YOUR RIGHTS AS A TENANT

Some informations on the rights and duties of tenarts

IHR RECHT ALS MIETER

Wegweiser über das Mietrecht in der Bundesrepublik Deutschland

ENGLISCH

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Some notes on this booklet:

This manual has been worked out by the Arbeiterwohlfahrt e.V. and the Mieterbund e.V.. It is meant to give you some informations on the rights and duties of tenants and landlords. The authors tried to avoid juridical terms in order to present the German law of tenancy as easily understandable as possible.

We hope that the guide-lines contained in this manual are of some use for you and wish you a 'happy lodging' here in Germany.

By the way:

Amendments can be made to the law of tenancy - as to any other law - in the course of time. It may therefore occur that some of the informations given here are out of date when you read them. Please pay attention to this.

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Rent agreements which are limited to a certain period of time:

- Is it possible to prolong the tenancy?

A tenant may house his closest relatives in this flat as long as there is enough room.

The amount of caution money (Kaution) must not exceed a three months' rent. The landlord has to pay interest on it. The caution is restored to the tenant when he moves out, providing that he does not owe his landlord any money.

The tenant should observe the house-rules (Hausordnung). If they include undue regulations, however, the tenant can ignore them.

Chapter Two: The tenant generally cannot be given notice (Kündigungsschutz)

There are, however, certain exceptions which allow the landlord to end the tenancy, for instance:

- if the tenant does not pay the rent,
- if he makes undue noise in the house or does not get along with his neighbours,
- if the landlord needs the dwelling for his personal use.

Chapter Three: Under which conditions can the rent be increased? (Mieterhöhung)

The landlord has the right to raise the rent once a year up to the amount which is locally customary for comparable tenements (ortsübliche Vergleichsmiete).

Moreover, he can raise the rent

- if the running expenses increase.
- after a modernization of the flat.
- if interest-rates rise.

In many cases, an increase in rent is excluded by the provisions of the lease.

Chapter Four: If the rent is too high ...

If the rent is more than 20 per cent above the locally customary level, the tenant generally can reclaim his money.

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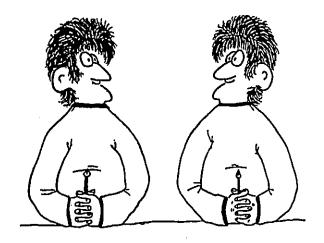
Who can apply for an rental allowance? Where do you have to apply for it?

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Chapter 1: The lease (Mietvertrag)

- A verbal tenancy agreement is as binding as any written contract.



- A lease remains valid even if the house is sold.

A new owner

Example:

When Mr. X rented his flat, he and his landlady made a verbal agreement. The rent was fixed upon DM 250 per month plus heating expenses.

The landlady originally intended to work out a written contract, but it never came to that. When at last the house was sold, the new owner told Mr. X that he had to sign a lease or to move out.

Is that true?

No! The new landlord is bluffing.

- Mr. X does not have to sign the lease. He has made a verbal agreement with his former landlady. That is sufficient. In this case, the regulations of the German law of tenancy apply, which on the whole are favourable to the tenants.
- Even a new owner has to respect an existing agreement be it verbal or stipulated in a contract. If a person buys a house, he simultaneously accepts the tenants and the leases.

Heirs, too, have to stand to existing contracts.

- If Mr. X still wants to sign the new lease, he should check it very carefully. As a rule, a new agreement is actually worse than the old one: other extra expenses are added to the rent or else, the tenant has to bear the costs of cosmetic repairs. And of course, the rent increases.



Which costs must be paid in addition to the rent?

On principle, all costs concerning the tenement are paid by the rent, including those of heating, removal of refuse, chimney sweeping, tax, insurance, caretaker, gardener, escalator, street cleaning.

The tenant must bear only those extra expenses - in addition to the rent - which are expressly stipulatet in the lease.

Example:

Mrs. Y has rented a flat for DM 300 plus a prepayment of DM 50 on the heating expenses.

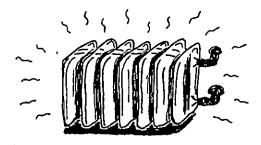
After one year, she receives a letter from the landlord: "Settlement of extra expenses for the year 1982".

Mrs. Y does not understand all those figures, she only realizes that the landlord demands an additional payment of DM 1.200 for 1982, including the expenses of heating, water, removal of refuse and chimney sweeping. Does Mrs. Y have to pay?

