

30 years federal allotment garden law – 30 years of social responsibility

In 1983 the federal allotment garden law was voted – a sufficient reason to celebrate this anniversary. The German federation had invited on 17th April 2013 to a parliamentary evening in the offices of the representation of the national federation of Mecklenburg-Vorpommern at the federation in Berlin. More than 60 guests took part. Among them were Enak Ferlemann, State secretary with the federal Minister for Transport, Till Backhaus, Minister for agriculture of the Land Mecklenburg-Vorpommern as well as Heinz Schreiber, one of the fathers of the federal law. Heinz Schreiber was in 1983 member of the Parliamentary commission on territorial planning, constructions and urban development. In this position he was the reporter of the federal allotment garden law on 28th February, 1983.

**Synopsis of the provisions
set out in the Federal Allotment Garden Act
of the Federal Republic of Germany**

CHAPTER ONE

General provisions

Section 1

Definitions

(1) An allotment garden is a garden which

1. serves the non-commercial gardening purposes of the user (allotment-holder) notably in providing garden produce for his or her own use and meets his or her recreational needs (allotment garden use) and
2. is situated in a space in which several individual gardens with collective facilities, for example paths, play areas and clubhouses, are grouped (allotment garden scheme).

(2) An allotment garden is not

1. a garden which satisfies the conditions referred to in subsection 1 but is used by the property owner or by a member of his or her family within the meaning of section 8 subsection 1 of the Second Housing Act, (owner's garden);
2. a garden which is let to a person entitled to use a dwelling in conjunction with that dwelling (residential garden);
3. a garden which is let to an employee in conjunction: with his or her contract of employment (employee garden);
4. a plot on which by contract only certain types of horticultural produce may be grown;
5. a plot on which by contract only annual plants may be cultivated (waste land allocated for cultivation as vegetable gardens, etc.).

- (3) A permanent allotment garden is an allotment garden on land which is designated for permanent allotment gardens in the local binding construction plan.

Section 2

Non-profit making character of allotment gardens

An organization of allotment-holders shall be recognized by the relevant authority as having a non-profit-making character if it is entered in the Register of Associations, if its management is subject to regular inspection and if its constitution stipulates that

1. the aim of the organization is wholly or predominantly to promote the allotment garden concept and to provide technical assistance for its members;
2. any revenue or earnings received is put to use for allotment garden purposes; and
3. if the organization is disbanded its assets are used for allotment garden purposes.

Section 3

Allotment gardens and summer-houses

(1) The area of an allotment garden should not exceed 400 square meters. Account should be taken of the requirements of environmental protection, nature conservation and landscape management in using and cultivating allotment gardens.

(2) It is permissible in an allotment garden to have a simple summer-house with a maximum area of 24 square meters including the covered terrace; the provisions laid down in the Federal Building Code relating to the permissibility of projects shall not be affected. The nature of the summer-house, notably its equipment and facilities, must be such that it is not suitable for permanent residence.

(3) Subsections 1 and 2 shall apply to owners' gardens *mutatis mutandis*.

CHAPTER TWO
Leasing of allotment gardens

Section 4

Allotment garden leasehold agreements

(1) The provisions of the German civil Code relating to leasehold shall apply to allotment garden leasehold agreements, unless otherwise provided for in this Act.

(2) Unless otherwise provided for, the provisions relating to allotment garden leasehold agreements shall also apply to the leasing of plots for the purposes of subletting them by virtue of individual allotment garden leasehold agreements (leasehold to a third party). A third party leasehold agreement which is not concluded with an allotment garden organization that is recognized as having a non-profit-making character or with the Commune shall be void. An agreement to transfer the administration of a set of allotment gardens to any party other than an allotment garden organization as referred to in sentence 2 shall also be void.

(3) If it benefits the public interest, notably if the proper cultivation or use of the individual allotment gardens or of the complex of allotment gardens as a whole is no longer guaranteed, the lessor shall transfer the administration of the set of allotment gardens to an allotment garden organization as referred to in subsection 2 sentence 2.

Section 5

Rents

(1) Relative to the total area of the set of allotment gardens, the rent shall not exceed four times the rent customarily paid in the area by commercial fruit and vegetable growers. The land devoted to collective facilities shall be taken into account in calculating the rent for the individual allotment gardens on a pro rata basis. If no data on rents customarily paid in the area by commercial fruit and vegetable growers is available, the corresponding rents paid in a comparable Commune shall be taken as a basis. The rent customarily paid by commercial fruit and vegetable growers in the area is the average rent paid in the Commune.

2) On application by one party to the contract, the Committee of Experts appointed in accordance with the Federal Building Code shall deliver an expert opinion on the rent customarily paid in the area by commercial fruit and vegetable growers.

