

Payment shall be made to the following account of the Vendor:

Account holder:
Bank:
Bank code:
Account number:

The payment shall, however, not be made earlier than 14 days after despatch of written notification of the notary public ⁽¹⁴⁾ to the Purchaser that the following prerequisites have been fulfilled whereby, for the calculation of the period, the date of despatch on the letter of the notary public is decisive:

1.
the entry of a prior notice of conveyance for the Purchaser in the land register is guaranteed, ⁽¹⁵⁾
2.
the negative test concerning the non-existence/non-action of a statutory preemptory right has been received, ⁽¹⁶⁾

3.
the deletion document for encumbrances not accepted by the Purchaser for sections II and III of the land register either without requirements or with requirements, which can be fulfilled using the purchaser price have been received, ⁽¹⁷⁾

4.
approval in accordance with the German Real Estate Transfer Regulation has been received. ⁽¹⁸⁾

In the notification of due date, the notary public shall give the Purchaser exact payment instructions, in particular with respect to redemption of the existing encumbrances in section III of the land register. ⁽¹⁹⁾ The Vendor shall receive a copy of the due date notification. If the purchase price is not received in good time by the Vendor or by the creditors to be redeemed, the Vendor shall notify the notary public of this without delay. The transfer of ownership shall only be initiated by the notary public when the Vendor has confirmed complete receipt of the purchase price towards him in writing. ⁽²⁰⁾ The Vendor is obliged to give this notification.

Inasmuch as entered creditors demand redemption sums for the release of encumbrances, the Purchaser is only obliged to fulfil these payment requirements counting these towards the purchase price without the recipient acquiring his own right of demand in this respect. For the security of the Purchaser, the Vendor cannot demand any payment to himself in this respect but only direct payment to the creditor. ⁽²¹⁾ The notary public and the Purchaser are neither obliged nor entitled to check the sums demanded in respect to reason or amount. ⁽²²⁾ After notarisation, the Vendor undertakes to convey the necessary information to the notary public which enables him to address the entered creditor directly and from there to demand the deletion approvals. ⁽²³⁾

If the Purchaser does not pay by due date, he shall be in default even without a reminder. ⁽²⁴⁾ Irrespective of statutory duties for compensation of further-reaching default damage, the Purchaser shall then always pay the statutory default interest. According to the notary public, this amounts to 5 percentage points above the base interest rate. ⁽²⁵⁾

In respect to payment of the purchase price, the Purchaser subjects himself towards the Vendor to immediate compulsory execution from this document. The Vendor can be issued with an executable copy of this document at any time without verification of the facts substantiating due date of the demand. ⁽²⁶⁾

Section 3 Power of attorney to encumber ⁽²⁷⁾

1.

To alleviate financing of the purchase price for the Purchaser and possibly expenses extending over and beyond the purchase price, the Vendor undertakes to co-operate as the present owner in the creation of enforceable (section 800 ZPO) charges on property in favour of financing creditors.

The duty for co-operation exists for the security of the Vendor only if in the charge on real property creation document, the following agreements already made by the involved parties are reproduced.

a) Securing arrangement

The land charge creditor may only utilise or retain the land charge inasmuch as he has actually made payment with the effect of repayment on the purchase price debt of the Purchaser. All other declarations of intended purpose, agreements concerning security and utilisation within or without this document shall only apply if the purchase price has been fully paid, in any case, from transfer on. From this point of time, they shall apply for and against the Purchaser as the new provider of security.

b) Payment instruction

Inasmuch as the purchase price is not to be used for the redemption of the sold object of purchase of entered encumbrances, payments in accordance with the amount of the purchase price are to be made to the account of the Vendor.

c) Personal payment duties, costs

The Vendor shall assume no personal payment obligation whatsoever in connection with the land charge creation. The Purchaser undertakes to indemnify the Vendor against all costs and other consequences of the land charge creation.

d) Continued existence of the land charge

The land charge created may also continue to exist after transfer of ownership to the Purchaser. All rights of the owner and return warranty claims which have to do with him shall hereby be transferred with effect after payment of the purchase price, in any case, however, after transfer of ownership to the Purchaser. The corresponding entry in the land register is approved.

2.

The Vendor authorises the Purchaser to represent him at all the above legal activities and to approve and apply for all in personam declarations for entry of the land charge plus interest up to 20% ⁽²⁸⁾ from today's date and to make one-off incidental payments of up to 10% in line with the entries and to declare in rem enforcement subjections also in the manner that enforcement against the owner concerned is permissible. The Vendor may not be subjected to personal enforcement. ⁽²⁹⁾

This power of attorney shall only apply when, in the land charge creation document, the provisions agreed in the above under a) to d) are effective again.

Section 4 Transfer ⁽³⁰⁾

The Vendor undertakes to transfer the site to the Purchaser on, not, however before complete payment of the purchase price.

The Vendor undertakes to hand over the original or copies of the site papers to the Purchaser on transfer inasmuch as they are in his possession. ⁽³¹⁾

With respect to his obligation for transfer, the Vendor subjects himself towards the Purchaser to immediate enforcement. He instructs the notary public to issue the Purchaser, on unilateral instruction, with an enforceable copy of this negotiation without it being necessary for verification of the facts substantiating due date of this claim, however not before verified payment of the purchase price. ⁽³²⁾

The day of transfer is the day of settlement. The benefit and the burdens of the site shall be transferred on this day from the Vendor to the Purchaser and shall be proportionally settled between them according to time. ⁽³³⁾

The risk of accidental ruin or accidental deterioration is also transferred to the Purchaser on the day of transfer. From the day of transfer, the Purchaser shall bear the traffic securing duty and the liability risk, and shall assume, within the framework of the agreement, all rights and obligations connected with the site.

Section 5 Site development costs ⁽³⁴⁾

The Purchaser shall acquire the object of purchase in the status of development as it is shown on today's date. Correspondingly, the Vendor shall bear all site development costs in according with the Construction Code and connection costs in accordance with the Local-body Tax Code inasmuch as the facilities have been completed as of today's date irrespective of whether completion has already been formally established or the site development contributions demanded. The costs of the site development facilities completed after today's date shall be borne by the Purchaser.

The Vendor assures that he has paid all site development costs already invoiced to him. If site development costs, which are to be borne in accordance with the aforementioned regulation by the Vendor, are demanded from the Purchaser because he has, in the meantime, become the owner, the Vendor undertakes to indemnify the Purchaser here or refund the costs paid by the Purchaser without delay.

Section 6 Material and legal defects

1.

With regard to legal defects, the Vendor is obliged to create unhindered possession and ownership free of the rights of third parties for the Purchaser inasmuch as rights or burdens are not expressly taken over in accordance with this agreement. ⁽³⁵⁾

2.

