



ภาคผนวก

เจ้าหน้าที่หอสมุด

Federal Building Code (Baugesetzbuch, BauGB)

In the version amended by the Act to Amend the Federal Building Code and to Reorder Spatial Planning Law [BauROG], issued on August 18th 1997 (BGBl. I p. 2081)

(Translation provided by the Federal Ministry for Transport, Construction and Housing and reproduced with kind permission.)

Part Five Expropriation

Subdivision One Legal Requirements for Expropriation

Section 85 The Purpose of Expropriation

(1) Expropriation may only take place under this Act in order

1. to use a plot, or to prepare a plot for use in accordance with the designations contained in the binding land-use plan,
2. in the case of land which is not developed or only developed to a very low level and is not within the area covered by the binding land-use plan but lies within a built-up area, to use this land or to supply it for a use to for infill development in accordance with regulations under building law,
3. to procure plots for compensation in the form of land,
4. to replace rights taken away by expropriation with other rights,
5. to make plots available for development where an owner has not met an obligation under Section 176 para. 1 or 2, or
6. to preserve a building structure situated within the area covered by a preservation statute on one of the grounds contained in Section 172 paras. 3 to 5.

(2) Nothing here shall affect

1. regulations on expropriation for purposes other than those referred to in para. 1,

2. regulations on expropriation under federal state law for the purposes referred to in para. 1 no. 6.

Section 86 The Subject of Expropriation

(1) By means of expropriation it is permissible to

1. remove or encumber ownership rights to land;
2. remove or encumber other rights to land;
3. remove rights entitling holders to the acquisition, possession or use of land, or which restrict obligated parties in their use of land; these shall include claims to reinstatement under property law;
4. to the extent that this is provided for in the regulations within this Part, to establish legal relations which grant rights of the types referred to in no. 3.

(2) Expropriation may only be extended to include the appurtenances of a plot, and those objects which are only connected with the plot or have been placed inside a building for a temporary purpose, where this is in accordance with Section 92 para. 4.

(3) The regulations governing the removal and encumbering of ownership of plots apply mutatis mutandis to the removal, encumbering and establishing of the rights designated in sentence 1 nos. 2 and 4.

Section 87 Requirements for the Admissibility of Expropriation

(1) Expropriation is only admissible in individual cases where this is required for the general good and the purpose to be served by expropriation cannot reasonably be achieved by any other means.

(2) Expropriation presupposes that the applicant has made a serious but vain attempt to acquire the land subject to expropriation privately on reasonable terms and offering an appropriate piece of land in return under the conditions of Section 100 paras. 1 and 3. The applicant must provide evidence that the land will be used for the designated purpose within a suitable term.

(3) Expropriation of land for the purpose of preparing it for development (Section 85 para. 1 no. 1) or to make it available for development (Section 85 para. 1 no. 1) may only be permitted where this is to the benefit of the municipality or of a public agency or agency charged with public infrastructure provision. In the cases covered by Section 85 para. 1 no. 5, the expropriation of land may be demanded in favour of a party who is willing to develop the land, and who is able to do so, and who enters into an obligation to complete the building measures within a suitable period. To the extent that expropriation in favour of the municipality is admissible within a formally designated redevelopment area, it may also be allowed in favour of a body charged with carrying out redevelopment.

(4) The legal requirements for expropriation shall not be affected by the regulations contained in Part Three of Chapter Two.

Section 88 Expropriation on Urgent Urban Development Grounds

Where the municipality applies for the expropriation of a plot for the purposes designated in Section 85 para. 1 nos. 1 and 2 on urgent grounds connected with urban planning, it is sufficient in place of Section 87 para. 2 for the municipality to provide evidence that it has made a serious but vain attempt to acquire this land privately on reasonable terms and conditions. Clause 1 applies *mutatis mutandis* where application is being made for expropriation of a plot situated within a formally designated redevelopment area in favour of either the municipality or redevelopment agency.

Section 89 Duty of Disposal

(1) The municipality shall dispose of such land as

1. it has accumulated by exercising its pre-emption right, or
2. has been the subject of expropriation in its favour in order for the land to be prepared for development or made available for building use.

This does not apply to plots which are required as land for exchange in the context of proposed urban development measures, or as compensation in the form of land or for any other public purposes. This duty of disposal is not applicable where suitable replacement land is provided for the plot, or where transfer to joint ownership of a plot has taken place, or where rights similar to real property rights, rights under the Condominium Act or any other real rights to a plot have been established or granted.

(2) The municipality shall dispose of a plot as soon as it is possible to achieve the purpose which lay behind the acquisition, or this purpose is no longer applicable.

(3) Having shown consideration for broad sections of the public, the municipality shall dispose of plots to such persons who commit themselves to using the land within a suitable period in accordance with the building regulations or the aims and purposes of the urban development measure. In the cases covered by para. 1 sentence 1 no. 1, the former purchasers, or in the cases covered in para. 1 sentence 1 no. 2 the former owners, are to be given priority consideration.

(4) The municipality may fulfil its duty of disposal by

1. transferring ownership of the plot, or
2. by establishing or granting rights similar to real property rights or rights under the Condominium Act, or
3. by establishing or granting any other real rights.

The procurement of a claim to acquisition of such rights is equivalent to the establishing or granting of the rights or to transfer of ownership.

