

# Pre-emptive right of the municipality according to the German Building Code (BauGB)

The municipal right of first refusal enables the municipality to acquire land for urban development purposes in order to influence its future structural and other use.

## Competent Department

- [Die Senatorin für Bau, Mobilität und Stadtentwicklung](#)

## Basic information

Exercising the right of first refusal means that the municipality has the right, subject to certain conditions, to enter into the purchase agreement and subsequently become the owner of the property when purchasing a plot of land in its municipal area. The right of first refusal may only be exercised if this is justified in the public interest.

Under certain circumstances, the exercise of the right of first refusal may be excluded or averted by the purchaser.

## Requirements

- A plot of land is purchased.
- The municipality must be notified of the purchase immediately. Without notification, the three-month period granted to the municipality to exercise the right of first refusal does not begin to run.
- If the municipality exercises a right of first refusal to which it is entitled and there is no reason for exclusion or if it is not averted, the municipality shall enter into the purchase agreement in place of the purchaser
- if it exercises the right in favor of a third party, the latter shall enter into the purchase agreement.
- The municipality or the beneficiary third party must then pay the seller a purchase price that generally corresponds to the agreed purchase price. Under certain conditions, a lower amount can also be paid, for example if the agreed purchase price clearly exceeds the market value at the time of purchase.

## What documents do I need?

- The notary must immediately inform the municipality of the content of the purchase agreement so that it can decide whether to exercise the right of first refusal.

# Procedure

- The notary informs the municipality of the content of a purchase agreement.
- If there is no pre-emptive right or if the municipality does not exercise it, the municipality must issue a certificate at the request of one of the parties (so-called negative notice/testate).
- If, on the other hand, the municipality exercises the pre-emptive right, an independent purchase agreement is newly established between the seller and the municipality. In principle, the same conditions (also with regard to the purchase price) that the seller had agreed with the original buyer apply. However, the purchase price may be limited if the agreed purchase price significantly exceeds the market value in a recognizable manner. In this case, the seller can withdraw from the contract.
- The right of first refusal is exercised vis-à-vis the seller. The buyer must be notified of the decision.
- The right of first refusal must be exercised by means of an administrative act. It is usually issued in writing.
- No specific form is generally prescribed for an application for the issue of a negative decision/testate
- this decision is also regularly issued in writing.

## Legal bases

- [§ 24 Baugesetzbuch \(BauGB\)](#)
- [§ 25 Baugesetzbuch \(BauGB\)](#)
- [§ 26 Baugesetzbuch \(BauGB\)](#)
- [§ 27 Baugesetzbuch \(BauGB\)](#)
- [§ 28 Baugesetzbuch \(BauGB\)](#)

## More information

- The right of first refusal is excluded in several cases, for example in the case of a sale to a spouse/relative/associate or if the property is built on and used in accordance with the development plan.
- The right of first refusal can also be averted by the buyer, for example if he
  - is able to use the property within a reasonable period of time in accordance with the intended use and
  - undertakes to do so within 2 months of the purchase agreement being notified to the municipality.
- The exercise of a right of first refusal in favor of a third party requires that he
  - is in a position to use the property for the intended purpose within a reasonable period of time and
  - undertakes to do so.
- The municipality is entitled to pre-emptive rights by law (general pre-emptive rights) and pre-emptive rights based on statutes (special pre-emptive rights). Both types are on an equal footing.
- The statutory pre-emption rights serve as instruments under urban development law to secure urban land-use planning.

### **What deadlines must be paid attention to?**

The right of first refusal can only be exercised against the seller within 3 months of notification of the purchase contract.

### **How long does it take to process**

A processing period is not directly regulated. However, the deadline for exercising the right of first refusal means that the municipality must act immediately.

### **What are the costs?**

40,00 EUR per land register property.