

BayWoFG: Act on the Promotion of Housing in Bavaria (Bavarian Subsidised Housing Act – BayWoFG) of 10 April 2007 (GVBl. p. 260) BayRS 2330-2-B (Arts. 1–25)

**Act on the Promotion of Housing in Bavaria
(Bavarian Subsidised Housing Act – BayWoFG)
of 10 April 2007
(GVBl. p. 260)
BayRS 2330-2-B**

Full citation pursuant to RedR: Bavarian Subsidised Housing Act (BayWoFG) of 10 April 2007 (GVBl. p. 260, BayRS 2330-2-B), last amended by section 1 of the Regulation of 1 July 2023 (GVBl. p. 508).

The state parliament of the Free State of Bavaria has enacted the following Act, which is hereby promulgated:

Part One General Provisions

Article 1 Purpose and scope of the Act

¹The purpose of this Act is the subsidisation of measures to support households in the provision of adequate housing (housing subsidies). ²The provisions of this Act apply to housing subsidies by providing funding from the state budget, by assuming guarantees and by providing funds of the Bayerische Landesbodenkreditanstalt. ³Municipalities and municipal associations may carry out subsidised housing under this Act using their own funds.

Article 2 Objectives of housing promotion

(1) ¹The objective of rental housing subsidies is to support households that are not able to obtain adequate housing through the market. ²In doing so, the subsidy supports in particular families, people with disabilities, older people and students.

(2) ¹The objective of home ownership subsidies is the creation of home ownership by households that are not able to do so without support. ²In doing so, the subsidy supports in particular families and people with disabilities.

(3) The objective of modernization subsidies is to adjust existing housing to the needs of the housing market in a socially acceptable manner and to preserve or restore the urban development function of older residential districts.

Article 3 Housing, residential construction, modernisation

(1) ¹Housing is enclosed space that is intended for permanent residential use and is legally and actually suitable for such use. ²Housing may consist of dwellings or individual rooms. ³Rental housing is housing that is made available for use on the basis of a tenancy or similar usage relationship. ⁴Owner-occupied housing is housing in the owner's own house or in an owner-occupied apartment that is used for the owner's own residential purposes. ⁵Cooperative housing is the use of housing on the basis of rights granted to members by the statutes of a cooperative.

(2) Residential construction is the creation of permanent housing involving substantial construction work through new construction, alteration or extension of buildings.

(3) Modernisation consists of construction measures that bring about a sustainable increase in the utility value of the housing or the residential building, a permanent improvement of general housing conditions or a sustainable saving of energy or water.

Article 4 Household

(1) The following persons are regarded as members of the household:

1. the applicant, the spouse, the civil partner and the partner in any other long-term life partnership, and
2. their relatives in the direct line and relatives of the second degree in the collateral line, relatives by marriage in the direct line and relatives by marriage of the second degree in the collateral line, foster children regardless of their age and foster parents,

who live together in a residential and economic community.

(2) ¹Persons within the meaning of subsection 1 are also regarded as members of the household if it is to be expected that they will be taken into the household in the near future on a permanent basis, as well as children whose birth is expected on the basis of an existing pregnancy. ²Persons are not regarded as members of the household if it is to be expected that they will in the near future permanently leave the household.

Article 5 Total income

(1) Total income is the sum of the annual incomes of the members of the household less the amounts pursuant to subsections 2 and 3.

(2) The following income allowances are deducted:

1. an amount of EUR 4,000 for each person with a disability degree of at least 50,
2. an amount of EUR 5,000 for married couples and civil partners until the end of the seventh calendar year following commencement of the marriage or the civil partnership.

