

Reclaiming Property Along the Former Berlin Wall

By David J. Rowland

Most Jewish persons claiming the return of such properties will not be affected by the new law. Jewish claimants who owned and then lost border or Berlin Wall properties during the Nazi period already have the right, under the 1990 Property Claims Law, to obtain either the return of the property or compensation for the loss of such properties. However, in the event that such properties were not lost by Jewish claimants during the Nazi period and then were lost through East German Defense Law expropriation, the 1996 Border Property Law provides substantial compensation.

In general, claimants who claimed the return of such properties under the 1990 Property Claims Law should now also file a claim under the 1996 Border Property Law to preserve all possible rights and options. However, claimants should also be very careful with respect to the interaction of these two forms of claims. If a claimant already received either the return of the property or compensation under the 1990 Property Claims Law, no further compensation can be received under the 1996 Border Property law.

Therefore, if a claim is pending under the 1990 Property Claims Law which has not been decided by the claims office or withdrawn by the claimant, an application under the 1996 Border Property Law cannot be decided until the 1990 Property Claims Law claim is either decided by the claims office or withdrawn by the claimant. However, claimants under the 1990 Property Claims Law should not withdraw their claim without first assessing all of the consequences, especially in the case of Jewish claimants who may obtain the return of border or Berlin Wall property under the 1990 Property Claims Law (without the necessity of paying 25% of the fair market value as required under the 1996 Border Property Law).

Claim Filing

Claims under the 1996 Border Property Law should be filed at the OFD office having jurisdiction over the area where the property is located. For properties in Berlin, this is: Oberfinanzdirektion Berlin, Fasanenstrasse 87, 10623 Berlin, Germany. It is also possible to file claims for all border and Berlin Wall properties regardless of their location at the Federal Ministry of Finance in Bonn at: Bundesfinanzministerium, Graurheindorfer Strasse 108, 53117 Bonn, Germany.

The claim should ask for the return of the property and should describe the property as specifically as possible by giving the name of the expropriated owner, his/her relationship to the claimant and the exact address and/or land record number of the property. Claims should be made in German whenever possible and should be made prior to the filing deadline even when not all of the information is available (the claim can be supplemented later). Claimants should also allow as much time as possible for the claim to arrive in Germany since the deadline of January 31, 1997, is with respect to the date of receipt in Germany and not from the date sent.

After the claim is filed, the OFD will decide if the property can be given back for payment of 25% of the fair market value or if it can no longer be given back because it was sold or is

otherwise needed for a public purpose. Claimants who can show that payment of the 25% would cause them hardship, can apply for state financing of the purchase at 4% interest.

If the property was sold after February 15, 1992, and before July 16, 1996, the claimant is entitled to 75% of the sales price. This will also be the case if the property was sold between October 3, 1990 (the date of German reunification), and February 15, 1992, if the claimant can show special hardship. If the property cannot now be given back because it is needed for a public purpose, the claimant is entitled to 75% of the fair market value of the property. The fair market value will be determined by an appraisal undertaken by the OFD.

Some procedure is not yet clarified and some limitations exist. For example, it is not yet clear if it is necessary to first obtain a decision that the property cannot be returned in the case where the claimant can prove that the property has already been sold. Such sales after German reunification were common since it was the policy of the German government, the legal owner of the properties, to encourage real estate investment and development, especially in the case of property along the former Berlin Wall which ran through central Berlin.

The 1996 Border Property Law is also limited to properties along the Berlin Wall and properties along the former West German -East German border that were used to prevent persons from crossing the border into West Germany. This is meant to specifically include the so-called "Killing Zones" along the Berlin Wall and the border which were cleared of buildings and cover, and upon which machine gun nests, barbed wire and mines were placed by the East German government to prevent its citizens from leaving. Despite this limitation, if claimants are not sure if their property falls within the new law, they should first file the claim and then seek clarification as to whether it applies.

A claimant who is as an heir of a former owner must also prove his or her right to claim the property by providing a German certificate of inheritance to the OFD. This is obtained through a German inheritance court, which determines the heirs. In addition, the claimant should supply the OFD with copies of relevant land records, information regarding the ownership and the expropriation of the property, maps showing the location of the property, and information regarding any sale of the property subsequent to German reunification.

Claimants are also encouraged to file the claim as soon as possible, since work on each claim will probably be on a first-filed, first-processed basis.

Historical Background

The properties along the former East German - West German border and especially along the Berlin Wall have an obvious historical significance, since the Wall symbolized both the Cold War era and the division of Germany. It is partial recognition of this historical significance, pressure from expropriated owners, and especially the inhumanity of the killing zones, that brought about the 1996 Border Property Law. In addition, a permanent memorial to victims who died trying to flee to the West over the Berlin Wall is being planned.

The 25% portion of the purchase price which old owners must pay to get back the properties or which they do not receive back in the case where the property was already sold, is to be paid into a fund for the promotion of culture and social institutions in the eastern part of Germany. It has not yet been determined exactly how these funds will be allocated. The requirement to pay 25% into the eastern German fund is also being challenged on constitutional grounds by a lobby group of expropriated owners.

Summary

The 1996 Border Property Law is an historically important law which permits former owners who lost these properties to obtain them back by paying 25% of the current fair market value, or in the case where the property cannot be given back, enables such claimants to obtain 75% of the fair market value or price for which the property was sold. Claimants should be cautiously aware of the interaction between the 1996 Border Property Law and the 1990 Property Claims Law and should file their claims under the new law quickly to meet the January 31, 1997, deadline.

Footnotes:

1. Statute Regarding the Sale of Berlin Wall and Border Properties to the Former Owners and to Change other Regulations (Gesetz über den Verkauf von Mauer- und Grenzgrundstücken an die Früheren Eigentümer und zur Änderungen andere Vorschriften, Journal of Federal Law (Bundesgesetzblatt), 1996, Part I, Number 34, p. 980.

2. Statute Regulating Open Property Questions (Gesetz zur Regelung offener Vermögensfragen), enacted in September 1990, amended in April 1991 and July 1992, Journal of Federal Law (Bundesgesetzblatt), 1990, Part II, pp. 885, 1159; 1991, Part I, p. 957; 1992, Part I, p. 1257.

3. Statute Regarding the Defense of the German Democratic Republic (Gesetz zur Verteidigung der Deutschen Demokratischen Republik), enacted in September 1961 and amended in October 1978, Law Journal of the German Democratic Republic (Gesetzblatt der Deutsche Demokratische Republik), 1961, Part I, p. 175; 1978, Part I, p. 377.

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