With regard to material defects in the basic fabric of the building, the land or the soil or any also purchased moveable items, any claims or rights are ruled out. No guarantees are given. The Purchaser has viewed the object of purchase and purchases it in its present condition, possibly conditioned by age. ⁽³⁶⁾

The Vendor assures, however, that, on viewing, no recognisable defects, in particular harmful change in the soil or pollution, dry rot or house xylophaga infestation are known. ⁽³⁷⁾

The Vendor assures that the object of purchase is not subject to the provisions of the Controlled Tenancies Act or any administrative act in accordance with the 'Residential Support Act', that is, in particular, the site is not encumbered by any public support which could possibly lead to rent control or to any restriction in commercial use and that there is no after-effect period from former public support. ⁽³⁸⁾

The Vendor assures further that no public encumbrances are known to him, in particular no revocable approvals or entries in the land charges register. It is, however a matter for the Purchaser to inform himself about any public charges not known to the Vendor. ⁽³⁹⁾

Finally, the Vendor assures that he has no knowledge off any existing preservation order in the Listed Buildings Act. ⁽⁴⁰⁾

Inasmuch as the rights of the Purchaser are restricted in the above, such restriction shall not apply

- inasmuch as composition agreements and guarantees are contained in this document

- inasmuch as the Vendor has intentionally represented or maliciously concealed the defect. ⁽⁴¹⁾

Section 7 Costs and taxes

The costs connected with this agreement and its execution ⁽⁴²⁾ and the land purchase tax ⁽⁴³⁾ shall be borne by the Purchaser. The Vendor shall bear the costs for deletion of the encumbrances in sections II and III of the land register not taken over by the Purchaser. ⁽⁴⁴⁾

He shall be responsible himself for the costs of any necessary subsequent approval of the agreement by one of the involved parties. ⁽⁴⁵⁾

The notary public has drawn attention to the fact that the aforementioned cost responsibility duty in the internal relationship between the Vendor and Purchaser is binding, however, in accordance with the statutory regulations for the notary public and the court costs and for the land purchase tax, the Vendor and Purchaser are joint and severally liable. ⁽⁴⁶⁾

Section 8 Tenancy and lease relationships

There are no tenancy or lease relationships; the object of purchase is transferred vacant.

Section 9 Pre-emptory right ⁽⁴⁷⁾

If a pre-emptory right is exercised, the Vendor shall assign his claims from the agreement together with the pre-emptory entitlement in this respect to the Purchaser, as he has already made payments to the Vendor. The Purchaser hereby accepts this assignment. The Purchaser has no further claims.

In exercising the pre-emptory right, the performance claim of the purchaser becomes null and void. The Purchaser is in this respect not due any further claims for damages.

The Vendor shall, however, bear the costs for this agreement and its execution inasmuch as they are not borne by the person entitled to the pre-emptory right.

III. EXECUTION

ANDLANDREGISTERAPPLICATIONS

Section 1 Conveyance

The Vendor and Purchaser are in agreement that the ownership in the sold site described under I shall be

transferred to the Purchaser – in the case of several purchasers in equal parts.

(50)

The Vendor and the Purchaser **approve and apply**

the ownership change-over to be entered in the land register.

The acting notary public or his appointed notary public representative may only submit the copy containing the conveyance or certified copy of this record to the land registry office after full payment of the purchase price and before this, send the copy containing the conveyance or the certified copy to the involved parties or third parties as otherwise the Purchaser would be put in the position even before payment of the purchase price to apply for the transfer of ownership. ⁽⁵¹⁾

Section 2 Prior notice

1.

The Vendor and the Purchaser **approve and apply,**

to secure the transfer of ownership to the Purchaser, for a prior notice to be entered in the land register and, after transfer of the ownership, to be deleted inasmuch as up to then no entries have been made or applied for in which the Purchaser has not co-operated. ⁽⁵²⁾

2.

As the financing creditor of the Purchaser desires priority of the financing land charge above the prior notice, the Purchaser hereby subordinates the prior notice already entered or to be entered in his favour for the site described under I in rank below the land charge created or to be created under II. Section 3 and applies for full execution of this subordination in the land register. The Vendor also provisionally declares approval of the subordination and applies for execution in the land register. ⁽⁵³⁾

3.

If the Purchaser does not fulfil his duty for payment of the purchase price in good time and the Vendor makes use of his statutory rights due to default on the part of the Purchaser, the Purchaser is obliged to have the entered prior notice of ownership in his favour deleted.

To secure this conditional deletion claim, the Purchaser already **approves** now the deletion of the prior notice of ownership to be entered in his favour. The Vendor **applies for** the deletion. The notary public is instructed not to send this copy containing this deletion approval or certified copy of this document before the prerequisites for submission of the deletion approval have been provided at the land register office. In this respect, both parties instruct the acting notary public to make the deletion application irrevocably at the land register office inasmuch as the following prerequisites, not to be checked by the land register office, have been fulfilled. ⁽⁵⁴⁾

- the purchase price has not been paid in good time,

- the declaration of withdrawal or the claim for damages by the Vendor has been verified to the notary public in writing, directed to the address stated in this agreement whereby verification of receipt does not have to be given,

- the notary public has sent the Purchaser a copy of the declaration of subordination or damages sent to him by the Vendor to the address stated in this agreement and notified him that he will make use of the deletion approval after 10 days and will apply for deletion of the prior notice,

- after expiry of this period, the notary public has not received any other instruction from the contractual parties or a court decision which prohibits him from making use of the approval.

If the Purchaser verifies that a part of the purchase price has been paid, the deletion of the prior notice may take place concurrently on refund of the already paid amount.

The Purchaser can neither assign nor pledge his claim to procurement of ownership before the purchase price has been paid in full.

Section 3 Encumbrances in sections II and III

The Vendor and the Purchaser **approve and apply for**

any encumbrances in section II and III of the land register to be deleted.

Section 4 Order to the notary public

The involved parties order and authorise the acting notary public to execute this agreement and to apply for and accept the certificates, notices and declarations necessary for this inasmuch as unconditional notices not subject to approval or negative certificates are issued. This shall apply in particular for any approval declarations. They shall be regarded on receipt by the notary public as having been submitted and received by the involved persons.

All applications from this document shall be made exclusively by the notary public. The Purchaser renounces his own application right from this document towards the land register office.

The acting notary public is authorised to make all applications from this document individually and independently of one another.

The involved parties, who have been instructed about the data protection and the duty for confidentiality, declare that they are in agreement with the authorities being issued with complete copies for winding up the agreement and that the personal papers of the appeared can be put as simple copies to the ancillary files.

The notary public shall, in further execution off this document, make use of his computer system for support. The involved parties declare their agreement for the storage and processing of the personal and other data in connection with the matter notarised here.

Section 5 Power of attorneys for the notary public's staff members

1.

The involved parties instruct and approve the notary public's specialised staff members Michaela Zacniewski, Ines Spyрка, Dana Leithoff and Melike Yildiz - each for themselves ruling out their personal liability, with their working address in Clayallee 84, 14195 Berlin, to make and accept all declarations necessary for the execution, amendment and supplementation of the agreement in front of the acting notary public.