(3) ¹As deductible amounts, expenditures to meet statutory maintenance obligations are deducted up to the amount determined in a maintenance agreement recorded by a notary or determined in a maintenance order or maintenance decision. ²If there is no maintenance agreement recorded by a notary, no maintenance order and no maintenance decision, expenditures to meet statutory maintenance obligations may be deducted as follows:

1. up to EUR 4,000 for a member of the household who is accommodated away from home and is undergoing vocational training,
2. up to EUR 6,000 for a former spouse or civil partner or a spouse or civil partner who permanently lives separately and is not a member of the household,
3. up to EUR 4,000 for any other person who is not a member of the household,

4. up to EUR 4,000 for a child whose parents permanently live separately or are divorced and who jointly hold unrestricted parental custody rights, if they share the place of residence with the child.

(4) The circumstances at the time of application are decisive for the amounts pursuant to subsections 2 and 3.

Article 6 Annual income, authorisation to issue regulations

(1) ¹Annual income is, subject to subsections 2 to 3, the sum of the positive income within the meaning of section 2 subsections 1, 2 and 5a of the Income Tax Act (EStG) of each member of the household. ²Offsetting against negative income from other types of income and against negative income of the jointly assessed spouse is not permissible.

(2) ¹Annual income also includes tax-free, non-taxable and other income not taken into account in the sum of positive income that is used to cover living expenses. ²The State Ministry for Housing, Building and Transport is authorised to determine by statutory ordinance the income pursuant to sentence 1.

(3) For the payment of

1. taxes on income,
2. regular contributions to health and long-term care insurance, and
3. regular contributions to life insurance or insurance for old-age provision,

a flat deduction of ten per cent is made in each case from the amount determined on the basis of subsections 1 and 2.

Article 7 Period for determining annual income

¹When determining annual income, the income earned in the twelve months preceding the month of application is taken as a basis. ²If the monthly income has permanently changed during this period, twelve times the changed monthly income plus annual benefits is taken as a basis. ³Sentence 2 applies accordingly if such a change is expected to occur within twelve months from the month of application; changes whose commencement or extent cannot be determined are disregarded. ⁴In the case of income whose amount is determined by calculating profit in accordance with section 4 EStG, the income earned in the calendar year preceding the month of application is taken as a basis.

Part Two Subsidies

Article 8 Principles of subsidies

The following must in particular be taken into account for the subsidy:

1. the regional and local housing situation,
2. the special requirements of the group of persons to be provided with housing, in particular the requirements of barrier-free construction for persons whose mobility is permanently or temporarily restricted due to age, disability or illness,

3. the creation and preservation of socially stable resident structures as well as balanced settlement structures,
4. the economical use of land, the ecological requirements for the construction of housing and the requirements of cost-saving and resource-conserving construction,
5. measures in connection with urban development renewal schemes,
6. the contribution of cooperative housing to achieving the objectives of housing promotion,
7. the avoidance of unjustified housing cost relief,
8. special approaches to further development of sustainable housing provision.

Article 9 Consideration of municipal concerns

¹When granting subsidies, the housing-related concerns of the municipalities should be taken into account; this applies in particular where a municipality participates in granting the subsidies. ²The competent authority may base subsidies on a concept for social housing provision adopted by a municipality. ³Sentences 1 and 2 apply accordingly to municipal associations.

Article 10 Objects and recipients of subsidies

(1) Objects for subsidised housing are residential construction, acquisition of housing, modernisation and the granting of occupancy and rent commitments on existing housing.

(2) ¹Recipient is, in the case of subsidies

1. for residential construction and modernisation, the owner of the property, the holder of the heritable building right or the usufructuary,
2. for acquisition of housing, the acquirer,
3. for the granting of occupancy and rent commitments on existing housing, the owner or any other person entitled to do so.

²The recipient must provide assurance that the purpose of the subsidy will be achieved.

Article 11 Income limits, authorisation to issue regulations

(1) ¹In the promotion decision, the following may be set at most as income limits:

1. for a one-person household EUR 28,300,
2. for a two-person household EUR 43,200,

plus EUR 10,700 for each further person regarded as a member of the household;

the decisive factor is the total income. ²The income limit pursuant to sentence 1 increases by EUR 3,200 for each child belonging to the household within the meaning of section 32 subsections 1 to 5 EStG. ³The same applies if the birth of a child or several children is expected on the basis of an existing pregnancy.