Section 90 The Expropriation of Plots for Purposes of Compensation in the Form of Land

(1) Permission may be granted for the expropriation of plots for purposes of compensation in the form of land (replacement land) where

1. compensation in the form of land is due to an owner under Section 100,
2. it is neither possible nor reasonable to provide plots suitable as replacement land within the framework of the proposed urban-planning development either from the land holdings of the beneficiary of expropriation, or from the land holdings of the Federation or federal state or of the municipality (association of municipalities), or of a juristic person governed by private law in which the Federation or federal state or the municipality (association of municipalities) has a preponderant interest, and
3. it has not been possible for the beneficiary of expropriation to acquire suitable land privately on reasonable terms and conditions, in particular, where this is possible and reasonable by offering suitable alternative land owned by the beneficiary or from the land holdings of juristic persons governed by private law in whose capital the beneficiary has a preponderant interest.

(2) Plots are not subject to expropriation for purposes of compensation in the form of land where and to the extent that

1. the owner or, in the case of land in agricultural or forestry use, any other holder of rights of use, depends on the land considered for expropriation to sustain a livelihood, and in view of such an interest in the maintenance of the economic basis for a business it would be unreasonable to demand forfeiture, or
2. the land or revenue from the land directly serves or is intended to serve public purposes or public welfare, or purposes of instruction, research, medical and health care,

education, physical training or the work of the churches or other religious organisations under public law and their institutions.

(3) Outside the area covered by a binding land-use plan and outside built-up areas, plots may only be expropriated for purposes of compensation in the form of land if they are intended for agricultural or forestry use.

(4) Permission shall not be granted for expropriation for the purpose of rendering compensation to an owner whose land is expropriated in order to procure replacement land.

Section 91 Restitution for Withdrawn Rights

Expropriation for the purpose of providing restitution for rights withdrawn by expropriation in the form of new rights is only admissible to the extent that restitution is provided for in the regulations contained in Subdivision Two. In respect of restitution of withdrawn rights in the form of new rights through expropriation under Section 97 para. 2 sentence 3, the regulations on expropriation for purposes of compensation in the form of land provided in Section 90 paras. 1 and 2 apply *mutatis mutandis*.

Section 92 The Scope, Limits and Extent of Expropriation

(1) Permission for expropriation of a plot may only be granted to the extent that the plot is required to achieve the purpose of expropriation. Where the purpose being pursued by expropriation can be achieved by encumbering the plot with a right, expropriation is to be restricted to this.

(2) Where a plot is encumbered with a building lease, the owner may demand the withdrawal of ownership in place of the encumbrance. Where it is intended to encumber a

plot with another right, the owner may demand the withdrawal of ownership if the encumbrance with the real right is inequitable to him.

(3) Where a plot or a physically or economically cohesive property is to be expropriated only in part, the owner may demand that expropriation be broadened to cover the rest of the plot or the rest of the property where this is no longer capable of being put to building or economic use.

(4) The owner may demand that expropriation be broadened to cover those objects referred to in Section 86 para. 2 where and to the extent that, as a result of expropriation, the owner is no longer able to put them to economic use or to utilise them in any other appropriate manner.

(5) Demands under paras. 2 to 4 are to be lodged in writing with the expropriation authority or asserted for minuting before the conclusion of the hearing.

Subdivision Two Compensation

Section 93 Principles Governing Compensation

(1) Where expropriation takes place, compensation is due.

(2) Compensation is provided

1. for rights forfeited as a result of expropriation,
2. for property loss of other kinds arising from expropriation.

(3) Any property gain accruing to the beneficiary of compensation as a result of expropriation is to be taken into consideration in setting the level of compensation due.

Where the beneficiary of compensation is partly responsible for property loss arising, Section 254 of the Civil Law Code [Bürgerliches Gesetzbuch] applies mutatis mutandis.

(4) The assessment of compensation is based on the state of the plot at the time at which the expropriation authority adjudicates on the application for expropriation. In cases where the date of putting in possession has been brought forward to before completion, it is the state of the plot at the time when possession becomes effective which is decisive.

Section 94 Beneficiaries of Compensation and Obligated Parties

(1) Compensation may be demanded by any person whose rights are adversely affected by expropriation resulting in property loss.

(2) The beneficiary of expropriation is legally obligated to make compensation. Where replacement land is expropriated it is the party with responsibility for supplying the replacement land for the expropriated plot which is legally obligated to make compensation.

Section 95 Compensation for the Loss of a Right

(1) Compensation for the loss of a right arising from expropriation is assessed on the basis of the current market value (Section 194) of the plot to be expropriated or of any other subject of expropriation. It is the current market value at the time at which the expropriation authority adjudicates on an application for expropriation which is decisive.

(2) In setting the level of compensation the following are not to be considered:

1. any increase in the value of a plot which has ensued in anticipation of a change of the permitted use where the change cannot be expected to take place in the foreseeable future;

2. changes in value resulting from imminent expropriation;

3. rises in value which occur subsequent to the time at which the owner could have prevented expropriation by accepting an offer of purchase or exchange from the applicant made on reasonable terms and conditions (Section 87 para. 2 sentence 1 and Section 88);

4. any alterations resulting in a rise in value which were carried out during a development freeze without the permission of the building permit authority;

5. any alterations resulting in a rise in value which were carried out after the initiation of the expropriation procedure in the absence of an official order or the permission of the expropriation authority;

6. any agreements, to the extent that these deviate noticeably from the usual agreements, and any facts which provide grounds for the assumption that they were created with the purpose of obtaining a higher amount of compensation;

7. land values which would not be taken into consideration if the owner were to claim compensation in any of the cases contained in Sections 40 to 42.