The power of attorney for the specialised staff members of the notary public's office may only be exercised in front of the acting notary public or his officially appointed representative, who shall monitor the fact that use of the power of attorney is only made within the terms of the agreement.

The power of attorney shall lapse one month after entry of the Purchaser as the owner in the land register.

The aforementioned power of attorney provides authorisation in particular to

- make applications and to issue approvals for the entry, deletion and alteration to the ranking of rights of all types in sections I, II and III of the land register,
- to declare the conveyance and determination of the object of purchase and to approve and apply for the transfer of ownership,
- to correct possible printing errors in this document,
- to make and accept all declarations, in particular to declare renunciation of legal aid.

The authorised persons can act for all involved parties at the same time and are entitled to issue sub-power of attorney.

The authorised persons can carry out legal transactions in the name of the represented persons and at the same time with themselves in their own name or as the representatives of third parties.

2.

The aforementioned persons are also authorised, already before the transfer of ownership, to create the land charges in accordance with II section 3 of this agreement and in doing so, to subject the owner concerned in accordance with section 800 ZPO to immediate enforcement as also to assume the personal liability for culpability for the Purchaser and to subject him from this to immediate enforcement. The Vendor may not be subjected to personal enforcement.

The notary public drew the attention of the Purchaser to the fact that the aforementioned notary public's office staff not only subject the object of purchase in rem to enforcement on the basis of customary conditions in the use of the forms of the financing creditors but also declare a personal assumption of liability for the Purchaser connected with subjection of his complete assets under personal enforcement. The notary public drew the attention of the purchaser further to the fact that financing creditors regularly reserve the conversion of uncertificated land charges into a certificated one or the other way around at the expense of the Purchaser and have all rights of the Purchaser in prior-ranking land charge rights, in particular the right to deletion assigned to themselves. The notary public drew the attention of the Purchaser to the fact that he could also carry out the creation of the land charge personally at a further notarisation appointment. For simplification of processing, the Purchaser wishes, however, creation of the land charge right on the basis of the existing power of attorney.

Section 6 Instructions

The notary public gave the appeared the following instructions:

- all agreements between the parties shall be notarised as, in case of violation, the agreement would be ineffective in its whole content, ⁽⁵⁶⁾

- the Vendor and the Purchaser are liable for the costs and taxes triggered by this notarisation as joint and several debtors irrespective of any other agreement in the internal relationship. ⁽⁵⁷⁾

- the Purchaser shall only become the owner of the object of purchase on transfer of ownership in the land register, ⁽⁵⁸⁾

- entries in the land register can, if necessary, only be made when a corresponding court cost advance has been paid,

- the transfer of ownership only takes place when the clearance certificate from the financial authorities (confirmation of payment of the land purchase tax) has been received ⁽⁵⁹⁾,

- for this agreement there is a statutory pre-emptory right of the public sector,

- there is a possibly a directory of public easements for the competent land register district; the notary public has not inspected this directory,

- to become effective approval, this agreement requires approval in accordance with the property transfer order and is provisionally ineffective up to its issue.

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(1) Prohibition of prior involvement

If the notary public has represented one of the contractual parties against the other in the notarisation matter as a lawyer or representation has taken place through one of his partners, he can no longer be impartial for notarisation. The notary public correspondingly does not come into question for notarisation. In accordance with the statutory regulations, the notary is obliged, before notarisation, to pose the question of prior involvement to the parties.

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(2) Land register status

At this point of the purchase agreement, the notary public shall give an account of the land register as he found it on inspection of the land register. In cases, in which notarisation has to take place very quickly, inspection of the land register before notarisation is sometimes not possible. In these cases, the land register inspection shall be carried out without delay after notarisation. The notary public shall always inspect the land register before payment/payout.

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(3) Content of section I of the land register

The owner is entered in section I of the land register. If there are several owners, entry of their legal relationships are found there below one another. Conceivable are

- owners of fractions
- owners as a limited liability company
- owners as a community of heirs

(4) Encumbrances in section II

All encumbrances, which are not land charges, are entered in section II of the land register i.e. for example:

- easements (e.g. walking, driving and piping rights)
- in rem residential right
- usufruct
- reversal of the prior notice of conveyance

As a rule, these encumbrances shall be deleted within the framework of winding up the property purchase agreement so that the purchaser receives an encumbrance-free site in section II of the land register. In some cases, this is not possible because it is just the meaning of the encumbrance also to bind each purchaser.

Example:

walking, driving and piping rights (easement) for a back site.

In this case, the Purchaser shall take over the old entry in section II of the land register without any purchase price reduction right, see (9).

In some districts, which have been designed from the plan as residential area or as a garden town (e.g. Frohnau, Zehlendorf, parts of Dahlem), there are old encumbrances, which are decades old, and, at the time, were supposed to guarantee the uniformity of the buildings. Further, as a rule, certain trades were to be kept out. These encumbrances can also often not be deleted and are therefore to be taken over by the Purchaser even if they may be obsolete in their content.

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(5) Encumbrances in section III

Only land charge rights are entered in section III of the land register; these are mortgages, land charges and rent charges. In most cases it concerns here land charges which were used as security for the bank of the Vendor for his own acquisition.

As a rule, these land charges shall be repaid out of the land register so that the Purchaser purchases free of encumbrances here. An exception is conceivable if the Purchaser either takes over the land charge without a loan or even the loan forming the basis of the land charge because it means particularly favourable interest for him.

One of the most important tasks of the notary public is to create an encumbrance-free land register for the Purchaser. To achieve this, the notary public writes, after conclusion of the property purchase agreement, to the creditors still entered in section III of the land register and reports the fact of sale and requests a deletion approval to be granted. This deletion approval in its original version, which the notary public receives as a result, leads in the end to deletion of the right in section III of the land register,

Inasmuch as the loan, which is the basis of the land charge right, still exists, the bank shall send back the deletion approval to the notary public, only in trust, with the instruction only to make use of it when a certain amount has been paid.

In his due date notification to the Purchaser – see also (19) – the notary public then notifies him of the bank account of the bank requiring redemption and the exact amount to be paid. After payment of the Purchaser to the redeeming bank (and the remaining amount to the Vendor), the notary public can then make use of the deletion approval sent to him so that freedom of encumbrance in favour of the Purchaser in section III of the land register is guaranteed.

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(6) Purchase Agreement

The Property Purchase Agreement is the contractual transaction which obligates the Vendor and Purchaser as follows:

The Vendor is obliged to make the ownership of the site available , as agreed, free of encumbrances, and to hand over the site. The Purchaser is obliged to purchase the site and to pay the agreed purchase prices.

The details, such as the description of the object of purchase, the purchase price, its due date, the reciprocal safeguarding of the Vendor and the Purchaser, the transfer, the change in benefit and encumbrances, regulation of the site development costs etc. then form part of the regulation.

