

Commercial Property - Switzerland

Electorate votes to restrict construction of second homes

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Introduction

In March 2012 the electorate voted in favour (by a narrow majority) of an initiative to restrict the construction of second homes. The clauses which this vote introduced into the Constitution will have a major impact on the property sector, as in communities where at least 20% of housing is already used as second homes, permission will not be granted for the construction of further second homes. Since the adoption of the initiative, a dispute has arisen between politicians, lawyers and lobbyists as to how this clause should be interpreted and implemented.

Secondary residences are often vacant – often referred to as the 'cold beds' problem. Notwithstanding cold beds, the infrastructure of a community is designed for full capacity use, often at considerable public cost and additional environmental burdens. Environmental associations are seeking to halt the trend towards secondary residences. They wish to protect the natural environment and argue that the loss of cultivated land by the construction of further second homes should be terminated. The general trend towards second homes has led to high prices for land and residences in tourist communities, pricing locals out of the housing market.

The newly introduced main clause states that:

"The percentage of secondary residences of the total stock of housing units and of the gross floor area used for residential purposes of a community is limited to 20%."

The adoption of the initiative will directly affect one-fifth of all Swiss communities, where the percentage of secondary residences amounts to more than 20%. For example, in the canton of Grisons, 77% of communities will be directly concerned, causing the adoption of the initiative to be a big issue.

In Valais and Grisons, the most touristic cantons, the percentage of secondary residences amounts to 36% of the total housing stock. However, the percentage of second homes varies considerably between regions; in some areas, the percentage may be as high as 80%.

In order to clarify uncertainties and concretise the Constitution's new article, an official working group was assembled in April 2012. The first draft of the decree for the implementation of the constitutional amendment was published recently and is now progressing through official channels, and therefore is not yet conclusive.

Substantial legal uncertainty

The amendment raises various legal questions. As long as they remain unanswered, it is uncertain how communities and investments in the real estate sector will be legally and commercially affected.

What is a secondary residence?

It is unclear what type of property falls within the definition of 'secondary residence'. The initiative committee characterised the term by the fact that a resident user has no intention of settling in that community long term. Others claim that residences which are rented for a particular number of weeks per year should not fall within the definition, arguing that with such a definition, the point of the initiative – according to which fewer

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beds should remain cold – could be implemented without depriving tourist areas of their economic potential. If this definition prevails, holiday resorts with an abundance of commercially rented holiday flats will likely experience a boom.

Others have demanded that a secondary residence be defined as a 'temporarily inhabited residence'. However, the initiative's political opponents have stated that such a definition would have dramatic economic consequences. They want to define the term as narrowly as possible in order to minimise the practical impact of the constitutional amendment.

To date, the official working group intends to adopt a wide definition of a 'secondary residence' as a house owned by a party which is not domiciled in the community; in other words, the user of the home has no intention of settling within the community.

What happens to pending building licences?

The Constitution's transitional regulations state that building licences granted after January 1 2013 will be legally invalid in communities where the percentage of secondary residences exceeds 20%. However, it is yet unclear whether building licences will be granted until the end of 2012 in communities where the threshold of 20% has already been surpassed or whether the construction cap will apply immediately. The working group debated this issue at length; however, the draft decree remains inconclusive on this matter.

In practice, local authorities will continue to grant building licences without limit until the end of 2012. However, some communities will do so with the explicit reservation of the new regulations at federal level and the express denial of any liability.

A building licence application made in 2012 may be stayed if a formal objection is tabled during the licence application procedure; this has seen a considerable increase in the number of formal objections since the initiative was adopted. Developers may have to pay hefty sums in order to instigate a withdrawal of a formal objection.

Selling existing residences

One of the most important questions is whether an existing primary or secondary residence can still be sold as a secondary residence or whether it must be sold as primary residence if the 20% threshold has been surpassed. The working group affirmed that the constitutional guarantees of the right of ownership and of vested rights dictate that both secondary and primary residences, which were not already expressly designated as such by previous cantonal and communal limitations, can still be sold as a secondary residence even if the threshold has been surpassed. The draft decree states that the amendment will affect only residences built after March 11 2012. However, this issue is still controversial.

Economic consequences

If the initiative is implemented according to the draft decree within communities where the 20% threshold has been exceeded, the value of existing housing (both primary and secondary) is expected to rise, while the value of undeveloped land is expected to decrease. In communities where the threshold has not yet been surpassed, construction activity and the value of undeveloped land is expected to increase.

The picture for the hotel industry is ambiguous. In the past, modernisation of hotels was often cross-financed by the sale of secondary residences. This source of finance will, in most cases, no longer be available. On the other hand, hotels may profit because the trend towards secondary homes which detracts from hotel business will be alleviated. It will likely be permissible to affiliate rented holiday flats to hotels.

Comment

The negative impact of this initiative on the economy and the redistribution of assets in the real estate sector, particularly in the tourist cantons of Valais, Grisons and Ticino, cannot be avoided. It is anticipated that construction in the affected communities will considerably decline and employment will be affected. The more strictly the initiative is implemented, the greater these impacts will be felt.

The amendment to the Constitution will be concretised with a legal decree. The first draft of the decree was released recently; it will likely come into force on January 1 2013 or maybe as early as September 1 2012. However, as the draft will be presented to cantons, political parties and associations for comment, the decree has yet to be finalised. After implementation of the decree, the official working group will prepare the necessary changes to federal acts.

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