Legal information – newly built cooperative housing

The role of the real estate agent
The task of an estate agent is to act as an impartial intermediary, looking after the interests of both parties. This task is to be conducted conscientiously and in accordance with good estate agent practice, and always pursuant to fastighetsmäklarlagen which is a consumer protection law. All Fastighetsbyrån real estate agents are registered with the Swedish national regulator, Fastighetsmäklarinspektionen (FMI).
The role of the estate agent is to facilitate the transfer of ownership of the residence between the cooperative housing association and the buyer. The cooperative housing association is the party with which the buyer enters into a binding agreement and is the buyer's counterpart in the transaction. The contractor is normally the party that initiates a project and then performs the construction, either individually or via what is known as a "sister company". In many cases, the contractor also establishes the cooperative housing association that is subsequently to sell the cooperative apartments. Fundamentally, it is not uncommon for the same natural person to represent both the contractor and the cooperative housing association. It is, however, important to understand that the cooperative housing association and the contractor are two separate legal entities, with different rights and obligations.

Cooperation agreement and commission agreement
The local Fastighetsbyrån office enters into a cooperation agreement with the contractor who initiated the project. The contractor undertakes to perform construction of the apartments/property and to establish the cooperative housing association. Once the cooperative housing association has been founded, the association becomes a party to the agreement, replacing the contractor.
At a later stage, the cooperative housing association enters into a commission agreement with the responsible real estate agent. There must be a designated estate agent for each residence when marketing of the project is initiated.

Remuneration of the real estate agent
The client and the real estate agent agree on the remuneration payable to the agent. In the absence of any separate agreement to the contrary, real estate agents are not entitled to remuneration over and above the agreed commission. The right to commission is normally fulfilled when the buyer designated by the real estate agent enters into an agreement with the cooperative housing association.

Description of the property
According to fastighetsmäklarlagen, the agent is to provide a prospective buyer with a written description of the apartment/property. Pursuant to the law, this description must contain certain mandatory information, principally based on information from the vendor. It is important that the vendor highlight any errors or defects, as the description of the property will form part of the basis on which the buyer's decision to purchase the property is based. The vendor is normally responsible for the information included in the description of the apartment/property. However, if the agent suspects that any information is incorrect, he is obliged to check it and then make the necessary correction. It is essential that the description of the apartment/property and any other marketing accurately present the project and the newly built apartment.

Vendor's disclosure obligation
The vendor has a responsibility to provide information about any circumstances or defects which the vendor is aware of and should understand to be of significance to a buyer. A prerequisite for such responsibility is that there be a significant defect, i.e. something that the buyer should reasonably expect to have been informed about, and that the vendor's failure to disclose it to the buyer may be assumed to have affected the purchase.

Buyer's obligation to investigate
Bostadsrättslagen regulates the relationship between the cooperative housing association and the buyer. For example, the association is responsible for ensuring that the apartment/property is suitable for the intended purpose on take-over, while the buyer is responsible for paying the agreed price.
When purchasing a newly constructed apartment/property it is difficult, in practice, to examine the actual property before the purchase, as construction has often not been completed when a binding agreement is signed. With that said, the buyer is obliged to examine circumstances that may otherwise affect the apartment/property, such as planned construction projects in the area and the financial status of the cooperative housing association.
Prior to take-over, an independent surveyor performs an inspection of the property to verify the work executed, i.e. a final inspection. During this final inspection, the surveyor checks that the construction ordered by the cooperative housing association has been professionally executed by the contractor commissioned. The final inspection does not include checks of any options requested by the buyer. In some cases, the cooperative housing association may invite the buyer to be present during the final inspection. Two years after an approved final inspection, it is common to have a guarantee inspection performed by an independent surveyor. The purpose of this guarantee inspection is to check whether any defects have appeared during the period between the final and guarantee inspections.