No, she does not! Mrs. Y must bear the heating costs because that is stipulated in the lease. Additional payments are not named there; they are, therefore, already paid by the

monthly rent. The landlord cannot change the lease as long as Mrs. Y does not consent.

By the way, the landlord has to account fully for all extra expenses if he intends to charge them on the tenants.



The settlement of heating expenses (Heizkostenabrechnung)

(The following applies to central - heated tenements.)

Usually tenants make monthly advance payments on the heating expenses. Once a year, a settlement of charges is worked out:

- The landlord has to render an account of the heating expenses for the whole building.
- He then has to make out the expenses for every single flat.
- Finally the tenant's advance payments are to be deducted. The landlord has to restore a surplus; a deficit has to be balanced by the tenant.
- The heating expenses are often apportioned among the tenants according to the size of the flats. Sometimes special 'measuring-tubes' are fixed to every heating unit, so that the consumtion of heating energy can be measured separately for each flat. Thus a tenant who has consumed more heating-energy than the others, has to pay more.

As it is quite difficult to apportion the heating expenses among the tenants, landlords very often make mistakes. On the whole, this is done without the intention of deceiving the tenants; many landlords just don't know how to figure out the heating expenses for every single flat correctly. Moreover, expenses are sometimes charged on the tenants, e.g. costs of repairs to the heating system, which actually have to be paid by the landlord himself.

Tenancies which are limited to a certain period of time (befristeter Mietvertrag)

The tenant can prolong the tenancy even if the lease has originally been limited to a certain duration.

Example:

Mrs. J's tenancy agreement contains the following clause: "The tenancy starts on March 1st, 1982 and ends on February 28th, 1984." Mrs. J. was glad that she has found a flat at all, so she signed the lease. Does she really have to move out on February 28th, 1984?

No. Two months before the lease runs out, she just has to inform her landlord (by letter!) that she intends to stay. Thus the tenancy will be continued, whether the landlord agrees or not.

The stipulations of the German law of tenancy relating to the example described above protect the tenants from being given notice. The government wants to prevent that, for instance, tenants have to move out every two years or that landlords demand new leases (including a higher rent etc.). The legal provisions described above do not apply, if the landlord needs the tenement for his own or his relatives purposes (after the lease has run out), or if he intends to make alterations in the building. The landlord has, however, to point out intentions like these already when the lease is signed. If he has done so, the tenant cannot claim that the tenancy be continued.

Who is allowed to live in the tenement?

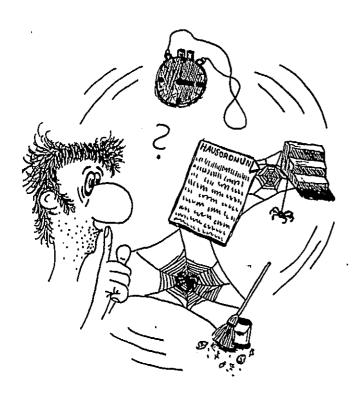
The tenant may house his closest relatives without paying any additional rent, as long as the flat provides enough room. As a standard for the definition of the necessary size of the flat, the corresponding articles of the law of residence (Aufenthaltsrecht) are applicable. If the tenant wants to sublet a room to anyone else, he has to ask his landlord's permission. Under certain circumstances, the landlord must allow a sub-tenancy.

The caution (Kaution)

Often landlords demand caution money before they make a lease. In this case, the following regulations are to be observed:

- A caution must not exceed a three month' rent (excluding prepayments on extra expenses!).
- The landlord has to pay the caution into a separate deposit account.
- When the lease has run out, the caution money (plus interests) is restored to the tenant, provided that he does not owe his landlord any money.

The house-rules (Hausordnung)



The rules of the house generally include regulations like these:

- When does a tenant have to clean stairs, corridors etc.?
- On which days may common rooms like laundry, attic etc. be used?
- Where can bikes, prams etc. be kept?
- During which hours should the tenants especially avoid to make undue noise?

As far as the tenants' living together is concerned, the house-rules are valid and have to be respected. Should they contain, however, undue or petty regulations, the tenant may ignore them.

Example:

"No ladies in the rooms!" or "No visitors after 10 p.m.."

If stipulations like these are included in the house-rules or the lease, the tenant need not to care about them. Even if he has consented by signing the lease, the tenant is allowed to have visitors as often as he wants to.

