

Amendment of the “Immobilienwertermittlungsverordnung” (Ordinance on the Valuation of Property) in Germany

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Key words: Valuation, comparative method value, the income approach, the cost approach, depreciated replacement cost

1.1 Summary

The ordinance on the principals for valuation of the market value of real estate—Immobilienwertermittlungsverordnung 2021 (ImmoWertV 2021) - has been valid since January 2022 and replaces the previous rules.

The ordinance regulates the general standard of property valuation in Germany. In particular, the focus is on the binding nature of the derivation of the model parameters.

This text explains the basic idea of the regulations and their key points.

Assessments of the market value of a property which were written on or after the first of January 2022 ought to use the updated version of the ImmoWertV, regardless of the date of valuation, but still take into consideration the models valid on the reference date.

The aim of the new ImmoWertV is to use the same data and systems, when valuating a property as were used when gathering and analysing the underlying data from the local governmental valuation expert committees.

The new Ordinance was thoroughly discussed and evaluated with professional associations as well as individuals by the responsible state ministry for building (Bundesministerium für Wohnen, Stadtentwicklung und Bauwesen).

The objective of the ordinance is to redraft the laws of property valuation in a coherent way. This means that a uniform way of using the principals of property valuation should be ensured and the clarity and comprehensibility of the regulation of property valuation improved.

Die Verordnung über die Grundsätze für die Ermittlung des Verkehrswertes von Grundstücken - Immobilienwertermittlungsverordnung 2021 (ImmoWertV 2021) - ist seit Januar 2022 in Kraft und löst die bisherigen Regelungen ab.

Die Verordnung regelt den allgemeinen Standard der Immobilienbewertung in Deutschland. Im Mittelpunkt steht insbesondere die Verbindlichkeit der Ableitung der Modellparameter.

Dieser Text erläutert den Grundgedanken der Verordnung und ihre Eckpunkte.

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Verkehrswertgutachten, die am oder nach dem 1. Januar 2022 erstellt werden, sollen unabhängig vom Bewertungsstichtag die aktualisierte Fassung der ImmoWertV verwenden, aber weiterhin die zum Stichtag gültigen Modelle berücksichtigen.

Ziel der neuen ImmoWertV ist es, bei der Bewertung einer Immobilie dieselben Daten und Systeme zu verwenden, die auch bei der Erhebung und Analyse der zugrunde liegenden Daten durch die kommunalen Gutachterausschüsse verwendet wurden.

Die neue Verordnung wurde vom zuständigen Bundesministerium für Wohnen, Stadtentwicklung und Bauwesen ausführlich mit den Fachverbänden und Einzelpersonen diskutiert und erörtert.

Ziel der Verordnung ist es, das Recht der Immobilienbewertung einheitlich “aus einem Guss” neu zu gestalten.

Das bedeutet, dass eine einheitliche Anwendung der Grundsätze der Immobilienbewertung sichergestellt und die Klarheit und Verständlichkeit der Regelungen zur Immobilienbewertung verbessert werden soll.

2.1 Introduction

The ImmoWertV 2021 replaces the ImmoWertV 2010 and the comparative method value guideline, the income approach guideline and the cost approach (depreciated replacement cost) guideline as well as the second part of the valuation guideline 2006 (Wertermittlungsrichtlinie WertR 2006). The ImmoWertV 2021 is supplemented by the application notes (Anwendungshinweise zur ImmoWertV 2021), which are expected to be published at the end of 2022.

Sections 192 to 199 of the German Building Code (Baugesetzbuch) contain the main legal bases for real estate valuation in Germany. The main focus is on the definition of market value in accordance with Section 194 of the Building Code. The authorization to issue a legal ordinance on statewide binding standards for determining the market value and the data required for the valuation and including the standard land values is contained in Section 199 of the Building Code.

The ImmoWertV 2021 was adopted by the Federal Cabinet on May 12, 2021, and passed by the Bundesrat (upper house of the German parliament) on June 25, 2021, subject to amendment. On July 14, 2021, the Federal Cabinet approved the amended version again. The new ImmoWertV came into force on January 1, 2022.

