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## **East German Claims Revisited**

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In 1994, the author gave a talk at the German American Chamber of Commerce regarding general provisions of East German Claims law. Now, two and one half years later, I would like to discuss some of more frequent problems encountered by claimants and some of the more recent developments which have occurred in the East German claims law.

The German government reports that approximately two million claims were filed with claims offices (Vermögensante) in eastern Germany. In Berlin, approximately 310,000 property claims have been filed. Of these, approximately 150,000 claims were filed for the return of approximately 100,000 real properties. From these, approximately two thirds, have been decided (30% to 50% are given back, the remainder obtain damages or are rejected). Easier cases (cases where there is no counter-claimant or where the claimants are very old) are decided first. This means that the remaining cases are generally the more difficult cases involving difficult legal issues and will take longer to decide. In Berlin a target date of February 29, 2000, has been set for deciding all cases in the first instance. However, claimants should not expect to automatically receive a decision unless they have submitted the basic evidentiary requirements requested by the claims offices.

### **I. Specification of the Claim.**

After filing the claim, the first most important task of the claimant is to specify what he or she is claiming. Although a claim which states that the claimant wishes to claim the return of her father's house in Berlin is sufficient to file a claim within the deadline for filing claims (December 31, 1992 for land and businesses and June 31, 1993 for personal property), it is not sufficiently specific for the claims office to determine exactly what property is being claimed.

The claimant in this example must therefore do research and find out exactly where her father's house was located and then inform the claims office by giving an address or block and lot number identifying the location of the property. In the event that the claimant does not specify her claim, she will most likely receive a letter from the claims office asking her to do so and setting forth a deadline of four weeks to comply, unless additional time is needed (extensions are usually liberally granted). The consequences of failing to specify the claim are severe and can result in the loss of the claim.

### **II. Submission of Proof of Inheritance.**

A second major requirement to have a claim decided is to prove the chain of inheritance from the person who owned the property to the claimant. In most cases, the claims office requires a German certificate of inheritance. This document must be obtained from a German inheritance court called a Nachlassgericht (Surrogates Court) which is located in a larger court called an Amtsgericht (District

Court).

In order to obtain a certificate of inheritance, a notarized application/affidavit must be submitted to the German Nachlassgericht where the property is located (the applicable court may vary depending on the facts of each case). If made outside of Germany, the application/affidavit is usually prepared at a German Consulate by a German Consular official. It consists of a statement of the facts surrounding the right of inheritance including the names and relationship of the heirs to the testator, what law is applicable, and whether the right of inheritance devolves by way of testamentary disposition or by way of intestacy.

The application/affidavit should be supported by either original or certified copies of documents including death certificates, birth certificates, wills and other relevant documentation (court order changing name, ect.) together with a certified German translation of each document not in the German language. Obtaining the relevant documentation and assembling all of the facts regarding this application is often a difficult and onerous, albeit necessary, task. Often it requires obtaining documents which may have been lost or destroyed in the war or documents which are logistically difficult to obtain because they are located in former communist countries. In the event that the documents can no longer be located, the applicant should obtain a certificate from the local authorities that the document can no longer be located. Usually this together with the affidavit is sufficient proof for the German inheritance court.

Once the application/affidavit has been prepared by the German consular official, the German consular official contacts the applicant and a meeting is scheduled for the signing of the application/affidavit (where several heirs are involved, one applicant may make the application on behalf of all of the heirs). At this meeting, the German consular official reads the prepared application/affidavit to the applicant and asks the applicant if the facts stated in the application are correct. After affirming this or upon making any necessary corrections, the applicant then signs the application/affidavit and the German consular official notarizes the signature of the applicant.

Upon the completion of the application/affidavit, it is sent together with supporting documentation to the German Nachlassgericht closest to where the property is located (different jurisdictional rules may apply on a case by case basis). The inheritance court will then correspond with the applicant or her attorney and will pose any relevant questions which may have been overlooked in the application. When all questions have finally been answered to the courts satisfaction, and relevant documents submitted, a certificate of inheritance or Erbschein will be issued. The Erbschein should then be submitted by the claimant to the claims office together with a letter giving the claim number.

Many claimants do not understand the necessity of obtaining a German Erbschein and instead submit a copy of a will in English to the claims office. Although, such documentation may be sufficient for informal proceedings, it is not sufficient for the German claims proceedings. The reason for this is that German property claims often involve the actual return of valuable property, such as real estate, which must be strictly proven and which often involves complicated conflicts of law questions.