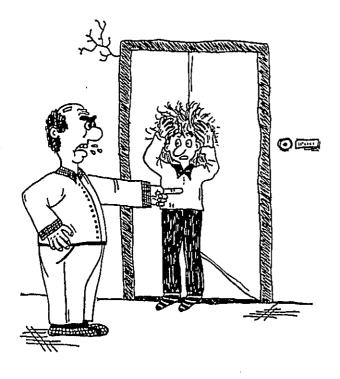
During the midday hours, usually from 1 p.m. to 3 p.m., the tenant and his children are requested to keep as quiet as possible in and in front of the house. No noise should be heard outside the flat, that might disturb the neighbours. Furthermore, the tenant should take care that his children don't play football during the midday hours, especially not exactly under the landlord's window. Nevertheless, children have the same right to use the flat as any other tenant. They are allowed, e.g., to invite their friends or to bring them round to play. If anything else is requested in the house-rules, the tenant need not accept it.

Chapter 2: Tenants are protected by law from being given notice (Kündigung)

The law of tenancy ensures that tenants can live without the fear of being given notice as long as they observe the stipulations of the lease. There are only few exceptions which allow the landlord to give notice:

- The tenant does not pay the rent.

- He is the cause of constant quarrels among the tenants.
- The landlord needs the tenement for his personal use.



Example:

Mrs. M. has forgotten to clean the stairs. According to the rules of the house, she would have to clean them once a week. The landlord reproaches her of not having fulfilled the contract und nullifies the lease with immediate effect. This cancellation of the lease is invalid.

The landlord must not end the tenancy unless the tenant has severely violated the stipulations of the lease or has neglected his duties considerably. Only if the landlord has reason to believe that the tenant will break the contract again, he cannot be expected to continue the tenancy.

Example:

The tenant has not paid the rent for more than two month, or else, he has repeatedly caused severe quarrels among the inhabitants of the house.

You see: as long as a tenant fulfils the tenancy agreement, he can practically not be given notice.

There ist, however, one important exception:

A landlord may end a tenancy if he needs the flat for his personal use (Kündigung wegen Eigenbedarf).

This applies, for instance, if his present dwelling is too small or too far away from his work. At the same time, the flat into which he wants to move must suit his purposes better. The landlord can only require the tenement for himself or for some member of his family. He has to explain by letter (a verbal statement of notice is not valid!), why and for whom he needs the flat.

In case the landlord has given false reasons or has cheated the tenant, the latter can claim damages, e.g. a compensation for the expenses caused by his remove.

If tenements are changed into private property ...

Often tenements in the same building are sold seperately so that each of them belongs to a different owner afterwards. Tenancy agreements which have been made with the former landlord remain binding, to be sure, but generally someone who buys a flat intends to live there. That is why the new owner will probably try to make the tenant move out sooner or later.

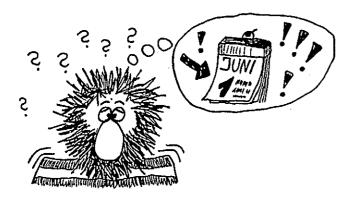
A specific legal stipulation protects the tenant from being given a short-term notice:

If tenements in the same buildings are changed into private property and sold separately, the buyer must not claim it for his personal use for three years.

Periods of notice (Kündigungsfrist)

Even if the cancellation of a rent agreement is valid, the tenant need not move out immediately. Notice-periods up to one year exist.

The period of notice includes the time from the day the tenant receives notice to the day on which he has to move out at the latest. The landlord must leave the tenant enough time to look for another tenement. The period of notice depends on the duration of the tenancy.



duration of lease		Period of notice
up to 5 years	s -	3 months
more than 5 years	3 -	6 months
more than 8 years	3	9 months
more than 10 years	-	l year

Example:

Tenant M. moved in on April 1st, 1975. On October 31st, 1983, he is given notice by the landlord. Provided this is justified, Mr. M. has to move out by April 1st, 1984: he can demand a nine months' notice because he has occupied the flat for more than eight years. If the landlord gives an earlier date for moving out, the tenant may disregard it.

When may one object to a statement of notice?

Even if the statement of notice is valid, you can object to it if certain conditions are fulfilled. This applies if the tenant finds it extremely hard to move out. He then can request the landlord to extend the tenancy for a certain period or permanently. But these are only rare exceptions.



Example:

The tenant is already held out a prospect of a flat but it will only be ready for occupation after six months. In this case you can request the landlord to extend the lease for half a year.

