

Legal information for vendors and buyers of houses

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.

The estate agent's role in a transaction concerning a new build house is to facilitate the transfer of the ownership of the property, i.e. the plot, between the vendor and the buyer. It is the vendor with whom the buyer enters a binding agreement and who becomes the buyer's opposite party in the transaction concerning the plot. If the plot is sold before the actual building of the house is undertaken and completed, the buyer and the construction company agree a development contract (ABS18) in conjunction with the purchase contract for the property being signed. This means that the construction company is the buyer's opposite party in the transaction concerning the construction of the actual building.

Service contract

According to the Estate Agent Act, a service contract concerning a property (plot) is to be 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.

When marketing of the project begins, it is to be clear which estate agent is responsible for each plot in the project. The estate agent must be able to provide information to the buyer about who is the responsible housing constructor including information about its contact person.

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.

Description of the property

According to the Estate Agent Act, the agent is to provide a prospective buyer with a written description of the plot. This description is to contain certain mandatory information, based partly on data from public records and partly on the vendor's information. It is important that the vendor points out errors 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 that the description of the property and other marketing material reflects the project, the plot and the new build house accurately, including for example, any current reservations such as planned but not yet constructed parts of the project. A time schedule for takeover (occupancy) is also to be given in the description of the property and other marketing material.

It is important to remember that the estate agent is the intermediary link between the buyer and the vendor. The responsibility for any shortcomings in a plot being transferred is therefore usually with the vendor or with the buyer, and not with the estate agent. The estate agent has no investigatory obligation in its usual meaning. The agent does, however, have a responsibility to inform the buyer of anything the agent has observed or has other knowledge of, or which with regard to the circumstances, the agent has particular reason to suspect, about the condition of the property which can be considered of significance 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 plot. For example, the buyer has to investigate any circumstances which can affect the purchase of the plot, such as further buildings planned in the vicinity, detailed plans, shore-land protection etc.



When purchasing a new build house it is difficult in practice to investigate the actual building before the purchase, as the building is often not yet constructed when binding agreements are signed. When the house is ready and it is time for occupancy, a final inspection must be made, if either party so requests. This final inspection is done after the work has been completed. If several contractors are working in conjunction with each other, then if the parties agree, the final inspection can instead be done when all work has been completed. Within two years after the final inspection, the buyer has the opportunity to call for a warranty inspection when an inspector investigates whether any defects in the construction of the house have arisen.

Who is responsible for defects?

With regard to the plot, the basis is that the plot 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 "hidden" defects. These are 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 purchase, there is sometimes a discussion between the buyer and the vendor about who will pay for a defect discovered in the plot. If the parties cannot agree on the matter, the Land Laws' 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 to fulfil this 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 to be a hidden defect. Secondly, it is also necessary that the defect is of significant character, that is, it may be considered that the market value of the property 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 hidden defect. If the buyer detects signs of defects in the property, 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 there has been occasional minor flooding on the plot, this may increase the buyer's obligation to investigate.

The basis is that the construction company is responsible for defects in the house. What can be regarded as defects in the house are determined in ABS18, General regulations, which is to be part of the development contract.

Claims against the vendor

The vendor is responsible for significant defects in a property he has sold for ten 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. If the buyer considers that there are contractual errors in the construction, the buyer is to make a claim against the construction company.

Bidding

With new build houses, there is often no bidding but the plot and its development are sold at a fixed price. As in the secondhand market, it is the vendor who decides who he is to sell to. Despite the plot being sold at a fixed price, according to the Estate Agent Act the estate agent is responsible for preparing a list of bids which is to be passed to the vendor and the buyer when the transfer is 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 is to prepare a list of all bids which is passed, with contact information, to all the bidders. This is to ensure that the bidding is conducted in the correct 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 Fastighetsbyråns 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, as the buyer, have for financing the purchase.

Types of agreement etc.

WRITTEN PURCHASE AGREEMENT

In order for a purchase of a property to become binding, certain formal requirements under the law are required. The most important formal requirement is that the purchase will only become valid when all the vendors and buyers 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.

SPECIAL CONDITIONS IN THE PURCHASE 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 plot before the purchase becomes binding. For the vendor's part, a condition may be that he is able to buy another dwelling 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.

THE DEVELOPMENT CONTRACT (ABS18)

When an agent deals with a plot with the condition that a house is to be built on the plot, a development contract agreement is often entered into by the construction company and the purchaser. The development contract agreement to be used is ABS18 which was developed by Konsumentverket [the Consumer Agency] and Sveriges Byggindustrier [the Swedish Construction Federation].

ABS18 follows the regulations in the Consumer Services Act and is mandated towards the benefit of the consumer. For example, the construction company (the contractor) has the burden of proof for what is agreed, which means that if it does not appear in the contract, or in circumstances in general, then the consumer's understanding of, say, the price and the payment date, applies. According to ABS18, the buyer is also not responsible for paying anything more than the construction carried out.

Fixed property/accessories

That which is fixed property (the building) and that which belongs to a property (the property's accessories and the building's accessories) are defined in the Land Laws. That which is not fixed property or property and building accessories, is movable property and does not normally form part of the purchase of a house.

Property accessories include buildings, wiring and ducting, fencing, flagpoles, oil tanks etc. and building accessories include bathtubs, walk-in closets, white goods etc. If these items are present at the time of signing the contract, they are included in the purchase, unless otherwise agreed between the parties. However, it is fully possible for the vendor to exclude accessories from the purchase if a discussion has taken place on what should be excluded in good time before the purchase contract is written. If it is uncertain whether something should be considered as an accessory or movable property, it is helpful if the parties clarify this before the purchase contract is written.

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 purchase contract.

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. At FMI you can also find more information about the estate agent's role, estate agency services and related topics.

Right of withdrawal

In those cases where all clients have entered 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 (withdrawal period).

Standard forms for exercising the right of withdrawal are available on the Konsumentverkets [Consumer Agency's] website, see www.konsumentverket.se. However, the right of withdrawal is not applicable if the service is completed, if the client expressly consents to the service to begin to be performed during the withdrawal period and agreed that there is no right of withdrawal when the service has been 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. The estate agent may charge for the provision of these additional services. For example, for Advertising on Hemnet [A website for buying and selling dwellings], individual agents may charge up to SEK 1 160.

Hemnet Supplementary Products – Individual brokers can receive up to 20% of the price of the supplementary product excluding VAT. All our partners and services are described on fastighetsbyran.com.

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 indepth 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 fastighetsbyran.com/en/spain/privacy-policy/