

Legal information for vendors and buyers of new build properties in housing estate projects

The Estate Agent's role in the transaction

The 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 is to facilitate the transfer of the ownership of the dwelling between the cooperative housing association and the buyer. It is the housing association with whom the buyer has a binding agreement and who becomes the buyer's opposite party in the transaction. The construction company is usually the entity which initiates a project and which conducts its construction either on its own or via a sister company. In many cases, the construction company also constitutes the original housing association which will sell the ownership rights. It is not uncommon for the same natural persons to represent both the construction company and the housing association. However, it is important to be aware that the housing association and the construction company are two separate legal persons, with different rights and obligations. When marketing of the project begins, it is to be clear which estate agent is responsible for each dwelling. 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, and who is on the housing association's board and the association's 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 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. It is important that the vendor points out errors or 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 that the description of the property and other marketing material reflects the project and the newly produced dwelling accurately, for example, that any current reservations about the project are included. A description of the 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 newly constructed dwelling being transferred is therefore usually with the vendor, i.e. the housing association, 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 dwelling which can be considered as of significance to a buyer.

Vendor's disclosure obligation

In some situations, the vendor has a responsibility to disclose any circumstances or defects which he knows and should realise / understand are significant to a buyer. 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 Sales Act, which deals with the question of investigatory obligation in the transfer of dwellings, is not suitable for a tenancy grant from a housing association. Instead, the Housing Act regulates what is applicable between a housing association and a buyer, for example, that the association is responsible for the dwelling being fully suitable for the intended objective of occupancy.

When purchasing a newly constructed dwelling it is difficult in practice to investigate the actual property before the purchase, as the housing is often not yet built when binding agreements are signed. However, it is for the buyer to investigate circumstances that may affect the housing, such as further planned building in the vicinity, the housing association's finances, etc.

Before the new owners move in, it is usual for an independent inspector to inspect the construction with the housing association and the contractor in order to check that the contracted work has been carried out, this is the 'final inspection'. At this final inspection, the inspector checks that the construction has been carried out professionally but does not include a check that, for example, specific options are of the right model. The buyer is often given the opportunity to participate in and comment on, for example, options, at the time of inspection before moving in and then at a follow-up inspection after moving in. Two years after approved final inspection, a warranty review is often made. The warranty review will check if any defects have arisen between the final and warranty inspections.

Who is responsible for defects?

The basis of any transfer is that the dwelling is to be of the same form as was agreed between the parties, i.e. what appears in the preliminary agreement / tenancy agreement and its attachments such as a description leaflet, drawings, etc. It is therefore important that the buyer reviews all the documents provided in connection with the signing of a binding agreement. According to the Housing Act, the apartment on the day of occupation must be in a condition according to the contract and unless otherwise agreed, the apartment is to be fully suitable for the intended objective of occupancy. In the event that the buyer does not consider the dwelling to be fully suitable, the buyer is entitled to remedy any shortcomings at the housing association's expense unless the association has done so after being so informed. Otherwise, the buyer has the right to remedy the defect at the expense of the housing association unless the board has done so after reprimand. In the event that the defect cannot be remedied without delay or if the board of the tenants-owner association fails to remedy the defect after being so informed, the buyer may have the right to terminate the agreement and resign from the apartment if the defect is of essential character.

As the dwelling will not have been fully constructed when any binding agreements were signed, the dwelling and any other vacant space, will not have been subject to inspection checks. Minor adjustments may occur in the dwelling during construction. For example, it may be that the elevator shaft is widened or reduced, which may affect the area of the dwelling. This means that there may be a discrepancy between the area specified in the preliminary agreement / tenancy agreement in relation to the completed area.

Association's finances

It is important that a buyer of newly constructed housing examines the registered cost estimates (at the preliminary agreement) and the registered financial plan, in order to form an opinion on the future finances of the housing association. For example, if an association has large loans or if the maintenance of the property has been neglected, the buyer's monthly charge may be affected in future if, for



example, the interest rate changes. It is therefore important that the buyer tries to assess how his monthly charge may increase and if he has sufficient income to cope with such a cost increase. It is important to be aware that cost estimates and the financial plan are based on assumptions and that minor deviations may occur when the dwelling is fully completed.