Or: The tenant has made great expenses on the flat, which have not been paid back to him until the day he moves out. If the tenant had reasons for assuming that he might keep the flat for a longer period, he has the right to object to the statement of notice. If the landlord wants to avoid this, he has to restore the expenses to the tenant.

Separate flats (Einliegerwohnung)

Some tenancies can be ended at short notice. This applies especially when landlord and tenant live under the same roof. So be careful when you rent a separate flat; you may be given a statement of notice without any further explanation. The only way to avoid a short-termed notice is fixing the duration of the tenancy in the lease (see Chapter 1). There may arise difficulties, however, if the tenants wants to move out before the expiry of the contract.

Attention:

The period of notice will be extended by three months (see chapter 2, page 10).

If the landlord lets separate rooms within his own flat, he can give a statement of notice at any time. He does not necessarily have to need the rooms for his own purposes.



Chapter 3: The increase in rent (Mieterhöhung)

The legal provisions relating to rent increases determine under which conditions landlords are allowed to raise the rent. Any deviation from these regulations is illegal and tenants need not accept it.

Example:

Landlord R. sends Mr. M. a letter:

"From beginning of the following month the rent will be increased by DM 50. You certainly know that everything hasbecome more expensive these days.

With kind regards, M."

Such an increase in rent is not valid! The tenant need not care about it and may simply continue to pay the former amount.

When can the rent be increased?

- 1. The landlord can raise the rent every twelve months up to the standard local level.
- 2. Additionally, the landlord can raise the rent if the running costs or the interest rates have increased.

Standard local rent (ortsübliche Vergleichsmiete)

If the landlord wants to adjust the rent to the locally customary level, he has to account fully for the new price, which he intends to claim (by letter!): he has to prove that the new rent is usually paid (in that particular town) for a comparable flat in comparable surroundings. The landlord can do this by referring to the representative list of rents (Mietspiegel) or to three comparable tenements which are let at the same price. The landlord can also add an expert opinion.

Representative list of rents (Mietspiegel)

The representative list of rents is an index which has been worked out in co-operation of house owners and landlords. It is meant to give a survey of the prices which are usually paid for flats in comparable areas.

Attention: Landlords often demand a rent which is too high. The tenant should inquire the actual standard local rent at the tenant's association or the housing office.

Graduated rent (Staffelmiete)

Since January 1st, 1983, landlords are allowed to fix in the lease that the rent will be increased annually by a certain amount (Staffelmiete). It is impossible, however, to insert such a clause into an existing contract unless the tenants agrees to this change resp. extension.

Extra expenses or running costs (Nebenkosten/Betriebskosten)

In case extra expenses or running costs increase, the landlord can only raise the rent if such costs are included in it. As far as they have to be paid in addition to the rent, the landlord has the right to increase the advance payments. This is only possible when bills make evident that the prepayments have not been sufficient.

Modernization

After a modernization of the tenement, the landlord can demand ll per cent in addition to the annual rent.



Attention:

The tenant does not have to accept all kinds of modernizations. The landlord isn't entitled, e.g. to change an ordinary flat into a luxury one if the tenant would not be able to pay the rent afterwards.

The landlord is not allowed to pass on all costs arising from the tenement. Expenses which have been made for inevitable or overdue repairs cannot be charged on the tenants!

Rent increase after a raise in interest-rates

If the interest rates for the loans which have been used to build the house are raised, the landlord can apportion the higher interests among the tenants.

Attention:

This regulation has often been misused. You should keep the following in mind:

- The landlord has to prove additional financial obligations on his part.
- He has to distribute the additional costs justly among the tenants. (his own household included, if he lives in the same building)
- A person who buys a house and therefore runs into high debts (change of landlord) must not charge these expenses on the tenants even if the interest rates for these debts increase.

Increases in rent can be excluded by the contract

If you agree to a time-limited lease (e.g. limited to a duration of 5 years), you are generally protected from an increase in rent during this period unless the contract includes no provision to the contrary.

Chapter 4: Unjustified increases in rent

If the landlord wants to increase the rent during a running tenancy, he can only demand the standard local rent.

If landlords work out a new contract, the rent must not exceed the standard local rent by more than 20 per cent.

Example:

In Heidelberg, an older style flat in a house on a railway embankment - with a bath, only heated by an oven, of 55 m²-is let at DM 450 plus extra expenses. In other words, the rent is DM 8,18 per square metre. The standard local rent in Heidelberg for comparable flats in such areas is, however, DM 5,65 per square metre, according to the representative list of rents. The rent demanded thus exceeds the locally customary level by DM 2,53, i.e. by almost 45 per cent.

