CUSHMAN & WAKEFIELD | CMS law·tax·future

## Update for investors

# REGULATION IN THE GERMAN HOUSING MARKET

What legal changes will the new federal government bring?

Better never settles

# CONTENTS

# 01 FOREWORD

The German housing market is one of the most attractive in Europe for institutional investors, thanks to Germany's strong economy, persistently high demand for housing and the largest rental market in the EU. However, to protect tenants in particular, Germany's housing property market is strictly regulated by numerous laws relating to rent setting, construction measures and energy standards for residential buildings, among other things. Many of these laws are characterised by current political objectives and can change accordingly with movement in political direction. In order to make sensible investment decisions, it is worth examining the legal developments.

Even before the early federal elections in February 2025, there were already signs of changes to certain areas in view of the housing shortage – for example, tighter regulations were expected, particularly with regard to the so-called rent cap and temporary letting of residential space. The coalition agreement now in place between the CDU/CSU and SPD for the 21st legislative period shows that the new government will continue to focus on strong regulation and in some cases even expand existing regulations.

While some innovations require investors and owners to take a close look, others harbour interesting opportunities. This report from the collaboration between Cushman & Wakefield and CMS combines investor expertise with legal competence, tailored to players in the housing market. After a look at the mood on the investment market, the report takes you through the most important legislative changes in the residential sector and sheds light on the changes to tenancy law, the so-called conversion ban, the right of first refusal, subsidy measures and the German Buildings Energy Act.

We look forward to guiding you through the regulatory changes in detail and hope you enjoy reading it.

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# 02

# MARKET TRENDS & INVESTMENT ACTIVITY

> The German residential market is particularly strong across Europe and the transactions in the first quarter of 2025 confirm its attractiveness for domestic and foreign capital. It is therefore particularly important for investors to familiarise themselves with the applicable laws to make successful investment decisions.

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# HIGH DEMAND AND STRONG START TO THE YEAR ON THE GERMAN RESIDENTIAL INVESTMENT MARKET

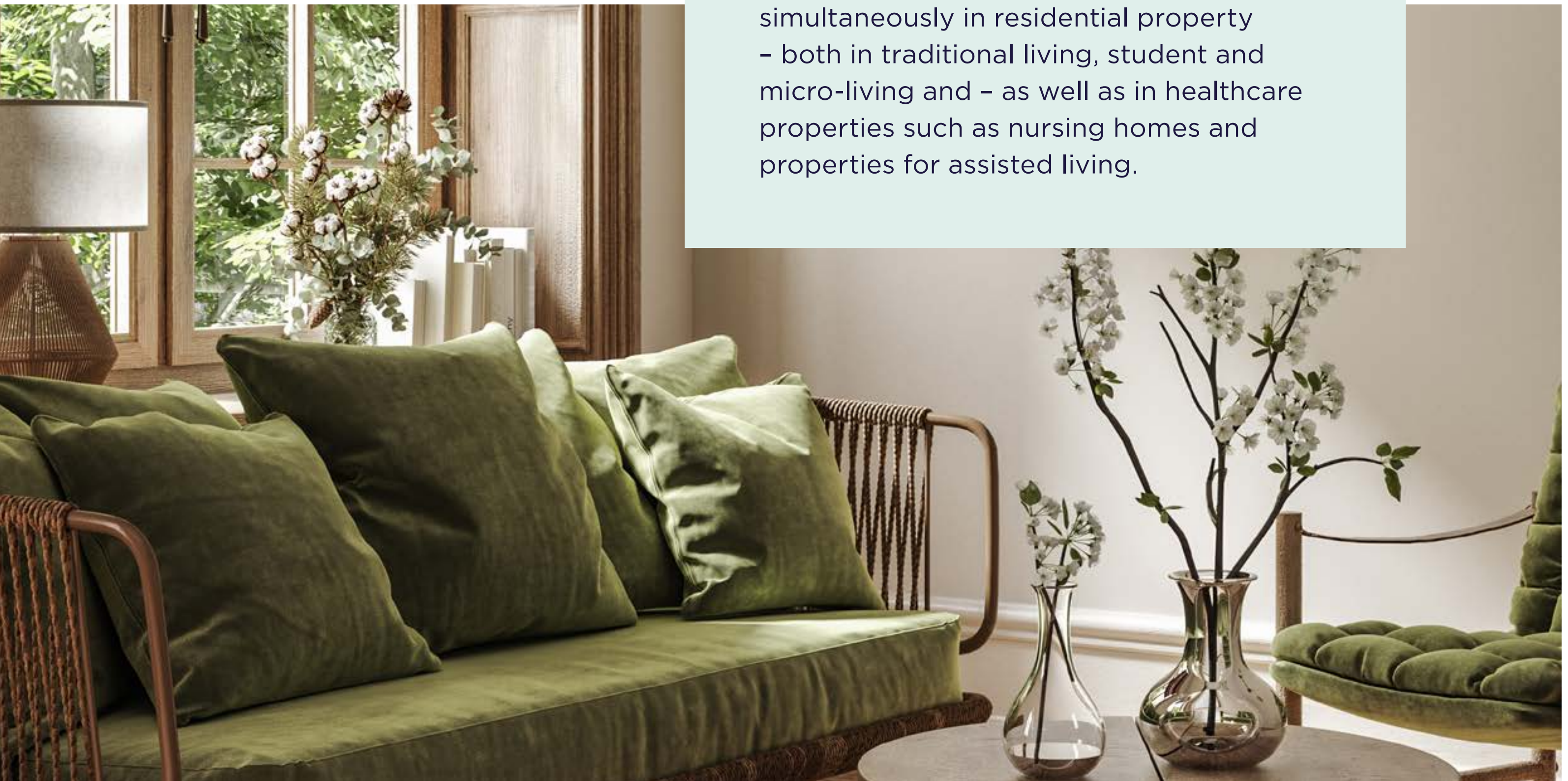
**Residential property in Germany is very popular with national and international investors – this is reflected both in the strong start to 2025 and in Cushman & Wakefield's latest survey of 112 players in the German residential market, which paints a detailed picture of sentiment and trends.**

