



**Baker
McKenzie.**

**Strengthening the Rights of Apartment
Owners in Germany
A Real Push for Charging at Home Solutions**

■ Dr. Claire Dietz-Polte, LL.M. & Vivien Vacha | 27 October 2021

Agenda

1

LEGAL BASIS

2

„RIGHT TO CHARGE“ BY LAW

3

SECURITY, OBLIGATIONS and COSTS

4

PUBLIC OPINION



1

Legal Basis

Governing Law

- German Act on Condominium Ownership and Permanent Residence Right (*Gesetz über das Wohnungseigentum und das Dauerwohnrecht – WEG*)
- German Civil Code (Bürgerliches Gesetzbuch / *BGB*)
- Land Register Code (Grundbuchordnung / *GBO*)
- Law on the development of a building-integrated charging and cable infrastructure for e-mobility (*Gebäude-Elektromobilitätsinfrastruktur-Gesetz / GEIG*)

Structure according to the *WEG*



Cond Owner
Cond Owner
Cond Owner



COA

Condominium Owners
Association
(*Eigentümergeinschaft*)



COM

Condominium Owners
Meeting
(*Eigentümersammlung*)



Administrator
(optional)

Membership in the COA
is inseparably linked to
condominium ownership

Cond Owner

Condominium Owner

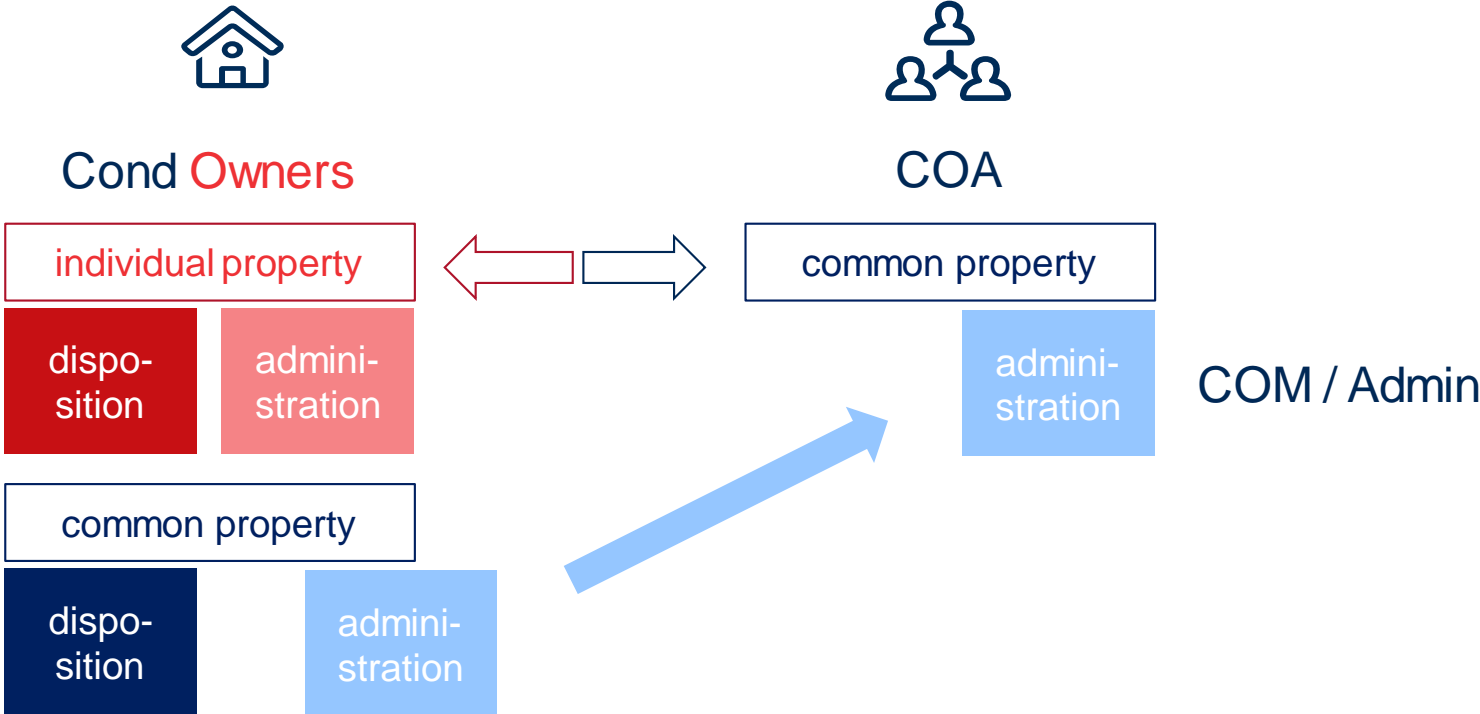
Condominium ownership is the individual ownership of an apartment in connection with the co-ownership of shares in the condominium complex to which it belongs

COA

Condominium Owners Association

In German condominium law (*WEG*), the COA is the entirety of apartment owners of a condominium complex

Relationship between the Cond Owners and the COA



Condominium Owners Meeting

- COM as the will-forming body of the COA
 - meets on a yearly basis
 - takes the relevant administrative decisions by resolution
 - if the decision is not delegated to the Administrator by resolution or by law
- COM Resolutions
 - Votes: Determined either by law (one vote per person) or by individual agreement in the declaration of division (*Teilungserklärung*)
 - Quorum: if the Cond Owners with voting rights present at the COM represent more than half of the co-ownership shares