If the landlord demands such a high rent, he is contavening the regulations of the German punitive code.

Above all, the tenant can reclaim the amount which exceeds the standard local rent. According to the given example, he can demand DM 139,15 (55 \times 2,53) for each month, for which he has paid too much.

Attention:

The landlord does not have to pay a penalty if the rent has only been fixed on such a high level to coyer the costs arising from the tenement.

Chapter 5: Repairs / beautification repairs

The landlord has to carry all costs for the tenement - this is one of the reasons for which he is paid the rent. If something different is stipulatet in the contract, this is null

and void (even if the tenant has signed it). If the landlord has not carried out necessary repairs, the tenant can protest against this.



Example:

In tenant M.'s flat the gas-oven is out of order. Mr. M. hasn't got warm water for a week, now. What can he do?

- 1. The tenant can withhold part of the rent, e.g. 5 per cent, namely until the day the oven is repaired. This is an adequate way to prevent a landlord from taking the rent without spending money on the maintenance of a building.
- 2. The tenant himself can order a mechanic and withhold the expenses from the next rent to pay.

Attention:

The landlord should be informed first and be requested to remove the damage within a settled space of time. Only after this term has expired, the tenant is allowed to order a mechanic and withhold the expenses from the next rent to pay. If you have the damage repaired without giving the landlord time for repairing it as he sees fit, you have to bear the expenses yourself.

Beautification repairs (Schönheitsreparaturen)

Landlords can only charge beautification repairs (painting and papering of the rooms) and minor repairs (expenses up to DM 50) on the tenants.

Attention:

The tenant has to pay only for those beautification repairs, which he has rendered necessary himself. Thus a renovation at both moving in and moving out is not necessary! This applies, too, when a flat has been renovated only a short time before your moving out. Any other regulation in the contract is not binding.

Chapter 6: Council subsidized flats (Sozialwohnungen)

What are council subsidized flats?

The government offers cheap loans to those who intend to build tenement houses. In return, the owner has to let the tenements for a rent which is not higher than is necessary to cover his costs. Such flats are calles 'Sozialwohnungen' or 'council subsidized flats'.

Consequently, tenements which have been at low costs 20 years ago, are let at a low rent. New council subsidized houses, which were built only a few years ago, often are very expensive, so that sometimes terants have to pay more than for flats which are not council subsidized.

Who is allowed to move in?

The flats are let to families with a low income. The applicant can get a corresponding statement at the municipality (Wohnberechtigungsschein). To decide whether an aplicant may rent a council subsidized flat, the income of the whole family is taken into consideration. The larger your family is, the higher your gross income may be. The following items have to be deducted from the gross income:

- -Professional expenses (Werbekosten)
- -family allowance ('Kindergeld')
- -sick-benefit as a payment from health insurance or unemployment insurance

- unemployment benefit

Furthermore, there can be deducted:

- (income) tax relief (for employees)

DM 480

- Christmas allowance (Weihnachtsfreibetrag)

DM 600

- at least DM 564 annually, eventually more if you can account for it, e.g. for driving to work with your car DM 0,18 per km can be deducted.

The following schedule shows the margin of income per year which must not be exceeded if you want to rent a council subsidized flat:

Size of the household	Margin of income per year
1 person	21 600, DM
2 persons	31 800, DM
3 persons	38 100, DM
4 persons	44 400, DM

plus 6 300, -- DM for every other person

In certain cases there is also a supplement:

- young couples (not longer than 5 years, either partner isn't older than 40 years) 8 400,-- DM

-severely handicapped persons
50% reduction of earning capability, at least
4 200,-- DM

- extremely handicapped persons 80% reduction of earning capability, at least 9 000.--DM

Old council homes which have been subsidized up to 1965 are to be rented out only to those persons whose income lies 20 % below the above mentioned margins of income. Thus, the cheap flats are meant for those whose income is extremely low.

You can get the "Wohnberechtigungsschein" at the housing office. Attention:

Agents are not allowed to demand a commission when they have worked out a contract for a council-subsidized flat. If one has

paid it nevertheless, one can reclaim the money within a twelve months' time.

Chapter 7: Rental allowance (Wohngeld)

The rental allowance is that part of the rent the government pays through public funds. All citizens who fulfil certain conditions have the right to claim this allowance. The same applies to foreigners.