Cushman & Wakefield recorded a strong start to the year in the first quarter of 2025, confirming the upward trend in the transaction market and the high level of interest in residential property with a transaction volume of 2.15 billion euros. The significant increase in transaction volume compared to the first quarter of 2024 clearly shows that the market has stabilised and is attracting both national and international capital.

## WHO IS ACTIVE ON THE MARKET?

Asset and investment managers, project developers as well as family offices and private individuals are well represented on the market. Smaller market players with fewer than 500 flats in their portfolios and large market players with 2,500 or more residential units are particularly active. They are increasingly focussing on densely populated and structurally strong regions and cities with positive population growth.

Many investors want to represent the entire spectrum of the living sector in their portfolio and are therefore investing simultaneously in residential property – both in traditional living, student and micro-living and – as well as in healthcare properties such as nursing homes and properties for assisted living.

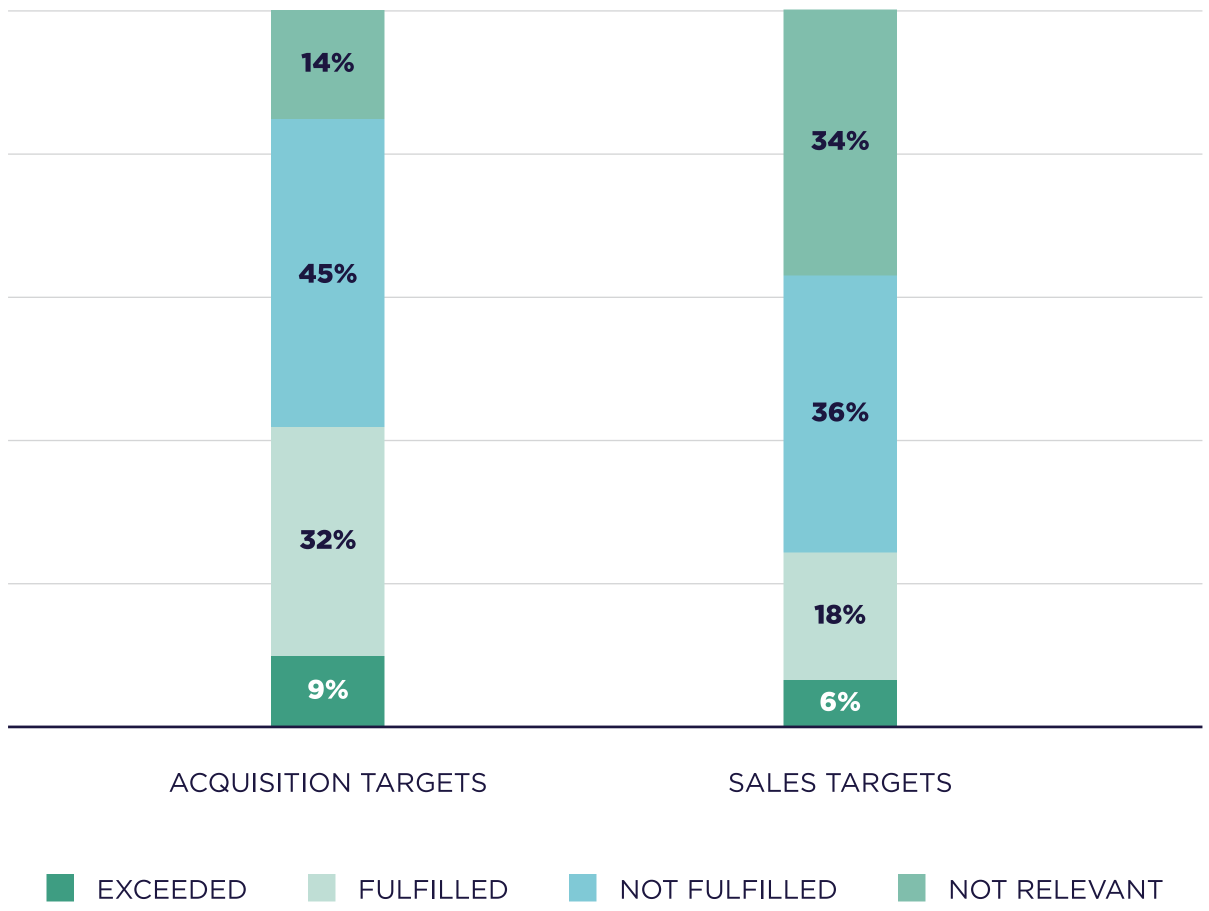


## MISSED ACQUISITION AND SALES TARGETS IN 2024 MAINTAIN STRONG MARKET ACTIVITY

The high level of investor activity is also driven by the failure to meet acquisition and sales targets in the past 12 months: 45 per cent were unable to fulfil their purchase targets and therefore remain particularly active in the transaction market. The same applies to sales targets, which were not met by more than one in three market players.

Investors' current growth strategy is also reflected in the buying and selling activity: over 30 per cent want to continue to grow but can only do so with further planned sales of their portfolio. At the same time, slightly less than 30 per cent of market players want to continue to grow without sales.