In contrast to the previous guidelines, the model valuation parameters to be used are now mandatory, in particular for the governmental local valuation-experts committees (Gutachterausschüsse).

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The specification of binding and nationwide model approaches is the most serious change in the context of the amendment to ImmoWertV.

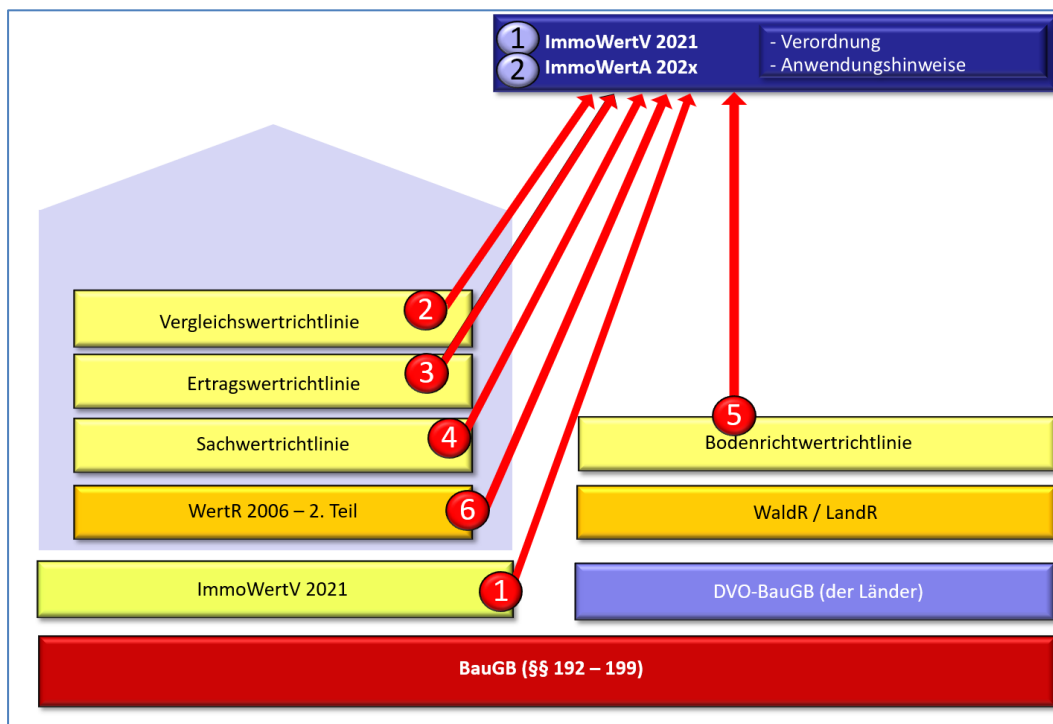


Figure I: Development of the ImmoWertV 2010 and the subordinate guidelines to the ImmoWertV 2021

Since the same models and model approaches are to be used when applying the other data required for the valuation as part of the determination of the respective preliminary procedure, ImmoWertV 2021 also has an indirect effect on the experts as users of ImmoWertV. However, the valuator retains the necessary broadness to appropriately assess the property-specific characteristics of the valuation of an object. That means, among other things, that the valuer has to use the similar model when he takes the property interest rate from des expert committee that determined this interest rate. For this purpose, it is essential to look at the ImmoWertV from two perspectives. On the one hand, the scope of application of the valuation-experts committees and, on the other hand, the scope of application of the market value determination. The model obligation within the scope of application of the valuation-experts committees is more strictly defined. In particular, the appraisal committees determine the parameters required in the context of the determination of market values using one of three methods (the comparative method value, the income approach and the cost approach (depreciated replacement cost)).

