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Entries (specifically: registrations (*Einverleibungen*) and prenotations (*Vormerkungen*)) in the land register can only be made based on *documents (Urkunden)* (§ 26 para 1 Austrian Land Register Act (*Grundbuchsgesetz, GBG*)). Such documents must, if the acquisition or change of a real right (e.g., ownership (*Eigentum*)) is to be registered, contain a valid legal basis (§ 26 para 2 GBG). Typically, such a legal basis is a purchase (*Kauf*), an exchange (*Tausch*), or a donation (*Schenkung*). Beyond these common legal grounds, other reasons are conceivable, on the basis of which a new owner of a property can be entered in the land register.

Initial Situation

A decision by the Austrian Supreme Court (*OGH*)ⁱ dealt with a case in the land register concerning the transfer of property shares (*Liegenschaftsanteilen*) between divorced spouses. The applicants, two divorced partners, sought to rewrite the property rights (*Eigentumsrecht*) for certain property shares in the land register. After the marriage was dissolved in 2021 and the division of assets (*Vermögensaufteilung*) was arranged through a court settlement (*gerichtlichen Vergleich*), the parties amended this agreement in 2023. This amendment proposed that instead of the original transfer of shares from the first applicant to the second applicant, now the shares of the second applicant would be transferred to the first applicant.

The court of first instance (*Erstgericht*) dismissed the application, stating that a retroactive amendment (*rückwirkende Abänderung*) of the divorce settlement (*Scheidungsfolgenvergleich*) was not possible. The appellate court (*Rekursgericht*) confirmed this decision, explaining that a valid legal basis was required for the transfer of the shares, which was missing in this case.

Supreme Court

The OGH, on the other hand, upheld the revision appeal (*Revisionsrekurs*) of the applicants. It clarified that the substantive legal agreement (*materiell-rechtliche Einigung*) on the division of marital assets (*ehelichen Gebrauchsvermögens*) and savings (*und der ehelichen Ersparnisse*) constitutes a valid legal basis, even if the original agreement is later amended. The OGH emphasized that the parties have the freedom to deviate consensually from the arrangements made in a divorce settlement. Therefore, the OGH decided to amend the decisions of the lower courts and grant the applicants' request. In summary, the decision clarifies that a consensual amendment of a divorce settlement is permissible and can serve as a valid legal basis for the transfer of property shares within the division of marital assets and savings.



Sabadello Legal specializes in legal consulting for real estate companies. We accompany our clients in all transactions up to the execution in the land register. Our real estate law team has extensive experience in land register matters (*Grundbuchsangelegenheiten*), especially in complex projects and the implementation of division plans (*Teilungsplänen*).

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