

# LEGAL INFORMATION FOR VENDORS AND BUYERS OF COOPERATIVE HOUSING

## THE ESTATE AGENT'S ROLE IN THE TRANSACTION

An estate agent's task is to act as an impartial middleman looking after both the vendor's and the buyer's interests. This task is to be conducted carefully and in accordance with good estate agent practice, and always in accordance with the Estate Agent Act which is a consumer protection law. All estate agents are registered with the national regulator, Fastighetsmäklarinspektionen.

## SERVICE CONTRACT

According to the Estate Agent Act, any intermediary services regarding a dwelling are to be subject to a written contract. This service contract is to set out the conditions for the services and the respective rights and obligations of the client and the estate agent in the transaction.

## THE ESTATE AGENT'S REMUNERATION

The client and the estate agent may agree on what should apply in the case of the agent's compensation. There are no fixed rates, charges etc. This remuneration is usually paid as commission, which is often determined as a certain percentage of the purchase price. An agent is not entitled to charge special payments for his services in addition to the agreed commission, unless a special agreement has been reached on this.

The right to commission usually arises when the property is sold to a buyer designated by the agent during the period of the service contract. Often, the agreement contains a provision for a time-limited exclusive right for the estate agent. This is a safeguard for the agent which gives him this right to commission if the property is sold under exclusive rights even if the agent has not designated the buyer or contributed to the transfer.

## PROPERTY DESCRIPTION

According to the Estate Agent Act, the agent is to provide a prospective buyer with a written description of the property. According to the Act, this description is to contain certain mandatory information, based partly on data from public records and partly on the vendor's information. As a rule, the description also contains certain general information, such as size and disposition of rooms, any fittings, plus photos, drawings, etc. Once the agent produced the description, it is to be presented to the vendor in order to correct any errors. It is important that the vendor points out errors and defects as the property description will be part of the basis on which the buyer's decision to purchase the property is based. It is the vendor who is responsible to the buyer for the information contained in the property description, as later in the transaction, this is considered to be part of the transfer agreement. If however, the agent suspects that any information is incorrect, he must of course check it and then correct the information.

It is important to remember that the estate agent is the intermediary between the buyer and the vendor. The responsibility for any errors in a property transfer handled by an estate agent is therefore usually with the vendor or the buyer, and not with the agent. The estate agent has no obligation to investigate in the ordinary sense. However, the agent has a duty to inform the buyer of what he has observed or

otherwise knows or what, in the particular circumstances, he has reason to suspect about the condition of the property which can be considered to be of importance to a buyer.

## VENDOR'S DISCLOSURE OBLIGATION

The vendor has no general duty to disclose all he knows. Instead the premise is that the vendor cannot be held responsible for errors that are discoverable to the buyer. Nevertheless, in some situations, the vendor still has a responsibility to disclose any defects which he knows and should realise / understand are significant. However, a prerequisite for such responsibility is that there is a significant defect or deviation, i.e. something that the buyer should have been able to expect to be informed about and that the vendor's failure to disclose to the buyer may be assumed to have affected the purchase.

## BUYER'S INVESTIGATORY OBLIGATION

The meaning of the obligation to investigate, which is very far-reaching, is thoroughly and carefully to examine all that is accessible without intervention in the building. For example, the buyer has to move any obscuring furniture and lift carpets and curtains to inspect the surface of the floors and walls. Particular attention should be paid to possible damp damage in the kitchen and bathroom.

## ASSOCIATION'S FINANCES

It is important that a buyer of a cooperative housing dwelling examines the housing association's annual report to form an idea of the association's finances. For example, if an association has large loans or if the maintenance of the property has been neglected, your monthly charge may be affected in future if, for example, the interest rate changes. It is therefore important that you, as a buyer, try to assess how your monthly charge may increase and if you have sufficient income to cope with such a cost increase.

## BIDDING

Bids or offers are not binding on the bidder and the vendor is not obliged to sell to the highest bidder. Nor does the vendor have to explain his choice of buyer. According to the Estate Agent Act, an agent must keep a list of all bids submitted, with contact details of the bidders. This is to ensure that the bidding is conducted in a proper manner. Note that this bid list is only disclosed to the vendor and the buyer with respect to the personal data contained therein. More information about this is available in Fastighetsbyrån's Bidding Policy.

