



# **Building Cooperatives in Vienna**

Robert Temel

Collaboration: Maja Lorbek

## *Executive Summary* Final Report **Legal Aspects, Manual, Building Lot Tendering**

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## **1 Research Project Building Cooperatives in Vienna**

This study is the second part of a research project on building cooperatives in Vienna. The first part called “Building Cooperatives in Vienna. Assessment of Potential and Conditions” contains a description of the status quo of building cooperatives and their potential in Vienna and of the most important problems of such groups in this city; further on, proposals for a policy of support for building cooperatives and for measures to strengthen them; and, finally, suggestions for zoning and building lots.

## **2 Building Cooperatives Don’t Just Happen**

Ways of living like building cooperatives can be realized successfully only if four conditions do exist: a group, a lot, money and consultancy. Therefore the first part of this project made several proposals for measures to support such groups. Support for building cooperatives level 1: Commitment to supporting building cooperatives; building lot tendering; consultancy, representation in the administration; public relations for interested people; promotion of networking and documentation; development of expertise for advisors; further research; support for cooperation with developers. Support for building cooperatives level 2: City development by means of building cooperatives; adaptation of subsidy conditions; support for the development of a parent cooperative; support for tenant self-administration and of tenant cooperatives.

## **3 Basic Problems for Building Cooperatives in Vienna**

### **3.1 “Anbotswohnungen” (Proposal Apartments)**

The central obstacle is the proposal duty when applying for housing subsidies. This is, on one hand, a “cultural” problem because groups depend on all their members identifying themselves with the group objectives; but much more it is a financial problem: because Wohnservice starts giving away the apartments earliest when the subsidy confirmation is there, the time until then must be pre-financed by the other members. When the city wants to support independent groups, either the “Heimförderung” should be declared as a standard mode for subsidies for building cooperatives, or the decision of the provincial government about “Anbotswohnungen” should be changed middle-term, i.e. special rules for building cooperatives should be added.

### **3.2 “Heimförderung” (Residential Home Subsidy)**

Several building cooperatives in Vienna chose the way of a “Heimförderung” because this model brings with itself several advantages, but also a few disadvantages. A special point: “Heimförderung” means that groups don’t have to use the rent rating based on the “Nutzwert” (beneficial value). Therefore groups with members who have different income levels are possible because people with less income can pay less compared to the others.

### **3.3 Further Problems**

Further aspects that can be problematic when developing a building cooperatives are conflicts between the group idea and tenancy law; VAT refund entitlement; real estate transfer tax; “Bau trägervertragsgesetz” (developer contract law); and “Mietkauf” (tenant purchase).

## 4 Manual for Building Cooperatives

### 4.1 Development of a Building Cooperative Project

A building cooperative project can be divided into five consecutive phases: start phase, development phase, planning phase, building phase and use phase. In an optimum case, when the group has experienced architects and consultants, the lot is found fast, negotiations with the administration go well and it is a small project, the whole process from the first meeting until moving in will take three years. But very often, this process takes much longer.

### 4.2 Legal Forms, Forms of Organization

#### 4.2.1 "Verein" (Registered Association)

Associations are a widely spread legal form for building cooperatives in Vienna because they replace the "Genossenschaft" (cooperative) which is not used in this field. Advantages of an association are the easy and inexpensive formation, the low effort in ongoing business and the simple accounting rules for small associations. A disadvantage is that VAT refund entitlement is not so easy to achieve.

#### 4.2.2 Rent Project with a Developer

Because of the much lower risk, the possibly lower need for equity funds and the lower amount of work for the group, many "building cooperatives" are realized as cooperation projects with non-profit or commercial developers.

#### 4.2.3 Non-Profit Character

In housing, the independence of the legal form of the cooperative from the non-profit housing developer status is widely unknown. Therefore and since getting such a status according to the Wohnungsgemeinnützigkeitsgesetz is very difficult, but since nobody knows that this is not necessary for founding a cooperative, no cooperatives are being founded.

#### 4.2.4 Legal Form of a Cooperative

The cooperatives would in fact be the obvious legal form for forming a building group – the history of housing and residential development at the beginning of the 20<sup>th</sup> century in Vienna shows this very well. Nonetheless, this legal form was not being used in housing in Austria during the last decades. Formation and operation of a cooperative is in general more complicated compared to an association. The standard forms of housing cooperatives are small, single-house cooperatives, parent cooperatives and tenant cooperatives.

#### 4.2.5 Home Owners' Association

A widely used form of building groups in Germany is the home owners' association, which has also often been in use in Vienna during the last decades.

#### 4.2.6 Private vs. Common Concern

Almost every building cooperative tries to privilege common interests in relation to private interests. That means mainly that the privatization of building cooperative projects are tried to restrict or altogether prohibited. Two models for that which are tested in Germany are the "Mietshäusersyndikat" and the trias Foundation.

#### 4.2.7 Limited Liability Company (GmbH)

A GmbH is a corporate body and entrepreneur by means of legal form. Its central character is the limitation of liability. Different to a cooperative, where these aspects are regulated by law, for the GmbH democratic rights of participation and for the disposition of company shares have to be defined in the company agreement.

#### 4.2.8 Other Forms

Other possible forms are the civil law association (GbR), which is widely used in Germany; the non-incorporated firm, the private limited partnership and the silent partnership; foundation, fund and public company; and, finally, the common ownership.

#### 4.2.9 "Baurecht" (Ground Lease)

Ground lease is a right comparable to property right which is regulated in the "Baurechtsgesetz" of 1912. At that time, it was planned to be used mainly for communal housing policy. Ground lease is the sellable and hereditary right to own a building on or below the ground of the foreign lot.

## 5 Concept for Building Lot Tendering

Based on the tendering processes and lists of criteria in several German cities, a proposal was developed for such a process in Vienna. The procedure should be designed as simple and transparent as possible. An architectural design for the lot should not be demanded. The applicants have to know the criteria for decision and their relevance and the jury before they participate. We propose a three-step procedure for Vienna: 1. statement of interest; 2. application procedure; 3. option phase and acquisition.

### 5.1 Statement of Interest

The statement of interest should be transacted as an informal application: when a basis group is formed and plans to participate in a tendering, no matter if for a certain place or for several ones, it registers at the tendering institution.

### 5.2 Application Procedure

In the second step, the application procedure, the groups have to fulfil minimum requirements on one hand; and their concepts are being evaluated by the jury based on a catalogue of criteria with variable weight. The minimum requirements are a minimum number of group members (two thirds of the apartments); evidence of equity funds; evidence of qualified professional consultancy. The building group concept should be approximately three to five pages and has to contain information on three weighing criteria: architectural and cooperative concept; feasibility of the project; and site-related factors.

### 5.3 Option Phase

In this phase, the chosen group develops its project and completes the necessary legal and financial steps to realize the project. After that, the group is asked to join the acquisition negotiations. During the option phase, the pullout of the group should be possible without serious disadvantages.