## ACQUISITION AND SALES TARGETS OF MARKET PLAYERS IN THE LAST 12 MONTHS



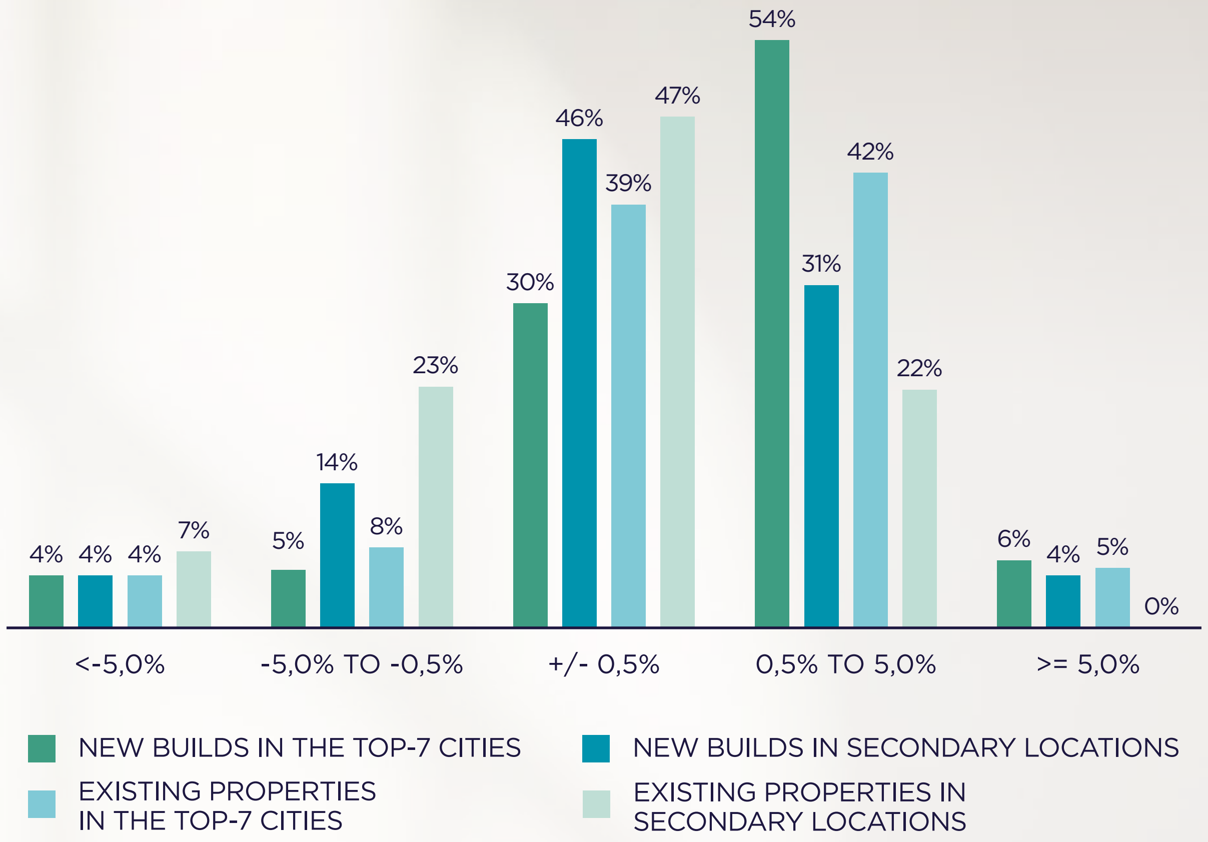

Source: Cushman & Wakefield:
Housing Market Investor Survey, 2025

# PLAYERS ARE CONFIDENT ABOUT MARKET DEVELOPMENTS

Many of those surveyed confirm the trend towards a stabilisation of the transaction market observed by Cushman & Wakefield: around half expect a positive development in purchase prices for existing and new-build properties over the next 12 months. Expectations for growth in rents for residential property are also encouraging.

