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Berlin Rent CAP – What, Where, When and How?



WHAT?

The local parliament in Berlin has recently passed a law that imposes severe rent control on residential leases (the “**Act**”). The Act applies to all kinds of residential units, except (i) publicly subsidised apartments, (ii) apartments modernised or refurbished with public funds and that are subject to rent control, (iii) newly constructed residential premises ready for use for the first time from 1st January 2014, (iv) in individual cases, otherwise permanently uninhabitable and unoccupied former

residential space which has been reconstructed for residential purposes at a cost corresponding to the cost of a new building, (v) apartments in dormitories and (vi) residential space rented or leased by a legal entity under public law or a recognised private welfare institution for the purpose of giving it to persons with urgent housing or care needs.

According to the Act, “**Rent**” is the basic rent (rent without operating costs and costs for heating and hot water), but including all surcharges e.g. for partial commercial use or furniture.

WHERE?

The Act is only applicable in **Berlin**.

WHEN?

The parliament passed the Act on 30th January 2020. It will come into force as soon as it is published which is expected to happen on or around 23th February 2020. The Act will have binding effect for five years after it comes into force.

HOW?

- **Rent Freeze.** A Rent Freeze applies (i) to all existing amounts of rent agreed on up until 18th June 2019 and (ii) to the amounts of rent agreed on in new leases entered into between 18th June 2019 and the point of time when the Act comes into force (the “**Frozen Rent**”). All increases of rent conducted in existing leases after 18th June 2019, irrespective of their legal basis, are invalid and shall be revoked from the moment the Act comes into force. The Frozen Rent shall be increased annually starting from 1st January 2022, according to the inflation rate in the respective previous year, but by no more than 1.3 percent and not exceeding the Fixed Rent Ceilings. The Senate will determine the relevant percentage.
- **Fixed Rent Ceilings.** The Act defines Fixed Rent Ceilings within a range from 3.92 EUR/sqm up to 10.80 EUR/sqm, only depending on the age of the building and the facilities of the apartment (bathroom, central heating, specific features such as an accessible lift, fitted kitchen, high-quality sanitary equipment, quality flooring in the majority of the living spaces or low energy consumption). The Fixed Rent Ceilings shall be adjusted by the Senate every second year according to the development of the wages in Berlin.
- **New Leases.** For new leases entered into after the Act comes into force, only the Frozen Rent may be charged. If the Frozen Rent exceeds the Fixed Rent Ceilings, only the rent permitted under the Fixed Rent Ceilings may be charged (the “**Rent Cap**”). Under certain conditions, a Frozen Rent below 5.02 EUR/sqm can be increased by up to 1 EUR/sqm, but not exceeding 5.02 EUR/sqm.
- **Modernisation measures,** i.e. for greater accessibility or environmental reasons, may lead to an increase in rent after written notification to the Investitionsbank Berlin. The admissible rent can increase by a maximum of 1 EUR/sqm.



- **Rent Reduction.** Nine months after the Act comes into force (so presumably from 23rd November 2020 onwards), all rents in existing leases are capped at the Fixed Rent Ceilings amount plus 20%, taking into account the location (in a simple residential area, the basic rent is reduced by 0.28 EUR/sqm, in a mid-range residential area it is reduced by 0.09 EUR/sqm and in a more attractive residential area it is increased by 0.74 EUR/sqm).
- **Rent above the Rent Cap.** To avoid unreasonable hardship, the Investitionsbank can upon application by the Landlord allow a reasonable increase of the amount of the Rent Cap if (i) it is needed to avoid permanent losses or (ii) if otherwise the substance of the rented property is at risk, for reasons beyond the Landlords' control. If the higher rent is approved, the tenant can apply for a respective subsidy by the state.

Obligations of the Landlord

- When the Act comes into force, a Landlord is not allowed to **demand or collect** a higher rent than permitted under the Act.
- The Landlord is obliged to provide the tenants with **information of the circumstances** relevant to the calculation of the Rent Ceiling within two months after the Act comes into force. On demand of the tenant or the authorities, and prior

to signing a new lease, the Landlord must inform about the Fixed Rent.

- If the Landlord does not comply with these obligations, the landlord is subject to a **fine of up to EUR 500,000.00** for each single case.

Why You as a Landlord Need Legal Advice...

- It is for sure that the Federal Constitutional Court and the Berlin Constitutional Court will review the Act. In view of most legal experts, the Act is unconstitutional.
- To reduce the damage caused by the Act, it is necessary to draft new lease agreements to enable the Landlord to claim the market rent permitted under the Civil Code if certain provisions are declared void or the act expires.
- The same applies to the correct handling of obligations under the Act for existing tenancies. On the one hand, no rent exceeding the Rent Cap may be received; on the other hand, it must be ensured that the tenant can pay the rent in arrears if a relevant provision is void. This means that the wording of the information provided to the tenants should be drafted in order to preserve the landlord's rights.
- The impact of the Act on the financing, especially the loan-to-value ratio must be taken into account. Banks might come up with the argument that the rent level decreases by the Act and therefore reduces the value of the property. In such cases, as a precautionary measure, an application should be made to the Investitionsbank to have rent increased permitted.
- If a sale/purchase of a residential property is intended, as a precautionary measure, a clause should deal with potential repayment risks.



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