



RICS professional guidance, Germany

Application of the RICS Valuation - Professional Standards in Germany

1st edition, September 2015



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Published by the Royal Institution of Chartered Surveyors (RICS)

Parliament Square
London
SW1P 3AD
UK
www.rics.org

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Part of the *RICS Valuation – Professional Standards* (the 'Red Book').

Produced by the German RICS Valuation Professional Group.

ISBN 978 1 78321 079 4

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Typeset in Great Britain by Columns Design XML Ltd, Reading, Berks

Acknowledgments

RICS would like to thank the following RICS Deutschland Valuation professional group board members for their contribution to the development of this publication:

Marcus Badmann FRICS

Klaus Dallafina MRICS

Kerstin Dressel MRICS

Dr. Hubert Geppert FRICS

Frank Hemmer FRICS

Christoph Kettel MRICS

Thomas Kral FRICS

Thomas Kübler MRICS

Prof. Dr. Gerrit Leopoldsberger FRICS

Dr. Peter Lindenthal MRICS

Dr. Daniel Piazolo FRICS

Florian Pollmann FRICS

Simon Ritsch FRICS

Katrin Schwemer MRICS and

Roland Wollnik MRICS.

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RICS professional guidance

International standards

Globally recognised high level valuation principles and definitions are now embodied in the International Valuation Standards (IVS) published by the International Valuation Standards Council (IVSC). RICS has long been a supporter of the development of such universal standards, and not only fully embraces them itself, but also proactively supports their adoption by others around the world.

RICS Valuation – Professional Standards 2014, commonly referred to as the Red Book, formally recognises and adopts the IVS by requiring members to follow them. It also complements the IVS by providing detailed guidance and specific requirements concerning their practical implementation.

Member and firm conduct is underpinned through the application of the Rules of Conduct and the Global Professional and Ethical Standards and is assured through a well-established system of regulation. The whole ensures the positioning of RICS members and regulated firms as the leading global providers of IVS-compliant valuations.

RICS guidance notes

This is a guidance note. Where recommendations are made for specific professional tasks, these are intended to represent 'best practice', i.e. recommendations that in the opinion of RICS meet a high standard of professional competence.

Although members are not required to follow the recommendations contained in the guidance note, they should take into account the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this guidance note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It is for each member to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this guidance note, they should do so

only for good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice.

Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In some cases there may be existing national standards which may take precedence over this guidance note. National standards can be defined as professional standards that are either prescribed in law or federal/local legislation, or developed in collaboration with other relevant bodies.

In addition, guidance notes are relevant to professional competence in that each member should be up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

This guidance note is believed to reflect case law and legislation applicable at its date of publication. It is the member's responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document.

Document status defined

RICS produces a range of professional guidance and standards documents. These have been defined in the table below. This document is a guidance note.

Type of document	Definition	Status
Standard		
International standard	An international high-level principle-based standard developed in collaboration with other relevant bodies.	Mandatory
Professional statement		
RICS professional statement	A document that provides members with mandatory requirements or a rule that a member or firm is expected to adhere to. This term encompasses practice statements, Red Book professional standards, global valuation practice statements, regulatory rules, RICS Rules of Conduct and government codes of practice.	Mandatory
Guidance		
RICS code of practice	Document approved by RICS, and endorsed by another professional body/stakeholder, that provides users with recommendations for accepted good practice as followed by conscientious practitioners.	Mandatory or recommended good practice (will be confirmed in the document itself).
RICS guidance note (GN)	Document that provides users with recommendations or approach for accepted good practice as followed by competent and conscientious practitioners.	Recommended best practice. Usual principles apply in cases of negligence if best practice is not followed.
RICS information paper (IP)	Practice-based document that provides users with the latest technical information, knowledge or common findings from regulatory reviews.	Information and/or recommended good practice. Usual principles apply in cases of negligence if technical information is known in the market.

1 Introduction

1.1 RICS Deutschland has published this national guidance for RICS members active in Germany. It is intended to facilitate application of the RICS valuation standards in Germany and aims to demonstrate how the RICS valuation standards can be applied to German market conditions and the German legal system.

Any recommendations made in relation to specific tasks should be understood as 'best practice' recommendations, e.g. recommendations which RICS considers to represent a high level of professional expertise.

This RICS guidance for the German market only applies to assets (or liabilities) in the form of developed and undeveloped land. It does not cover other forms of asset within the scope of the global section of the *RICS Valuation – Professional Standards* (the 'Red Book').

1.2 This guidance note supports RICS members' application of the *RICS Valuation – Professional Standards* (the Red Book) for valuation assignments performed under German law or in a German jurisdiction.

