

PROPERTY ONE

ONEFOCUS
SALE OF A HOUSE WITH
RIGHT OF RESIDENCE

A RIGHT TO STAY WITH
MANY ADVANTAGES



www.propertyone.ch

If you want to sell your house but do not want to move immediately, you should consider the possibility of a right of residence and, if possible, call in specialists for advice.

The desire to have one's own four walls has increased further since the beginning of the pandemic in spring 2020. This is reflected, on the one hand, in the constantly rising demand for owner-occupied homes, which is causing prices to continue to rise. On the other hand, the supply of residential property is still very tight, especially in urban regions. Properties that come onto the market are a rare and sought-after commodity and usually change hands very quickly.

Too large for baby boomers

Properties with large plots of land belonging to baby boomers are particularly sought-after. For the residents, the houses have become too big after their own children moved out. Maintenance and landscaping are time-consuming and tedious. This age group is now considering smaller forms of housing that are appropriate for their life stage and centrally located. Many people also sell their property because they want to benefit from the high increase in value over the past few years and, perhaps, use the proceeds for retirement. Financing risks (insufficient affordability) can also play a role. Last but not least, the liquidity can be used to help the children realise their dream of owning their own home in their place of residence. Estate planning is an important issue in all scenarios.

Right of residence and usufruct

Selling the house is often contrasted with the emotional bond one has with the family's home. People have spent many years of their lives here and it has become a home. A suitable, if not ideal, form of meeting both needs is a sale with the simultaneous granting of a right of residence or usufruct. The right of residence and usufruct can be granted for a limited period of time or until death or moving out and is factored into the purchase price. Alternatively, a rental model with a moderate market rent is possible for shorter terms. The right of residence is secured by means of an entry in the land register.

The time-limited right of residence gives the selling party the time to look for, plan and, if necessary, build a new home without having to rely on interim financing. There is a time lag between the sale and the purchase or new construction. In the meantime, you can simply continue to live within the four walls you are accustomed to. From the seller's point of view, the advantages are quite obvious.

Advantages for buyers

Buyers can also take advantage of such an option. They are given time and planning security to prepare potential conversions or renovations or even a new construction during the term of the right of residence. Then, they can implement the project after the right of residence has expired.

Compensation for use is mutually agreed between the parties depending on the interpretation of the right of residence. The owner of the right of residence is usually responsible for any minor ongoing maintenance work. A major advantage from the buyer's point of view in times of rising prices is the protection against inflation, as the purchase price is fixed at the time of closing, taking into account the right of purchase. However, especially in the case of an unlimited right of residence or usufruct, the planning can also be longer than expected. This type of acquisition is usually only used by professional market participants or within the family (estate planning). For the former, the property must generally have considerable potential for appreciation.

This alternative form of acquisition can also be used for income-producing properties, such as multi-family houses. A seller with a usufructuary right benefits from the continued success of the property. This also solves the problem of insufficient affordability in the refinancing of mortgages if the income is lower at retirement age than during one's active working life.

Subordinated financing

Another possibility in this context is subordinated financing for the property. The owner receives a higher loan-to-value ratio than would be possible with traditional financing. The lender thereby secures the second mortgage via debt certificates and receives a right to purchase at a fair purchase price. The borrower does

not necessarily have to use the freed-up funds for the property.

The options shown for a sale with a right of residence clearly demonstrate that this is not a trivial matter. It is therefore recommended to call in specialists for the legal, tax and financial questions, who have the expertise to professionally advise on the issues of real estate and financing and guide the process. Property One is one of the companies that has this expertise and provides expert advice on transactions.

Get in touch with us:
www.propertyone.ch

PROPERTY ONE
Finance

Loans secured by real estate

Property One Investors Ltd. gives potential borrowers access to subordinated financing. It arranges the financing and assumes responsibility for all services involved in the process. All of the parties involved benefit from Property One's experience and expertise as an established provider of real estate and subordinated financing services. Further information: finance.propertyone.ch



Properties with large plots of land belonging to baby boomers are particularly sought-after



The time-limited right of residence gives the selling party the time to look for, plan and, if necessary, build a new home without having to rely on interim financing

Blum & Grob

ATTORNEYS AT LAW

From a legal point of view

The right of residence according to the Swiss Civil Code is what is known as a personal easement and gives the beneficiary (an individual) the right to live in a building or in a part of it. The right of residence is non-transferable, non-inheritable and also unseizable.

Simply put, the right of residence is a limited form of usufruct, which goes much further than a right of residence. A usufructuary may also rent out a property, the usufruct is generally also transferable and inheritable (unless otherwise regulated), and the usufructuary must bear the costs for maintenance, management, debt interest and taxes. The beneficiary of the right of residence, on the other hand, only has to pay for the maintenance costs and generally pay tax on the imputed rental value as income (provided that no interest is owed on the right of residence). In contrast to the usufruct, in the case of a right of residence, the registered owner of the property must pay the mortgage interest and insurance premiums, etc.

From the point of view of a real estate buyer, the right of residence is nevertheless a difficult factor to assess to a certain extent, because rights of residence are usually granted for the lifetime

of the person thus entitled and it is in the nature of things that this time factor can be very short or, indeed, very long. This, in turn, causes some difficulties in the valuation of the property, even if the right of residence is granted in return for payment (i.e. payment of a fair market rent).

If the property owner is paid a periodic fee in line with the market for the right of residence, the relationship is one of use, which hardly differs from an obligatory landlord-tenant relationship, except for the fact that the duration is indefinite and there is generally no possibility of termination. Thus, a sale-and-leaseback structure (as is common for commercial properties) should be considered as a real alternative to a right of residence for residential properties too. The leaseback agreement can be structured within the framework of contractual freedom under tenancy law (e.g. time limits, extension options, etc.) and will therefore, at least from the perspective of the real estate buyer, provide greater planning security than a right of residence granted for a lifetime. Accordingly, such a leaseback agreement should certainly produce a higher value when determining the purchase price, since rights of residence may well result in a substantially lower purchase price due to the time risk.

Specialist Swiss corporate law firm

Blum&Grob Rechtsanwälte AG

Neumühlequai 6, 8021 Zürich

www.blumgrob.ch

Gian Marchet Kasper

Attorney at law, LL.M.

g.kasper@blumgrob.ch

T +41 58 320 00 00