Where do you get rental allowances?

You have to apply for rental allowances every twelve months. Forms are available at the local government or the municipality (Wohngeldstelle). You have to make statements concerning the flat, your income, how many persons belong to the household etc.. The landlord has to sign these statements.

Attention:

Don't worry if the landlord refuses to sign. In this case, the local authorities ask the landlord to give the necessary informations. The landlord is required by law to answer the questions the official may ask.

If you don't know exactly whether you can claim a rental allowance, just make an application. It is for free.

Chapter 8: The house-agent

House-agents assist in the flat-hunt. But: there are cheaper ways of finding a flat, e.g.:

- -advertisements in the newspapers,
- -building co-operatives you can find in every town. Addresses are available at the municipality.

- Some towns have housing agencies whose services are free of charge.

If you want to consult an agent, you should consider the following:

Agents are only allowed to charge a commission when a contract has been worked out with their assistance. They are not entitled to demand any payment in advance. If the tenant has already paid money, he can reclaim it within a twelfth months' period.

The administrator of a tenement does not get any money either. House agents are not allowed to charge any commission for council-subsidized flats.

They have to inform their clients about the fees in advance. In general, agents claim about a two months, rent as commission.

You better take care of certain associations which promise to find a tenement for you without charging any fees. In many cases however, they promise too much. Actually their help is not for free. You often have to pay high admission fees. Furthermore, they frequently offer expensive flats. There have been cases, where they have simply copied advertisements from newspapers, or else the offered flats had already been given to someone else.

Chapter 9: Where can you ask for advice?



Tenants association

Tenants associations look after the interests of tenants. For a small annual subscription (about DM 40 - to DM 70,-) the tenant can go there any time with any problem. In order that the tenant's associations can render their services that cheaply, one has to accept a membership of at least two or three years.

Tenant's association can, for instance,

- check a rent agreement before the tenant signs it,
- -check whether an increase in rent is justified,
- -check bills of extra expenses,
- -have statements of notice checked.

Registration office (Einwohnermeldeamt)

Everyone who lives in the Federal Republic of Germany must be registered at the competent registration office. If you rent a flat for the first time or move to another town, you need a registration form which is available at the stationer's or the registration office. There you have to hand in the form when it is filled in and when the landlord has signed it.



Attention:

If you move to another town, you have to report the change of address to the registration offices of your former und your new domicile. This has to be done within 7 days.

The report to the registration office does not serve as a substitute for a residence permit. This has to be obtained at the immigration office (Auslanderamt).

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ortsübliche Vergleichsmiete

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Schönheitsreparaturen

Sozialwohnung Vermieter Verwalter

Wohlfahrtsverbände

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require s.th.for perso-

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council subsidized flat

landlord

administrator/caretaker welfare organizations, see p. 25

department of the local social welfare office where you can get a cer-

tificate which allows you to rent a council subsidized flat

department of the local social welfare office where you can apply for

rental allowances

semi-detached house

The advice bureaus of some welfare organizations

There are advice bureaus of the welfare organizations in nearly every town, where foreigners including refugees and persons who are entidled for political asylum can ask for help.

Some of these organizations are:

Arbeiterwohlfahrt e.V.

Caritas

Diakonisches Werk

Deutscher Paritätischer Wohlfahrtsverband

Deutsches Rotes Kreuz (DRK)

Zentrale Wohlfahrtsstelle der Juden

You can find the telephone numbers of these organizations in the telephone directory.

WOHLFAHRTSVERBÄNDE

- DEUTSCHER CARITASVERBAND Karlsstraße 40 7800 Freiburg im Breisgau
- .- DIAKONISCHES WERK DER EVANGELISCHEN KIRCHE IN DEUTSCHLAND Stafflenbergstraße 76 7000 Stuttgart
- DEUTSCHES ROTES KREUZ Friedrich-Ebert-Allee 71 5300 Bonn 1
- DEUTSCHER PARITÄTISCHER WOHLFAHRTSVERBAND Heinrich-Hoffmann-Straße 3 6000 Frankfurt/Main
- ZENTRALE WOHLFAHRTSSTELLE DER JUDEN IN DEUTSCHLAND Hebelstr. 17 6000 Frankfurt/Main
- ARBEITERWOHLFAHRT Bundesverband e.V. Oppelner Str. 130 5300 Bonn 1

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