## BUYER'S FINANCES

It is important for both parties that the buyer has the financial capability to complete the purchase. Usually a written loan commitment from a bank is sufficient, but note that this loan commitment is in principle always conditional on nothing changing for the buyer.

For example, if the buyer loses his job, the bank can revoke the loan commitment. Generally, the bank states that the loan commitment is conditional on the buyer selling his current home. Tell the estate agent the conditions you have for your financing of the purchase.

## **WRITTEN TRANSFER AGREEMENT AND REQUIREMENTS FOR MEMBERSHIP OF THE ASSOCIATION**

In order for a purchase of a dwelling to become binding between the parties, certain formal requirements under the Housing Act are required. The most important formal requirement is that the purchase will only become valid when both the vendor and the buyer have signed a transfer agreement. An oral or written undertaking to sell, or a bid to buy, is therefore not binding. Once the formal requirements are met, it is not possible to unilaterally withdraw from the purchase.

If the buyer has not previously been a member of the housing association, the buyer must apply for membership of the association's board. Membership implies both rights and obligations. The primary right is the right of use of the dwelling for an indefinite period, while the main obligations are to pay annual charge (monthly charge) to the association and to be responsible for the interior care and maintenance of the dwelling. The purchase is conditional on the membership of the association being granted to the buyer and thus becomes binding only when this condition is met. If the buyer is refused membership of the association, the buyer is entitled to appeal against the decision to the Housing Tribunal. However, it is possible that the parties agree that the buyer does not have such a right to appeal, as it is sometimes essential to the vendor that the purchase is not delayed by the need for taking a membership refusal to the Housing Tribunal.

## **SPECIAL CONDITIONS IN THE TRANSFER AGREEMENT**

There are certain optional terms of the transfer agreement that can give the parties, or one of them, the right to withdraw from the purchase. A common situation is that the buyer wants to withdraw from the purchase if they are not granted a loan to finance the purchase. Other conditions that may arise are allowing the buyer to have an expert check the property before the purchase becomes binding. For the vendor's part, a condition may be that he is able to buy another property to move into. These so-called "hover" conditions are always time-limited, and the aim is that they usually expire after a relatively short period of time. The question of whether this type of condition is or is not to be included, is part of the negotiation between the vendor and the buyer.

## **WHAT IS INCLUDED IN THE PURCHASE?**

When selling a dwelling, questions sometimes arise about what is included in the purchase, that is, what additional items are included with the dwelling. Examples of such items in a dwelling – and which are therefore included in the purchase – are bathtubs, shower cubicles, toilets, white goods, hat racks, etc.

If these additional items are present at the time of signing the transfer agreement, they are included in the purchase, unless otherwise agreed between the parties. However, it is fully possible for the vendor to exclude items from the purchase if what should be exempted has been discussed in good time before the transfer agreement is signed. If it is unclear whether something should be considered an additional item, it is helpful for the parties to clarify this before signing the transfer agreement.

## **WHO IS RESPONSIBLE FOR DEFECTS?**

The basis of any transfer is that the dwelling is purchased in the same condition as it was on signing the transfer agreement. The actual defects that the vendor can normally be held responsible for

are so-called "significant" defects. This excludes those defects that the buyer did not discover, nor should have discovered or suspected, considering the property's age, price and general condition. However, the vendor is always responsible for his warranties and assurances. In addition, the vendor is responsible for any deterioration in the dwelling's condition because of an accident between signing the transfer agreement and the buyer moving in. However, the vendor cannot be held responsible for normal wear and tear and age-related defects. Following the transfer, there is sometimes a discussion between the buyer and the vendor about who will pay for a defect discovered in the dwelling. If the parties can not agree on the matter, the Sales Act's defect rules provide guidance. First, it has to be determined whether the defect could have been discovered during a careful investigation before the purchase. It can be difficult for the buyer to fulfil his investigatory obligation and therefore it is wise to hire an expert or professional inspector for this. If it is considered that the buyer could not have detected the defect, nor that he could have expected the defect, then it is often considered a sales fault in sales law. Secondly, it is also necessary that the defect is significant, that is, it may be considered that the market value of the dwelling would have been affected if the defect had been known before the purchase. If these two conditions are met, the buyer is entitled to compensation from the vendor.