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(7) Object of purchase: Site with its components and accessories

The object of purchase is legally primarily the site even if there is a building on the site. The building is legally transferred with the site and is also legally sold with it. This also applies for all parts of the building and for all accessories. All moveable items fixed firmly to the building and all items taken into the building (e.g. built-in cupboards, built-in kitchen etc.) are also sold with it. Not sold with it are, without a separate agreement, furniture, lamps, curtains etc. If, in individual cases, it is desired that an exact list of the objects, which are sold with the building, be drawn up, that can be carried out at this point.

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(8) Purchase relationships

If several natural persons or legal entities purchase a site, their acquisition relationship between one another shall be regulated. As a rule, several acquire at equal fractions, conceivable as well is also only acquisition in a business partnership.

Acquisition in a business partnership generally creates greater flexibility than purchase in fractions because the relationship of the purchasers amongst themselves can be regulated exactly.

Disadvantageous with the purchase by a partnership is that, as a rule, for reasons of proof, a written company agreement has to be concluded the working out of which should be carried out by a lawyer or a notary public. This causes further costs.

The partnership has appreciable advantages over the normal fractional organisation in particular for the case that later creditors wish to seize the site.

In the case of fractional ownership, this is possible through a partition auction in that the whole site is utilised, i.e. also the share of that co-owner who does not owe the creditor anything. In the case of a partnership, on the other hand, it can be regulated in the company agreement that, for the case of creditor seizure, the business share of the debtor can be collected and the creditor is only compensated.

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(9) Obligation to encumbrance-free ownership procurement

It is not sufficient for the Purchaser when ownership in the site is procured for him. It is just as important that this ownership is transferred non-encumbered in sections II and III of the land register. There shall only be another regulation if encumbrances, for example, in section II of the land register shall be taken over because they cannot be deleted. The formulation is then, for example:

“... with the exception of the encumbrance in section II series no.1 (walking, driving and piping rights) which the Purchaser takes over without a purchase price reduction right.

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(10) Purchase price and composition

The total purchase price can, for the purpose of tax savings, be split up. “Accessories” to the site are, for example, land purchase tax-free. If, therefore, it is formulated, a certain amount of the purchase price is apportioned to accessories, this amount is not subject to land purchase tax so that 3.5% (or in Berlin 4.5%) can be saved on this amount.

The most important cases of land purchase tax-free accessories are:

- kitchen furniture
- garden tools
- remaining heating oil in tank

Example for a land purchase tax-favourable formulation:

“The purchase price amounts to 170,000.00. Of this, 8,000.00 € is apportioned to accessories in particular to kitchen furniture and garden tools.

In this case, 8,000.00 € is free of land purchase tax which, at a land purchase tax rate of 4.5% in Berlin, means an absolute sum of 1,250.00 €

Further-reaching explanations

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(11) Limitations of claims

The statutory limitation periods for the Purchaser's claim and the Vendor's claim are different. For reasons of "equal terms", the limitation periods for both claims are adapted in the purchase agreement.

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(12) Purchase price payment

The purchase price payment can be made in two conceivable ways:

- by using s notary public's escrow account
- directly from the Purchaser to the Vendor and possibly the creditor to be redeemed without a notary public's escrow account

Basically, any property purchase agreement can be wound up without a notary public's escrow account. The advantage of a property purchase agreement without notary public's escrow account lies for the Purchaser in the lower notary public's fees. There is not a higher risk for the Purchaser in winding up the agreement without a notary public's escrow account. The notary public sends him a "notification of due date" in which there is an exact payment plan, for example, for payment to creditors to be redeemed. If there are errors in this, the notary public is liable for this due date notification as for his own bank transfer from the notary public's escrow account.

In cases in which a quick transfer of the site is planned, the Vendor, however, on the one hand, first of all wishes to "see" the purchase price, on the other, however, not all prerequisites for passing on the purchase price to the Vendor have been fulfilled, a notary public's escrow account is used: the Purchaser shall pay the purchase price into the notary public's escrow account, the Vendor can now transfer the site because he has a corresponding security and, after the payment prerequisites have been met, the purchase price shall be paid out then later to the Vendor or the banks to be redeemed.

A further exception, for which the use of a notary public's escrow account is meaningful, is for a site which is subject to forced sale.

On the other hand, property purchase agreements with numerous encumbrances in section II and III of the land register can be wound up without a notary public's escrow account in particular when the purchase price is financed by the Purchaser.

Since 1998, notary publics are required by law to wind up purchase agreements as a rule without a notary public's escrow account in the cost interests of the Purchaser.

Further-reaching explanations

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(13) Point of time of payment

The bandwidth with respect to the point of time of payment is broad.

In some cases, the Vendor still has to find a new flat himself so that the transfer and, advanced, the purchase price payment is only to take place months after the purchase agreement.

As a rule, the point of time of payment lies at four to eight weeks after the conclusion of the purchase agreement. The point of time of payment should be selected so that the security prerequisites of the Purchaser (prior notice guaranteed, negative test, existing deletion documents) have been met by then. As a rule, a payment period of less than four weeks after the conclusion of the purchase agreement will not be meaningful.

Further, for the Purchaser also the time span is also to be observed which the bank requires for financing the purchase price. If the person interested in purchase negotiates with various banks before conclusion of the purchase agreement, a minimum period of three weeks after the conclusion of the purchase agreement shall be planned.

For the normal case, a payment period of six weeks after conclusion of the purchase agreement is recommended.

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(14) Due date notification by the notary public

The purchase price may only be due when fulfilment of the agreement has been guaranteed for the Purchaser. Acquisition has been guaranteed when the notary public can guarantee that the Purchaser acquires the ownership of the site and this ownership, also as promised in the purchase agreement, contains no encumbrances in the land register or only encumbrances which the Purchase expressly takes over. On the other hand, the purchase price shall be conceived in such a manner that the point of time of payment is not unnecessarily delayed as

- the Vendor is interested in receiving his money as quickly as possible.
- the Purchaser is interested in short-term payment of the purchase price because transfer to him is dependent on receipt of the purchase price (see section 4).

Indispensable prerequisites for the due date notification of the notary public are:

- guarantee of the prior notice,
- receipt of the negative test,
- receipt of the necessary approvals (e.g. in accordance with the Property Conveyance Ordinance, legal rehabilitation approval etc.)

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(15) Prior notice of conveyance as security

The most important security of the Purchaser in accordance with the land register is the prior notice of conveyance. The Purchaser is noted down here in the land register in section II with his claim to transfer of ownership. The prior notice has the effect – stated in non-legal language – of a “land register block” so that the Vendor, from this point of time, cannot pass the ownership on again and also further encumbrance of the site by the Vendor is also not possible. Securing mortgages for third-party creditors can also no longer be entered in the land register.

As the entry period for the prior notice in the land register is, as a rule, incalculable and longer processing periods have to be expected, the practice notary publics has become common that entry of the prior notice is not necessary but that “guarantee” of the entry is sufficient. The notary public makes the application for prior notice of ownership at the Land Register Office, then he inspects the land register once again and establishes the existence of his own application. The notary public then also checks whether there are prior-ranking applications. If this is not the case, the prior notice shall be entered in rank above all other following applications and thus secures the purchase without any gap. This is sufficient as security for the Purchaser.