At the request of the Committee of Experts, the authorities responsible for notification of leasehold agreements shall furnish information on the rents customarily paid in the area by commercial fruit and vegetable growers. If no data is available that can be presented in anonymous form within the meaning of the Federal Data Protection Act, information on rents paid by commercial fruit and vegetable growers in a comparable Commune shall be additionally taken as a basis.

(3) If the agreed rent is lower or higher than the maximum rent ensuing from subsections 1 and 2, the respective party to the contract may inform the other party to the contract in writing that the rent is being raised or lowered to the level of the maximum rent. The higher or lower rent shall be paid by virtue of the declaration from the first day of the payment period following the declaration. The parties to the contract may demand the adjustment of the rent no earlier than three years after the conclusion of the leasehold agreement or since the previous adjustment. In the event of a declaration by the lessor on an increase rent, the lessee shall be entitled to terminate the leasehold agreement at the latest on the fifteenth working day of the payment period from which the rent is to be increased, the said notice of termination taking effect at the end of the following calendar month. If the lessee gives notice to terminate the leasehold agreement, there shall be no increase in the rent.

(4) The lessor can demand reimbursement from the lessee for expenses he or she incurs in connection with the allotment gardens, notably expenditure on soil improvements, paths, providing fencing and parking spaces, in so far as the expenditure is not covered by payments made by the allotment-holders or their organizations or by grants provided by public authorities and in so far as the expenditure is usual within the context of allotment garden uses. The allotment-holder's duty to reimburse expenditure is restricted to the share of the expenditure eligible for reimbursement which is commensurate with the share of the total area of the allotment gardens represented by his or her allotment garden; the area of land devoted to collective facilities is added to the area of the allotment garden on a pro rata basis. The lessee shall be entitled to pay the amount to be reimbursed in instalments equal to the amount of the rent and to make these payments when he or she is paying the rent.

(5) The lessor may demand reimbursement from the lessee for public charges levied on the plot of land used for the allotment garden(s). Subsection 4 sentence 2 shall apply mutatis mutandis. The lessee shall be entitled to pay the amount of anon-recurrent, reimbursable charge in instalments, provided this is done in a maximum of five annual payments.

Section 6

Duration of contract

Leasehold agreements on permanent allotment gardens may only be concluded for indefinite periods; fixed-term agreements shall apply as if they had been concluded for indefinite periods.

Section 7

Termination in writing

The termination of a leasehold agreement on an allotment garden shall be in writing.

Section 8

Termination without complying with the period of notice

The lessor may terminate the leasehold agreement on an allotment garden without complying with the period of notice if

1. the lessee is at least three months in arrears with the payment of his or her rent and does not meet the demand for payment within two months of receiving a reminder in writing or
2. the lessee or persons tolerated by the lessee on the site of the allotment garden commit such serious breaches of duty, notably disturbing the peace of the community of allotment-holders to such an extent that it would be unreasonable to require the lessor to continue the contractual relationship.

Section 9

Termination subject to contractual period of notice

(1) The lessor may terminate the leasehold agreement on an allotment garden if

1. the lessee, notwithstanding a warning by the lessor in writing, continues an inadmissible use of the allotment garden or commits other significant breaches of duty relating to the use of the allotment garden, notably if he or she uses the summer-house as a permanent residence, lets the plot to a third party without being authorized to do so, fails to remedy substantial administrative deficiencies within a reasonable period of time or refuses to render financial or other community services for the benefit of the community of allotment-holders;
2. the termination of the leasehold agreement is necessary in order to re-organize the allotment gardens, notably in order to limit allotment gardens to the size referred to in section 3 subsection 1, to improve the paths or to provide play areas or parking spaces;
3. the property owner himself or herself or a member of his or her family wishes to use a garden as an allotment garden and no other suitable gardening land is available for this purpose; the interests of the allotment-holders shall be taken into consideration in selecting the garden;
4. a use of the garden, other than as an allotment garden is permissible under planning law and the property owner is prevented from putting the garden to a different economic use by the continuation of the leasehold agreement and would suffer significant disadvantages as a consequence;
5. the plot used as an allotment garden is soon to be put to the other use stipulated for it in the local construction plan or is soon to be prepared for this use; the termination of the leasehold agreement is also admissible before the local construction plan becomes legally binding if the Commune has reached agreement on drawing up, amending or supplementing the plan, if it may be assumed from the progress of the planning work that the other use intended will be stipulated in the plan and if compelling reasons in the public interest require the preparation or realization of the other use before the local construction plan becomes legally binding; or if

6. after the conclusion of the plan preparation procedure the plot used for allotment gardens is needed soon for the stipulated use.

