

## **Deadlines Affecting Property Claims in East Germany**

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As has been widely publicized, reunification of East and West Germany has created the possibility to file restitution or compensation claims for property in Germany expropriated by the Nazi government during World War II and by the East German government after 1949.

Since the enactment of the German property claim laws, a large number of claims have been filed and new laws have been passed setting final deadlines and refining the claims laws. The most important date for claimants who have not yet filed their claims is the final bar date of Dec. 31, 1992 with respect to filing new claims for the return of real estate and enterprises and a bar date of June 30, 1993 with respect to other property claims.<sup>1</sup>

All applications must specify the location, kind, extent of the assets, original ownership, and chain of inheritance.<sup>2</sup> However, the law only requires the submission of information to the extent that it is available at the time of filing.<sup>3</sup> Therefore an argument can be made that failure to specify before the deadline does not affect the claim. Still, it is advisable to specify the claimed property as accurately as possible before the bar date, because the German authorities might decide that a claim, which is not properly specified, does not qualify as a proper filing at all.

Claimants also should be aware that the claims office formally can request the claimant to specify his or her claim as to the exact location of the claimed property. Failure to provide the requested information within a certain time will also void the claim.<sup>4</sup> In addition, failure to specify has other negative implications described below.<sup>5</sup>

Claimants who hold awards under the U.S. Foreign Claims Settlement program and who also have filed their claims under German law face an end of the year deadline. They must either elect to accept their cash award, accept the U.S. Foreign Claims Conference decision in their case, or opt out of their U.S. award on or before Dec 31, 1992 and pursue their claims in Germany under German claims laws. Failure to make such an election on or before the end of the year deadline means the claimant is deemed to have elected his or her U.S. Award and will not be permitted to pursue the claim for the return of the property in Germany. The difference in remedies can be great because the U.S. award is a monetary award and does not include the possibility of restitution of the property. Normally, the value of returned property is in excess of the monetary damage (principal plus 3 percent interest) awarded by the U.S. Foreign Claims Commission.

Difficulties may arise where there are several heirs to a property claim and some heirs elect to receive the U.S. award while others seek restitution of the property in Germany.

When the award is accepted all rights and interests of the claimants electing to receive the U.S. award will be transferred to the German government.<sup>6</sup> Normally, this will not hinder the right of the other claimants to pursue their claims for the return of the property. However, this may be different where there exists a community of heirs (Erbengemeinschaft) under German law.<sup>7</sup> Since German inheritance law requires all of the heirs to an undivided community of heirs to act in concert with respect to the estate,<sup>8</sup> the German government, to which inheritance rights are

transferred, may effectively hinder the return of the property by choosing monetary compensation over restitution under the German program.

Multiple heirs should therefore seek to prevent the situation where the election of one claimant may affect all of the heirs to their detriment.

## Restitution

The end of the year will also bring an end to state administration of some properties where the owners are still listed in the land registry book as the owners of the property.<sup>9</sup> This means that the collection of rent, and duty to pay taxes and other benefits and burdens of ownership return to the owner. Claimants should prepare for this by finding a qualified real estate management company.

Claimants also should be aware of the danger of losing their restitution rights where the person currently listed in the land registry validly disposes of the property. Generally, where a claim has been made for the return of real estate, the owner last listed in the land registry is prohibited from disposing, encumbering or making any long-term contracts with respect to the property<sup>10</sup> and has a duty to inquire at the claims office as to whether a claim has been filed for the return of the property.<sup>11</sup>

Therefore, it is strongly advisable that claim be specified as precisely and as early as possible, because a filing, which does not exactly identify the property, may not be communicated to the current owner; Unfortunately, the duty, to become informed of claims and to refrain from dispositions does not effectively bar dispositions. It only creates a claim for damages.

One safeguard against the sale and transfer of real estate is a new requirement in the land transfer laws which requires a permit for any sale and transfer of real property situated in the former German Democratic Republic.<sup>12</sup>

The permit will not be issued if a claim for the return of the property has been properly filed,<sup>13</sup> provided that the claim clearly has no merit.<sup>14</sup> Filings that do not adequately identify the property after the claimant has been asked for further specifications by the claims office will be disregarded.<sup>15</sup>

The claimant also can apply for an injunction in the civil court. This also applies where the registered owner plans dispositions other than Transfer or encumbrance (e.g. long-term lease or construction). However, an injunction only will be granted where the claimant can establish that the restitution claim is actually endangered.<sup>16</sup> In most cases the claimant will not know whether the registered owner has taken steps toward disposing of the property.