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(16) Negative test

For every site, there is the statutory pre-emptory right of the District Office/the Community. This pre-emptory right shall secure the planning possibilities of the state. The notary public shall correspondingly obtain renunciation of this pre-emptory right after notarisation. The waiver declaration is referred to as the negative test. As waiver of the statutory pre-emptory right is important, the negative test has been raised to become a payment prerequisite.

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(17) Deletion documents

It is of little benefit to the Purchaser if he receives the ownership of the site but the old encumbrances on the sections II and III of the land register, which he was not prepared to take over, are still existent in the land register. These rights could namely be asserted burdening the site, for example through enforcement. Correspondingly, it shall become a payment prerequisite that all deletion documents for these old encumbrances, which the Purchaser has not taken over, have been presented. With the deletion documents, the notary public can initiate deletion in the land register so that, already on their being received by the notary public, security for purchase is given and payment of the purchase price can take place.

(18) Approval in accordance with the Property Transfer Ordinance

In the acceding territory and in particular also in the eastern part of Berlin, approval in accordance with the Property Transfer Ordinance is necessary for the sale of a property. This approval confirms that no old claims off authorised person have been registered, in particular from the expropriation of Jewish property.

Up until approval is granted, the agreement is provisionally ineffective and can therefore not be executed. This approval is, that is, so important that it shall be raised to a payment prerequisite. Before the approval is granted, some time, in certain cases, months can pass. Approval in accordance with the Property Transfer Ordinance is therefore for sites in the acceding territory often the last prerequisite for payment of the purchase price. If, for the parties, earlier payment is essential (for example, because transfer of the site depends on it), exceptional use of a notary escrow account is recommended – see here (12).

Approval in accordance with the Property Transfer Ordinance can be waived in the following cases:

- when after 28 September 1990, conveyance has already taken place and, in this connection, approval was granted.
- when the site has been in interrupted family ownership since 30 January 1933.

Existence of the exceptional prerequisites shall be checked particularly carefully by the notary public.

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(19) Payment instruction to the Purchaser

The due date notification of the notary public consists first of all of the notification that all facts necessary to secure the Purchaser have occurred. Further, the due date notification also contains an exact payment instruction, in particular in the cases in which not the whole purchase price is to be paid to the Vendor but at the same time, also the encumbrances in section III towards the banks are to be redeemed.

Example of a due date notification:

Dear Ms Schmidt,

Concerning your purchase agreement, entry of the prior notice is guaranteed, the negative test of the District Office has been received and all deletion documents of the former authorised persons from section III of the land register have been received.

Correspondingly I shall now make the purchase price amounting to 180,000.00 € in accordance with section 2 of the purchase agreement due as of

01.07. ...

in accordance with the enclosed payment plan.

Yours sincerely

Notary public, Dr. Hildebrandt

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Payment plan to be presented to your bank or for bank transfer:

1. 102,750.00 €

Recipient: Willi Muster
Bank: BW-Bank
Bank code: 600 501 01
Account no.: 612.02.368.7
Reason for payment: "Loan repayment 44132025/4718 KA/47165"

2. Residue amount amounting to 77,250.00 €

Recipient: Willi Muster
Bank: Commerzbank Berlin AG
Bank code: 100 400 00
Account no.: 0715372530
Reason for payment: "Residue purchase price after redemption for document no.:
768/...

of the notary public, Dr. Hildebrandt

(Notary public, Dr. Hildebrandt)"

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(20) Confirmation of the Vendor

To secure the Vendor, transfer of ownership to the Purchaser shall only then be applied for when the Vendor has confirmed to the notary public in writing that he has received the full purchase price. When creditors of the Vendor were to be redeemed partly directly from the purchase price, the Vendor shall convince himself that these creditors have been satisfied by the Purchaser. Only then shall the Vendor confirm to the notary public in writing that he has received the complete purchase price.

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(21) Payment to creditors

For the security of the Purchaser, the creditors entered in the land register shall be directly satisfied. The Vendor cannot demand that the amounts which the creditors demand from section III of the land register are first of all transferred to him, with the promise to pass on these sums. This procedure appears to be too risky for the Purchaser.

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(22) Calculation of the creditors

The creditors of the Vendor still entered in the land register shall notify the notary public at his request, sending a deletion approval, of which amounts they still expect. The notary public shall state the key date which is fixed in the purchase agreement as the presumable day of payment date and is based on the estimation of the payment prerequisites. The creditors shall calculate their demand exactly to this day and calculate daily interest for any delayed payment.

The notary public can and shall not check the amount of the demand itself or the amount of the daily interest. The Vendor shall correspondingly make sure that settlement with him is accurate. As a rule, the Vendor shall receive, parallel to the letter of the redeemable creditors to the notary public, a copy of this letter and can check the settlement, in particular with respect to the so-called acceleration compensation if the loan is redeemed early in spite of an interest binding period. If the Purchaser does not receive such a copy of the letter, he can request it from the notary public.

If there are doubts for the Vendor about the calculation of his redeemable bank, he should have this calculation checked. “Stiftung Warentest”, for example, offers an examination of the calculation of acceleration compensation at a cost of about 50.00 €

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(23) Information of the notary public

Immediately after notarisation, the Vendor shall be asked by the notary public for the loan numbers, names, addresses and possible contacts for the creditors. The Vendor should send the notary this information as quickly as possibly so that the notary public can write to the creditors and provide for the deletion documents. Acceleration is in the interests of the Vendor because the presentation of the deletion documents is regularly a prerequisite for payment.

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(24) Regulation in case of delay

Delay occurs if the Purchaser does not keep to the due date for the purchase price regulated in the purchase agreement. In this case he shall owe not only the statutory delay interest stated in the notarised agreement but also risks reverse processing of the agreement: the Vendor has - if necessary, after announcement – the right to withdraw from the purchase agreement or demand damages due to non-performance.

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(25) Claims for damages in case of delay

The statutory delay interest rate is only the regular case of delay damage. If the Vendor can prove that his damage is higher, for example, because he cannot redeem high-interest loans or the Purchaser can prove that only lower damage has arisen for the Vendor, this delay damage shall be decisive.

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(26) Subjection to enforcement

Subjection to enforcement by the Purchaser is one of the most important securing possibilities for the Vendor. Should the Purchaser come into default with the purchase price payment, the Vendor can immediately pursue enforcement from the enforceable copy of the notarised document and does not have to obtain – as otherwise in civil law – a deed against the Purchaser by means of a long-drawn-out civil process.

The rights of the Purchaser are, however, not truncated. By way of the so-called “counter enforcement action”, he can raise objections from which he is of the opinion that he can refuse to pay the purchase price.

For reasons of equal terms, the Vendor shall subject himself to enforcement, namely due to his obligation for transfer in section 4 of the purchase agreement.

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(27) Encumbrance power of attorney

If the Purchaser does not have to finance the purchase price, an encumbrance power of attorney is not necessary.