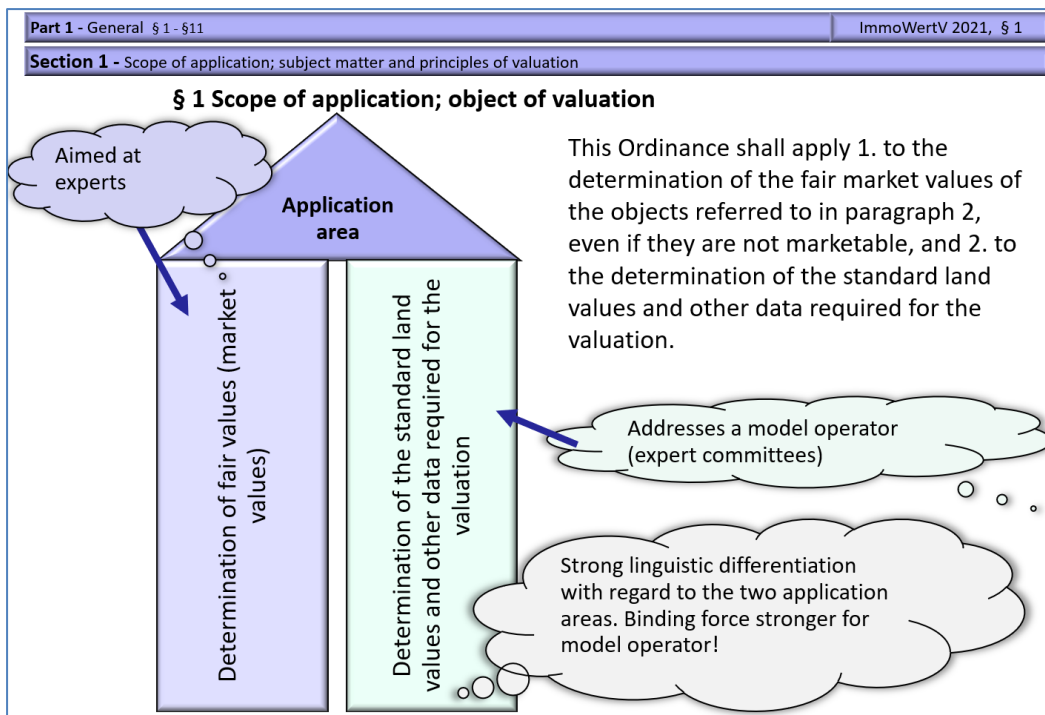


Figure II: ImmoWertV from two perspectives

It was originally intended to combine the individual guidelines for determining market values and the parts of the 2006 valuation guidelines that are still in force into one new guideline.

However, the guidelines have not been implemented uniformly in the past so that it has not been possible to ensure statewide uniform determination of land values and other data required for valuation. This contradicts the goal of nationwide real estate market transparency, makes tax valuation more difficult and also impairs the work of private real estate valuers. In short: Different valuations lead to injustice.

With the revision of the ordinance, the possibility to re-regulate the set of rules from a single source should be used, so to speak, in order to ensure the desired more uniform application of the principles of valuation. The clarity of the regulations should also be improved.

2.2 Essential content of ImmoWertV

The ImmoWertV 2021 summarizes the essential principles for determining the building-value and standard land value. The previous principles have largely proven their worth, so that there are no fundamental deviations from previous practice in terms of content.

The amendment of the ImmoWertV was carried out by a working group with representatives of

- the tax authorities and
- associations and independent experts as part of a public consultation process.