(2) ¹The State Ministry for Housing, Building and Transport is authorised, in agreement with the State Ministry of Finance and for Homeland, by statutory ordinance

1. to adjust the maximum income limits stated in subsection 1,
2. to set higher income limits for already committed housing, differing from the income limits determined
 - a) under Article 13,
 - b) under sections 88 to 88e of the Second Housing Act (II. WoBauG) in the version applicable up to 31 December 2001, or
 - c) under section 13 of the Housing Promotion Act,

in the promotion decisions made by the approval authorities,

if this is necessary, taking account of the general development of income, to maintain the target group hitherto covered by housing subsidies and to achieve the subsidy objectives pursuant to Article 2 subsections 1 and 2 as well as to create and preserve socially stable resident structures. ²The authorisation pursuant to sentence 1 no. 1 also includes the determination of the increase amount for each child belonging to the household within the meaning of section 32 subsections 1 to 5 EStG and for each child whose birth is expected on the basis of an existing pregnancy.

Article 12 Size of housing

¹The size of the housing must be appropriate in relation to its intended purpose. ²In doing so, account must be taken of the particular features of construction measures on existing housing as well as special personal or occupational needs of the household, in particular of older people or people with disabilities.

Article 13 Promotion decision

(1) ¹The competent authority may grant subsidies in writing by means of a subsidy approval notice or by contract (promotion decision). ²Commitments stipulated in the subsidy approval notice are effective against the legal successor. ³Otherwise, the promotion decision contains the provisions required for the respective subsidy, in particular regarding the objective and object of the subsidy, type, amount, duration, interest rate and repayment of the subsidy, type and duration of the commitments and legal consequences of a change of ownership of the object being subsidised. ⁴There is no legal entitlement to subsidies.

(2) Commitments are determined as follows:

1. for rental housing subsidies as occupancy and rent commitments in accordance with Article 14 subsection 1, Article 15 subsections 1 and 2 and Article 16 subsections 1 to 5; in doing so, commitments may be established in whole or in part in respect of non-subsidised housing in addition to subsidised housing,
2. for home ownership subsidies as occupancy commitments in accordance with Article 16 subsection 6,

3. for subsidies for modernisation of rental housing as rent and occupancy commitments in accordance with Article 15 subsection 3 and Article 16 subsection 1 sentence 2 nos. 2 and 3, subsections 3 and 4, or additionally as occupancy commitments under Article 14 subsection 1 and Article 16 subsections 2 and 5, and for owner-occupied housing as occupancy commitments in accordance with Article 16 subsection 6.

Part Three Commitments

Article 14 Letting of rental housing

(1) ¹The landlord may only let housing to a person seeking housing whose entitlement to housing results from a certificate of entitlement to housing submitted by that person or from a nomination by the competent authority, in accordance with the promotion decision. ²In the promotion decision, nomination of one or more persons seeking housing may be stipulated.

(2) Persons seeking housing who are not only temporarily resident in the federal territory and who are legally and actually able to establish a place of residence for their household as the centre of their life relationships on a long-term basis and to maintain an independent household are entitled to apply.

(3) ¹The competent authority issues a certificate of entitlement to housing that is valid for a fixed period if the household does not exceed the income limit referred to in Article 11. ²Issuing a certificate of entitlement to housing for specific housing and nomination presupposes that the household complies with the income limit applicable pursuant to the promotion decision, that the size of the housing is appropriate and that any reservation in the promotion decision in favour of specific households is observed. ³Departing from the following, the competent authority may

1. depart from the income limit in order to avoid particular hardship for the person seeking housing or if the person seeking housing vacates other subsidised housing,
2. depart from the size of the housing in order to take account of special personal or occupational needs or to avoid particular hardship.