If the Purchaser wishes to finance the purchase price – as is normally customary - the financing bank will demand a security for the loan. The sold site shall now serve as the security: as a rule the bank shall desire entry of the land charge in section III of the sold site as security. The Purchaser can, however, only carry out such entry when the application for transfer of ownership to him has been made. Until then, however, as a rule, the purchase price should be paid. Before applying for the transfer of ownership, the site can, however, only be encumbered by the still authorised Vendor.

Practice solves the problem in that the Vendor – as the authorised person in the land register – issues the Purchaser with a power of attorney to encumber the property already before the transfer of ownership with land charge rights (“encumbrance power of attorney”).

Such an encumbrance of the site before the transfer of ownership is of course risky for the Vendor if the notary public does not, at the same time envisage securities for him. For this reason, a comprehensive part of the encumbrance power of attorney regulates securities for the Vendor. The regulations for the security arrangement, payment instruction, personal payment duties, costs and continued existence of the land charge right have the effect that the land register encumbrance may and can legally only be maintained if the purchase price is paid to the Vendor or to the redeemable banks of the Vendor. Practically these securities are integrated so that the land charge form of the financing bank shall contain the corresponding securities as, otherwise, the notary public shall not create the land charge.

The encumbrance power of attorney is standard in winding up of notarised property purchase agreements and contains, with exact formulation of the securities of the Vendor, no risk for him.

As a rule, the Purchaser shall only require an encumbrance power of attorney amounting to the purchase price because his financing frame also only comprises the purchase price. If, however, for example, a building site is sold and also the house construction is financed before the transfer of ownership, the encumbrance power of attorney will be very much higher. This also applies in cases in which the Purchaser wishes to co-finance certain incidental costs (e.g. agent’s fees, land purchase tax, notary public and land purchase office). Here also he will need a power of attorney to encumber the site with a land charge which extends over and beyond the purchase price.

Such an increase in the encumbrance power of attorney is, like the encumbrance power of attorney itself, for the Vendor without risk if the notary public envisages adequate safeguards

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for him. It must always be certain that use is only made of the encumbrance power of attorney when payment of the purchase price has been secured. If this is the case, however, it does not matter whether the sold site can only be encumbered to the amount of the purchase price or also clearly higher. For the Vendor it is only decisive that he securely receives the purchase price.

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(28) Interest

The interest to be entered for the financing creditor is not that which the Purchaser has to pay for the loan. The bank desires security in the form of a land charge not only for the actually agreed loan interest but also for that interest which become due for a distressed loan. Default interest can, however, be clearly higher so that a corresponding “frame” has to be envisaged for the interest of the land charge right in the land register. The interest to be entered in the land register in section III correspondingly has nothing to do, with respect to its amount, with the interest for the loan.

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(29) Safeguard for the Vendor: No personal liability

With the encumbrance power of attorney, the Vendor only provides the sold site as the object of safeguard. It has to be made clear that the Vendors have no personal liability from this – above all from the loan.

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(30) Transfer

Transfer means the actual ownership procurement.

For safeguarding of the Vendor, the agreement is included, as a rule, that, first of all, the purchase price has to be fully paid before transfer can take place. No longer period of time has to lie between payment and transfer. As a rule, transfer can take place in fact on the same day.

It is an important safeguard for the Vendor if he only transfers the site when he has received the purchase price. If the Vendor transfers the site before this and he does not receive the purchase price, he shall possibly have to enforce eviction against the purchaser.

The Vendor should therefore convince himself before transfer that the purchase price has been paid to him or the redeemable creditor in accordance with the agreement. As, as a rule, between receipt of payment and transfer there is only little time, the Vendor cannot wait for the receipt of account statements or written confirmations of his banks. The Vendor shall rather ask by telephone on the prognosticated day of payment whether the payment of the purchaser have been booked. This applies both for the amount which the Vendor receives himself and for the amounts which his redeemable creditors receive from the Purchaser.

If, in an individual case, transfer is desired in time before payment of the purchase price, this represents an increased risk for the Vendor. Such cases can, however, be regulated, for example as follows:

- processing takes place through a notary public's escrow account. On transfer to the notary public's escrow account, the Vendor has the security that the purchase price has been paid by the Purchaser and, after receipt of the payment prerequisite taking even longer, will also be paid to him and he can then transfer the property.
- the Purchaser shall make a – for him at this point of time, however, unsecured – down payment to the Vendor. The Vendor shall retain an amount in hand which is sufficient for the case of reverse processing of the purchase agreement to serve his claims for damages.

Further-reaching notes:

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(31) Site papers

The formulation is consciously structured flexibly and speculates as to which site papers the Vendor has in his possession. It is possible to think of planning documents, construction agreements, rates notices, operating instructions for technical devices etc.

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(32) Subjection to enforcement due to transfer

For reasons of “equal terms”, not only the purchaser subjects himself with respect to the purchase price to enforcement of his complete assets (see section 2) but also the Vendor with respect to his obligation for transfer of the object to the purchaser. The subjection to enforcement has the effect that the Purchaser does not have to sue the Vendor for transfer but can lodge a claim from the notarised document as deed.

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(33) Settlement proportional to time

The day of settlement between the parties, is as a rule, the day of transfer. To be observed here is that the Vendor has often already made advance payments over and beyond the day of transfer, for example, rates, insurance premiums etc. On transfer, a corresponding set-off between the parties has to take place; i.e. the Purchaser shall take over all payments from the day of transfer proportionally.

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(34) Costs for site development

The site development costs are not delimited as of the day of transfer in the draft of the agreement but as of the date of the purchase agreement. This has the following background:

the Purchaser purchases the site in the status of development as it appears to him on conclusion of the agreement. He is prepared to pay a certain purchase price for the site developed as seen. The developments which he sees on conclusion of the purchase agreement have also been paid by him, all developments which he does not see, he shall calculate in such a manner that he shall pay them himself in the future. From this, the simple rule evolves that all site developments which are existent at the point of time of the purchase agreement are still to be paid by the Vendor even if the invoices come later and all developments which begin one day after the conclusion of the purchase agreement shall be paid by the Purchaser even if they take place before transfer of the site.

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(35) Legal defects liability

There is a legal defect, for example, when the object of purchase is let out or encumbered with other rights of third parties. In the draft agreement, the Vendor assures the absence of such legal defects with the exception of those impairments which the Purchase knowingly accepts (for example an entered walking, driving or piping right [easement]).

Further-reaching explanations

(36) Material defects liability

In accordance with the regulations of the German Civil Code, the Vendor is liable for any defects in the site or the building built on it. This regulation is not regarded by notarial practice for old buildings as appropriate as each defect otherwise, for example, would mean the justification for a purchase price reduction. Correspondingly, it has become common practice to regulate complete exclusion of material defects liability in favour of the Vendor. For the parties, this has two meanings:

- the purchaser is bound as a rule to carry out an intensive inspection of the property.
- the Vendor may, in spite of the exclusion of liability, not keep defects which are known to him secret and for the purchaser not recognisable. If he keeps these defects secret nevertheless, the exclusion of liability in his favour shall not apply, and he shall be liable again in accordance with the statutory regulations.

