

# Legal information for vendors and buyers of cooperative housing

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## The role of the real estate agent in your transaction

The task of an estate agent is to act as an impartial intermediary, looking after the interests of both the vendor and the buyer. This task is to be conducted with care, in accordance with good estate agent practice, and always in accordance with the Swedish Estate Agents Act, which is a piece of legislation intended to protect consumers. All estate agents are registered with the Swedish national regulator, Fastighetsmäklarinspektionen.

## The service contract

Pursuant to the Swedish Estate Agents Act, any intermediary services regarding housing are to be subject to a written contract. This service contract is to stipulate the conditions for the services and the respective rights and obligations of the client and the estate agent in the transaction.

## Remuneration to the estate agent

The client and the estate agent are to agree on what remuneration is to be paid to the agent. There are no fixed rates or the like. The agent's remuneration is usually paid as commission, which is often determined as a certain percentage of the purchase price. Agents are not entitled to charge separately for their services over and above 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 referred by the agent during the period of the service contract. The service contract typically features a provision granting exclusive rights to the estate agent during a given period. This is a safeguard for the agent which grants him/her this entitlement to commission if the property is sold during the "exclusive rights" period, even if the agent has not referred the buyer or participated in the transfer.

## Description of the property

Under the provisions of the Swedish Estate Agents Act, the agent must provide prospective buyers with a written description of the property. The act stipulates that this description must contain certain mandatory information, based in part on data from public records and in part on information supplied by the vendor. As a rule, the description will also contain some general information about aspects such as room size and distribution, household appliances, photos and drawings, etc. Once the broker has prepared the description, the vendor will have the opportunity to check through it and correct any errors or inconsistencies. It is important that the vendor point out any errors and inconsistencies because the property description will form part of the documentation 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 presented in the description of the property, because this will be considered part of the transfer agreement later on in the transaction. If, however, the agent suspects that any information is incorrect, he/she must naturally check it and then make any necessary corrections. 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 therefore usually rests with the vendor or the buyer, and not with the agent. The estate agent has no "obligation to investigate" in the generally

accepted sense. That said, the agent has a duty to inform the buyer of what he/she has observed or otherwise knows or what, in the particular circumstances, he/she has specific 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. When a co-operative apartment is sold "as viewed" the vendor must, however, disclose any significant conditions concerning the apartment. This means that the vendor must disclose any faults or defects of which he/she is aware and which must be assumed to affect the purchase. The vendor must disclose any faults or defects that the vendor should realise/understand to be of significance to a buyer, and about which the buyer can reasonably expect to be informed.

## Buyer's obligation to investigate

The meaning of the obligation to investigate, which is extremely far-reaching, is thoroughly and carefully to examine everything that is accessible in the building without intervention. For example, the buyer is required 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 any evidence of damp damage in the kitchen and bathroom.

The buyer's obligation to investigate covers not only the apartment itself, but also conditions concerning the housing association. The buyer's investigation should therefore include contact with a representative of the association to discuss issues such as major renovations or any planned changes in charges.

## The association's finances

It is important for the buyer of a cooperative residence to examine the housing association's annual report to build up an idea of the association's finances. For instance, if an association has large loans, or if the maintenance of the property has been neglected, this may affect your monthly charge in the future if interest rates change, for example. It is therefore important that you, as a buyer, try to assess how your monthly charge may increase, and check whether you have a sufficient margin to accommodate any such increase in costs.

## Making an offer

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/her choice of buyer. According to the Swedish Estate Agents Act, the agent must establish a list of all bids submitted, with contact details of the bidders. This is to ensure that the bidding process is conducted in a proper manner. Please note that this bid



list is only disclosed to the vendor and the buyer with respect to the personal data contained therein. For additional information about this, see Fastighetsbyrån's Bidding Policy.

### **The buyer's finances**

It is important for both parties that the buyer have the financial capacity to complete the purchase. In most cases, a written loan commitment from a bank is sufficient, but please note that in principle, this loan commitment is always conditional on the buyer's situation remaining exactly the same. If the buyer loses his/her job, for example, the bank can revoke the loan commitment. Otherwise, the bank usually states that the loan commitment is conditional on the buyer selling his current residence. Make sure to tell the estate agent how you are placed with regard to financing the purchase.

### **Written transfer agreement and requirement for membership of the association**

In order for a purchase of a cooperative residence to become binding between the parties, certain formal requirements under the Swedish Cooperative Housing Act have to be fulfilled. 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 withdraw from the purchase unilaterally.

If the buyer has not previously been a member of the housing association, the buyer must apply to the board of the association for membership. Membership implies both rights and obligations. The principal right is the right of use of the apartment for an indefinite period, while the main obligations are to pay an annual charge (monthly charge) to the association and to take responsibility for the interior care and maintenance of the apartment. The purchase is conditional on 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 the decision to the Housing Tribunal. However, there are cases where the parties agree that the buyer is not entitled to appeal, because it is sometimes a significant condition for the vendor that the purchase not be delayed by an appeal against refusal of membership to the Housing Tribunal.

### **Special conditions in the transfer agreement**

Certain optional terms may be included in the transfer agreement that give both parties – or either one of them – the right to withdraw from the purchase. It is relatively common for the buyer to want to be able to withdraw from the purchase if he/she is not granted a loan to finance the transaction. Other conditions that may arise include allowing the buyer to have an expert check the property before the purchase becomes binding. For the vendor's part, the transfer may be made conditional upon him/her being able to buy another property to move into. These "hover" conditions, as they are known, are always limited in time, and they are typically intended to expire after a relatively short period. The question of whether conditions of this type are or are not to be included forms part of the negotiations between the vendor and the buyer.

