



# Germany

e-manual appendix





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## **What is enforced**

The German Code of Civil Procedure (ZPO) differentiates between enforcement due to monetary claims and enforcement to obtain the surrender of things and to obtain acts or omissions. This separation is preceded by general regulations within the statutory provisions. Overall, the Code of Civil Procedure distinguishes between compulsory enforcement in movable property and immovable property, since in each case enforcement proceeds differently.

Accordingly, a distinction is made not only based on the object of the enforcement, but also on the means of enforcement. An enforceable judicial title is required to initiate enforcement proceedings to collect monetary claims. Examples of such titles are writ of execution, judgments, settlements, notarial deeds and other titles suitable for enforcement.

## **Who enforces**

The various types of enforcement are not assigned to a single enforcement body. In Germany one can roughly distinguish the following enforcement bodies:

- enforcement officer
- enforcement court
- trial court of first instance
- land registry

The enforcement officer is mainly responsible in the area of enforcement of movable property and in the area of surrendering things (also clearing residential or business premises). In German law, the enforcement officer is a civil servant in accordance with Section 154 of the Courts Constitution Act (GVG). He is entrusted with deliveries, summons and enforcements in accordance with statutory provisions.

The enforcement officer is an independent judicial authority. This means that the officer is part of the district court, which is entrusted with tasks of state authority. Since there are often encroachments on fundamental rights, only a state enforcement body can carry out this task.

The enforcement officer is subject to supervision by the supervising judge of the local court. However, the enforcement officer cannot receive individual instructions from their superior.

The enforcement court is responsible for enforcing pecuniary claims in real estate (compulsory administration or foreclosure auction) as well as claims and other rights with the exception of the registration of the security mortgage, for which the land registry is responsible.

The trial court is responsible for the execution of actions and omissions (e.g. authorization of the obligator to carry out a certain act at the

expense of the debtor, submission of a declaration of intent, penalty payment or compulsory detention).

### **Enforcement procedure**

The creditor can freely decide whether and when he wants to enforce his claim from the title. The creditor determines the beginning, the type and the extent of the enforcement process. The creditor can withdraw the application at any time and is thus "master of the procedure". The foreclosure is therefore not carried out "ex officio". The request of the creditor is thus a procedural act that initiates the proceedings.

The enforcement order is called 'the enforcement order to the enforcement officer'. It can be submitted in writing (on paper) or electronically (by lawyers and debt collection agencies). Electronic orders are transmitted via the so-called EGVP (electronic court and administrative mailbox).

The creditor is not allowed to give the enforcement authorities instructions on how to carry out a measure. However, as far as he refers to certain assets, it can be viewed as a suggestion. In principle, however, the obligator has no claim to the attachment of certain things.

Overall, the creditor selects which type of enforcement is to be carried out on presentation of the title (seizure, acceptance of the property information, obtaining information from third parties, eviction, etc.).

### **Duration of enforcement procedure**

Duration cannot be determined concretely, as it always depends on which enforcement measure is to be carried out. If the debtor is summoned and does not appear, the proceedings are temporarily terminated. According to the law, enforcement should generally have started within one month, which does not mean that it can then be completed. If the debtor is not found on site several times during the attachment proceedings, for example, further enforcement attempts must be carried out on site, which in turn takes time. In addition, sometimes advances are requested from the creditor, but are not paid promptly. This also prevents timely and effective foreclosure.

### **Cost of enforcement procedure**

Costs depend on the specific enforcement measures. In principle, the bailiff is entitled to fees incurred as a result of the service provided. In general, these fees are regulated by the "Gerichtsvollzieherkostengesetz" (GVKostG).

Proven expenses are also to be reimbursed.

As a general rule, the aim is to collect the debt and the costs from the debtor. If this is not possible, the debtor is responsible for all costs incurred.

If the debtor does not pay the calculated cost after a request for payment has been served, then foreclosure procedures can be initiated against him without the need for a separate title.