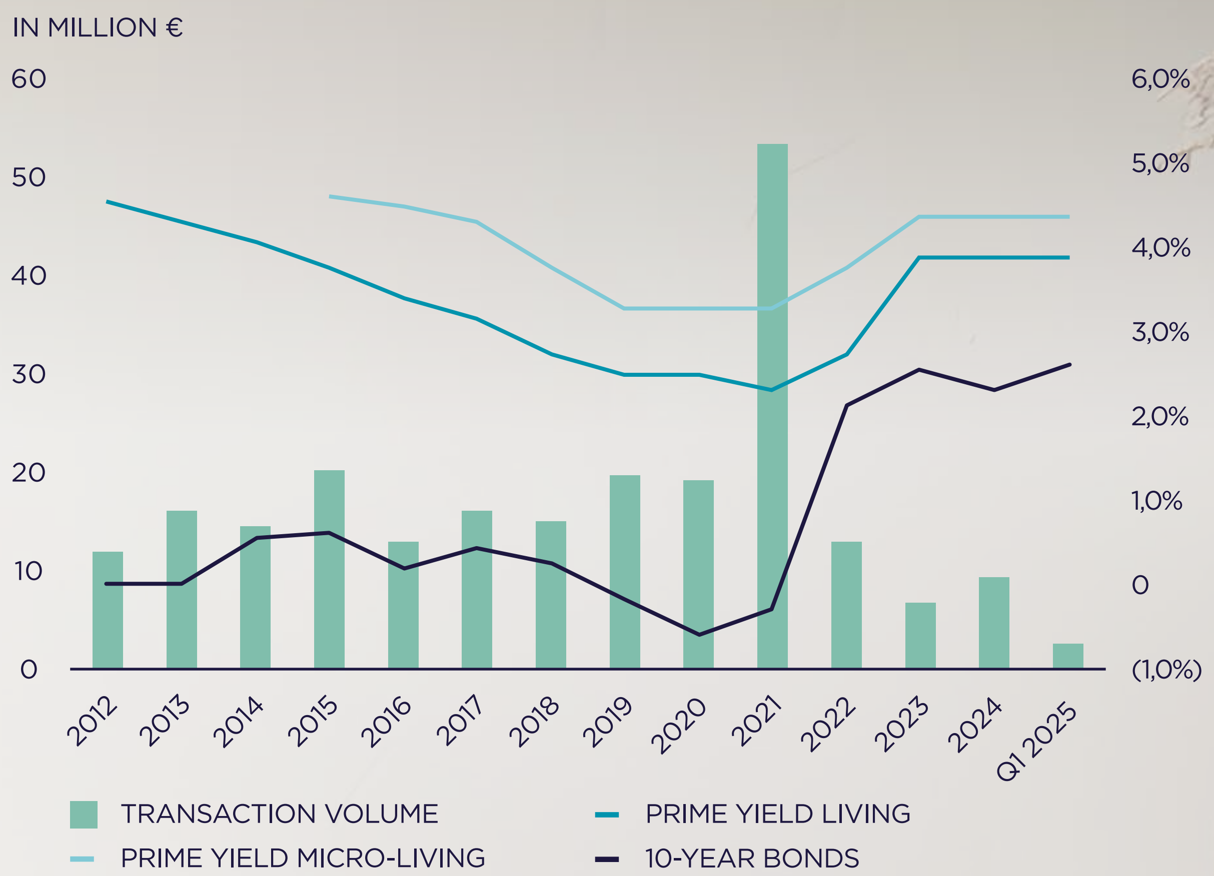
This mood of optimism regarding the residential property market will continue over the course of the year. Cushman & Wakefield expects that the transaction volume for 2025 as a whole could exceed 10 billion euros for the first time since 2022.

## EXPECTED DEVELOPMENT OF PURCHASE PRICES




Source: Cushman & Wakefield:
Housing Market Investor Survey, 2025

## TRANSACTION VOLUME AND PRIME YIELD Q1 2025




Source: Cushman & Wakefield:
Housing Market Investor Survey, 2025

**YOU CAN FIND THE COMPLETE HOUSING MARKET INVESTOR SURVEY 2025 HERE:**

# 03

# LEGAL CHANGES IN THE 21ST LEGISLATIVE PERIOD

The German rental housing market is characterised by far-reaching tenant protection. The tightening of certain laws, in particular to protect tenants from displacement, had already become apparent in the last legislative period. Even if the new government wants to make some adjustments to increase construction activity in Germany again, it is sticking to the trend of regulating tenancy law.

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The new government has shown that it intends to swiftly implement its plans for tenant protection. It is to be hoped that the measures set out in the coalition agreement to promote and ease the burden on the property industry will be implemented just as quickly. Only these can boost new housing construction and ensure a sustainable improvement in supply.

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# 03.1

## CHANGES IN TENANCY LAW

Residential tenancy law is strictly regulated in Germany. The coalition agreement now in place between the CDU/CSU and SPD for the 21st legislative period shows one thing above all: the new government is also sticking to the regulatory approach in principle and even expanding it in some cases. Below we provide an overview of the most important planned changes.

# #1 EXTENSION AND TIGHTENING OF THE RENT CAP

## WHAT IS THE SO-CALLED RENT CAP?

In contrast to commercial tenancy law, residential tenancy law contains regulatory instruments that intervene in the contractual freedom of the parties with regard to setting and increasing the rent to protect the tenant. One such instrument is the so-called rent cap (Sec. 556d BGB), which was introduced in 2015.

This stipulates that the residential rent at the start of a tenancy may not exceed the standard local comparative rent by more than 10 per cent if the rental property is located in an area with a tight housing market.

### EXCEPTIONS EXIST, AMONG OTHER THINGS

- for flats that were ready for occupancy after 1 October 2014
- for extensive modernisations, whereby these must amount to around 1/3 of the cost of a new build, and
- in the event that the rent owed by the previous tenant was legally higher than the rent permitted under the rent cap. In this case, the rent may be agreed up to the amount of the previous rent, even if this exceeds the local comparative rent.