⁴The competent authority rejects the application if letting the housing would obviously not be justified even if the applicable income limit were complied with.

Article 15 Rent commitment

(1) ¹The landlord may not let housing at a rent higher than the maximum permissible rent stipulated in the promotion decision; in addition, the landlord may demand a payment to cover operating costs in accordance with the general provisions of tenancy law. ²The provisions of the promotion decision concerning rent commitment may not depart from the general provisions of tenancy law to the detriment of the tenant.

(2) ¹The provisions of the promotion decision concerning rent commitment must be stated in the tenancy agreement; the tenant may invoke these provisions vis-à-vis the landlord. ²The landlord may increase the rent up to the maximum permissible rent in accordance with the promotion decision and the general provisions of tenancy law. ³Agreements departing from subsection 1 sentence 1 and from sentences 1 and 2 to the detriment of the tenant are invalid.

(3) Subsection 1 and subsection 2 sentence 1 second half-sentence and sentences 2 and 3 apply accordingly to rent increases on the basis of modernisation.

Article 16 Safeguarding the intended use

(1) ¹Rental housing may, subject to sentence 2, only be used for letting. ²The competent authority grants approval

1. for own use, applying Article 14 subsection 3 accordingly,
2. for leaving the housing vacant if and as long as letting is not possible and the purpose of the subsidy cannot be met in any other way; no approval is required if the housing remains vacant for less than three months,
3. at its discretion, if housing is to be put to uses other than residential purposes or altered structurally accordingly due to overriding public or private legitimate interests; the competent authority may require an appropriate monetary compensation or the granting of commitments of equal overall value on other housing.

(1a) ¹If the authority has not decided on the application for approval pursuant to subsection 1 sentence 2 within a period of three months, the approval is deemed to have been granted. ²The procedure pursuant to subsection 1 sentence 2 may be handled via a single contact point.

(2) ¹The person entitled to dispose must immediately notify the competent authority in writing of readiness for occupation or vacancy and state the expected date. ²If housing is let to a person seeking housing who is not entitled, the landlord must terminate the tenancy at the request of the competent authority; the competent authority may require the tenant to vacate the dwelling if the tenancy cannot be terminated in the near future.

(3) The recipient of the subsidy must submit to immediate enforcement under a contractual promotion decision.

(4) Insofar as this is necessary to safeguard the intended use of the housing and the other provisions of the promotion decision, the person entitled to dispose and the parties to the tenancy agreement are obliged to provide information to the competent authority upon request, to allow inspection of their documents and to permit inspection of properties, buildings and housing; the basic right of inviolability of the home (Article 13 of the Basic Law and Article 106 subsection 3 of the Constitution) is restricted.

(5) ¹The person entitled to dispose must immediately notify the competent authority in writing of the sale of housing and the creation of home ownership. ²As long as housing is subject to commitments, the acquirer of housing in respect of which ownership has been established after it was let to a tenant may not invoke vis-à-vis the tenant legitimate interests in the termination of the tenancy within the meaning of section 573 subsection 2 no. 2 of the German Civil Code; otherwise, section 577a subsections 1 and 2 of the German Civil Code remains unaffected.

(6) Subsection 1 sentence 2 nos. 2 and 3, subsection 2 sentence 1 and subsections 3 and 4 apply accordingly to owner-occupied housing.

Article 17 Duration of commitments

(1) ¹In the case of subsidies by loans, the promotion decision stipulates provisions on the duration of the commitments, including for the event of early full repayment. ²If repayment is demanded due to breach of the provisions of the promotion decision, the commitments remain in effect in the case of

1. loans, after termination, until the end of the commitment period stipulated in the promotion decision, but at most until the end of the tenth calendar year following the year of repayment,
2. grants, at most until the end of the tenth calendar year following the year of repayment.