Bidding

With new construction, there is often no bidding but the newly constructed residential properties are sold at a fixed price. Like a transfer within the usual market (i.e. previously occupied dwellings), it is the vendor, i.e. the housing association which determines to whom the dwellings will be sold. Although the property is sold at a fixed price, according to the Estate Agent Act the estate agent is required to keep a list of the bids which is to be submitted to the seller and the buyer when his services are completed. 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 and situations

GENERAL

In connection with the sales of newly constructed housing, there are different types of agreements. Preliminary agreements and tenancy agreements are governed by the Housing Act and are signed between the housing association and the person who will be the first owner of a dwelling. Ownership rights so granted may be sold on by the tenant owner by a transfer agreement.

RESERVATION AGREEMENT

Expressions of interest / Reservation agreements are signed between the construction company and the buyer and are not legally binding agreements to purchase the property. It is common for the buyer to pay a reservation fee when signing the reservation agreement. If the buyer chooses not to proceed with the purchase, the buyer is entitled to recover the fee paid with any deduction for an administration charge. If the construction company fails to complete the project, the entire fee will be refunded.

PRELIMINARY AGREEMENT

A preliminary agreement is signed between the housing association and the prospective buyer and is governed by the Housing Act. The preliminary agreement is legally binding on the parties, which means that the housing association is obliged to sell the dwelling to the buyer and the buyer is required to purchase the dwelling. It is the housing association, and not the construction company, which is the buyer's opposite party, since it is only the housing association that has the right to assign tenancy. When the preliminary agreement is signed, there must be a cost estimate certified by the Bolagsverket [Companies Registration Office]. If an advance payment is to be made, the housing association must also have permission from the Bolagsverket to receive the advance. If a reservation fee has been paid with a reservation agreement, this fee is included in the advance and is to be deducted.

SPECIAL CONDITIONS IN THE PRELIMINARY AGREEMENT

There are certain optional conditions in the prior agreement that may give the parties, or one of them, the right to withdraw from the purchase. One situation is that the buyer wants to be able to withdraw from the purchase if he is not granted a loan. Other conditions that may arise are that the housing association makes the purchase conditional on the acquisition of a specified sign-up ratio, i.e. that certain number of dwellings will be sold within a certain time, in order for the preliminary agreement to become binding. 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.

TENANCY AGREEMENT

The tenancy agreement is signed between the tenant association and the buyer and is governed by the Housing Act. In order for the housing association to be able to let the dwelling, the association is required to have a registered and certified financial plan. If the final construction cost is not reported in the financial plan, or at a general meeting, permission from Bolagsverket is required for the housing association to grant tenancy in the dwellings. At the time of transfer, the housing association is to be the actual owner of the association's property.

In conjunction with the signing of the tenancy agreement, the buyer becomes a member of the housing association. Membership entails a number of rights and obligations. The primary right is the right of use of the dwelling for an indefinite period. The main obligations are to pay for the share in the association and the tenancy fee (the price of the dwelling), the monthly charge to the housing association and to be responsible for the interior care and maintenance of the dwelling. The housing association is responsible for the maintenance of the common areas and the exterior of the buildings and all the main ducting, pipework and circuitry.

OCCUPATION

Occupation is when the buyer gets the keys to the newly constructed dwelling and will be scheduled for after the date of completion of the final inspection. It is not uncommon for final settlement to be paid some day prior to occupation, which differs from the handling of a normal home sales transfer.

Housing costs

The estate agent should offer to provide you, as 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 his office. 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.

Additional services

As a customer of Fastighetsbyrån, you have access to bespoke solutions featuring products and services from our partners. The estate agent may receive remuneration for brokering additional services. For arranging advertisement of a residence on hemnet.se, for example, an individual estate agent may receive 30–50% 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 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 Fastighetsbyråns 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 fastighetsbyran.com/en/spain/privacy-policy/