The responsible state governments have declared the **housing markets to be tight**, especially in urban centres such as Berlin, Munich and the surrounding area, Cologne, Düsseldorf, Hamburg and Stuttgart, but also in smaller cities such as Freiburg. Not only does the rent cap apply there, but also the so-called **tightened rent cap**. The rent cap determines how high the rent may rise during a tenancy within a certain period of time. It is normally 20% within three years, but only 15% within three years in tight housing markets.

## WHAT IS CHANGING?

- The **rent cap** will expire on 31 December 2025 under the current regulations. According to the coalition agreement, it is now to be **extended by a further four years**, i.e. until 31 December 2029. During the coalition negotiations, an extension of only two years was initially planned.
- To date, breaches of the rent cap have not been associated with sanctions for landlords; instead, the enforcement of the rent freeze is in the hands of tenants. Tenants only have the option of reclaiming the overpaid rent following a timely complaint but may have to initiate legal proceedings against the landlord. As a result, the rent freeze remains largely ineffective in practice. By the end of 2026, a **commission of experts is to draw up proposals for the further development of rent regulation,** including the **introduction of fines** for breaches of the rent cap. The expert group's findings are more likely to be implemented in law in the second half of the legislative period.
- In view of the **increasing publication of qualified rent indexes** in cities with a tight housing market, it could be expected that tenants will find it easier to enforce the rent cap in court.
- The coalition agreement does **not provide for a further tightening of the rent cap**. In this respect, it is likely to remain at 20% and – in tight housing markets – 15% permissible rent increases within three years.
- However, an **extension of the rent cap** not provided for in the coalition agreement is conceivable. In an initial proposal in May 2025, Federal Minister of Justice Dr Hubig had planned to extend the rent freeze to new builds constructed between 2014 and 2019, which were previously exempt from the rent freeze. Following protests from the housing industry, this was initially cancelled. However, changes remain possible in the parliamentary procedure that began at the start of June 2025.

# #2 REGULATION OF INDEXED RENTS

## RENT ADJUSTMENT DURING THE TERM OF THE TENANCY AGREEMENT – WHAT IS AN INDEXED RENT?

Residential tenancy law stipulates that the rent can only be adjusted during an ongoing tenancy under certain conditions. Either a **stepped rent** (Staffelmiete) (Sec. 557a BGB) or an **indexed rent** (Indexmiete) (Sec. 557b BGB) can be agreed in the tenancy agreement. If this is not the case, the law stipulates that the rent can only be adjusted to a maximum of the local comparative rent if certain requirements are met (Sec. 558 BGB), whereby the above-mentioned cap must be observed. In addition, there are also regulations stipulating that a rent increase can be demanded to a certain extent for modernisation measures (Sec. 559 BGB).

The indexed rent is a rent adjustment mechanism in which the rent level is based on the change in the consumer price index (CPI) determined by the Federal Statistical Office. The rent agreed by the parties to the tenancy agreement is adjusted to the changed index level by means of a declaration by the landlord. The rent must remain unchanged for at least one year while the indexed rent is in force. A retroactive adjustment or increase is not possible.

## WHAT IS CHANGING?

- As a result of the sharp rise in the inflation rate from 2022, triggered by the after-effects of the coronavirus pandemic and the Russian war of aggression against Ukraine, more and more indexed rental agreements have been concluded in recent years. As a result, residential tenants have been confronted with high rent increases at times.

  In order to counteract this development, **indexed rents for residential lettings are to be regulated in future**. However, the coalition agreement does **not yet contain any specific details** on the regulation of indexed rents. It is conceivable, for example, that indexed rents could be capped, which would jeopardise the function of indexed rents, namely protection against inflation, especially in times of high inflation.

# #3 REGULATION OF FURNISHED AND TEMPORARY LETTING

## WHAT DOES FURNISHED AND TEMPORARY LETTING MEAN UNDER CURRENT LAW?

If a rental property is **let furnished**, the landlord can demand a **furnishing surcharge**. In this way, the standard local comparative rent can be exceeded and the rent cap partially circumvented. The amount of the furnishing surcharge does not have to be stated separately in the tenancy agreement, with the result that it is not possible to differentiate between the basic rent and the furnishings. This makes it more difficult to check whether the rent cap is being complied with.