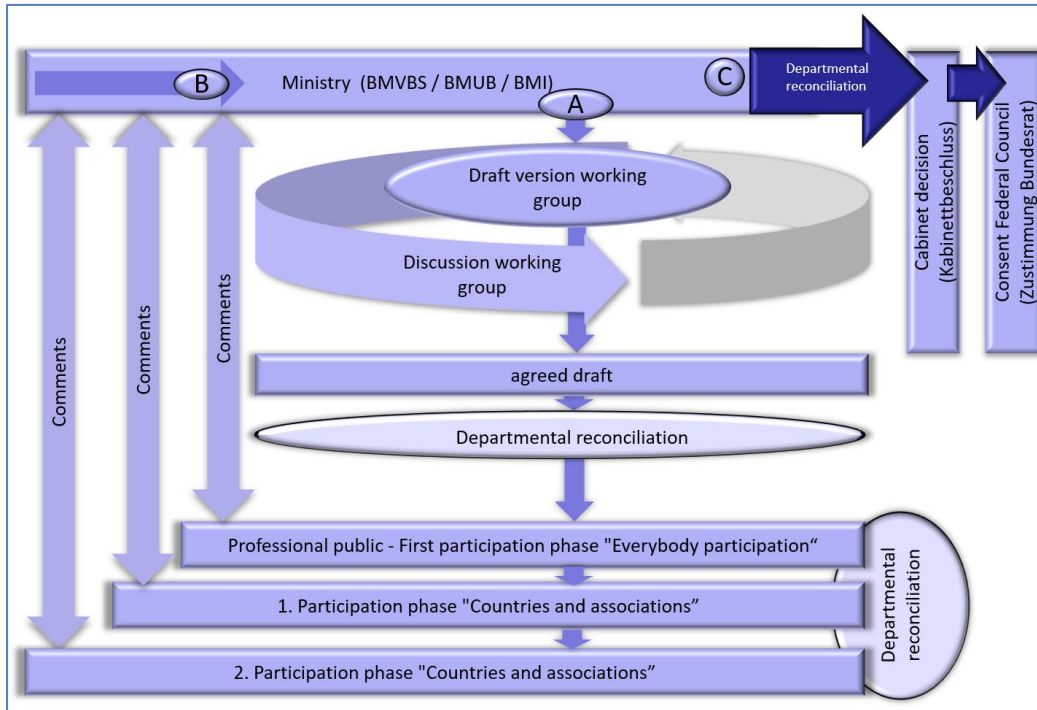


Figure III: Voting process for the amendment of the ImmoWertV 2021

In the interest of an improved system, however, the previous specifications are often made more precise. And at the same time, there were essentially no changes to the content.

The ImmoWertV is binding for the determination of the fair market value for regulated subjects covered by the German Building Code. These include, for example, the reallocation procedure compensation for expropriation and the price-limited right of first refusal. Also included are the preparation of market value valuation and the determination of the "data required for the valuation" by the valuation committees. The regulations issued on the base of the Building Code are also to be applied in the case of valuations for the purpose of proving the net general value within the framework of inheritance and gift tax in accordance with the Valuation Act.

There are some opinions that private valuers do not necessarily have to base their market value valuations on the ImmoWertV 2021. However, due to the principle of model conformity explained below, an indirect binding force of the ImmoWertV 2021 can be assumed. Furthermore, the different valuation occasions cannot lead to different valuation principles - let alone that different market values would have to be assumed.

Of course, the new ImmoWertV 2021 does not lead to different market values than the previous ordinance - otherwise the definition of market value according to Section 194 Building Code would not have been fulfilled.

Experience shows that, in case of doubt, courts in particular refer to the legislator's rules and regulations as the "state of the art" and thus a deviation represents an open flank for the defense of expert opinions.

The mere fact that many directives have been dropped in favor of a regulation with supplementary information is a contribution to simplifying the law.

2.3 Structure of ImmoWertV 2021

ImmoWertV is divided into five parts leading to a standardized valuation of property in Germany.