1.3 The Red Book adopts and complies with the current International Valuation Standards (IVS). Both the Red Book and the IVS recognise that the application of these standards may be influenced by relevant national legislation, ordinances, guidance notes and regulations.

1.4 German laws, ordinances, guidance notes and regulations may exceed the requirements laid down in the Red Book and IVS where valuation assignments are performed under German law or in a German jurisdiction.

1.5 In Germany, the standards for valuation are relatively strict by comparison with other countries. Verkehrswert – which is equivalent to market value – is defined by law; and the valuation methods are laid down in the German ordinance on the principles for determination of the market values of property (Real Estate Valuation Regulation – *Immobilienwertermittlungsverordnung (ImmoWertV)* as well as the Regulation on the Determination of the Mortgage Lending Values under § 16 (1) and (2) of the Mortgage Bonds Act (*Pfandbriefgesetz*), *Beleihungswertermittlungsverordnung (BelWertV)* and related directives).

1.6 Unlike the statutory definitions, use of the ordinances and guidance notes is not mandatory for market participants.

1.7 Nonetheless, reports that must be produced on the basis of the German regulations and directives may be prepared in compliance with the Red Book.

1.8 RICS members must ensure that the Red Book is also complied with for valuation assignments performed under German law or in a German jurisdiction. This is stipulated in PS 1 paragraph 4 (Compliance with other valuation standards).

1.9 It is mandatory to comply with the minimum terms of engagement set out in VPS 1 of the Red Book, which adopts IVS 101, but additional detail regarding the scope or the depth of the valuation assignment may be included in a contract. These adjustments are intended to ensure that clients and employers of RICS members receive the highest possible level of service, in accordance with the Red Book and German law.

1.10 Due to the variations in legislation in German-speaking countries, for the sake of clarity it should be pointed out that this guidance note applies to Germany only and does not cover other German-speaking countries or parts of countries. Until such regulations are published for these regions, RICS members in these regions may consult these guidelines if they consider them to be appropriate for their activities.

1.11 The German RICS Valuation Professional Group may publish supplementary guidance if necessary.

1.12 This guidance note is effective from the date of publication.

2 Definitions

Verkehrswert *Verkehrswert* is a basis of value defined in § 194 of the German Building Code (*Baugesetzbuch, BauGB*) as follows:

‘*Verkehrswert* is determined by the price which would be realisable at the time of the valuation through normal business operations in accordance with the legal circumstances and the actual characteristics, other qualities and the location of the property or any other valuation object, irrespective of unusual or personal circumstances.’

While the wording is not the same as the international definition of market value in VPS 4 paragraph 1.2 and IVS Framework paragraph 29, the intention behind it is identical. Thus in practice, the valuation amount to be reported as *Verkehrswert* in accordance with § 194 of BauGB will be the same as that which would be reported in accordance with the IVS definition of market value. It is also the case that market value in accordance with the IVS definition may be reported as the *Verkehrswert*, even though a valuation method may have been used that is not prescribed in the BauGB code.

Members’ attention is drawn to VPS 3 paragraph 2 regarding the need for clarity both in the terms of engagement and in the report as to the valuation standards adopted. Additionally attention is drawn to VPS 3 paragraph 7[e]1.

Beleihungswert (mortgage lending value) *Beleihungswert* (mortgage lending value) is a basis of value which, in accordance with § 16 [2] of the *Pfandbriefgesetz* (Mortgage Bonds Act), may not exceed the value resulting from a cautious valuation of a property’s future saleability, while considering the long-term, sustainable characteristics of the property, normal regional market conditions and the property’s current purpose of use and other possible types of use. This may not include speculative aspects. The mortgage lending value may not exceed a market value (*Verkehrswert*) that has been determined transparently in accordance with a recognised valuation procedure.

The mortgage lending value is defined in line with the provisions of the regulation on the determination of the mortgage lending values of properties in accordance with § 16 paragraphs 1 and 2 of the *Pfandbriefgesetz* [*BeWertV*]. Unlike a market value (*Verkehrswert*) – which is calculated as of a specific date – the mortgage lending value is intended to ensure stability over an extended period (this is normally the lending period). Throughout this period, temporary fluctuations in value and speculative aspects are excluded, so as to guarantee permanent debt servicing capacity for the property and permanent realisation of the collateral securities, without the credit institution suffering any losses of capital. Cautious valuations and safety margins are intended to protect the owners of mortgage bonds against defaults and market fluctuations.