(3) In the case of those physical structures which may be subject to compulsory reduction of development without compensation at any time under public-law regulations, compensation is only to be made where this is deemed necessary for reasons of equity. Where demolition without compensation cannot be required before expiration of a term, compensation is to be assessed proportionately based on the relationship between the remaining period and the overall term.

(4) Where the value of ownership of a plot is diminished by third party rights which are maintained in respect of the plot, newly established in respect of another plot, or for which separate compensation is made, due consideration is to be given to this in setting the level of compensation for the loss of rights.

Section 96 Compensation for Other Property Loss

(1) Compensation for any other property loss arising from expropriation is due only and to the extent that such property loss has not been taken into consideration in assessing the level of compensation in respect of the loss of rights. This compensation is to be assessed giving due weighting to the respective interests of the public and of the parties concerned, in particular in respect of

1. any temporary or permanent loss suffered by the previous owner in the pursuance of his profession or livelihood or in performance of the tasks incumbent upon the owner, however, only up to the amount required to utilise another plot in the same manner as the plot which is subject to expropriation;

2. decrease in value arising from the expropriation of part of a plot or for the remaining area in the case of expropriation of part of a spatially or economically cohesive property, or from the expropriation of a right to a plot in the case of another plot, to the extent that the decrease in value has not been taken into consideration in assessing the level of compensation under no. 1;

3. the unavoidable expenditure incurred in moving house where this is made necessary by expropriation.

(2) In cases under para. 1 no. 2, Section 95 para. 2 no. 3 applies.

Section 97 The Treatment of the Rights of Secondarily Entitled Parties

(1) Any rights to the plot subject to expropriation and any personal rights with an entitlement to possession or use of the plot, or which restrict the obligated parties in their use of the plot, may be maintained to the extent that this is compatible with the purpose of expropriation.

(2) In replacement for a right to a plot which is not maintained, the replacement land, or some other plot owned by the beneficiary of expropriation, may with the approval of the

entitled person, be encumbered with an equivalent right. In replacement for a personal right which is not maintained, a legal relationship may, with the approval of the entitled person, be established granting an equivalent right in respect of the replacement land or some other plot owned by the beneficiary of expropriation. In replacement for real or personal rights held by a public transport operator or a public utility provider (electricity, gas, heat and water), and on which this party is dependent to perform the tasks incumbent upon it, equivalent rights are to be established at the request of this party; where plots owned by the beneficiary of expropriation are not suitable, other plots may be claimed for this purpose. Applications under sentence 3 are to be lodged in writing with the expropriation authority or declared for minuting before the end of the hearing.

(3) Where rights are neither maintained nor replaced by new rights, special compensation is to be made on the expropriation of land to

1. tenants under a building lease, retired farmers entitled to a portion of the estate and the holders of servitudes and acquisition rights to the land,
2. holders of personal rights containing an entitlement to possession or use of the land where the entitled party is in possession of the land,
3. holders of personal rights containing an entitlement to acquisition of the land or which restrict the entitled party in its use of the land.

(4) Entitled persons whose rights are not maintained or replaced by new rights and to whom no special compensation is made have a claim in the event of expropriation to restitution of the value of the right from the financial compensation for ownership of the property to the extent that this is covered by their right. This applies *mutatis mutandis* in respect of financial compensation ordered in other cases or under Section 96 para. 1 sentence 2 no. 2 for the loss of rights arising from expropriation.

Section 98 Succession in Debt

(1) Where the person affected by expropriation is at the same time personally liable for a mortgage loan which is either maintained or replaced by a new right to another plot, the beneficiary of expropriation shall assume the debt at a level equal to the mortgage. Sections 415 and 416 of the Civil Law Code apply mutatis mutandis; the transferor [Veräußerer] within the meaning of Section 416 is the party affected by expropriation.

(2) The same applies in the case of a land charge or rent charge which is maintained or replaced by a new right to another plot where the party affected by expropriation is also personally liable, provided that this party has registered the claim against him within the term permitted under Section 108 with details of the amount due and its justification, and has proved this claim by evidence, where this is required by the expropriation authority or by another party involved.

Section 99 Compensation in the Form of Money

(1) Compensation is to be paid in one instalment unless stipulation to the contrary is made within this Act. On application by the owner, compensation may be paid in regular instalments where this can reasonably be expected of the other parties involved.

(2) Where land is encumbered with a building lease, compensation is to be made in the form of ground rent.

(3) One-off payments of compensation are subject to interest at an annual rate 2 per cent above the Deutsche Bundesbank's discount rate commencing at the date on which the expropriation authority reaches a decision on the application for expropriation. In cases where putting in possession has been brought forward in time to before completion, it is the point at which this takes effect which is decisive.

Section 100 Compensation in the Form of Land

(1) On application by the owner, compensation is to be set in the form of suitable replacement land, where the owner is dependent on such replacement land for the continued pursuance of his profession or livelihood, or in performance of the tasks incumbent upon the owner, and

1. the beneficiary has land available which would be suitable as replacement land and does not require this land for the pursuance of his profession or livelihood or in performance of the tasks incumbent upon him, or

2. the beneficiary of expropriation, in the best judgement of the expropriation authority, is in a position to procure suitable replacement land privately and at reasonable terms, or

3. suitable land can be procured by expropriation under Section 90.

(2) Where compensation is set in the form of land, stipulation is to be made as to the use for which the land is to be utilised and the time limit within which the land is to be put to such use. Sections 102 and 103 apply.

(3) Under the preconditions set out in nos. 1 to 3 of para. 1 and on application by the owner, compensation is also to be set in the form of suitable replacement land when the land subject to expropriation contains a private residential building or a small housing estate. This does not apply in cases where reduction of development without compensation may be ordered at any time under public law regulations.