(2) The termination of a leasehold agreement shall only be permissible for 30 November of a given year; it shall be effected at the latest

1. on the third working day of August in the cases referred to in subsection 1 number 1;

2. on the third working day of February in the cases referred to in subsection 1 numbers 2 to 6.

If compelling reasons require the early use of the land used for allotment garden purposes, notice of termination of the leasehold agreement given no later than the third working day of a given calendar month to take effect at the end of the following months shall be permissible in the cases referred to in subsection 1 numbers 5 and 6.

(3) If the leasehold agreement on an allotment garden is entered into for a fixed period of time, termination in accordance with subsection 1 number 3 or 4 shall be inadmissible.

Section 10

Termination of third party leasehold agreements

(1) The lessor may also terminate a third party leasehold agreement if

1. notwithstanding receiving a warning from the lessor, the intermediate lessee tolerates breaches of duty within the meaning of section 8 number 2 or section 9 subsection 1 number 1 or

2. the intermediate lessee is deprived of the rights relating to the non-profit-making character of the allotment garden.

(2) Following notice of termination in accordance with section 9 subsection 1 numbers 3 to 6, which only affects parts of the set of allotment gardens, the third party leasehold agreement shall be restricted to the other parts of the allotment gardens.

(3) If the third party leasehold agreement is terminated by the lessor giving notice, the lessor shall take over the intermediate lessee's agreements with the allotment-holders.

Section 11

Compensation for termination of leasehold agreement

(1) If a leasehold agreement on an allotment garden is terminated in accordance with section 9 subsection 1 numbers 2 to 6, the lessee shall be entitled to adequate compensation for the cultivation carried out and the installations he or she has introduced or taken over against payment, in so far as these are usual within the context of allotment garden uses. In so far as regulations governing the valuation of planting and installations have been adopted by the Länder or have been agreed by an allotment garden organization and approved by the relevant authority, these shall be taken as a basis for the assessment of the level of compensation due. In the case of termination of a leasehold agreement in accordance with section 9 subsection 1 number 5 or 6, the principles applicable to compensation for compulsory purchase shall also be complied with.

(2) The lessor shall be obliged to pay compensation, if the leasehold agreement has been terminated in accordance with section 9 subsection 1 numbers 2 to 4. In the case of termination in accordance with section 9 subsection 1 number 5 or 6, the person who uses the land as an allotment garden shall be obliged to pay compensation.

(3) The claim shall fall due as soon as the leasehold agreement has been terminated and the allotment garden has been vacated.

Section 12

Termination of a leasehold agreement on the death of the allotment-holder

(1) If the allotment-holder dies, the leasehold agreement on the allotment garden shall end on the expiry of the calendar month following the death of the allotment holder.

(2) A leasehold agreement on an allotment garden, which a husband and wife or partners have concluded jointly, shall be continued on the death of one of the spouses or partners with the surviving spouse or partner. If the surviving spouse or partner informs the lessor in writing within one month of the death that he or she does not wish to continue the leasehold agreement, subsection 1 shall apply mutatis mutandis.

(3) In the case of subsection 2 sentence 1 the general provisions of civil law relating to liability and the taking into account of rent paid shall be applied mutatis mutandis.

Section 13

Divergent agreements

Any agreements, which deviate from the provisions of this chapter and are to the disadvantage of the lessee shall be void.

CHAPTER THREE

Permanent allotment gardens

Section 14

Provision and procurement of substitute land

(1) If a leasehold agreement on a permanent allotment garden is terminated in accordance with section 9 subsection 1 number 5 or 6, the Commune shall provide or procure suitable substitute land unless it is unable to fulfil the obligation.

(2) If the Commune has provided or procured substitute land, the user shall make a compensatory payment to the Commune corresponding to the difference in value between the land used for allotment garden purposes and the substitute land.

(3) The substitute land should be available for use for allotment garden purposes when the permanent allotment garden is vacated.

Section 15

Establishment of leasehold agreements on allotment gardens through compulsory purchase

(1) Leasehold agreements on allotment gardens may be established by means of compulsory purchase for the benefit of persons wishing to become leaseholders on land, which is designated for permanent allotment gardens in a local construction plan.

(2) The compulsory purchase presupposes that

1. it is required in the public interest;
2. the purpose of the expropriation cannot be achieved in any other reasonable way; and
3. a reasonable offer has been made to the property owner for the establishment of leasehold agreements on allotment gardens; the offer shall be deemed reasonable with regard to the rent if this is in accordance with the rent referred to in section 5.

(3) The rent to be determined as compensation shall be assessed in accordance with section 5.

(4) Land legislation on expropriation shall apply in all other respects.

CHAPTER FOUR

Transitional and concluding provisions

Section 16

Transitional provisions relating to the non-profit-making character of allotment gardens

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Section 18

Transitional provisions governing summer-houses

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Section 19

Entry into force

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