Valuation date, quality date and condition of the property The valuation date and the quality date may differ for certain types of assignment. Pursuant to § 4 [1] *ImmoWertV*, the quality date is the date on which the condition of the property is determined that provides the basis for the valuation. This corresponds to the valuation date, unless the condition of the property as of a different date is key on legal or other grounds.

Members’ attention is drawn to VPS 3 paragraph 7[f] regarding the need for clarity when reporting.

3 German legislation and the application of Red Book

3.1 PS 1 Compliance with standards and practice statements where a written valuation is provided

PS 1 applies to members of RICS and IRRV in Germany. In addition, national regulations are laid down in *ImmoWertV* in combination with the relevant guidance notes and in *BeWertV* (cf. 3.8). However, these regulations are consistent with overall Red Book requirements. The details are covered in the following sections.

3.2 PS 2 Ethics, competency, objectivity and disclosures

3.2.1 PS 2 applies to members of RICS and IRRV in Germany.

3.2.2 In regard to the issues mentioned in PS 2 paragraph 3 (Member qualification), paragraphs 3.1 and 3.3 are particularly relevant in relation to certification.

3.2.3 With regard to fulfilment of the 'duty of care to third parties' (PS 2 paragraph 6), depending on the client, binding statutory or regulatory provisions may apply for written valuations in German jurisdictions in regard to the nature and frequency of reports, the underlying assumptions and also the requirement of their publication. Such regulations must be complied with. The same applies for PS 2 paragraph 7 (Terms of engagement).

3.2.4 In cases of 'disclosures where the public has an interest or upon which third parties may rely' (PS 2 paragraph 8), depending on the client, binding statutory or regulatory provisions may apply for valuations in German jurisdictions. In regard to the change of valuer (PS 2 paragraph 8.3.3), in Germany the requirements are in some cases less stringent than the specified period of seven years.

3.2.5 'Reviewing another valuer's valuation' (PS 2 paragraph 9) may be performed in Germany in compliance with the same requirements.

3.3 VPS 1 Minimum terms of engagement

3.3.1 The minimum terms of engagement indicated in VPS 1 must be considered in connection with section 7 of PS 2 (Terms of engagement). The minimum terms of engagement themselves are in line with IVS 101 (Scope of work). In addition to IVS 101, RICS members must also specify the basis for their remuneration in the minimum terms of engagement.

The minimum terms of engagement are not inconsistent with German statutory regulations. However, in terms of their scope they significantly exceed the contents of many contracts and terms of engagement on the German market.

3.3.2 Under German statutory regulations, the lender is required to commission the mortgage lending valuation.

3.3.3 VPS 1 paragraph 9(e)5 makes reference to 'projected value'. RICS Deutschland does not recommend the provision of projected values, for which there are no applicable jurisdictional or national standards in Germany.

3.4 VPS 2 Inspections and investigations

3.4.1 VPS 2 paragraph 1: As a rule, the valuer personally performs a property inspection. Exceptions are permitted, for instance, in case of the determination of mortgage lending values for small loans or so called 'drive-by', 'desktop' or 'pavement' valuations (i.e. as mentioned in VPS 1, paragraph 9(g)2). Relevant German legislation must be considered in individual cases.

The underlying assumptions for the valuation and the scope of the assignment must be explicitly indicated in a suitable passage of the valuation report.

Furthermore, the contents of VPS 2 paragraph 1 largely match the provisions of *ImmoWertV* and *BeWertV*.

3.4.2 VPS 2 paragraph 2: *ImmoWertV* and *BeWertV* only stipulate requirements for valuations of real estate (developed and undeveloped land).

3.4.3 VPS 2 paragraph 3: This largely matches the provisions of *ImmoWertV* and *BeiWertV*. To avoid any doubt, it is advisable to indicate the inspected and non-inspected areas of the valuation property in the report.

3.4.4 VPS 2 paragraph 4: In line with the definitions of *Verkehrswert* and *Beleihungswert*, all of the characteristics of the property that influence its value must be assessed within the scope of the valuation in terms of their effects on the property's value, and they must be clearly documented in the report.

3.4.5 VPS 2 paragraph 5: In accordance with *ImmoWertV* and *BeiWertV*, the valuation must consider legally permissible types of use. Different assumptions may be made and should be indicated in the scope of the assignment and/or the purpose of use for the report.

3.4.6 VPS 2 paragraph 6: The scope of the inspection may be restricted. As for VPS 2 paragraph 1, this should be explicitly indicated in the valuation. The valuer is responsible for assessing whether he or she is technically capable of producing a report on the basis of the available information.