(4) On application by either the party subject to expropriation or the beneficiary of expropriation, compensation may be set wholly or partly in the form of replacement land where this form of compensation is deemed equitable by the expropriation authority after due weighting and consideration has been given to the public interest and to the interests of

the parties involved, and the preconditions relating to the beneficiary of expropriation set out in nos. 1 to 3 can be met.

(5) In respect of the assessment of the value of the replacement land, Section 95 applies *mutatis mutandis*. Account may be taken of any rise experienced in the value of the remaining irremovable property owned by the party affected by expropriation arising from acquisition of the replacement land over and above the value of that land under sentence 1. Where the replacement land is lower in value than the plot subject to expropriation, additional financial compensation is to be set to correspond to the difference in value. Where the replacement land is higher in value than the plot subject to expropriation, stipulation is to be made to the effect that the party entitled to compensation shall make a compensatory payment to the beneficiary of expropriation corresponding to the difference in value. Such a compensatory payment becomes due on the day fixed under Section 117 para. 5 sentence 1 of the implementing ordinance.

(6) Where compensation is fixed in the form of land, any real or personal rights to the land subject to expropriation which are not maintained shall, on application by the holder of such rights, be replaced either wholly or in part in accordance with Section 97 para. 2. Where this is not possible or not sufficient, the holders of rights are to receive a separate payment as financial compensation; this applies to the entitlements contained within Section 97 para. 4 only to the extent that their rights are not covered by additional financial compensation due to the owner under para. 5.

(7) Applications under paras. 1,3,4 and 6 are to be submitted to the expropriation authority in writing or declared for minuting; applications in cases covered by paras. 1,3 and 4 are due prior to the opening of the hearing, and those covered by para. 6 prior to its completion (Section 108).

(8) Where joint ownership, rights similar to real property rights or rights under the Condominium Act [Wohnungseigentumsgesetz] are equally suitable to allow the entitled person to continue in the pursuance of his profession or livelihood or in performance of the tasks incumbent upon him, the owner may be offered such rights instead of replacement land. An owner who refuses to accept compensation offered under sentence 1 is to receive financial compensation. Nothing here shall affect Section 101.

(9) Where an owner has a claim to replacement land under para. 1 or 3 and personally procures replacement land, or the rights referred to in para. 8, with the approval of the beneficiary of expropriation outside the expropriation proceedings, this owner may claim reimbursement from the beneficiary of expropriation for the necessary expenses incurred. The beneficiary of expropriation is only liable to make reimbursement to the extent that this saves him from incurring expenses. Where no agreement can be reached on reimbursement, adjudication is to be made by the expropriation authority; with regard to notification Section 122 applies mutatis mutandis.

Section 101 Compensation by the Granting of Other Rights

(1) The owner of the land subject to expropriation may, on application and provided that this is equitable to the interests of other parties concerned, be offered compensation either wholly or in part

1. in the form of the granting or transfer of joint ownership to land, rights equivalent to real property rights, rights under the Condominium Act, other real rights to the property subject to expropriation or to some other property owned by the beneficiary of expropriation, or

2. by means of the transfer of ownership of a developed plot belonging to the beneficiary of expropriation, or

3. by means of the transfer of ownership of land owned by the beneficiary of expropriation on which a private house or small housing estate is to be built.

Where a difference in value exists between the rights under sentence 1 and the property subject to expropriation, Section 100 para. 5 applies *mutatis mutandis*.

(2) The application under para. 1 must be submitted to the expropriation authority in writing, or alternatively made orally for minuting prior to the completion of the hearing.

Section 102 Re-Expropriation

(1) The former owner of the expropriated property may demand that the expropriated property be re-expropriated in his favour where and to the extent that

1. the beneficiary of expropriation or that person's heir at law does not utilise the expropriated property for the designated purpose of expropriation within the time-limits set (Section 113 para. 2 no. 3 and Section 114) or abandons this purpose prior to expiration of the term, or

2. the municipality has failed to meet its obligation under Section 89 to transfer ownership.

(2) Re-expropriation may not be demanded where

1. the person whose land was expropriated had himself acquired the land through expropriation in accordance with the provisions of this Act or of the Procurement of Building Land Act [Baulandbeschaffungsgesetz], or

2. expropriation proceedings have been initiated for the land in accordance with this Act in favour of another party prepared to build on the land, and the former owner of the expropriated land is unable to provide evidence of an intent to utilise the land for the required purpose within an appropriate period.

(3) The application for re-expropriation is to be submitted to the appropriate expropriation authority within two years of the claim arising. Section 203 para. 2 of the Civil Law Code applies *mutatis mutandis*. The application is no longer admissible where, in the cases cited

in para. 1, the legitimate use has already been undertaken or where disposal or transfer of the property to a building lease has been initiated prior to the submission of the application.

(4) The expropriation office may refuse re-expropriation where the land has been significantly altered or where compensation wholly or substantially in the form of land has already been granted.

(5) The previous holder of a right which has been extinguished by expropriation under the provisions of this Act may, in accordance with the conditions contained in para. 1, demand that an equivalent right to the previously encumbered land be re-established in his favour by means of expropriation. The provisions relating to re-expropriation apply mutatis mutandis.

(6) The procedure is subject to Sections 104 to 122 as applicable.

