

Information Sheet No. 38

The scope of application of WBVG

The Residential and Care Contract Law (WBVG) is a consumer protection law and regulates contracts between traders and consumers of legal age, where the letting of residential property is linked to the payment or offer of nursing or care services. It applies to persons who are dependent because of their age, their need for care or require help on account of a disability.

The applicability of WBVG arises independently of the definitions of forms of residence and furnishing forms of the Residential Participation Law in the contractual agreements between the entrepreneur and the consumer. It does not depend on the type of the institution. For consumers, it is important, which law will apply to their contracts. For example, the period of notice according to the WBVG is significantly shorter than tenancy provisions. It may also be important for family members: When persons in need of care die, the contracts according to the WBVG terminates immediately whereas under tenancy legislation the lease is passed on to the heirs and can then only be termination with a period of notification. The applicability of WBVG thus, for example, has a financial impact on the consumer.

Which law applies to contracts in the nursing home?

In the nursing home the company offers residential space and care from a single source. As a rule, the consumer receives a contract in which the services are described. (S)He pays the fee for the residential room and the nursing and care services to a company. Here the Residential and Care Contract Law always applies.

Which law applies in a residential care community?

When moving into a residential care community the consumer signs at least two contracts. There is a contract concluded with the landlord for the residential room and a contract with the care service on the care and supervision services to be rendered. Basically the WBVG applies only to contractual relations, where both services are agreed upon in a contract. To prevent circumvention of the law, the WBVG also applies if the services owed by the contractor are the subject of various contracts and there is a link between the contract on the provision of residential space and the contract for the provision of care and support services. This is the case in many residential care communities. The conclusion of the contract for the residential room is usually made conditional on the conclusion of a contract for nursing care.

The WBVG is therefore often applicable to the residential care community when the landlord and the care service is the same or are commercially linked to each other. However, one must note that the applicability of WBVG must be checked in contracts with residential care communities in each individual case. A general statement cannot be made. In self-organized residential communities the WBVG is not applicable; here there is the link of the contracts from the residential care agreement.

If consumers want to invoke the WBVG in the residential community to the WBVG, they have to prove in case of doubt that the contracts have been intrinsically linked, so that they were able to conclude the lease only simultaneously with the specific care service contract or cannot change the care service.

Which law applies in facilities such as "sheltered living" or "residential service"

What sheltered living or assisted living means, is not legally defined. Basically, this type of living consists of a combination of living in a rental or private apartment which offers services. The agreed services often include a home emergency service, janitorial services or the provision of care services. For these services a "basic service package" is agreed. The services cannot be terminated separately from the rental contract, even if they are not used. For these services, the consumer must pay regardless of whether the services are used or not. The available are general support services, such as household assistance and driving and accompanying services.

Therefore, these agreements are not covered by the WBVG. Despite the designation as "sheltered living" these are not care services but support services. If other services are included other than those enumerated above, one must examine on an individual basis whether the WBVG is applicable.

The staff of the care support organisation are happy to advise you.

Free service number: 0800 59 500 59

www.pflegestuetzpunkteberlin.de

Support for the care facilities is provided by the State of Berlin and also the care and health insurance schemes in Berlin