### **What is included in the purchase?**

When selling a cooperative residence, questions sometimes arise about what is included in the purchase, i.e. what additional items come with the apartment. Examples of additional items in an apartment – which are therefore included in the purchase – include bathtubs, shower cubicles, toilets, domestic appliances and hat racks.

If these additional items are present at the time of signature of the

transfer agreement, they are included in the purchase, in the absence of any agreement to the contrary between the parties. However, it is fully possible for the vendor to exclude additional items from the purchase if the parties discussed the items to be exempted in good time before signing the transfer agreement. If it is unclear whether a given item is to be considered an additional item, it is helpful for the parties to specify this before signing the transfer agreement.

### **Who is responsible for defects?**

The basis of any transfer is that the apartment is purchased in the same condition as it was on signing the transfer agreement, commonly called "as viewed". The actual defects that the vendor can normally be held responsible for are what are known as "significant" defects that the buyer could not have been expected to have discovered, or which the buyer should not have suspected or reasonably expected on the basis of the age, price and general condition of the apartment. If, for example, a defect should arise in any of the domestic appliances in the apartment, this is something the buyer could reasonably have expected, taking into account the age and estimated service life of such appliances. The vendor is, in contrast, always responsible for his warranties and assurances. The vendor is also responsible if the condition of the apartment deteriorates on account of an incident or accident between the signing of the transfer agreement and take-over. In contrast, the vendor cannot be held responsible for normal wear and tear and age-related defects.

Subsequent to the purchase, a discussion may sometimes arise between the buyer and the vendor about who will pay for a defect discovered in the apartment. If the parties cannot agree on the matter, the provisions of the Swedish Purchasing Act concerning faults and defects rules provide guidance. First, it has to be determined whether the defect could have been discovered during a careful investigation prior to the purchase. As it can be difficult for the buyer to fulfil his investigatory obligation, a sensible approach is to hire an expert or professional assessor for the purpose. If it is considered that the buyer could not reasonably have detected the defect, nor that he/she could reasonably have expected the defect, then it is often considered a "defect" as defined in sales law. Second, it is also necessary that the defect be significant, i.e. that it can be assumed that the market value of the apartment would have been affected had the defect had been known prior to the purchase. If these two conditions are met, the buyer is entitled to compensation from the vendor.

It is thus largely the buyer's investigatory obligation that determines whether something can be regarded as a defect for which the vendor is responsible. If the buyer detects signs of defects in the bathroom, for example, or if the bathroom is in such a condition that defects can be suspected, the buyer's investigatory obligation becomes even more significant. The information provided by the vendor also affects the extent of the buyer's obligation to investigate. For example, if the vendor informs the buyer that damp has been occasionally observed in the wall by the bathroom, this increases the buyer's obligation to investigate. When co-operative apartments are sold "as viewed", it can also be considered improper procedure if the vendor has concealed any conditions of significance from the buyer prior to the purchase. It is thus in the interests of the vendor to inform the buyer of any faults or defects – or indications of same – of which the vendor is aware or suspects.

### **Complaints against the vendor**

The vendor is responsible for significant faults and defects in a cooperative apartment he/she has sold for two (2) years after the buyer moves in. If the buyer wishes to claim that the property is

faulty, the buyer must submit a complaint against the vendor. The complaint must be submitted within a reasonable time after the buyer noticed, or should have noticed, the defect. If the buyer submits a complaint too late, the right to claim compensation from the vendor will normally be lost.

### **Calculation of housing costs**

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

### **Complaints 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 associated complaint must be submitted within a reasonable period after the vendor or buyer became aware of – or should have become aware of – the circumstances on which the complaint is based. Complaints against estate agents are usually considered to have 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 have a claim for damages investigated, this will initially be handled by the estate agent's liability insurance company after a complaint has been filed against the agent. If the buyer or vendor is not satisfied with the insurance company's decision, he/she may request that *Fastighetsmarknadens reklamationsnämnd* [the Property Market Complaints Board] (FRN) review the insurance company's decision, see [www.frn.se](http://www.frn.se). If the vendor desires a reduction of commission, this is initially investigated at FRN.

Additionally, *Fastighetsmäklarinspektionen* [the Estate Agency Inspectorate] (FMI) – which regulates estate agents in Sweden – may look into whether the estate agent has failed to fulfil his/her obligations. FMI does not investigate issues relating to damages or commission, see [www.fmi.se](http://www.fmi.se). The FMI site also presents additional information about the role of the estate agent, 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 (right of withdrawal) 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 Konsumentverket [Swedish Consumer Agency] website, see [www.konsumentverket.se](http://www.konsumentverket.se). That said, the right of withdrawal is not applicable if the client explicitly consented to commencement of the service 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 exercise it, the client may be obliged to remunerate the agent for the part of the service that was completed, through payment of an appropriate proportion of the agreed price. However, this right is conditional upon the client having explicitly requested that the service commence during the withdrawal period.

### **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](http://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](http://fastighetsbyran.com).

### **Customer ombudsman**

If you have any questions about buying or selling a residence, consult your estate agent. If you find that, having contacted your agent, you would still like more information and guidance, Fastighetsbyrån operates a department called the Customer Ombudsman. The function of this department is to help Fastighetsbyrån customers who have detailed questions about buying or selling a residence, or who wish to submit complaints about the services provided by the agency.

### **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/](http://fastighetsbyran.com/integritetspolicy/)