Section 103 Compensation in the Case of Re-Expropriation

Where an application for re-expropriation is approved, the applicant is liable to make compensation to the party aggrieved by such re-expropriation for any loss of a right. Section 93 para. 2 no. 2 does not apply. Where compensation for other property loss has been made to the applicant upon the initial expropriation, this compensation is to be repaid to the extent that such loss is reversed by the re-expropriation. The compensation to be made to the property owner must not exceed the standardised market value applicable on the initial expropriation; any expenses incurred which have resulted in an increase in the value of the property are to be taken into account. In all other cases the provisions on compensation contained in Subdivision Two have apply.

Subdivision Three The Expropriation Procedure

Section 104 The Expropriation Authority

(1) Expropriation is administered by the higher administrative authority (the expropriation authority).

(2) The federal state governments may by legal ordinance involve honorary assessors in the decision-making process undertaken by the expropriation authority.

Section 105 The Application for Expropriation

The application for expropriation is to be submitted to the municipality within whose territory the land subject to expropriation is situated. The municipality shall present the application to the expropriation authority with its comment within one month.

Section 106 Parties Involved

(1) The parties involved in the expropriation procedure are:

1. the applicant,
2. the owner or those persons in whose favour a right to the land or to a right encumbering the land has been entered in the land register, or is secured by such an entry,
3. holders of rights to the land or to rights encumbering the land not entered in the land register, of claims with a right to satisfaction from the land or of a personal right entitling the holder to the acquisition, possession or use of the land, or which imposes restrictions on the use of the land,
4. where replacement land is provided, the owner and the holders of those rights mentioned in nos. 2 and 3 in respect of the replacement land,
5. the owners of land affected by expropriation under Section 91, and

6. the municipality.

(2) The persons described in para. 1 no. 3 become involved parties from the point at which they register their right with the expropriation authority. Registration may be made up to the termination of the hearing with the parties involved.

(3) Where doubts exist regarding a right which has been registered, the expropriation authority shall without delay set a period within which the person concerned shall substantiate this right. Should this period pass without such substantiation being forthcoming, the person concerned is to be excluded until such time as substantiation of the right is provided.

(4) The registered creditor of a mortgage or rent charge for which a bond has been issued, and any heir at law shall at the request of the expropriation authority make a declaration as to whether any other person has acquired the mortgage or rent charge or a right to it; the identity of the acquiring party is to be stated. Section 208 sentences 2 to 4 applies *mutatis mutandis*.

Section 107 Preparation for the Hearing

(1) The expropriation procedure is to be carried out expeditiously. Prior to the commencement of the hearing, the expropriation authority shall take all necessary measures to ensure as far as is possible that the procedure can be completed in one session. The property owner, the applicant and those authorities affected by the expropriation are to be given the opportunity to make representations. In assessing the facts and circumstances the expropriation authority shall obtain an expert opinion from the committee of experts (Section 192) in cases where ownership is to be withdrawn or a building lease established.

(2) The expropriation authority shall hear the agricultural authority in those cases where agricultural land outside the plan area of a binding land-use plan is to be expropriated for purposes of compensation in the form of land.

(3) A number of expropriation procedures may be linked together and shall be linked on application by the municipality. Expropriation procedures which have been linked may later be separated.

Section 108 Initiation of the Expropriation Procedure and Fixing the Date for the Hearing; Note of Expropriation

(1) The expropriation procedure is initiated by setting a date for the hearing with the parties involved. The parties to be summoned to appear at the hearing are the applicant, the owner of the land affected, any other parties revealed by the land registry as having an interest, and the municipality. Summonses to appear at the hearing are to be served. The period of summons shall be one month.

(2) An expropriation procedure in favour of the municipality may be initiated where

1. the draft of a legally-binding land-use plan [Bebauungsplan] has been available for public inspection under Section 3 para. 2, and

2. negotiations have been conducted with the parties involved pursuant to Section 87 para. 2 and those objections lodged within the term set have been dealt with. The municipality may both conduct the negotiations in pursuance of Section 87 and deal with objections in one session.

The procedure is to be treated as a matter of urgency so that the decision on expropriation can be issued as soon as the land-use plan becomes legally binding. Agreement in the sense of Section 110 or Section 111 may be reached prior to the land-use plan becoming legally binding.

(3) The summons shall contain

1. indication as to the identity of the applicant and of the land affected,
2. the essential contents of the application for expropriation along with the information that the application and accompanying documentation are available for inspection at the offices of the expropriation authority,
3. the request that any objections to the application for expropriation should be lodged with the expropriation authority in writing or declared for minuting as far as possible prior to the hearing, and
4. advice that in the case of failure to attend, a decision may nonetheless be taken concerning the application for expropriation as well as any other applications to be dealt with within the procedure.

(4) Summonses to persons whose participation is based on an application for compensation in the form of land must contain, in addition to the contents described in para. 3, indication as to the identity of the owner on behalf of whom compensation in the form of land has been applied for, and of the land in respect of which compensation in the form of land is to be granted.

(5) Public notice of the initiation of the expropriation procedure is to be issued in the customary manner stating the land affected and the identity of the person registered at the land registry as the owner, as well as the first date scheduled for the hearing with the parties involved. This notice shall request all parties involved to exercise their rights at the latest during the hearing and advise these parties that in the case of failure to attend a decision may nonetheless be taken concerning the application for expropriation as well as any other applications to be dealt with within the procedure.

(6) The expropriation authority shall notify the land registry of the initiation of an expropriation procedure. It shall request that the land registry make an entry in respect of the land affected to the effect that an expropriation procedure has been initiated (note of expropriation); on the completion of the expropriation procedure, the expropriation authority

shall request that the land registry remove the note of expropriation. The land registry shall notify the expropriation authority of all entries which have been or are made in the land register for the land affected subsequent to initiation of the expropriation procedure.