Normally, the claims office will not even begin to work on a claim unless the claimant has submitted an Erbschein to prove her right to make a claim. The submission of an Erbschein is thus essential to the claims process and many claimants who fail to submit an Erbschein are frustrated in their claims.

If no Erbschein has been submitted to support the claim, the claims office may write to the claimant and set a deadline for the submission of this proof of inheritance. Failure to submit the Erbschein within the deadline set by the claims office may also lead to the loss of the claim, however extensions are liberally granted and, if the Erbschein has been applied for, the pendency of the application usually stays the deadline as long as the claims office has been informed that the application has been made.

### III. Supporting Documentation: Expedition of the Claim.

Once the claim has been specified and German certificate of inheritance has been submitted, the claimant has fulfilled the basic requirements of the claims process. From this point the claims office will, in theory, automatically process the claim. However, a claimant or her attorney would be well advised to help the claims office by researching the land records (in the case of real property) or obtaining old balance sheets (in the case of a corporation) to assist the claims office in its research task. In the case of real estate, certified copies of the land records (Grundbuch) and any contracts or other records which show the way the property was lost should be obtained and submitted to the claims office.

The claimant may also help her cause by submitting an application to have the claim decided on a priority basis. Normally claims are decided by number. When the claim is filed, a number is assigned based upon when the claim was received (lowest numbers to those first received). When the claim number comes up, the case becomes active and is given to a case worker who begins to work on the claim. By submitting an application to have the case decided on a priority basis, if approved, the claimant may jump the line and have her claim assigned to a case worker. However, in order to do this the requirements for such an application must first be met. These include the following:

1. Submission of all certificates of inheritance necessary to prove the chain of inheritance from the original owner.
2. Submission of certified copies of relevant documents such as land records and contracts.
3. Absence of competing claims for the same property.
4. Representation of all heirs by one individual or one attorney (not always enforced).

An application for a priority decision is most effective when it includes a statement of the relevant facts and applicable law and when it is supported by certified documents (Erbscheins, land records, ect.). The better organized and complete the application is, the less work there is for the case worker and the more likely the claim will be worked on in an expedited fashion. Even if all of the above requirement are not met, it is still advisable to make such an application because it prepares the case to be worked on when it is finally assigned to a case worker. However, even when a priority application has been made and the claim has been assigned to a case worker, delays will still occur because the case worker has the obligation to double check land record information and to obtain information and make calculations regarding investments and mortgages on the property.

### IV. Conflicting Claims.

#### A. Jewish Claims.

Most American claimants are Jewish and Jewish claims are usually assigned to case workers on a

priority basis. Large claims offices, such as in Berlin, have created special departments to handle Jewish claims to insure that they are worked on in an expedited manner. However, Jewish claimants are not the only claimants permitted to file claims, and the heirs of claimants who purchased properties from Jews may also claim the return of such property or may be the current legal owner of such property.

Although presumptions under German claims law strongly favor Jewish claimants, a conflicting claim will cause delays by preventing a claim from being handled on an expedited basis. In addition, even when a case with a conflicting claim is worked on and eventually decided in the Jewish claimants favor, the other claimant may still appeal the decision, thus delaying the return of the property. This is a typical tactic to try to obtain a settlement from the frustrated claimant who does not wish to wait until the appeal is decided.

#### B. Bona Fide Purchaser During the East German Period.

Another very difficult conflict occurs where a property lost by a Jewish person during the Nazi period is later bought by a bona fide purchaser during the East German period. Such a case pits the very valid claim of the Jewish person who lost the property due to persecution against the social necessity of not displacing innocent purchaser's during the East German period from their homes. Such cases are perhaps the most difficult which occur under the claims law because at one party will most certainly not be happy with the ultimate outcome.

In such cases the claims law permits the property to be taken away from the bona fide purchaser and given back to the Jewish claimant only in those cases where the sale was indeed not bona fide because special influence was used to obtain the property. A good example of this would be where a high communist party official used his special position to obtain a particularly choice property.

However, most such cases involve a normal family which purchases the property during the East German period. In such cases, the return of the property is ruled out and the Jewish claimant must be satisfied with an award of damages.

#### C. Conference on Jewish Material Claims Against Germany.

Conflicting claims may also arise for other reasons. Under the claims law (Vermögensgesetz), the right to claim property lost by Jews killed in the Holocaust with no surviving heirs is assigned by law to the Conference on Jewish Material Claims Against Germany (JCC). The JCC is an umbrella organization with Jewish organizations as members. It is incorporated and has offices both in the United States and in Germany. In order to insure that it has claimed the property of Jews who were killed in the Holocaust with no heirs, the JCC has filed claims for almost all property owned by Jewish persons in eastern Germany.