Deeper-reaching explanations

(37) Special property impairments

With respect to the material defects most significant in practice, the Vendor gives the assurance, in addition, that such are not known to him. It has to be made clear that the Vendor, in accordance with this clause, is not already liable when these defects show subsequently in contrast to the assurance but only then if the Vendor knew about these defects. Important is, further, the following: in principle, the Vendor does not have to draw attention on conclusion of the agreement to already eliminated defects. Something else can apply if the eliminated defects are exposed to the risk of returning. This has been assumed by jurisdiction, for example, for dry rot. The Vendor shall, that is, draw attention to this fact also for dry rot which has just been recently eliminated.

(38) Assurance of social commitment

If residential space is subsidised with public funding, there are, as a rule, commitments. In return for the granting of public funds, the lender secures influence on the subsidised real estate for himself. The main restrictions resulting from the social commitment are the following:

- self-use of the property only when certain prerequisites are fulfilled (income limits etc.)
- binding for external letting (income limit, rent restrictions etc.)
- obligation for permission for conversion to trade

The special feature of controlled tenancy is that it, by virtue of the statutory regulations, in particular in accordance with the Controlled Tenancy Act and in accordance with the Residential Room Support Act not only concerns the direct contractual partner but can automatically be transferred to a purchaser with the real estate. Correspondingly, a purchaser takes over, if relevant, obligations from socially bound residential property or from a socially bound family home which he does not even know from the content.

For the reasons stated above, the assurance of the lack of such burdens is of particular significance.

Deeper-reaching notes

(39) Assurance concerning the construction obligations

The construction obligation is an obligation under public law entered in a register which means an obligation to act, to tolerate or to refrain.

Example:

the authority of a neighbour to erect an indoor swimming pool directly on the site boundary.

Construction obligations are entered in a construction obligation directory which is kept at the district offices. In case of justified interest, you can be given written information and also short-term notice by telephone about the existence of construction obligations.

Deeper-reaching notes

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(40) Assurance concerning the protection of sites of historic interest

Requirements in connection with the protection of sites of historic interest can mean an appreciable burden for a purchaser. Correspondingly, the expressed assurance of the Vendor is taken down as a noted item stating that he has no knowledge of any such existing protection.

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(41) Liability of the Vendor in spite of limitation of the material defects liability

Basically, the liability of the Vendor for the existence of material defects for an old building is ruled out. Anything else is only applicable if the parties expressly agree another composition of the object of purchase or the Vendor makes corresponding guarantees or the Vendor knows about defects and maliciously conceals them. In these cases the Vendor is always liable for the material defect which has arisen.

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(42) Costs of the agreement

The costs of the agreement are customarily borne by the Purchaser. These costs of the agreement are as a rule put together from the following amounts:

- notary public's fees (between 0.6% and 1% of the purchase price),
- Costs of the Land Register Office (between 0.6% and 1% of the purchase price),

The exact amount for the costs depends on the actual make-up of the case:

- the higher the purchase price, the lower from a percentage point of view are the fees for the Land Register Office and the notary public.
- winding up a purchase agreement without a notary public's escrow account is with respect to the notary public's fees more favourable than with a notary public's escrow account.
- if the land charge creation is necessary for a bank to finance the purchase price, this shall trigger additional fees with the notary public and the Land Register Office. It is therefore more cost-favourable to wind the matter up without a financing land charge.

Both the costs of the notary public and the costs of the Land Register Office are statutorily determined and not negotiable. There are no 'favourable' or 'unfavourable' notary publics as all notary publics are bound to the schedule of fees. There are, however, favourable and unfavourable agreement structures: for example, as a rule, the use of a notary public's escrow account is dispensable and makes the property purchase agreement more cost favourable – cf. (12).

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(43) Land purchase tax

The land purchase tax amounts to 5% of the purchase price. Directly after conclusion of the purchase agreement, the notary public shall send the Land Purchase Tax Finance Office a copy of the agreement. The Land Purchase Tax Finance Office shall then draw up a land purchase tax notice and send this to the Purchaser. As soon as the Purchaser has paid the land purchase tax, the notary public shall receive the clearance certificate from the Finance Office. Only with this clearance certificate can the notary public apply for the transfer of ownership.

Concerning the possibility for savings see (10).

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(44) Deletion costs

The Vendor customarily bears the costs for all encumbrances to be deleted in sections II and III of the land register (e.g. usufructuary right, old creditors in section III).

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(45) Costs of subsequent approval

Each party shall bear the additional costs which become necessary through any necessary approval of declarations. This is, for example the case, if the Vendor or the Purchaser cannot be present for the notarisation but allow himself to be represented without power of attorney and the agreement is then later approved in front of another notary public at his place of residence. Additional costs arise here.

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(46) Joint and several cost liability

In accordance with the statutory regulations, the Vendor and the Purchaser are liable for the land purchase tax and for the notary public and court costs alongside one another as joint and several debtors. In the property purchase agreement, however, it is customarily agreed that only the Purchaser shall bear these costs. If the Purchaser does not pay the costs or the taxes, the Vendor shall be externally liable but can, however, after making payment, hold the Purchaser liable.

The parties to the purchase agreement cannot alter anything to do with this legal situation; the agreement merely draws attention to the legal situation.

Otherwise there is no risk for the Vendor as a rule for the biggest item – the land purchase tax. A purchaser who does not pay the land purchase tax is customarily also a purchaser who does not pay the purchase price. In this case, the Vendor shall turn away from the purchase agreement. After reversal of the purchase agreement however, the land purchase tax duty shall no longer be valid so that, as a result, also the Purchaser shall not be liable externally for the land purchase tax.

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(47) Regulations concerning pre-emptory rights

If the statutory pre-emptory right exercised, the Community or the District Office shall move into the purchase agreement. The Vendor would make himself liable for damages as, from a legal point of view, he has legally concluded two purchase agreements (with the Purchaser and the party entitled to pre-emption right). Correspondingly, there must be a regulation to enable the Vendor to release himself from the notarised purchase agreement so that he can fulfil the rights of the party entitled to pre-emption right. The Vendor shall also be indemnified against claims for damages of the Purchaser. It shall be secured for the Purchaser that down payments on the purchase price are returned to him and that he bears no costs for an agreement which cannot be realised for him.

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(48) Execution and land register applications

After establishment of the land register status (I) and conclusion of the property purchase agreement (II), there are regulations included under III. which are important for the fulfilment of the Property Purchase Agreement. Firstly, there is the conveyance here, i.e. which regulates the in rem conveyance of the site and, secondly, here are all land register applications included which are necessary for execution of the purchase agreement and the in rem agreement.

The following passages are important for the notary public inasmuch as they prepare declarations towards the Land Register Office which are absolutely necessary for execution of the agreement. Amendments in this part are only possible with restrictions if the executability of the whole purchase agreement is not to be put into question.