3.4.7 VPS 2 paragraph 7: In line with the definitions of *Verkehrswert* and *Beleihungswert*, as already indicated in 3.4.4 above, all characteristics of the property that influence its value must be assessed within the scope of the valuation in terms of their effects on the property's value and must be plausibly documented in the report.

3.4.8 VPS 2 paragraph 8: This should be considered in accordance with the comments made regarding VPS 2 paragraph 7.

3.4.9 VPS 2 paragraph 9: As for VPS 2 paragraph 1, the underlying assumptions for the valuation and the scope of the assignment must be explicitly stated in a suitable passage of the valuation report.

3.4.10 VPS 2 paragraph 10: As well as the work documents used for preparation of the valuation report, the valuer is obliged to preserve a complete copy of the report. The regulations applicable for the relevant corporate bodies must be complied with.

3.4.11 VPS 2 paragraph 11: As a rule, the property must be inspected for any valuation. This may where appropriate be waived in case of repeat valuations, but see also the requirements of VPS 2 paragraph 1.

3.4.12 VPS 2 paragraph 12: The comments on VPS 2 paragraph 1 apply.

3.4.13 VPS 2 paragraph 13: The information provided in this paragraph is covered by the definitions of *Verkehrswert* and *Beleihungswert*. This information amounts to value-influencing characteristics of the property.

3.4.14 VPS 2 paragraphs 14 and 15: The comments on VPS 2 paragraph 1 apply.

3.5 VPS 3 Valuation reports

All of the provisions of VPS 3 (Valuation reports) are consistent with the principles of German legislation. The following supplementary regulations apply:

- (a) Until new directives are published – particularly in relation to the income approach – the valuation guidance notes must continue to be used accordingly (where this is compatible with the Real Estate Valuation Regulation). The appendices to the valuation directive (*WertR*) indicate the requirements for a valuation report (valuation of developed/undeveloped land).
- (b) Due to regulatory requirements concerning the *Beleihungswert*, which are more stringent than the requirements laid down in VPS 3 in individual cases, pursuant to § 5 *BeiWertV* comments are required on the following issues:
 - eligibility as collateral
 - realisability as collateral and lettability
 - (scope of the) potential group of purchasers and users.

3.6 VPS 4 Bases of value, assumptions and special assumptions

3.6.1 As well as the bases of value indicated in VPS 4 paragraph 1 (market value, market rent, investment value and fair value according to the IFRS or IVS definition), in Germany the *Beleihungswert* value is recognised as the basis of value for valuation in case of secured lending transactions. A discrepancy in relation to VPGA 2 paragraph 5.1 is expressly pointed out here. The statutory framework for this is laid down in the Mortgage Bonds Act and the Banking Act. (For a definition of *Beleihungswert* and related comments, see section 2 of this guidance note).

Normal valuation practice in Germany for assignments granted by a credit institution is to determine a market value (*Verkehrswert*) and a mortgage lending value (*Beleihungswert*) and to report both of these values in a joint report. This practice is unobjectionable, provided that the market value (*Verkehrswert*) and the mortgage lending value (*Beleihungswert*) are determined separately from one another and the report avoids mixing up these two bases of value. Reports should be structured so that the calculations themselves and the underlying assumptions for the market value (*Verkehrswert*) and the mortgage lending value (*Beleihungswert*) are presented and explained in separate sections of the report.

In accordance with the valuation purpose, the mortgage lending value (*Beleihungswert*) is generally reported free from encumbrances, i.e. excluding any encumbrances

entered in the land register. For assignments whose purpose is the determination of a market value or a mortgage lending value (*Beleihungswert*), for the sake of comparison a market value free from encumbrances – i.e. a market value prior to deduction of the value of encumbrances secured in rem (against the property) – should be reported. The basis of value must in all cases be made explicit, including all assumptions or special assumptions made.

3.6.2 Due to statutory regulations in Germany, for many valuation purposes the value (*Verkehrswert*) must be determined in accordance with § 194 *BauGB*. Where a valuer determines the value in line with § 194 *BauGB*, the basis of value *Verkehrswert* is to be taken as equivalent to the market value in accordance with VPS 4 paragraph 1.2.

Through the German Regulation on the principles for determination of market values (*ImmoWertV*) the state has issued detailed regulations for the determination of market values in accordance with § 194 *BauGB*. These have been supplemented by the guidance notes for individual valuation methods. Since these regulations are not generally binding, valuers may determine market value in accordance with VPS 4 paragraph 1.2 and also report this as a market value in accordance with § 194 *BauGB*, without full application of the provisions of *ImmoWertV*. In particular, market value may be derived from methods other than the valuation methods indicated in *ImmoWertV*.

