



cutting through complexity

Energy efficiency and tenancy law – the German experience

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Tenancy Law Amendment Act of 2013

- Energetic improvements during tenancy
- Introducing contracting to tenants

Condominium law situation

- Legal framework
- Specific challenges

Experiences and outlook

- Real estate focus
- Ongoing challenges

Tenancy Amendment Act of 2013 (1)

Introduction of energy-related tenancy law (residential/commercial)

- Amendments to Title 5 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*)
 - **Energetic improvement** as a new concept | § 555b Nr. 1 [Nr. 2] BGB
= **refurbishment** that effectively results in less consumption of end-use energy
 - Tenants must tolerate such improvements (provided proper notice was given; right to oppose the improvement limited to such cases of “severe personal hardship”)
 - Tenants rights to rent reductions are limited up to three months (re. nuisances from works)
- Statutory right of landlord to raise rent by up to 11% of the investment *) | § 559 BGB
- Potential risk: extraordinary termination right of tenant ⇨ issue re. commercial leases

New Title 5 not applicable in rent-controlled projects

- Specialized regulation on so-called “cost rent” takes precedent

*) Ordinary maintenance and repair cost as well as public funding to be deducted. *Practice issue*: distinction between ordinary maintenance/repair and works that constitute an energetic improvement.

Tenancy Law Amendment Act of 2013 (2)

Heat supply/energy contracting as operating costs | § 556c BGB

- New legislation specifically permits landlord the change of supply structure in a rented building from self supply to supply-contracting with a third party, provided that
 - contractor supplies in a more efficient way than previously*) from a new installation or supply-net, and
 - contracting costs do not exceed the operating costs in respect of heating/warm water supply in the previous self-supply structure for the building.
- Change to operating contracting only requires annual efficiency of current installation to be at least 80% *)
- Tenants need to be formally notified 3 months in advance about supply change
- Tenants cannot oppose the change to contracting from a tenancy law perspective, provided that the costs for heating/warm water supply are defined as operating costs in the lease.

Federal Heat Supply Regulation | *Wärmelieferverordnung*

Regulation on detailed procedure for formal notification of tenant, sanctions for failure to comply as well as framework to establish improved efficiency*) or annual efficiency (*cf.* above)

Condominium law situation

Condominium law is distinct from tenancy law

- German Condominium Act conceptualizes ownership with regard to the building shell / common access areas of the property as a legal association (so-called community of owners)
- Consequently, tenancy law does not apply, except where an apartment owner is letting to a third party
- German Condominium Act does not contain energy specific provisions “as such”
- Supplementary laws apply: mainly construction code and related areas of technical regulation

Challenges in the condominium legal situation

- Structural improvements of the building shell, media infrastructure (electricity, water etc.) require formal consent of the community of owners (*Eigentümergeinschaft*) by qualified majority vote of 3/4 with min. 50% of members participating in the vote
- The potential for individual initiatives is therefore limited
- Decision-making process tends to be more complex: requires a more profound cost/benefit-analysis for consideration by the members of ownership community and an adherence to a more formal legal process before possible implementation

Experiences and outlook (1)

Rental sector

- Tenancy Amendment Act of 2013 has been well received in general
- Legal framework of German tenancy law for energetic improvements can be deemed “practice approved”
- Socio-political discourse in 2014/2015 was focused on the issue of “affordable housing” vs. “cost sharing” (*cf.* above: cap on rent-raise due to energetic improvements)
- Rental industry tends to see a need for further reforms, especially tax incentives

Energy services, in particular contracting

- No statistical evaluation of the market situation in Germany, but there has been market monitoring by Federal Office of Energy Efficiency (*Bundesstelle für Energieeffizienz**)
 - Market growth by up to 14% p.a. in contracting
 - Gross turnover of €3bn to €4bn p.a. = 90,000 to 100,000 ongoing contracts
- Majority (approx. 84%) of all contracts are energy supply-contracting models

*) <http://www.bfee-online.de/bfee/marktentwicklung/contracting/marktentwicklung/index.html> (as at 12/2015)

Experiences and outlook (2)

Ongoing challenges

- Contracting models are rather complex and require long-term contracts
- Upside potential of contracting in smaller units/projects are perceived to be limited in contrast to self-supply structures
- Profitability threshold estimated at approx. >EUR 200,000 energy costs p.a.

⇒ *Building trust in contracting models is key.*

Energetic improvements & investments

- Federal Government identified real estate as sector with the most energy saving potential.
- 18.6m residential and 2.7m non-residential buildings account for 38.4% of the total energy consumption in Germany; 75% of all buildings have been built prior to 1975.
- Non-residential buildings constitute 15% of all buildings in the country, but are responsible for 36% of the total energy consumption in Germany.

⇒ *Energetic standards have been tackled in the real estate sector.*

Thank you

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