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(49) Conveyance

The in rem agreement between the Vendor and Purchaser is designated as “Conveyance” with which both parties are in agreement about transfer of the ownership of the object of purchase as performance of the purchase agreement. If this conveyance is subsequently executed in the land register, the Purchaser is, that is, entered in section I, the acquisition of ownership has been completed.

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(50) Safeguard for the Vendor

On declaring the conveyance, the Vendor loses his ownership of the site and requires special safeguards here. The notary public shall only apply for the transfer of ownership at the Land Register Office when the Vendor has confirmed to him in writing that he has received the full purchase price (see section 2).

The Vendor shall, however, be protected against the case that the Purchaser makes applications himself at the Land Register Office with the contractual document, applies for transfer of ownership already before payment of the purchase price and thus circumvents the aforementioned safeguard. To remove this possibility from the Purchaser of making applications himself at the Land Register Office with a copy of the Purchase Agreement or with a certified copy, he shall, up to full payment of the purchase price, receive copies or certified copies, however, without the conveyance. In practice, this occurs in that the in rem agreement is 'covered up' in making the copies for the Purchaser and for third parties. The Purchaser is therefore given no opportunity to hold a copy in his hands which contains the conveyance and with which he could apply for the transfer of ownership himself. Only after full payment of the purchase price does the Purchaser then receive a complete copy containing the conveyance because, at this point of time then, there is no longer any requirement for safeguard for the Vendor.

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(51) Prior notice

The prior notice is the most important security for the Purchaser. The prior notice is an entry in section II of the land register in the name of the Purchaser with which he is noted down as the future owner. The Purchaser, noted down in this manner, can demand of anyone, who is entered at a lower rank, deletion of this entered right. This practically means that the Vendor cannot even purchase the property, cannot encumber the property and also creditors of the Vendor can no longer seize the site. Through the prior notice, the Purchaser always has the stronger position.

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(52) Rank exchange

Directly after conclusion of the Property Purchase Agreement, the notary public shall apply for the entry of the prior notice of conveyance in the land register as the most important safeguard for the Purchaser. Only later in time shall the land charge be applied for the financing bank. The entries in the land register take place in accordance in the timely order of the applications so that first of all the prior notice and then the land charge is entered. For its own safeguarding reasons, the bank, however, requires the rank above the prior notice of the Purchaser meaning that the agreement has to envisage an “exchange in rank” already at this point. Rights of the Vendor are not affected by this; it concerns exclusively the relationship of the Purchaser to his financing bank.

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(53) Deletion of the prior notice

As the notary public initiates entry of the prior notice of conveyance in the land register directly after conclusion of the Property Purchase Agreement to safeguard the Purchaser, this prior notice of conveyance in the land register is also entered even if the Purchaser does not subsequently pay the purchase price. The Vendor does have a claim against the Purchaser to deletion of the prior notice but possibly has to assert this claim through court action. Up until entitlement of the claim, the land register would be “blocked” by the entered prior notice with the consequence that the Vendor could not sell a second time or the processing of the second agreement would be obstructed until deletion of the prior notice. For this reason, “automatic” deletion of the prior notice is already regulated in the Property Purchase Agreement in cases of default. Technically this is regulated in such manner that the Purchaser already approves deletion of the prior notice in the Property Purchase Agreement which is entered for him in the land register.

In a second step, the notary public shall observe that the prior notice for the Purchaser is an important instrument for his safeguarding and cannot simply be deleted on call by the Vendor. Correspondingly, the notary public agreement envisages a certain procedure the steps of which have to be carried out to delete the prior notice. The most important step is that that the Purchaser is once again forewarned. If he retains the purchase price for justified grounds, he shall have the possibility to hinder automatic deletion of the prior notice through court action.

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(54) Power of attorney for staff members

The power of attorney for the staff members of the notary public facilitates processing of the Property Purchase Agreement. The notary public shall ask the parties before any availment of this power of attorney whether they are in agreement with the amendment to the agreement and obtain their written agreement. The power of attorney is particularly important for the creation of the financing land charge for the Purchaser. The Purchaser can in practice simply send the land charge form of the bank to the notary public by post. With the power of attorney of the notary public, the land charge shall then be created at the notary public's. The Purchaser does not have to appear at further notarisation appointments.

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(55) Completeness of statements

Everything, which the parties have made to content of the purchase agreement, requires notarisation. This applies to all side agreements which are connected with the Property Purchase Agreement. If the Vendor and the Purchaser do not notarise all arrangements which they have made, the Property Purchase Agreement shall be null and void up to the transfer of ownership. This can have appreciable effects on the agreement.

Example:

The Vendor and the Purchaser make an arrangement, alongside the notarised agreement, concerning the separate sale of outdoor lamps, sauna, carport etc. As this second agreement depends in content on the notarised property purchase agreement, because not everything was notarised, the notarised purchase agreement can be null and void. Up until the transfer of ownership, none of the parties would be bound to such an agreement.

Deeper-reaching explanations

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(56) Joint and several cost liability

In accordance with the statutory regulations, the Vendor and the Purchaser are liable for the land purchase tax and for the notary public and court costs alongside one another as joint and several debtors. In the property purchase agreement, however, it is customarily agreed that only the Purchaser shall bear these costs. If the Purchaser does not pay the costs or the taxes, the Vendor shall be externally liable but can, however, after making payment, hold the Purchaser liable.

The parties to the purchase agreement cannot alter anything to do with this legal situation; the agreement merely draws attention to the legal situation.

Otherwise, there is no risk for the Vendor as a rule for the biggest item – the land purchase tax. A purchaser who does not pay the land purchase tax is customarily also a purchaser who does not pay the purchase price. In this case, the Vendor shall turn away from the purchase agreement. After reversal of the purchase agreement, however, the land purchase tax duty shall no longer be valid so that, as a result, also the Purchaser is not externally liable for the land purchase tax.

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(57) Acquisition of ownership only on transfer

On purchase of property, it concerns an “extended” fact of acquisition; neither in personam agreement in the purchase agreement nor the in rem agreement (“conveyance”) is sufficient. Only on entry of the Purchaser in the land register in section I does he become the owner. In the interim period up to the transfer of ownership, he is, however, comprehensively protected by the prior notice. The transfer of ownership in the land register is still of significance as

- only then can an existing fire insurance be terminated by the Purchaser.
- only on transfer of ownership is further transfer of ownership possible (re-sale is, however, possible previously).

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(58) Clearance certificate of the financial authorities

Directly after conclusion of the purchase agreement, the notary public shall register the agreement with the Land Purchase Tax Finance Office. A land purchase tax notice is drawn up which shall be delivered to the Purchaser as the tax debtor about four weeks after the conclusion of the agreement. If the Purchaser then pays the land purchase tax, the notary public will receive the clearance certificate of the Finance Office. Only with this clearance certificate can the notary public apply for the transfer of ownership. It therefore lies in the own interests of the Purchaser to pay the land purchase tax as, before receipt of the payment, transfer of ownership can not be initiated.