(7) Where an entry has been made in the land register ordering compulsory auction or sequestration, the expropriation authority shall inform the court competent for enforcement of the initiation of an expropriation procedure where this affects the land which is subject to enforcement.

Section 109 Requirement of Official Consent

(1) Prior to giving notice of the initiation of an expropriation procedure, the legal processes, proposals and subdivisions mentioned in Section 51 require the consent in writing of the expropriation authority.

(2) The expropriation authority may only withhold consent where it has reason to believe that the legal process, proposal or subdivision might seriously impair realisation of the purpose for which expropriation is to be pursued, or render this purpose impossible.

(3) Where legal processes or proposals under para. 1 are to be expected prior to public notice being issued, the expropriation authority may order that the requirement of official consent under para. 1 take effect at an earlier time. Public notice of such an order is to be issued in the customary manner and the land registry is to be notified.

(4) Section 51 para. 2 and Section 116 para. 6 apply *mutatis mutandis*.

Section 110 Agreement

(1) The expropriation authority shall strive to achieve agreement between the parties involved.

(2) Where the parties involved are able to reach agreement, the expropriation authority shall write minutes of the agreement. These minutes shall meet the requirements of Section 113 para. 2. They shall be signed by all the parties involved. A person empowered to represent the owner requires an officially authorised proxy.

(3) The certified agreement is equivalent to an indefeasible resolution to proceed with expropriation. Section 113 para. 5 applies mutatis mutandis.

Section 111 Partial Agreement

Where the parties involved reach agreement only on the matter of transition or on the encumbrance of ownership of the land subject to expropriation, but not however on the level of compensation, Section 110 paras. 2 and 3 applies mutatis mutandis. The expropriation authority shall order the advance payment to the beneficiary of an amount equivalent to the anticipated compensation to the extent that this is not inconsistent with the agreement.

Where agreement is not reached, the expropriation procedure shall continue.

Section 112 Adjudication by the Expropriation Authority

(1) Where no agreement is reached, the expropriation authority passes a resolution based on the hearing on the application for expropriation, any other applications and on any objections which may have been raised.

(2) At the request of any party involved the expropriation authority shall make a preliminary adjudication regarding the transfer or encumbrance of ownership of the land subject to expropriation or on any other alterations to rights to be effected by the expropriation. In such a case the expropriation authority shall order the advance payment to the beneficiary of an amount equivalent to the anticipated compensation.

(3) Where the expropriation authority approves an application for expropriation, it shall decide at the same time on

1. which of the rights to the subject of expropriation held by the entitled persons as described in Section 97 are to be maintained,
2. the rights with which the subject of expropriation, the replacement land or any other land is to be encumbered,
3. what legal relations are established of a nature which grant rights of the type described in Section 86 para. 1 nos. 3 and 4,
4. the transfer of ownership or the expropriation of replacement land in the case of compensation in the form of replacement land.

Section 113 The Resolution on Expropriation

(1) The resolution on expropriation is to be served upon all of the parties involved. This resolution shall contain information regarding legal redress with regard to the admissibility, form and time-limit for motions for a court ruling (Section 217).

(2) Where the expropriation authority approves the application for expropriation, the resolution (resolution on expropriation) shall in addition state

1. the persons affected by and the beneficiaries of the expropriation;
2. the other parties involved;
3. the purpose of expropriation and the period within which the land is to be utilised for the proposed purpose;

4. the subject of expropriation, in particular

a) where the ownership of land is the subject of expropriation, it shall describe the plot in terms of its size stating the designation attached to it in the land register, land survey and any other usual designation; where expropriation applies to a part of a plot, description of the land shall contain reference to land survey documents (land survey elevations and maps) produced by either a body authorised to conduct a continuous land survey or an officially appointed surveyor,

b) where some other right to a property is the subject of independent expropriation, it shall indicate the content of this right and state the designation given to it in the land register,

c) where the subject of independent expropriation is a personal right either entitling the holder to acquire, possess or use land or which imposes restrictions on the obligated parties in respect of their use of the land, then it shall indicate this right stating its content and the grounds for its existence,

d) the properties mentioned in Section 86 para. 2 where expropriation is extended to include these;

5. where the land is encumbered with a right, the nature and content of the right to the extent that this can be determined by contract, the status of the right, the entitled party and the plot;

6. in the case of the establishing of a right of the type mentioned in no. 4 c), the content of the legal relationship and the parties to it;

7. the status of ownership and other legal relations prior and subsequent to expropriation;

8. the type and level of compensation and the level of the compensatory payment under Section 100 para. 5 sentence 4 and Section 101 para. 1 sentence 2 stating by and to whom this payment is due; financial compensation out of which other parties aggrieved by the expropriation under Section 97 para. 4 are to be compensated shall be shown separately from other financial compensation;

9. in the case of compensation in the form of land, the land in question in the manner described in no. 1 a).

(3) In cases covered by Sections 111 and 112 para. 2, the resolution on expropriation is to be limited correspondingly.

(4) Where it is not yet possible to describe a part of a plot in accordance with para. 2 no. 4, the resolution on expropriation may designate it with reference to permanent features in nature or by reference to an entry in a ground plan. On the results of the land survey becoming available, the resolution on expropriation is to be adjusted by means of a supplementary resolution.

(5) Where the land register contains an entry ordering compulsory auction or sequestration, the expropriation authority shall notify the court of enforcement of the resolution on expropriation on the application for expropriation being given approval.