Who is responsible for defects?
Fundamentally, the apartment/property is to match what was agreed between the parties. It is therefore important that the buyer review all the documents provided in connection with the signing of a binding agreement. According to bostadsrättslagen, on the day of access, the apartment must be in the condition stipulated in the contract, and in the absence of any agreement to the contrary, it must be fully usable for the intended purpose. The buyer is otherwise entitled to have any non-conformances rectified at the expense of the cooperative housing association, unless the Board has already taken care of this, having been requested to do so. In the event that any non-conformances cannot be rectified without delay, or if the Board fails to take remedial action having been requested to do so, the buyer is entitled to terminate the agreement and vacate the apartment if the non-conformance(s) is/are significant.

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Given that apartment/property will not have been fully constructed when any binding agreement was signed, the apartment and any other vacant space will not have been subject to inspection checks. This means that there may be some deviations between the areas stated in the preliminary agreement/tenancy agreement and the areas actually built.
The real estate agent is the intermediary between vendor and buyer. The responsibility for any non-conformances in a newly built apartment/property generally rests with the vendor rather than the agent. The estate agent has no "obligation to investigate" in the generally accepted sense. In contrast, the agent is obliged to inform the buyer of anything the agent may have observed, is otherwise aware of or, given the circumstances, has particular grounds to suspect.

Complaints against the vendor

If the buyer wishes to claim that the property is defective, the buyer must file a complaint with the cooperative housing association. The complaint must be submitted within a reasonable time after the buyer noticed, or should have noticed, the defect. If the buyer fails to submit a complaint in time, the right to claim compensation from the vendor will normally be lost. If the cooperative housing association believes that legally, the fault is attributable to the contractor, the association may file its own claim against the contractor.

The finances of the cooperative housing association

It is important that the buyer of a newly built cooperative residence study the cost estimate (in the case of förhandsavtal) and the registered financial plan in order to form an opinion about the future finances of the cooperative housing association. It is likewise important to be aware that the cost estimate and the financial plan are based on assumptions, and that deviations may occur when the residence has been completed.

Making an offer

In the event of a new construction, it is common for no bidding to take place and for the newly constructed residential properties to be sold at a fixed price. In the same way as on the second-hand market, it is the vendor who decides to whom he wishes to sell. Even though the cooperative residence may be sold at a fixed price, the estate agent is, according to fastighetsmäklarlagen, obliged to prepare a bid list that is to be made available to both vendor and buyer once the commission has been completed.
If there is a bidding process, the following applies. Bids are not binding on the bidder and the vendor is not compelled to sell to the highest bidder. Nor does the vendor have to explain his choice of buyer. The estate agent must maintain a list of all bids, with contact information of the bidders. This is to ensure that the bidding is conducted correctly. The list of bids is only to be made available to the vendor and the buyer, out of consideration for the personal data it contains.

The buyer's finances

It is important for the buyer to have the financial capacity to complete the purchase. In the event that the buyer has a written loan commitment from a bank, it is important to remember that this is often conditional upon no changes taking place in the buyer's circumstances. For example, if the buyer should become unemployed, the bank may withdraw the loan commitment. The bank may likewise state that the loan commitment is conditional on the buyer selling his current residence. It is also common for the loan commitment from the bank to be limited to a fixed time period. Talk to the estate agent about the conditions for financing the purchase.

Types of agreement

The mediation of newly built cooperative residences normally features a number of different stages over a protracted period. This being the case, the parties typically enter into a variety of binding agreements. Förhandsavtal and upplåtelseavtal are governed by bostadsrättslagen and are signed between the cooperative housing association and the person who will be the first owner of a cooperative residence. Cooperative residences that have been mediated/sold can be sold on by the tenant owner via a transfer agreement.

BOKNINGSAVTAL

It is common for the contractor who initiates the residential project to verify the interest of the market in the project, and therefore to offer prospective buyers the opportunity to enter into a bokningsavtal. This does not constitute a legally binding agreement between the parties concerning acquisition of the property, rather, it can be compared to a statement of interest. It is common for the potential buyer to pay a booking fee in connection with signature of the agreement. If the customer chooses not to proceed with the purchase, the reservation fee paid is to be reimbursed, with the deduction of an administration fee, if appropriate. In the event that the contractor decides not to complete the project, the entire fee is repaid.