Nonetheless, in Germany *ImmoWertV* covers almost all aspects of the determination of market values under § 194 *BauGB*. In a large number of rulings, German case law has also recognised the general principles laid down in *ImmoWertV* as binding for the determination of market values in accordance with § 194 *BauGB*.

Where the preparation of a market value report is commissioned in a German jurisdiction, both the principles of the assignment and the valuation report should clarify whether this valuation has been produced in line with the principles and rules of procedure specified in *ImmoWertV*.

3.6.3 The basis of value for the market rent (VPS 4 paragraph 1.3) corresponds to the rent that is realisable in case of new letting of the leasing property, subject to appropriate terms in the tenancy agreement. This differs from the local reference rent in accordance with § 558(2) of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*), which is determined on the basis of new agreements and past rent adjustments and, by law, has a critical impact on residential rent increases. Where valuers are commissioned with the preparation of rent value reports to determine the local reference rent, the report should expressly refer to the fact that the basis of value differs from the market rent.

3.6.4 In regard to the further bases of value outlined in VPS 4 paragraphs 1.4 and 1.5 – the investment value and the fair value as defined by the IFRS or the IVS – no specific issues result from German legislation.

3.6.5 All of the issues covered in VPS 4 paragraph 2 (Assumptions) and VPS 4 paragraph 3 (Special assumptions) apply for valuations in German jurisdictions. Accordingly, all assumptions and special assumptions that are relevant for the valuation must be agreed with the client, included in the terms of engagement and fully set out in the valuation report.

As a rule, German valuation practice does not include the underlying valuation assumptions in a separate chapter of the valuation report. Instead, they are presented and explained in the description, with the subject of the valuation assessed in the appropriate context. For example, the description of the building will note the assumption that a building permit has been issued for a property to be valued, while the assumption of leasing on normal contractual terms will be covered in the chapter on the leasing situation.

Where a special assumption has been adopted for the valuation, it should be clearly stated.



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RICS promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.

We accredit 118,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers valuation and commercial property practice; property finance and investment; project management, planning & development; quantity surveying as well as facilities management.

From environmental assessments to real estate transactions, if our members are involved the same professional standards and ethics apply.

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United Kingdom RICS HQ

Parliament Square, London
SW1P 3AD United Kingdom

t +44 (0)24 7686 8555
f +44 (0)20 7334 3811
contactrics@rics.org

Media enquiries

pressoffice@rics.org

Africa

PO Box 3400,
Witkoppen 2068,
South Africa

t +27 11 467 2857
f +27 86 514 0655
ricsafrica@rics.org

North Asia

3707 Hopewell Centre,
183 Queen's Road East
Wanchai, Hong Kong

t +852 2537 7117
f +852 2537 2756
ricsasia@rics.org

Ireland

38 Merrion Square, Dublin 2,
Ireland

t +353 1 644 5500
f +353 1 661 1797
ricsireland@rics.org

Americas

One Grand Central Place,
60 East 42nd Street, Suite 2810,
New York 10165 – 2811, USA

t +1 212 847 7400
f +1 212 847 7401
ricsamericas@rics.org

ASEAN

10 Anson Road,
#06-22 International Plaza,
Singapore 079903

t +65 6635 4242
f +65 6635 4244
ricssingapore@rics.org

Europe

[excluding UK and Ireland]

Rue Ducale 67,
1000 Brussels,
Belgium

t +32 2 733 10 19
f +32 2 742 97 48
ricseurope@rics.org

South America

Rua Maranhão, 584 – cj 104,
São Paulo – SP, Brasil

t +55 11 2925 0068
ricsbrasil@rics.org

Japan

Level 14 Hibiya Central Building,
1-2-9 Nishi Shimbashi Minato-Ku,
Tokyo 105-0003, Japan

t +81 3 5532 8813
f +81 3 5532 8814
ricsjapan@rics.org

Middle East

Office G14, Block 3,
Knowledge Village,
Dubai, United Arab Emirates

t +971 4 446 2808
f +971 4 427 2498
ricsmenea@rics.org

Oceania

Suite 1, Level 9,
1 Castlereagh Street,
Sydney NSW 2000, Australia

t +61 2 9216 2333
f +61 2 9232 5591
info@rics.org

South Asia

48 & 49 Centrum Plaza,
Sector Road, Sector 53,
Gurgaon – 122002, India

t +91 124 459 5400
f +91 124 459 5402
ricsindia@rics.org