The claims offices generally regard claims made by the JCC as non-competing claims with respect to claims filed by the actual Jewish heirs. Therefore a claim made by the JCC normally should not prevent a claim from being decided on a priority basis. However, the almost universal claim filings made by the JCC sometimes lead to conflicts with the actual heirs. In particular heirs who filed claims after the filing deadline find that the JCC is entitled to the return of property in the place of the actual heirs. In these cases the JCC has created a "Good Will" fund from which they pay part of the

money received to the actual heirs. However, the failure of the JCC to pay the full amount of the proceeds of these claims to the actual heirs has led to some conflicts.

Despite this drawback, the JCC serves a vital function in the claims process by claiming property which might otherwise fall to the German government or to persons who improperly benefited from the injustices of the Nazi period.

#### D. Foreign Claims Settlement Commission.

A frustrating conflict sometimes arises when claimants had previously claimed the loss of property located in eastern Germany at the Foreign Claims Settlement Commission in Washington, DC. During the East German period, the U.S. Government, Treasury Department, set up the Foreign Claims Settlement Commission (the "Commission") to receive and decide claims regarding property lost in the German Democratic Republic (East Germany). The Commission decided these claims and awarded a US Dollar amount for valid claims. However, the German Democratic Republic refused to recognize or pay the awards and they remained dormant until the Federal Republic of Germany agreed to pay the awards with limited interest after Germany was reunified in 1989. Under this agreement, signed in Bonn on May 13, 1992, claimants who were granted awards by the Foreign Claims Settlement Commission and who also filed a claim under the German claims act (Vermögensgesetz) were required to choose between these two claims proceedings by December 31, 1992. If the claimant failed to make the election on or before December 31, 1992, she is deemed to have elected the US settlement award and may not pursue the claim in Germany. Since the US settlement amount is based on a damages formula and does not include the right to obtain the return of the property and since the German claims law permitted the return of property where it was not otherwise ruled out, this led to drastic consequences for some claimants who were not fully aware of the consequences of a failure to make the election.

To give an extreme example, a claim for a property today worth millions, might have been settled for a few thousand dollars if the claimant failed to make the election on time. The Foreign Claims Settlement proceeding may thus become a trap for the unwary and although it is possible to appeal the election, the reversal process is cumbersome and the chances of reversal slim.

#### V. The Decision Process: Return of Property or Damages.

Once the claim has been assigned to a case worker and all German certificates of inheritance and other documentation have been submitted, the case worker will review the claim. Often the case worker will request additional information and will write directly to the property management firm which manages the property and the current legal owner to obtain information regarding mortgages and investments made on the property.

Under the property claims law, property is to be returned to the claimants who lost it under duress or by other unlawful means, unless it not possible to return it due to intervening circumstances. Examples of such circumstances are as follows:

1. Where the original property was destroyed and a new different building replaced the original structure.
2. Where the property was sold in a bona fide sale to a buyer during the East German period.

3. Where there was a large investment in the property, the use of the property changed, and the property is used for public purposes (i.e. schools, public housing, public offices).

4. Where the original property was substantially destroyed, the property was taken in an eminent domain proceeding and rebuilt, and damages were awarded during the East German period to compensate the owner (Aufbaugesetz).

The case worker will review land records and other information regarding the case and determine if the property was improperly taken from the claimant. Once this determination is made, the case worker will then determine if there are any grounds for ruling out the return of the property.

In the case where there are no grounds to rule out the return of the property, a proposed decision is drafted giving back the property. This will include the facts of the case, the legal reasoning and a complicated calculation of pre-reunification debts against the property which must be paid off prior to the decision becoming final and binding. Assuming there are no objections to the proposed decision, a final decision is then issued and, after pre-reunification debts are paid off and a thirty day period expires

without an appeal, the decision returning the property becomes final and binding. The claims office then applies directly to the land records office to have the claimant inscribed as the owner in the land records.

In the case where the claims office determines that the claimant is entitled to a positive decision, but there are sufficient grounds to rule out the return of the property, the case worker drafts a proposed decision deciding that the claimant is entitled to damages. Assuming that there is no objection, the claims office will then issue a decision that the claimant is entitled to a damages award. After becoming final and binding, the decision is then sent to the Oberfinanzdirektion (a financial accounting office) for a determination as to the amount of damages to be awarded. For Jewish persecution cases, damages are based on a formula of four times the 1935 tax assessed value (Einheitswert) minus some deductions for mortgages and previously paid out awards. For property lost in the East German period, a different damages formula is used which takes into account the kind of use of the property. The amount awarded in these cases is generally lower than the amount awarded in Jewish persecution cases.