FÖRHANDSAVTAL

Förhandsavtal are signed between the cooperative housing association and the preliminary signatory (the prospective buyer) and are governed by bostadsrättslagen. Förhandsavtal are legally binding on the parties, which means that the cooperative housing association is obliged to sell the cooperative residence to the preliminary signatory, while the preliminary signatory is obliged to purchase the apartment. It is the cooperative housing association, and not the contractor, who is the preliminary signatory's contractual party. When förhandsavtalet is entered into, there must be a certified cost estimate. The certifiers are appointed by Bolagsverket. A permit from Bolagsverket is required if the cooperative housing association intends to receive payments in advance.
If a reservation fee has been paid previously, this will be included in the payment in advance.
When making an offer to enter into a förhandsavtal, the cooperative housing association must present the preliminary signatory with clear, straightforward information that may be of significance to the customer's decision to acquire the residence. The offer of a förhandsavtal is binding, and the preliminary signatory must be given a period of grace of at least seven days to consider the offer.
According to bostadsrättslagen, förhandsavtal cannot be transferred to anyone other than the preliminary signatory's spouse or cohabiting partner.

UPPLÅTELSEAVTAL

Upplåtelseavtalet is signed between the cooperative housing association and the buyer, and is governed by bostadsrättslagen. For the cooperative housing association to be entitled to sell the apartment, the association must have a certified financial plan registered with Bolagsverket. If the final construction cost is not reported in the financial plan, a permit from Bolagsverket is required for the cooperative housing association to sell the apartments/property. At the time of transfer, the housing association is to be the direct owner of the association's property.

In conjunction with the signing of upplåtelseavtal, the buyer becomes a member of the housing association. Membership entails a number of rights and obligations for the tenant owner. The principal right enjoyed by the member of a cooperative housing association is the right to utilise the apartment/property for an unlimited period as from the date of take-over. The principal obligations are to pay the prevailing fees to the cooperative housing association and to be responsible for the interior care and maintenance of the apartment/property. The cooperative housing association is responsible for the maintenance of the common areas and the exterior of the buildings, as well as the main ducting, pipework and circuitry.

DATE OF ACCESS

On the date of access, the buyer is given the keys and access to the newly built cooperative residence. The date of access must be planned later than the date on which the final inspection was performed and the final notification received. The buyer is to pay the sum outstanding in connection with the access.

Estimation of housing costs

The estate agent is to offer to provide the buyer with a written estimate of the running costs of owning the property. Notify the agent if you wish to receive an estimation of the housing costs.

Complaints to the estate agent

If the vendor or buyer is of the opinion that he has suffered financial injury as a result of the work performed by the estate agent, a complaint must be submitted to the agent. The complaint must be in writing and must be presented within a reasonable period after the vendor or buyer became aware – or should have become aware – of the circumstances on which the complaint is based. Claims against estate agents are usually considered to have expired after ten years.
If the buyer or the vendor wishes to make a claim for damages , this is initially handled by the estate agent's liability insurance company. If the plaintiff is not satisfied with the insurance company's decision, he can appeal the decision to Fastighetsmarknadens reklamationsnämnd (FRN). If the vendor desires a reduction of commission, this is likewise initially investigated at FRN.
Furthermore, Fastighetsmäklarinspektionen , which regulates estate agents in Sweden, may investigate whether the estate agent has failed to fulfil his obligations. FMI does not investigate issues relating to damages or commission. The FMI site presents additional information about the role of the estate agent, estate agency services and related topics.

Additional services

As a customer of Fastighetsbyrån, you are offered tailored solutions featuring products and services from our partners. The estate agent may charge for the provision of these additional services. For arranging advertisement of a apartment/property on Hemnet, for example, an individual estate agent may receive 20–40% of the price of the service purchased, excluding VAT. For arranging an energy declaration performed by Anticimex or OBM, an individual estate agent may receive SEK 320. For additional information about our services and partners, see the Fastighetsbyrån website.

Kundombudsman

Fastighetsbyrån offers our customers a function called Kundombudsman. All customers are welcome to contact this ombudsman for impartial guidance and information on issues regarding the property transaction and the estate agent service. Contact details are published on the Fastighetsbyrån website.

Fastighetsbyrån's processing of personal data

For information about how Fastighetsbyrån processes your personal data, and about which rights you have, see fastighetsbyran.com/Integritetspolicy