2

„Right to Charge“ by law

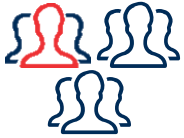
Background

- Changes in the social framework conditions, environmental challenges and technical possibilities since the creation of the WEG
- 2020: in particular activity to achieve the climate targets
 - Energy-efficient refurbishment of existing buildings
 - Installation of charging facilities to promote e-mobility

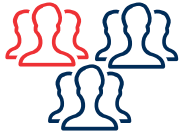
Legal Basis

1. New Sec. 20 para 2 WEG: Construction of a charging infrastructure as ‘privileged measure’
 - Every condominium owner has a right to claim charging infrastructure (**if**)
 - COM may influence the way in which the measure is carried out (**how**) but may not, as a rule, deny this right (**if**)
2. Also includes legal claim of tenants against landlords for permission to install a charging station at their own expense

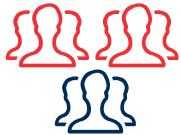
Scenarios



- Installation of individual charging station at the request of **one Cond Owner**



- Installation of charging stations at the request of **a group of Cond Owners**



- **COA** decides to upgrade the building with charging infrastructure as a structural measure

Sec. 20 para. 2 WEG applies in all cases, but sharing of costs is different

The „IF“

- ‘IF’: only right as to whether the measure is taken
 - As a rule, no possibility of rejection by COM
 - Exception: Proportionality in Sec. 20 para. 2, para. 4 WEG
 - Measure cannot serve purpose
 - Inadequacy of the measure conflicting statutory law: e.g. protection of historical monuments, security concerns
 - Fundamental transformation of the building / undue interference
- Unlawful rejection: Cond Owner concerned may appeal to the court by way of an action to replace the resolution

The „HOW“

- **‘HOW’**: COA can make detailed specifications for the constructional implementation, which the entitled Cond Owner must take into account
- Sec. 20 para. 2 sent. 2 WEG: Execution within the scope of proper administration
- Contractor, materials, cables under plaster etc.
- COA may even decide that the construction work is to be carried out by the community, but at the expense of the Cond Owner wishing to build



3

Security, Obligations and Costs

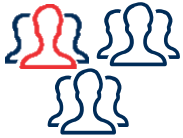
Security Measures

- Legal requirements for charging stations in apartment buildings concerning security
 - the installation is required to meet the legal technical standards (Sections 20 para. 2 and Section 18 para. 2 WEG); especially the standards on fire protection
 - the "VDE-Norm 0100-722" is the relevant norm for the legal technical requirements on low-voltage electrical installations like charging stations
- Generally advised precautions by several institutions: electric vehicle charging in enclosed areas requires adequate ventilation, nearby fire extinguishers are recommended when using heavy current energy, inspection of the buildings' structure concerning fire protection is advised in advance of the installation of charging stations

Cond Owner Obligations

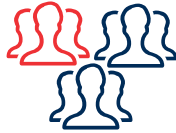
- (Initial) proper construction (obeying safety obligations)
- Maintenance (obeying safety obligations)
- Insurance
- No obligation to deconstruct if the COA has agreed to the installation (i.e. measures that comply with Sec. 20 WEG)

Cost Scenarios



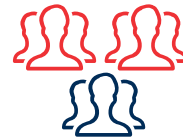
One Cond Owner

Costs to be borne by the respective Cond Owner. In return, only the Cond Owner may use the charging point.



Group of Cond Owners

Costs to be borne by the respective Cond Owners according to the ratio of their shares. In return, only these Cond Owner may use the charging points.



If **COA** decides to upgrade the building with charging infrastructure as a structural measure (i.e. something for the benefit of all Cond Owners), permission by COA with resolution under qualified quorum is required: Quorum: 2/3 of all votes, which at the same time combine more than 50% of all co-ownership shares. By law, all Cond Owners bear the costs in proportion to their shares and may use the charging points.

A photograph of a public electric vehicle charging station, heavily tinted with a blue color. The station is a tall, dark-colored unit with a screen and a charging cable. It is part of a row of similar stations in an outdoor parking area. A white railing is visible in the background. The overall scene is dimly lit, suggesting dusk or dawn.

4

Public Opinion

Public Opinion

- Approving:

- Verband der Immobilienverwalter Deutschland (*Association of Property Managers Germany*)

The draft is of high quality, is legally consistent and solves many problems in practice; in particular, the simplification of resolutions on structural changes and the extension of the authority of the administrators are approved.

- Prof. Dr. Johanna Schmidt-Räntsch (*Federal Supreme Court Judge*)

The aim of the law to eliminate the modernisation backlog in many condominium complexes is to be welcomed without reservation; however, there is still a need for adjustment here, because the regulations on cost allocation (bearing the costs in principle only for those who have voted for the measure or in whose individual interest it is) could rather slow down renovation measures.

Public Opinion

- Sceptical:

- Haus & Grund (*House & Ground*)

The regulations on the bearing of costs still needs to be improved. E.g. maintenance costs need to be explicitly assigned to the Cond Owner(s) that bear the costs for the installation.

- Deutscher Anwaltverein (*German Lawyers' Association*)

Upgrade the building with charging infrastructure as a structural measure is a cost risk for Cond Owners. Even Cond Owners who are outvoted have to bear the costs.

A photograph of an electric vehicle charging station at night. The scene is dimly lit, with a blueish tint. In the foreground, there's a concrete curb with yellow and black striped safety blocks. A black charging cable is plugged into a white charging station. In the background, there's a metal railing and some industrial-looking structures. A large white speech bubble is overlaid on the left side of the image, containing the text "Thank you!".

Thank you!

Baker McKenzie.



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