Even if the property is **let for temporary purposes**, the tenant cannot invoke the rent cap. In this case, the parties must agree that the rental property is only being let for a temporary purpose. To date, however, there are no clear legal requirements as to the conditions under which it can be assumed that the letting is only temporary.

## WHAT IS CHANGING?

- The coalition agreement provides for the **regulation of furnished and temporary letting**. This could put business models of serviced living providers under pressure.
- How the letting of furnished flats is to be regulated in future is still unclear. Statutory surcharges based on the value of the furniture or absolute upper limits are conceivable.
- With regard to short-term lettings, there are already clear criteria in case law for differentiating between residential and commercial use, which could be adopted by law. However, the coalition agreement does not contain any further details on this either.

# 03.2

# EXTENSION OF THE SO-CALLED CONVERSION BAN

## WHAT IS THE SO-CALLED CONVERSION BAN?

Since 2021, the state governments have been authorised under Sec. 250 BauGB to determine areas with tight housing markets in which the conversion of rental flats into owner-occupied flats requires approval. Berlin, Hamburg, Bavaria and Lower Saxony, among others, have made use of this option. In these areas, conversions from rented to owner-occupied flats require special authorisation, which is only granted in certain (exceptional) cases. The aim of this regulation is to better protect tenants from displacement and to secure the supply of affordable housing.

## WHAT IS CHANGING?

- Under current law, the conversion ban expires on 31 December 2025 and is to be **extended by a further five years** according to the coalition agreement.
- Until now, residential buildings that did not yet exist when the conversion ban came into force could continue to be converted in order to promote new construction. Depending on the legal form of the extension, however, residential buildings that have been completed in the meantime could be considered existing buildings and therefore subject to the conversion ban.
The existing room for manoeuvre for such buildings until the end of 2025 should therefore be exhausted if necessary.

# 03.3

# CHANGES TO THE MUNICIPAL PRE-EMPTION RIGHT

## WHAT IS THE MUNICIPAL PRE-EMPTION RIGHT?

A municipal pre-emption right entitles municipalities to acquire a property preferentially if it is sold to a third party. The municipality has a right of pre-emption if, for example, the property is located in certain urban development areas, such as a redevelopment area or a neighbourhood protection area.

When selling a property by way of an asset deal, the respective municipality must be informed in order to check whether a pre-emptive right exists and, if so, whether it wishes to exercise it. Only if a so-called negative certificate from the local authority is submitted to the land registry will the property be transferred to the buyer.

## WHAT IS CHANGING?

- The coalition agreement provides for the **municipal pre-emtion right to be strengthened in neighbourhood protection areas and for so-called ‘junk properties’**, among other things.
- In practice, local authorities have also used their **municipal pre-emption in neighbourhood protection areas** as a lever to persuade buyers to conclude avoidance agreements, which included bans on conversion, refurbishment and rent increases. The strengthening of the municipal right of first refusal provided for in the coalition agreement can be seen as a reaction to the decision of the Federal Administrative Court in 2021, according to which possible intentions of the buyer to use the property contrary to neighbourhood protection are not sufficient to exercise the right of first refusal under neighbourhood protection law. The Federal Administrative Court had thus removed the basis for the municipal practice of forcing buyers to conclude avoidance agreements.
- The **pre-emption right for ‘junk properties’** that already exists today has so far only taken effect in the event of negative effects on the neighbourhood. It remains to be seen how a concrete strengthening of this right will be organised. In any case, it should be made easier for local authorities to purchase such properties at market value and not at the agreed purchase price (so-called **price-limited pre-emption right**).
- In addition, the **circumvention of the municipal pre-emption right through so-called share deals** (i.e. the acquisition of shares in the company holding the property) is to be prevented. The last government had already made a corresponding move in 2024, but this was not linked to the share transfer itself, but to the transfer of the property to the company and would have led to numerous subsequent problems. This initiative did not become law.

