

Private sale: This is what has to be considered for private sale

A private sale is a normal contract of sale, which is governed by the rules of §§433 ff. of the German Civil Code, i.e. there are no separate legal provisions for a private sale. This means that the warranty regulations also apply to a private seller in principle and he/she must be liable for defects of the purchased item. However, in the case of a private sale, it is possible to completely exclude the warranty as long as the purchased item does not lack a warranted characteristic, such as functionality, or the seller fraudulently conceals a defect, see § 444 BGB.

How can a seller reduce the risk of legal action by buyers after a sale?

1. work on the article description

The rights of the buyer due to a defect are excluded if he is aware of the defect at the time of conclusion of the contract, see § 442 paragraph 1 BGB. The very precise description of the article is of utmost importance. And this means in particular to point out in writing everything that a buyer could possibly complain about the sold item later. Let the buyer countersign the knowledge of the very specific defects, possibly even in the sales contract. By definition, a defect is any deviation from the usual or agreed quality. If the buyer has demonstrably already known of a defect at the time of purchase, then he can compensate for this by paying a reasonable price and is thus later excluded legally and fairly.

2. no assurances or guarantees

Assurances or guarantees give the buyer rights beyond the legal warranty. Only give such assurances or guarantees if you are 100 percent sure that no complaints can be derived from them.

3. contractual exclusion of warranty for defects

The warranty claims to which the buyer is entitled cannot be excluded or limited by the company at all, cf. § 475 paragraph 1 BGB. In the case of private sellers, a clause such as - sold as seen under exclusion of any warranty - may just about hold. However, it does not help in cases of fraudulent concealment of defects, i.e. attempted fraud. In order to avoid unpleasant disputes about this variant, the recommendation is to work on the item description instead of questionable exclusions of warranty, and generously allow for a possible cancellation of the purchase from the outset.

Warranty claims at purchase

When a consumer (see §13 BGB) purchases an item for sale, he must all too often find that the purchased item is defective (see §434 BGB on material defects). If the seller and the buyer are in dispute about whether the purchased item is defective, an expert must clarify this question if necessary. A judicial procedure for the preservation of evidence can be carried out for this purpose.

If the defect is established, the buyer has several rights to choose from (§437 BGB):

1. the buyer can choose subsequent performance. Subsequent delivery of another purchased item can of course only be requested in the case of a series product.
2. the buyer can withdraw from the purchase contract. Only in exceptional cases he can do so without setting a deadline for the removal of defects and threat of withdrawal. He can then return the defective item in return for a refund of the purchase price. However, he must pay for any use of the goods, e.g. kilometres driven.
3. the buyer may reduce the purchase price. He keeps his purchase despite his defect, only demands the difference to its true value without defect.
4. furthermore and/or additionally, the buyer may demand compensation for damages or Reimbursement of futile expenses against proof in each case.

If a defect appears in the sale of a so-called consumer good within the first 6 months after delivery, it is generally assumed that the defect was already present at the time of purchase; the seller must prove the contrary, §476 BGB. The warranty period for the sale of movable goods is 2 years from receipt from the seller to the end of the calendar year after next. By the way, the service of the mentioned request for preservation of evidence by court inhibits the course of the limitation period.

§ 438 BGB: What the law says about the warranty period

§ 438 BGB (German Civil Code) regulates the statute of limitations for claims for defects, i.e. the claims that arise when a purchased item is defective. These are the so-called warranty periods, i.e. the limitation periods for liability for material defects.

How long is the warranty period?

The time limit is two years, five years for buildings and 30 years in special cases, particularly for the purchase of goods. After expiry of the period, the seller may invoke the statute of limitations. In the case of real estate, the period begins with the handover and otherwise with the delivery of the item.

What rights and options does the buyer have in case of a defect?

In the event of a defect, the purchaser may demand the removal of the defect or replacement delivery, reduce the purchase price, withdraw from the purchase contract and demand compensation for damages or expenses. However, these possibilities have different prerequisites in each case. For example, before you decide to withdraw from the contract, you should obtain professional advice.

The period of limitation for warranty claims is not extended by, for example, sending a written reminder to remedy a defect before the period of limitation expires. Legal action is usually required to interrupt the limitation period.

Private sale: When do warranty and guarantee apply?

In the German Civil Code (BGB) § 437 BGB regulates the claims of the buyer against the seller in the case of a defective item. The claim exists for two years after the transfer of the purchased item. Read here what you need to know about the warranty for private purchases.

When can liability be excluded?

According to § 444 BGB, liability between buyer and seller can be excluded. This does not apply, however, if the defect was fraudulently concealed by the seller or a guarantee was assumed. These conditions are to be checked in each individual case. An exclusion of liability also exists if the buyer is aware of the defect.

When do warranty rights not apply?

The buyer of a defective item cannot invoke the warranty rights if he was informed of them by the seller before the conclusion of the contract. It applies before conclusion of the contract between two private individuals to inspect the object of purchase (usually a motor vehicle) and to ask the seller as many questions as possible. The seller should check the object of purchase comprehensively beforehand and include all defects in the purchase contract.

Dealer warranty - Information and legal advice

In a sales contract between a dealer, who is defined as an entrepreneur in § 14 of the German Civil Code (BGB), and a private person according to § 13 BGB, the same warranty rights apply in principle as for any other sales contract according to § 433 ff. BGB.

The essential difference in a sales contract between a trader as seller and a private person, the so-called consumer goods purchase according to § 474 ff. BGB, is that here, in contrast, warranty rights can only be excluded to a very limited extent.

In the case of a normal sales contract, warranty rights can be completely excluded by contract within the limits of § 444 BGB as long as no warranted quality is missing or the seller fraudulently conceals a defect. This possibility of exclusion is only extremely limited in the case of the purchase of consumer goods in accordance with § 475 BGB. For example, a trader may

only limit the warranty period for used goods to one year for a consumer, but may not completely exclude it.

The burden of proof for the existence of a defect at the time of delivery of the object of purchase is also reversed within the first 6 months according to § 476 BGB. This has the consequence that the dealer must prove within the scope of the dealer warranty during the first 6 months that a defect was not already present at the time of delivery of the object of purchase.

For questions regarding the purchase of consumer goods, the lawyers of the German Lawyers' Hotline in the area of civil law are at your disposal. Please have relevant documents ready for further inquiries.

Purchase - Information and legal advice

From a legal point of view, the concept of purchase is to be classified in the area of civil law, more precisely in the area of the so-called law of obligations. To buy something, a so-called sales contract is necessary. This contract of sale consists of two concordant declarations of intent, which are directed at the obligation of one side to hand over the money and the other side to hand over the goods. Legal regulations regarding the purchase contract as well as the procedures of the purchase in general are found in §§ 433 ff. of the German Civil Code (BGB).

The warranty period for defects in the purchased goods is also regulated there.

Unless otherwise stipulated in the contract, the warranty period is 2 years from the date of delivery of the sold item.

If a defect occurs in the sold object, the buyer is entitled to choose between returning the object of purchase against reimbursement of the purchase price or a reduction in price. In the latter case, he shall retain the purchased item and agree with the seller on repayment of part of the purchase price.

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