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New Act to limit estate agent's fees

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The Austrian Parliament has passed a bill pursuant to which estate agents will only be able to claim a commission from the party that had initially instructed them, which, in most cases, is the landlord. The new Act will enter into force on 1 July 2023 and applies to residential leases only. Violations of the Act lead to a penalty of €3,600.

Key aspects

Typically, the landlord instructs the estate agent to search for potential tenants. The estate agent then lists the apartment on various media platforms, so that any interested parties can contact the agent. The agent provides the details of the property only to the interested parties who are prepared to conclude an agency agreement with them. This requires the tenant to pay a commission of up to three months' rent as soon as the lease is signed.

After the reform, the estate agent will be able to claim a commission only from the party that first instructed them, which is typically the landlord. Once instructed by the landlord, the agent can no longer claim a commission from the tenant.

The agent is still allowed to conclude a broker agreement (and request a commission) in cases where the landlord had not previously instructed the agent. The agent must give evidence of the agreement in writing. However, to prevent a circumvention of the new rules, the estate agent may not claim a commission from the tenant if:

- the agent is a group company of the landlord;
- the landlord has abstained from concluding an agency agreement with the sole purpose of letting the tenant be the first person to instruct the agent; or
- the agent advertised the apartment with the consent of the landlord.

In addition, any other arrangement by which the tenant should pay a commission to the agent, the landlord, the previous tenant or any third party in connection with the conclusion of the lease agreement (even if the landlord had first instructed the agent) is prohibited.

The new regime applies to lease agreements for residential leases. This concerns both apartments and detached houses. The Act does not apply to agency agreements concerning commercial leases or purchase agreements.

Comment

The new Act is unwelcome news for estate agents. It is expected that many landlords will no longer employ an estate agent but will rather try to search for prospective tenants themselves.

From a legal perspective, it is worth noting that, even where landlords decide to involve estate agents, the agents will likely no longer conclude an agency agreement with the tenant, given that they can no longer request a commission. Consequently, if any information that the agent provides is incorrect or misleading, the tenant will likely request damages from the landlord, as they will not have a contractual claim against the agent. The agent's omission or error will be attributed to the landlord as their proxy. In this scenario, the landlord will end up paying for the agent's services, as well as assuming liability for their actions or inactions. For this reason, it is expected that landlords will consider it more beneficial to attempt rent agreements without the help of an agent.

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