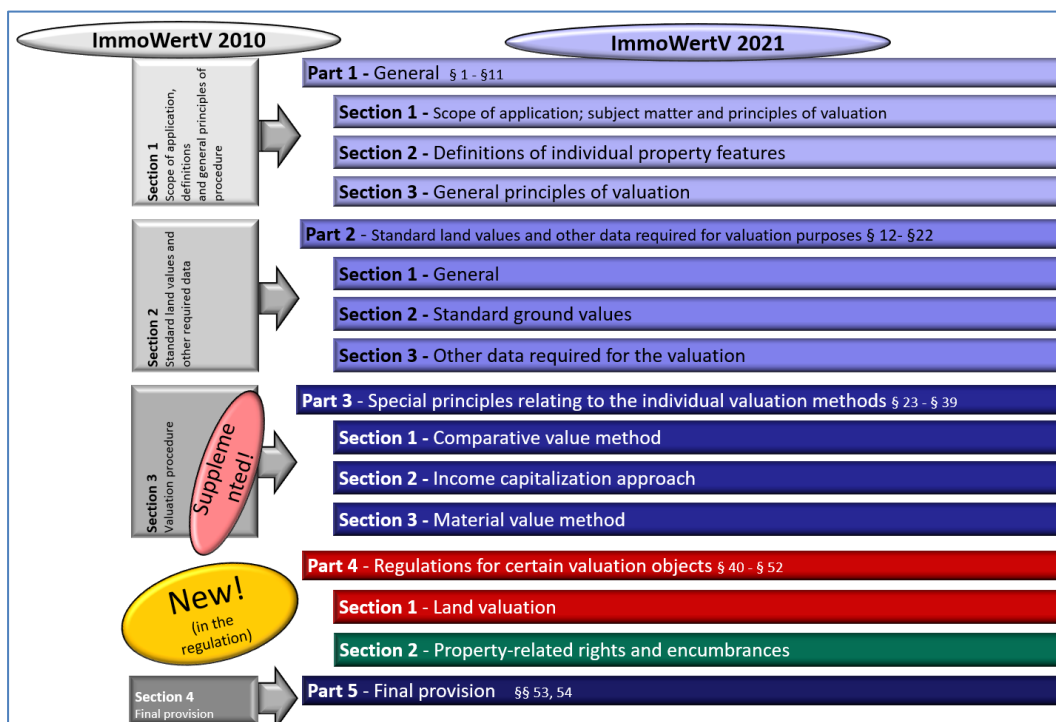


Figure IV: Comparison of the breakdown of ImmoWertV 2010 to ImmoWertV 2021

The first part

- discusses the scope, subject matter and principles of valuation as well as
- sets the definitions of terms for individual property features and
- defines the general principles of valuation methods.

In the second part of the regulation, the data required for the valuation are regulated.

In the third part, the individual valuation methods are discussed. As in the previous ordinance, the ImmoWertV distinguishes between the comparative, income and material value methods.

The procedure is divided into two steps:

1. the determination of a preliminary to the general value conditions on the property market (market-adjusted procedural value (comparative, income approach and material value)) and
2. the determination of the final process value.

As the first step, the provisional (market-adjusted) procedural value is derived on the basis of the property interest rates, material value factors or comparative factors derived by the expert committee for property values.