New investment laws also might bar restitution of the property. Notwithstanding the general prohibition upon the sale or encumbrance of property for which claims have been filed, the registered owner may validly sell, lease, rent, encumber or subdivide the property, or do

construction work on it, provided that there is an investment purpose which has been formally approved.<sup>17</sup>

The proceedings to obtain approval include the submission of a detailed investment plan. The office in charge informs the claims office and all claimants with respect to the plan and the claimant has the possibility to prevent, the suggested measure by submitting his or her own investment plan within a certain short time.<sup>18</sup> The claimants plan is generally, deemed to have priority.<sup>19</sup>

Again, it is important that the claim be sufficiently specified: to permit identification of the property otherwise it is doubtful that notice of the plan will be sent to claimant.<sup>20</sup> If any sales or encumbrances are validly made pursuant to these provisions, restitution is barred<sup>21</sup> However, the claimant then has a cause of action for damages in an amount considerably higher than the monetary compensation provided for under the claims program.<sup>22</sup>

Some properties are exempt from the above mentioned provisions, in particular real property marked in the land registry as former Jewish property (i.e. "Liste C" property) is exempt.<sup>23</sup>

#### Jewish Claimants

Other changes in the German claims law have been made in order to Savor Jewish claimants. There is a presumption in the law that from January 1933 until May 1945, property sold during this period is to be considered to be sold under duress, unless the buyer can prove the contrary.

From the period of Sept 15,1935 until May 1945, this presumption can be overturned only if the buyer can prove that the sale would have faked place in the absence of Nazi presence or in the event that the purchaser made provisions to pay a fair price to the seller and that the seller actually received payment outside at Nazi controls (for example where payment was made and received into a foreign account).<sup>24</sup>

The German claims law also has been amended to insure that property taken from January 1933 to May 1945 and which was later taken a second time by the Soviets from 1945 to 1949, must be returned to the original owner.<sup>25</sup>

Previously, an ambiguity in the law led some German courts to conclude that a treaty provision entered into between the German government and the former Soviet government prohibited the return of such property.

Another new amendment favoring Jewish claimants involves a lowering of the burden of proof with respect to inheritance. In particular, discretion is granted to the claims office to waive the requirement of a formal certificate of inheritance if the chain of inheritance can be sufficiently proven by other means.<sup>26</sup>

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Footnotes:

1. § 30a Vermögensgesetz: Statute for the Regulation of Open Property Questions, issued on September 1990, reissued on April 1991, amended on July 1992 - Federal Law Gazette (BGBl.) 1990 Part II pp. 885, 1159; 1991 Part I p. 957; 1992 Part I p. 1257.
2. § 4 par. 1 Anmeldeverordnung: Regulation on the Filing of Claims, issued July 11, 1990, reissued Oct. 11, 1990, amended July 14, 1992 - Law Gazette of the German Democratic Republic (GBl.) Part I No. 44 page 718; Federal Law Gazette (BGBl.) 1990 Part I page 2162; 1992 Part I page 1268
3. Id. § 4 par. 1.
4. Vermögensgesetz (supra note 1), § 31 par. 1b.
5. See text accompanying note 10 and following.
6. Agreement of May 13, 1992, between the Government of the Federal Republic of Germany and the Government of the United States of America on the Settlement of Specific Property Claims, Art. 3 par. 9
7. German law applies, for example where the original owner was a German citizen, EGBGB (Law for the Application of the Civil Code), Art. 25 par. 1.
8. Civil Code, § 2040 par. 1
9. Vermögensgesetz (supra note 1), § 11a.
10. Vermögensgesetz (supra note 1), § 3 par. 3. However, the owner is permitted to make modest improvements, maintain the property and collect rent until the claim is settled.
11. Id. par. 5.
12. Grundstrucksverkehrsordnung (Land Transfer Code) of December 15, 1977, reissued April 18, 1991, changed on July 14, 1992, (GBl. Part I 1978 No. 5 page 73; BGBl. 1991 Part 1 page 999; BGBl. 1992 Part I page 1266), §§ 1 par. 1, 2 par. 1.
13. Id. § 1 par. 2 no. 1.
14. Id. § 1 par. 2 at the end.
15. Id. § 1 par. 3.
16. Zivilprozeßordnung (Code of Civil Procedure), § 935.
17. Investitionsvorranggesetz (Laws establishing the priority of investment in the case of restitution claims) of July 14, 1992 (BGBl. 1992 Part 1 page 1268), §§ 1,2.
18. Id. § 5.
19. Id. § 7 par. 1.
20. Id. § 5 par. 1 sentence 2.
21. Id. § 11 par. 2.
22. Id. § 16.
23. Id. § 22.
24. Vermögensgesetz (supra note 1), § 1 par. 6 sentence 2.
25. Vermögensgesetz (supra note 1), § 1 par. 8 a).
26. Vermögensgesetz (supra note 1), § 31 par. 1c, Bundesentschädigungsgesetz (Federal Compensation Law), § 181.