³In the event of compulsory auction, the commitments end in the case of

1. loans at the time stipulated in the promotion decision, but at the latest on expiry of the third calendar year following the calendar year in which the bid is accepted and the land-charge rights established on the basis of loan funding lapse as a result of the bid being accepted,
2. grants upon acceptance of the bid.

(2) The person entitled to dispose must provide written information on the duration of the commitments to the tenant or a person seeking housing upon request; agreements departing from this to the detriment of the tenant are invalid.

Article 18 Waiver and release from commitments

(1) ¹The competent authority may temporarily waive occupancy commitments under Articles 14 and 16 subsections 1 and 6 in respect of the person entitled to dispose, insofar as

1. there is no longer an overriding public interest in these commitments, or
2. on the basis of an overriding public interest, in particular in the creation or preservation of socially stable resident structures, or an overriding legitimate private interest, it is not appropriate to insist on these commitments,

and the person entitled to dispose provides the competent authority with an appropriate compensation. ²In the case of waiver pursuant to sentence 1 no. 1 or on the basis of an overriding public interest pursuant to sentence 1 no. 2, compensation may be waived.

(2) ¹The competent authority may release the person entitled to dispose from the commitments if

1. this serves to create or preserve socially stable resident structures or is required on the basis of some other overriding public interest, and
2. the person entitled to dispose grants commitments of equal overall value in respect of other housing for the period from release from the commitments.

²Rights in rem may also be newly established, while cancelling security on the property of the previous housing. ³From the time of release from the commitments, the other housing is deemed to be subsidised housing.

Article 19 Special forms of housing

(1) In the case of subsidies for special forms of housing, departures from Articles 4 and 10 to 16 may be made in order to achieve the special objective of the subsidy; this applies in particular to housing for students, older people and people with disabilities and to shared housing for mutual support in old age or in situations of need, and to supervised shared housing.

(2) If subsidised housing is to be used to achieve a special objective within the meaning of subsection 1, the competent authority may establish provisions departing from the promotion decision and from Articles 4 and 14 to 16.

Part Four Supplementary and Final Provisions

Article 20 Public housing welfare

In the granting of subsidies for dwellings that are made available directly or indirectly from public budgets for members of the public service or similar groups of persons under agreement of a right to allocate the dwellings (housing welfare funds), Article 15 subsections 1 and 2 apply accordingly.

Article 21 Data protection

(1) Insofar as this is necessary to safeguard the intended use of housing and the other provisions of the promotion decision, the competent authority processes data concerning the housing, its use and the commitments, the person entitled to dispose and the parties to the tenancy agreement.

(2) Insofar as this is necessary for subsidised housing or to determine entitlement to housing and there are substantiated doubts as to the correctness of the information and documents submitted, the tax authorities and employers must provide the competent authority with information on income circumstances; before a request for information is made, the person concerned should be given an opportunity to comment.

(3) Subsidies that are granted depending on the respective household income of the tenant may also be paid out to the landlord if the landlord is able to draw conclusions as to the household income from the payments made.

Article 22 Measures in the event of breaches

(1) ¹For the duration of a culpable breach of the provisions of Article 14 subsection 1, Article 15 or Article 16 subsections 1, 2 and 5, the competent authority may levy from the person entitled to dispose, the landlord or their agents, for the housing concerned, a monetary charge of up to one-twelfth per month of the nominal amount of the subsidies calculated on one year of commitment. ²The monetary charge is otherwise assessed according to the value of the housing and the severity of the breach. ³The monetary charge must be used for housing subsidies. ⁴Any person who misuses housing contrary to Article 16 subsection 1 sentence 2 no. 3 must restore at their own expense the suitability of the housing for residential purposes.

