

Energy Efficiency Upgrades in Multi-Owner Apartment Buildings

**Management, governance & decision making: status of property law,
challenges & ways forward**

Germany

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Structure

- Legal Concept of Co-Ownership in Apartment Buildings
- Key Elements for EE Measures in Apartment Ownership Law
- Key Elements for EE Measures in Rent Regulation
- Consequences for Rented flats in Co-Owned Apartment Buildings
- Preliminary Conclusions

Co-Ownership in Apartment Buildings in Germany I

- Apartment Ownership Act 1951 (Wohnungseigentumsgesetz, WEG)
 - Composed Ownership
 - 14 % (more than 5,000) German households live in apartment buildings established under the WEG
 - Buy to lease: It is common that apartment flats are bought by private persons as an investment and rented out

Co-Ownership in Apartment Buildings in Germany II

- Housing cooperatives
 - exist, but of minor importance
 - no real ownership, but based on rent regulation with some additional rights of the share holders
 - these rights are, however, subject to inheritance



Composed Ownership

1) Individual ownership (*Sondereigentum*) (§ 3 WEG)

- ownership units under individual ownership as defined by the law
- can be established only on separable parts of a building such as individual apartments or garages
- cannot be established on parts of an apartment or other parts of the building that cannot be separated (such as staircases)

2) Common ownership of everything else (land on which the apartment is built and all not separable parts of the apartment building such as roof, staircases, façade, ...)

Relevance for EE Renovations

- More efficient heating elements or windows could technically be installed in individual parts of the building
- But: most EE renovations or measures to use renewable energy only refer to common ownerships parts



Realisation of Renovation and Modernization Measures

- Administration of the community by an administrator (*Verwalter*), typically a professional housing company
- Majority vote for most EE measures in the assembly of owners (*Eigentümerversammlung*), which meets at least once a year
- Principles of proper administration (section 21 (5) WEG)
 - (no 2.) “due maintenance and repair of the jointly owned property”
 - (no. 4) “creating a reasonable maintenance reserve fund”
- The individual co-owner may enforce the principles of proper administration in court as an individual right if it is not respected by the assembly of owners

Financing of EE Measures in Apartment Buildings

- Often, measures can be paid out of the maintenance reserve fund
- If not, payment via
 - a credit, which the community of owners can take out jointly (BGHZ 207, 99-114) or
 - an extra payment (*Sonderumlage*) of the co-owners to be decided by the assembly

Consequences for (Large) Apartment Complexes

- The financing of EE renovations is possible in most cases
- Under the guidance of the administrator, co-owners are likely to make rational decisions in most cases, in particular in large apartment complexes with a high number of co-owners
- => EE measures will be carried out if legally required or economically efficient



Rental Apartments

- A relevant share of apartments in buildings with composed ownership are bought as an investment and put on the tenancy market
- Therefore, the regulation of EE renovation in rental relations is crucial to create incentives for co-owners-landlords to support such measures in the assembly of owners

The Importance of Rent Regulation for EE Renovations I

- Since the legal possibilities for a rent increase in existing rent contracts are limited, the rent paid is often below the market price
- => If a rent increase were possible, tenants would often be willing to pay a higher rent rather than to move out after the realisation of EE renovations
- Special rules for rent increase in cases of modernization or EE renovation exist: 11 % of the costs of the EE renovation can be added to the yearly rent in addition to other legal rent increases (draft statute wants to decrease this to 8%)

Rent Regulation Important for EE Renovations II

- If the market allows an increased rent:
 - little incentives for the landlord to choose the most efficient EE measure
 - but: the most expensive EE measures can enable the highest possible rent increase (even if energetically not efficient)
- Social problems may arise due to massive rent increases in urban areas if previous rents have been very low or if the tying to cost rents ends in case of former social housing
- If a rent increase cannot be realized on the market: no incentives for landlords for EE renovations

Conclusions I

- The WEG establishes – esp. as to the professional management of the community by the administrator (*Verwalter*) and the way of financing (maintenance reserve fund and/or common credits) – a set of rules making EE renovation easily possible and likely if
 - a measure is legally required whenever maintenance works are carried out or
 - the measure is economically efficient, taking into account all public subsidies
- In Germany both systems – subsidies and legal requirements related to maintenance works – are partly in place
- A general duty for EE renovation does not exist
- However, in apartment buildings the principle of “due maintenance and repair of the jointly owned property” (section 21 (5) no. 5 WEG) renders necessary regular maintenance works and thus also EE renovation

Conclusions II

- In tenancy relationships, EE renovation is likely to occur if the flat is located in a position where rent increases after renovations can be realized on the market irrespective of the economic efficiency of the measure
- => this may easily entail economic losses of the tenant
- Since many apartments are owned by private and non-professional landlords, the tenancy law rules influence the way in which EE renovations are carried out in apartment complexes
- Tenancy law rules are also likely to increase gentrification and may lead to social hardship with negative effects on the overall acceptance of, and the compliance with, EE renovation programmes of the German government

Thank you for your attention

May I have your questions?