## VI. Investment Law.

Because of the necessity to encourage business development in eastern Germany and because of the uncertainty of title to property where claims have not yet been decided, the German government passed an investment law with respect to property whose title had not yet been decided (Investitionsvorangesetzt). Under the terms of this law, entities who desire to purchase a specific property for investment purposes may do so by first submitting an investment plan and having the plan approved in an investment proceeding. The entrepreneur first creates a plan detailing the nature and amount of the investment, the number of jobs created and the price to be paid for the property.

The claimant is also given the opportunity to make her own investment plan and, if seriously made, the claimants plan is given priority consideration. However most claimants do not wish to become involved in investments in Germany and therefore do not object to the investment plan except to

insure that the price offered for the property is fair.

After all investment plans are submitted, they are considered by the local authorities and a final decision is made accepting one of the plans. The accepted investor then has the right to purchase

the property for the fair market price and the money from the purchase is held in an escrow account until the claim is decided. When the claim is decided, the claimant has the right to receive the purchase money held in escrow and to bring suit against the local authorities if they sold the property for less than the fair market price. The fair market price is usually proven by obtaining certified appraisals from licensed appraisers.

The investment proceeding in theory does not harm the claimant, since they have the right to receive the fair market value of the property. However, since the claimant does not have the right to own the property and test the price on the market, there are some disadvantages to the claimant. These are balanced against the social advantages of putting the properties to economic use while the claim is being decided.

## VII. Claims for Properties Along the Former Berlin Wall.

One anomaly in the claims process involves properties located on the former border of East and West Germany including properties located along the former Berlin Wall (so-called "Mauergrund-stücke"). These properties were generally taken under an eminent domain proceeding by the East German government under the East German Defense Law ("Verteidigungsgesetz"). Under this proceeding the East German government determined a compensation for each property which was generally lower than the mortgages on the property. The mortgages were then written off, however the ownership of the property then fell to the East German government. Under the current claims law (Vermögensgesetz) claims may only be made for properties which were lost due to a discriminatory taking or which were taken without compensation. Thus, most Jewish owned properties along the Berlin Wall fell under the current claims law, however there was no real compensation for non-Jewish properties expropriated for defense reasons during the East German period.

The German parliament long pondered the question of whether a special law should be enacted to compensate property owners who lost these border properties, especially in view of the historical significance of the former Berlin Wall. The German Parliament (Bundestag) recently enacted legislation to compensate these former property owners by either permitting them to repurchase the these properties for one quarter of their fair market value today or, in the case where it is not possible to permit the return of the property, to receive payment of three quarters of the fair market value of the property. The one quarter fair market value of the property not returned to the former owner is to be paid into a fund to be used to pay out compensation where the property can no longer be returned and for social projects in eastern Germany.

There is a claim filing deadline of January 31, 1997, for receipt of the claim in Germany. Claims should be filed at: Oberfinanzdirektion Berlin, Fasanenstrasse 87, 10623 Berlin, Germany or Bundesfinanzministerium, Grauerheindorfer Strasse 108, 53117 Bonn, Germany. Claims should specify the property as clearly as possible and should submit inheritance documents, land records, expropriation decisions, and street maps. Claimants who also filed a claim under the Vermögensgesetz should be cautious regarding the interaction of the two laws. Jewish claimants

should first try to have their claim resolved under the Property Claims Law. Non-Jewish claimants will either have to have a decision regarding their Property Claims law claim or will have to withdraw that claim prior to obtaining a decision under the new border property law.

#### VIII. Future Outlook.

As can be seen from the foregoing, the claims process in Germany is a fair, but often slow moving proceeding which requires patience and attention to satisfying the evidentiary requirements of the claims office. However, for those claimants who do respond to the claims offices requests and supply it with the inheritance certificates and other documentary evidence (land records, contracts, ect.), the reward of obtaining the return of a property lost long ago is well worth the wait.

The German government and the claims offices should also be commended for passing fair laws to return property and for carrying out the claims law in a fair way. In particular, the fact that special attention is given to return Jewish property, and that work on Jewish claims is expedited, should be applauded.

However, despite this, it is unlikely that all of the claims will be settled in the near future. The sheer number of claims and often painstaking work which is required to obtain all of the necessary documentary evidence and the fact that easier cases are decided first, leads one to the conclusion that, although much has been done, there is still a long way to go before all of the claims will be settled.