Section 114 Time Limit for Use

(1) The time-limit within which the purpose of expropriation under Section 113 para. 2 no. 3 is to be realised commences on the alteration of the right becoming effective.

(2) The expropriation authority may on request extend this period prior to its termination where

1. the beneficiary of expropriation is able to demonstrate that, on grounds for which he cannot be held responsible, he is unable to satisfy the purposes for which expropriation was granted within the period allowed, or

2. universal succession occurs prior to the expiration of the period and the heir at law demonstrates that he is unable to satisfy the purposes for which expropriation was granted within the period allowed.

The former owner prior to expropriation is to be heard before a decision on such an extension is taken.

Section 115 Procedure for Compensation by the Granting of Other Rights

(1) Where compensation to an owner of land subject to expropriation is to be set in accordance with Section 101, and at the time at which the resolution on expropriation is issued it is not yet possible to establish, transfer or assess the value of any of the rights mentioned therein, the expropriation authority may, at the request of the owner stating the right in question, include in the resolution on expropriation, in addition to its ruling on the level of financial compensation due, an order requiring the beneficiary of expropriation within a defined period to offer to the party aggrieved by expropriation on reasonable terms and conditions a right of the type mentioned.

(2) Where the beneficiary of expropriation fails to offer a right of the type mentioned within the defined period, or is not able to reach an agreement with the party aggrieved by expropriation, such a right shall on request be withdrawn from him by means of expropriation in favour of the party aggrieved by expropriation. The expropriation authority shall determine the content of the right to the extent that its content can be settled by agreement. The provisions of this Part regarding procedure and compensation apply *mutatis mutandis*.

(3) An application under para. 2 may only be made within six months of the expiration of the defined period.

Section 116 Putting in Possession Before Completion of the Procedure

(1) Where immediate execution of the proposed measure is urgently required for reasons of public welfare, the expropriation authority may on request resolve to put the applicant in possession of the land affected by the expropriation procedure. Putting the applicant in

possession is only admissible where negotiations on this matter have been conducted in a hearing. The resolution on putting the applicant in possession is to be served upon the applicant, the owner and the person in immediate possession. Possession takes effect at the time appointed by the expropriation authority. At the request of the person in immediate possession, this date is to be set at not less than two weeks from his receipt of the order on possession before completion.

(2) The expropriation authority may make possession before completion dependent on the lodging of a security equivalent in value to the anticipated compensation and on the prior satisfaction of other conditions. At the request of the holder of a right entitling the holder to use or possession of the land, possession is to be made dependent on the lodging of a security equivalent in value to the anticipated compensation due to him. This order is to be served upon the applicant, the person in possession and the owner.

(3) In granting possession, possession is withdrawn from the person previously in possession and vested in the person who is placed in possession. The party placed in possession may proceed with the development described in the application for expropriation on this land and take whatever measures are required to this end.

(4) The party in whom possession is vested is obliged to make compensation in respect of any property loss resulting from possession before completion to the extent that such loss is not offset by interest on the financial compensation (Section 99 para. 3). The type and level of compensation due is set by the expropriation authority no later than in the resolution mentioned in Section 113. Where a resolution on the type and level of compensation is issued prior to this, it is to be served upon the persons mentioned in para. 2 sentence 3. Compensation for the taking of possession is due on the date stipulated in para. 1 sentence 4 irrespective of whether a motion has been lodged for a court ruling.

(5) At the request of any of the persons mentioned in para. 2 sentence 3, the expropriation authority shall order a written record to be made of the condition of the land prior to expropriation, to the extent that the condition is of relevance to compensation for possession or expropriation. The parties involved shall each be sent a copy of the record.

(6) Where the application for expropriation is turned down, possession before completion shall be reversed and the person previously in immediate possession reinstated in possession. The party in whom possession before completion had been vested is liable for compensation in respect of any harm suffered as a consequence of being put in possession before completion. Para. 4 sentence 2 applies *mutatis mutandis*.

Section 117 Execution of the Resolution of Expropriation

(1) Once the resolution on expropriation or the decision under Section 112 ceases to be defeasible, the expropriation authority shall, at the request of any of the parties involved, order the execution of the resolution on expropriation or of the preliminary ruling (order of execution) when the beneficiary of expropriation has rendered the financial compensation, or in the case of a preliminary ruling under Section 112 para. 2 sentence 2 the advance payment, or has deposited it in a permissible manner renouncing any right of redemption. At the request of the party entitled to compensation, the expropriation authority may, in cases covered by Section 112 para. 2, make the order of execution dependent on the beneficiary of expropriation providing other security for an appropriate amount.

(2) In those cases covered by Section 111, the order of execution shall, at the request of any of the parties involved, be issued once the beneficiary of expropriation has paid the undisputed amount of compensation agreed among the parties involved, or has deposited this amount in a permissible manner renouncing any right of redemption. Para. 1 sentence 2 applies *mutatis mutandis* to the extent that this is not inconsistent with what has been agreed upon.

(3) Where Section 113 para. 4 applies, the order of execution is to be issued at the request of any involved party at such time as the beneficiary of expropriation has made the financial compensation set in the resolution on expropriation in conjunction with the supplementary resolution, or has deposited the amount in a permissible manner renouncing any right of redemption. The supplementary resolution need not be infeasible.

(4) The order of execution is to be served upon all involved parties whose legal position is affected by the resolution on expropriation. A copy of the order of execution is to be sent to the municipality in whose territory the land subject to expropriation is situated. Section 113 para. 5 applies *mutatis mutandis*.