# 03.4

## FUNDING MEASURES

**The coalition agreement also states that the incoming government would like to promote affordable housing in Germany. Exactly how and to what extent this is to be achieved and how much money is available for this purpose has not yet been specified in detail.**

### THE COALITION AGREEMENT LISTS THE FOLLOWING MEASURES:

- For the promotion of new construction and the modernisation of existing housing, **tax measures are to be improved, equity-replacing measures are to be created and the assumption of state collateral is to be examined**.
- The **KfW's existing promotional programmes** are to be **bundled into two central programmes** – one for new construction and one for modernisation. To reactivate construction projects, the **EH55 standard is to be subsidised again**, at least for a limited period of time.
- An **investment fund for housing construction** is to be set up to provide equity and debt capital.
- The **financing costs** for construction activities are to be **minimised through state support**. The coalition agreement states the goal of creating a large number of flats for a basic rent of 15.00 euros per square metre in tight housing markets. In this context, the coalition agreement emphasises the expertise and planned cooperation with the housing industry.
- According to the coalition agreement, **letting at favourable rents is also to be promoted through tax incentives**, although this is not specified in more detail.
- With regard to the promotion of renewable energies under building and planning law, **private households in particular are to benefit more from the promotion of solar energy** by, among other things, simplifying the dual use of areas such as car parks, agricultural land or water areas.

# 03.5

# BUILDINGS ENERGY ACT (GEG)

**The coalition agreement also emphasises the central importance of the building sector for achieving the climate targets. However, the existing Building Energy Act (GEG) is to be comprehensively amended.**

## WHAT IS THE GEG AND WHAT IS MEANT BY 'HEATING ACT'?

The GEG regulates the energy requirements for new and existing buildings. An amendment to the GEG was passed under the last government, which came into force on 1 January 2024. Among other things, this regulated stricter requirements for heating systems in initially new construction projects and, after certain transitional periods, also in existing buildings, which must be powered by at least 65% renewable energy from the respective date of application – hence the colloquial term 'Heating Act'.

## WHAT IS CHANGING?

- The **so-called 'Heating Act' is to be abolished**. This probably does not mean the abolition of the GEG itself, but only the amendment to the GEG from the time of the last government.
- The **GEG is to become more open to technology, more flexible and simpler**. The central control parameter is to be the achievable $CO_2$ avoidance.
- **Refurbishment and heating subsidies** are to be **continued**.
- Furthermore, the **interlinking of the GEG and municipal heating planning is to be simplified** and the **national building efficiency classes in the GEG are to be harmonised with neighbouring European countries**.
- Finally, the coalition partners want to advocate an **extension of the implementation deadlines for the EU Buildings Directive (EPBD)**, which under current law must be transposed into national law by 29 May 2026. The existing scope for implementation should be fully utilised.

# 04 OUTLOOK

## LEGAL AWARENESS IS A STRATEGIC ADVANTAGE

**The first quarter of 2025 confirms that the German residential property market is stabilising and is of particular importance for both national and international capital. However, laws regulating the housing market can impair the success of an investment if they are not taken into account. Precisely because of the high attractiveness of the German residential real estate market, it is therefore important for investors to keep an eye on the changes brought about by the new coalition agreement and to review their own strategies accordingly.**

Of particular note here is the strengthening of municipal pre-emptive rights in protected areas, as well as for ‘junk properties’ and share deals. The extended and tightened ban on converting rental apartments into condominiums may also influence investment planning and require swift action in the case of new buildings.

With regard to rent pricing, the regulation of furnished and temporary rentals may put pressure on serviced living providers. In addition, the rent cap has not only been extended for another four years, but its enforcement is also to be simplified for tenants in the future and violations will be subject to fines. A possible cap on index-linked rents would also have an impact on pricing. Political initiatives for further regulation that are not reflected in the coalition agreement are also conceivable.

Nevertheless, no drastic cuts are expected for investors interested in the German residential property market, nor are any major changes in market sentiment anticipated, as the new government‘s focus is primarily on extending and selectively tightening existing regulations.

It is worth taking a look at the subsidies for new construction and modernisation, which are intended to reactivate construction projects to create and improve the quality of housing. The amendment to the GEG with the abolition of the ‘Heating Act’ promises greater flexibility in investment decisions and renovation planning and shows that the federal government wants to ease the strain on the tight housing market. The task now will be to implement these measures as quickly as the regulations outlined above.

This overview of the legal changes in the coalition agreement, produced in collaboration between CMS and Cushman & Wakefield, cannot replace in-depth and continuous analysis of the market and its often-complex regulations. However, we hope that the report has provided you with useful information and guidance on the pitfalls and options.

We are happy to answer any further questions you may have – because the more you know, the greater your advantage in the market.

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