Thus it is largely the buyer's investigatory obligation which decides whether something can be regarded as a defect for which the vendor is responsible. If the buyer detects signs of defects in, for example, the bathroom, or if it is in such a condition that defects can be suspected, the buyer's investigatory obligation becomes more significant. The information provided by the vendor also affects the extent of the buyer's obligation to investigate. For example, if the vendor tells the buyer that damp has been occasionally observed in the wall by the bathroom, this increases the buyer's duty to investigate.

## **CLAIMS AGAINST THE VENDOR**

The vendor is responsible for significant defects in a property he has sold for two years after the buyer moves in. If the buyer wishes to claim that the property is faulty, the buyer is to make a claim against the vendor. The complaint must be made within a reasonable time after the buyer noticed, or should have noticed, the defect. If the buyer makes a claim too late, the right to claim compensation from the vendor will normally be lost.

## **HOUSING COSTS**

The estate agent should offer to provide the buyer with a written estimate of the running costs of owning the property. Notify the agent if you want a housing costs calculation.

## **CLAIMS AGAINST THE ESTATE AGENT**

If the vendor or buyer considers that the estate agent has made a mistake which has caused a financial loss, the claim is to be made within a reasonable time after the vendor or buyer realised or should have realised the circumstances on which the complaint is based. Claims against estate agents are usually considered to be time-expired after ten years. Complaints and information concerning claims for damages may be submitted, orally or in writing, to the estate agent or to the office whose address is stated in the service contract or the transfer agreement.

If a buyer or vendor wishes to get a claim for damages investigated, this is initially conducted by the estate agent's liability insurance

company after a claim has been made against the agent. If the buyer or vendor is not satisfied with the insurance company's decision, they may request that Fastighetsmarknadens reklamationsnämnd [the Property Market Complaints Board] (FRN) review the insurance company's decision, see frn.se.

If the vendor wants a reduction of commission, this is investigated initially at FRN. Furthermore, Fastighetsmäklarinspektionen [the Estate Agency Inspectorate] (FMI), which regulates estate agents in Sweden, may investigate whether the estate agent has failed to fulfil his obligations. FMI does not investigate damages or commission questions, see [www.fmi.se](http://www.fmi.se). At FMI you can also find more information about the estate agent's role, estate agency services and related topics.

#### **RIGHT OF WITHDRAWAL**

When a client enters into a service contract with an estate agent outside the estate agent's office, the client has the right to withdraw from the contract by informing the estate agent personally of this within 14 days from the date the service contract was signed by both parties (withdrawal period). Standard forms for exercising the right of withdrawal are available on the Konsumentverkets [Consumer Agency's] website, see [www.konsumentverket.se](http://www.konsumentverket.se). However, the right of withdrawal is not applicable if the client explicitly agreed that the service should begin during the withdrawal period and agreed that there was no right of withdrawal when the service was completed. In cases where the client has the right of withdrawal and chooses to invoke this, the client may be obliged to pay compensation to the agent for the part of the service carried out, by means of a proportion of the agreed price. However, this right requires that the client explicitly requested that the service commence during the withdrawal period.

#### **ADDITIONAL SERVICES**

As a customer of Fastighetsbyrån, you are offered tailor-made solutions with products and services from our partners. Listed below are the fees an estate agent may charge for the provision of these additional services.

**Anticimex / OBM Energideklaration** [Dwelling energy declaration] – Individual agents may charge up to SEK 320.

**Advertisement on Hemnet** [A website for buying and selling dwellings] – Individual agents may charge up to SEK 840. All our partners and services are described on [www.fastighetsbyran.se](http://www.fastighetsbyran.se).

#### **CUSTOMER OMBUDSMAN**

If you have any questions about buying or selling a dwelling, consult your estate agent. If you find that after that contact you still want more information and guidance, Fastighetsbyrån also has an office called the Customer Ombudsman.

This office's function is to help Fastighetsbyrån's customers who have in-depth questions about buying or selling a dwelling or have complaints about the agency's services.

#### **FASTIGHETSBYRANS PROCESS OF PERSONAL DATA**

Information about how Fastighetsbyran processes your personal data and what rights you have is available at [utland.fastighetsbyran.se/en/privacy-policy](http://utland.fastighetsbyran.se/en/privacy-policy)