

Maklervertrag (§§ 652 ff. BGB)

A. Zustandekommen

– ein Auftraggeber verpflichtet sich, für den Nachweis der Gelegenheit zum Abschluss eines Vertrages (Nachweismakler) oder für die Vermittlung eines Vertrages (Vermittlungsmakler) an den Makler ein Entgelt zu zahlen

➤ Fehlt eine Vergütungsvereinbarung gilt gem. § 653 I BGB ein Maklerlohn als stillschweigend vereinbart, wenn die Leistung den Umständen nach nur gegen eine Vergütung zu erwarten ist

➤ Beachte: ein konkludenter Vertragsschluss kommt nur dann in Betracht, wenn das Verhalten der Parteien den eindeutigen Willen erkennen lässt, dass der eine Teil für den anderen (und nicht etwa im Auftrag eines Dritten) zur Vermittlung von Verträgen eingeschaltet werden soll

➤ „Bestellerprinzip“: die Provisionspflicht trifft den, der die Maklerleistung bestellt oder zuerst mit der Suche beauftragt

➤ Grds. ist der Maklervertrag formfrei, es sei denn er enthält bereits eine formpflichtige Verpflichtung

B. Beendigung

I. Kündigung eines unbefristeten Maklervertrags durch den Auftraggeber

➤ Soweit die Parteien keine abweichende Abrede getroffen haben, ist die Laufzeit des Maklervertrages unbefristet

➤ Kann vom Auftraggeber bis zum Abschluss des Hauptvertrages jederzeit gekündigt werden

II. Kündigung eines unbefristeten Maklervertrags durch den Makler

➤ Ob auch der Makler den unbefristeten Vertrag kündigen kann, ist umstritten:

(a) i.V.A.: nur unter den Voraussetzungen des § 626 BGB zulässig (wichtiger Grund)

(b) a.A.: jederzeitiges Kündigungsrecht, Arg.: fehlende Tätigkeitsverpflichtung des Maklers

III. Kündigung einer Partei eines befristeten Maklervertrags aus wichtigem Grund (§ 314 BGB)

IV. Abschluss eines Aufhebungsvertrags

V. Tod des Maklers (analog § 673 S.1 BGB, nicht bei Maklergesellschaften)

C. Provisionsanspruch (§ 652 I S.1 BGB)

I. Wirksamer Maklervertrag (s.o.)

II. Erbringung der Maklerleistung

1. Vermittlungstätigkeit: die bewusste und aktive Einwirkung des Maklers auf den zukünftigen Hauptvertragspartner seines Auftraggebers mit dem Ziel der Herbeiführung des Hauptvertrages

2. Nachweistätigkeit: wenn der Kunde des Maklers in die Lage versetzt wird, in konkrete Verhandlungen über den von ihm angestrebten Hauptvertrag einzutreten

➤ Beachte: Die Namhaftmachung ist gem. § 242 BGB ausnahmsweise entbehrlich, wenn bei der Mitteilung der Angaben zum Objekt keine weiteren Nachforschungen zur Feststellung des Interessenten erforderlich sind

Library Of 652 661a Maklervertrag German Andreas Bergmann

**Andreas Bergmann, Arnd
Arnold, Sebastian Herrler, Carsten
Herresthal**

Library Of 652 661a Maklervertrag German Andreas Bergmann:

§§ 652-661a (Maklervertrag; Auslobung) Andreas Bergmann, Arnd Arnold, Sebastian Herrler, Carsten Herresthal, 2015-11-27 Die Neubearbeitung bringt Sie auf den aktuellen Stand des Maklerrechts Die aktuellen Entwicklungen zu wichtigen Fragen wie das Zustandekommen des Maklervertrags oder die Haftung für Beratungsfehler wird praxisorientiert erörtert Die Kommentierung der 655a e zum Darlehensvermittlungsvertrag wird aktualisiert Neu hinzu kommt die Neubearbeitung der 657 661a zur Auslobung

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