(5) On the day designated in the order of execution the previous legal status is superseded by that settled in the resolution on execution. Simultaneously the legal relations established under Section 113 para. 2 no. 6 come into being; these apply from this point on as agreed among the parties to the legal relationship.

(6) The order of execution includes the putting in possession of the expropriated land and of the replacement land on the day designated.

(7) The expropriation authority shall convey to the land registry a certified copy of the resolution on expropriation and of the order of execution with the request that these alterations of rights be entered in the land register.

Section 118 Deposits

(1) Compensation in the form of money for the satisfaction of those with claims under Section 97 para. 4 is to be deposited with no right of redemption where a number of persons hold a claim and no agreement on payment can be demonstrated. The deposit is lodged with the local court [Amtsgericht] in whose district the land subject to expropriation is

situated. Section 2 of the Compulsory Auctioning of Immovable Property Act [Zwangsversteigerungsgesetz] applies mutatis mutandis.

(2) Nothing here shall affect any other regulations under which depositing is either required of permissible.

Section 119 The Distribution Procedure

(1) With the commencement of the new legal status, any involved party may assert his claim to the money deposited against any other involved party who disputes the former's entitlement in the law courts, or may apply for the initiation of a distribution procedure by the court.

(2) Jurisdiction for distribution procedures lies with the local court in whose district the land subject to expropriation is situated; in case of doubt Section 2 of the Compulsory Auctioning of Immovable Property Act applies mutatis mutandis.

(3) Distribution procedures are governed mutatis mutandis by the provisions for the distribution of proceeds subsequent to compulsory auction subject to the following deviations:

1. distribution procedures shall be opened by means of a resolution;
2. service of the opening resolution upon the applicant shall be regarded as seizure within the meaning of Section 13 of the Compulsory Auctioning of Immovable Property Act; where the land has already been seized within the course of compulsory auction or sequestration, no further action shall be taken;
3. at the commencement of a procedure the court competent for distribution shall request ex officio of the land register the notification as described under Section 19 para. 2 of the Compulsory Auctioning of Immovable Property Act; the certified extract from the land

register shall show all entries existing at the time of the resolution on expropriation being served on the party subject to expropriation, as well as any later alterations or deletions;

4. account shall be taken in the course of the procedure of the parties mentioned under Section 97 para. 4 as entitled to compensation in accordance with Section 10 of the Compulsory Auctioning of Immovable Property Act; this shall, however, end with the lodging of the deposit in view of claims to additional recurring payments.

(4) To the extent that distribution of the proceeds from compulsory auction is, under federal state law, a matter not for the court of enforcement, but for some other body, this other body may be deemed under federal state law to be competent for distribution in accordance with paras. 1 to 3. Where this body is called upon to revise a decision, adjudication by the court of enforcement shall be sought. Any complaint shall be against the adjudication of the court of enforcement.

Section 120 Revocation of the Resolution on Expropriation

(1) Where the execution order has not yet been issued, the expropriation authority shall on request revoke the resolution on expropriation, should the beneficiary of expropriation fail to make the payments required of him in the resolution on expropriation within one month of the resolution becoming indefeasible. The right to make an application exists for each involved party to whom due compensation has not been paid, or whose claim is to be satisfied from a payment under Section 97 para. 4.

(2) Before revocation takes place, the beneficiary of expropriation shall be heard. The resolution on revocation shall be served on all parties involved and copies sent to the municipality and to the land registry.

Section 121 Costs

(1) In the case of the application for expropriation being rejected or withdrawn, the costs are to be borne by the applicant. Where the application for expropriation is granted, the costs fall to the party liable to make compensation. Where an application for re-expropriation is granted, the costs shall be borne by the party affected by re-expropriation. In the case of an application lodged by any other involved party being rejected or withdrawn, and the application being obviously without foundation, costs incurred in dealing with the application shall be imposed on the applicant.

(2) Costs are procedural costs and the necessary and relevant expenditure incurred by involved parties in prosecuting or defending the action. Fees and expenses in respect of lawyers and any other authorised representatives qualify for reimbursement where legal counsel has been necessary. Where no statutory provision exists for fees and expenses, expenditure on legal representation can be reimbursed only up to the amount set for statutory fees and expenses for legal counsel.

(3) Expenditure incurred as a consequence of negligence on the part of a party entitled to reimbursement shall be borne by that party; a represented party is liable for negligence on the part of his representative.

(4) Procedural costs are subject to regulations under federal state law. The expropriation authority shall fix the costs in the resolution on expropriation or by means of a separate resolution. The resolution shall in addition deem whether the appointment of a lawyer or other legal representative was necessary.

Section 122 Enforceable Title

(1) Sequestration pursuant to the provisions of the Code of Civil Procedure on the enforcement of judgements in civil disputes takes place

1. on the basis of the written record of an agreement in respect of the requirements contained therein;

2. on the basis of an indefeasible resolution on expropriation in respect of the financial compensation or compensatory payment due;

3. on the basis of a resolution on possession before completion or its revocation in respect of the compensatory action required therein.

Sequestration in respect of a compensatory payment becomes admissible only on the execution order taking effect and becoming indefeasible.

(2) The enforceable transcript is conferred by the authenticating official of the local court [Amtsgericht] in whose district the expropriation authority is located, and, where the procedure is pending at a court, by the authenticating official of that court. In cases under Sections 731, 767 to 770, 785, 786 and 791 of the Code of Civil Procedure the local court in whose district the expropriation authority is located replaces the trial court