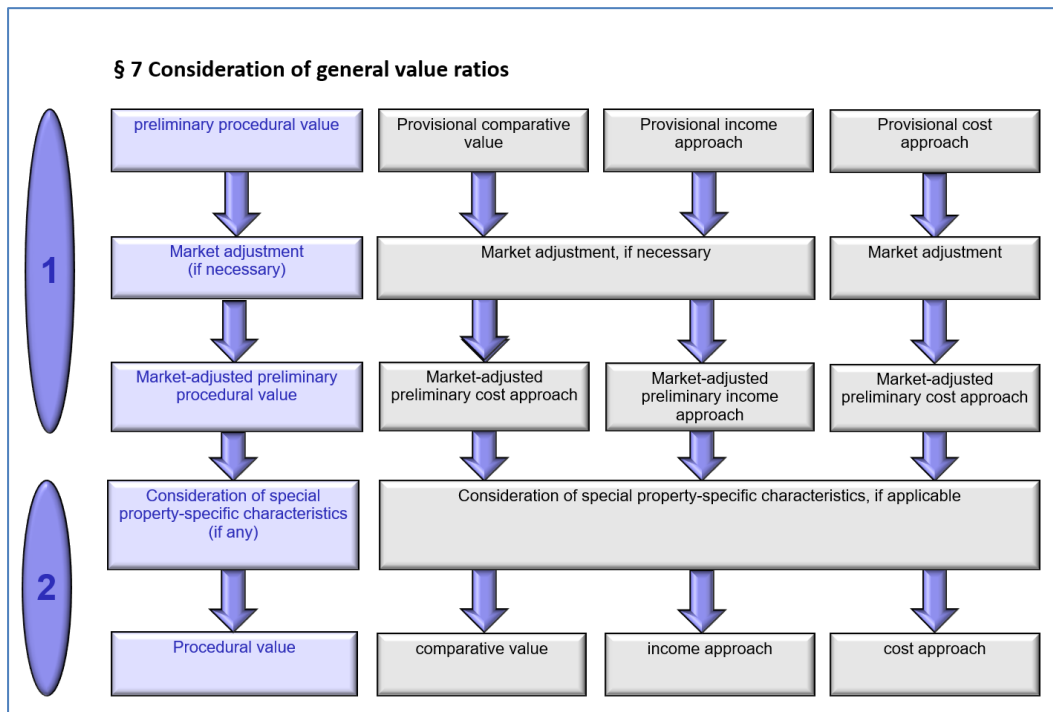


Figure V: Basic structure for the procedure

In the fourth part, the determination of the land value and the property-related rights and encumbrances are dealt with. The fifth part deals in particular with the entry into force.

2.4 Principle of nationwide model conformity

The principle of model conformity must be taken into account when using the comparative, income or real value method.

According to this principle, the provisional market-adjusted procedural value of the respective valuation method used is to be determined in accordance with the underlying model approaches in such a way that as was carried out by the expert committee for property values

when deriving the data required for the valuation within the meaning of the second section of the ImmoWertV.

For example, when deriving the property interest rate, the model total useful life and the model management costs must be taken into account in particular. If the remaining useful life or the management costs of the property to be valued differ from those of the model property, these must be taken into account as special property-specific characteristics.

2.5 Other valuation methods

The valuation methods regulated in the ImmoWertV do not exclude other methods that are not expressly regulated in there. A modification of the regulated procedure is also conceivable. It is essential that the procedure applied in a given case is suitable and that an appropriate result can be determined in terms of the definition of market value. The discounted cash flow method is therefore not excluded. In principle, however, so-called "black box" procedures should be rejected since the approaches used are not comprehensible.

This is an example of how the ImmoWertV allows for a certain degree of freedom for the scope of application of the expert - in contrast to the scope of application of the model operators (local valuation-experts committees).

3. Outlook

At first glance, the ImmoWertV 2021 is a complex amendment that has led to controversial discussions. It was often misunderstood that most changes do not affect the actions of the experts, but in particular the actions of the model operators (valuation-experts committees). The expert also retains the necessary freedom to be able to properly record the property-specific properties.

The ImmoWertA (application notes to the ImmoWertV), which is still being voted on, will contain further concretizations of the regulations made in the ImmoWertV. It is to be hoped that the voting process will also be accompanied and ultimately supported by the majority of those active in the field of market value assessment.

REFERENCES

- Bodenrichtwertrichtlinie (BRW-RL) vom 11. Januar 2011 (BAnz. Nr. 24 S. 597),
- Ertragswertrichtlinie (EW-RL) vom 15. November 2015 (BAnz. AT 04.12.2015 B4),
- Sachwertrichtlinie (SW-RL) vom 5. September 2012 (BAnz. AT 18.10.2012 B1),

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- Teile der Wertermittlungsrichtlinien 2006 (WertR 2006) vom 1. März 2006 (BAAnz. Nr. 108a, ber. Nr. 121); WertR 2006, Anlagen 1 bis 11 WertR 2006, Anlagen 12 bis 22 WertR 2006
- Vergleichswertrichtlinie (VW-RL) vom 20. März 2014 (BAAnz. AT 11.04.2014 B3),
- Verordnung über die Grundsätze für die Ermittlung der Verkehrswerte von Immobilien und der für die Wertermittlung erforderlichen Daten (Immobilienwertermittlungsverordnung - ImmoWertV) - BR-Drs. 407/21 – Beschluss

BIOGRAPHICAL NOTES

Andreas Jardin studied architecture at the TH in Cologne. Until 2001, he worked as a planning coordinator at HOCHTIEF AG on various major construction sites. Since 2001, he has been responsible for the valuation of buildings at the Regional Finance Office (Oberfinanzdirektion) in Cologne. In 2003, he completed his postgraduate studies in real estate economics at the European Business School (ebs).

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