(2) ¹Any person commits an administrative offence who

1. contrary to Article 14 subsection 1 lets housing to a person seeking housing who is not entitled,
2. contrary to Article 15 subsections 1 and 3 receives payments for letting housing,

3. contrary to Article 16 subsection 1 uses housing for own use without approval, leaves it vacant for at least three months or puts it to uses other than residential purposes or alters it structurally accordingly, or
4. sells housing and, contrary to Article 16 subsection 5, does not immediately notify the competent authority of this or of the creation of home ownership.

²In the cases of sentence 1 no. 4, the administrative offence may be punished with a fine of up to EUR 2,500, in the cases of sentence 1 nos. 1 and 2 and in the case of own use or leaving vacant in the cases of sentence 1 no. 3 with a fine of up to EUR 10,000, and in the other cases with a fine of up to EUR 100,000. ³Subsection 1 sentence 3 applies accordingly.

(3) Subsections 1 and 2 apply accordingly insofar as the provisions referred to therein apply on the basis of subsidies for owner-occupied housing or modernisation subsidies.

Article 23 Competent authorities, authorisation to issue regulations

The State Ministry for Housing, Building and Transport is authorised by statutory ordinance to determine the authorities competent for implementing this Act.

Article 24 Transitional provisions

(1) ¹The provisions of this Act apply accordingly to housing that has received subsidies under the Housing Promotion Act of 13 September 2001 (Federal Law Gazette I p. 2376), last amended by Article 2 subsection 13 of the Act of 5 December 2006 (Federal Law Gazette I p. 2748).

²Decisions and other measures that took effect under the Housing Promotion Act before 1 May 2007 continue to apply without prejudice to Article 11 subsection 2 sentence 1 no. 2.

³Commitment-related procedures under the Housing Promotion Act that were initiated before 1 May 2007 are concluded in accordance with the provisions previously in force.

(2) ¹The following provisions of the Second Housing Act in the version applicable up to 31 December 2001 continue to be applied:

1. section 42 subsection 1 sentence 3 II. WoBauG in conjunction with section 88 subsection 3 II. WoBauG to loans granted under sections 42 to 45 II. WoBauG for the balancing of expenditure loans and annuity loans,
2. section 44 subsections 2 and 3 II. WoBauG for increases in interest rates and initial interest charges,
3. section 44 subsection 4 sentences 2 and 3 II. WoBauG for increases in repayment,
4. section 44 subsection 5 sentences 2 and 3 II. WoBauG for terminations,
5. section 45 subsection 3 sentence 2 second half-sentence, subsection 6 sentence 4 and subsection 7 II. WoBauG for granting supplementary loans for purchased owner-occupied homes, small-scale settlements and purchased owner-occupied apartments,
6. section 45 subsection 8 II. WoBauG for repayment of a family supplementary loan,
7. section 87a II. WoBauG for housing welfare funds granted under section 87a II. WoBauG; section 87a subsection 5 II. WoBauG does not apply, insofar as it refers to section 18a of

the Housing Commitment Act, to loans from public housing welfare funds of the Free State of Bavaria,

8. section 88b subsections 2 to 4 and section 88c II. WoBauG for expenditure loans and grants granted under section 88 II. WoBauG,
9. section 88 subsection 3 II. WoBauG for recognising an expenditure loan in the balance sheet,
10. section 88e subsections 2 and 3 and section 88f subsection 2 II. WoBauG for income-related subsidies granted under section 88e II. WoBauG.

²To safeguard the intended use of dwellings subsidised under sections 87a, 87b, 88, 88d and 88e II. WoBauG, Article 16 subsections 4 and 5 sentence 1 and Article 21 apply instead of section 88f II. WoBauG. ³For dwellings subsidised under sections 88 to 88d II. WoBauG, Articles 4 to 7 apply to determining income. ⁴Decisions and other measures that took effect on the basis of the Second Housing Act continue to apply without prejudice to Article 11 subsection 2 sentence 1 no. 2.

Article 25 Entry into force

This Act enters into force on 1 May 2007.

Munich, 10 April 2007

The Bavarian Minister President
Dr Edmund Stoiber