

Legal information for apartment buyers

Property description

The agent must provide a description of the residence to the prospective buyer (property description). The property description must include certain mandatory information. The information in the property description is based on information from the tenant owner association, and on information submitted by the seller. As a rule, the property description also includes general information such as the layout, machinery and equipment, images and drawings.

Once the agent has created a property description, the seller is given a copy in order to correct any errors prior to the residence being marketed. The seller is primarily responsible for the information being accurate. However, if the agent has reason to believe that any of the information is incorrect, they must verify the claim. In addition to the property description, the agent must also provide the association's latest annual report and its organisational statutes. If no annual report is available, the association's financial plan must instead be provided.

Bidding

Bids are non-binding. Parties making bids on an apartment are not bound by these bids, not even if the bid is in writing. The seller of the apartment is not bound by any bids. A seller is not obligated to sell to the party who placed the highest bid, nor do they need to justify their choice of buyer.

Under the Swedish Estate Agents Act, the agent must maintain a list of all of the submitted bids, including the bidder's name, contact details, the amount bid and when it was made, as well as any terms and conditions. The list of bidders must be given to both the buyer and the seller once the assignment has been completed, generally meaning the date of access.

The agreement is binding

For a purchase to be valid, certain formalities listed in the Swedish Cooperative Housing Act must be fulfilled. The agreement must be in writing and include information about the apartment that is being transferred and its price. The agreement must be signed by both the seller and the buyer. A transfer agreement in which all of the formalities have been fulfilled is a binding agreement that neither the buyer nor seller can unilaterally withdraw from. This also means that there will be no sale until the formalities of the agreement have been fulfilled and that the party who

signed the agreement can change their mind until such time as both parties have signed the agreement.

Open purchase clause

This is a clause that entitles one of the parties to withdraw from the agreement and must be included in order for the agreement to be valid. Situations that require governing in the form of an open purchase clause include conditions related to loans or the sale for the buyer, the purchase of a new residence for the seller, or inspections.

A final date must always be listed up to which point the open terms and conditions are to remain in effect. The purchase remains "open" until such time as the conditions have been met or the final date has passed. A decision on whether or not to include open terms and conditions is part of the negotiation between the parties.

The seller has full discretion over these matters and is free to choose between a prospective buyer who requires e.g. an inspection clause and another prospective buyer – who does not, regardless of who placed the highest bid.

Immovable and movable property

Since a tenant-owner apartment is movable property, its transfer is governed by the Swedish Sale of Goods Act. However, the Swedish Sale of Goods Act does not govern what is deemed to constitute fixtures of the apartment. In the event of ambiguity concerning what is deemed to be included in a transfer, a comparison is instead made of the rules concerning fixtures that apply to real property.

The Swedish Land Code stipulates that immovable property is land. It also governs what are deemed to be fixtures of the land (such as buildings), and what are deemed to be fixtures of the buildings.

Is the coat-hanger included?

Examples of building fixtures include bathtubs, shower cabin, toilet, washer, drying cabinet, dryer, stove, refrigerator, freezer, closets, TV antenna, satellite dish, alarm system, window bars, hat rack, keys and intercom. These are only deemed to be fixtures if they are actually in place on the date of the agreement. Items that were in place on the day of the viewing are to be included unless otherwise agreed upon. In other words, the seller cannot be forced to add anything that was not in place when the agreement was signed, even if said item would have constituted a fixture if it had been in place when the agreement was signed.

However, the seller and buyer can always jointly decide what is to be included – or not included – in a purchase. In other words, they can contractually agree on property that constitutes fixtures not being included, or that movable property is to be included in the purchase. For example, if the residence has a washing machine, the buyer can expect it to be left in place since it is regarded as a fixture by law. However, if the seller wants to keep the washing machine, they must inform the buyer of this prior to the purchase, and this should also be documented in the agreement. This also applies if, e.g. the buyer does not want to keep the seller's washing machine, in which case it must be included in the agreement. Otherwise, the buyer cannot retroactively demand that the buyer removes the washing machine.

Energy certificate

By law, the seller of the tenant-owner apartment must show prospective buyers a copy of the latest energy certificate for the tenant-owner association's building and provide the buyer with a copy. The seller must also provide information about the building's energy performance when listing the property for sale. If the tenant-owner association's building does not have an energy certificate, neither the seller nor the buyer are obligated to ensure that such a certificate is produced.

Financing the purchase and a housing cost calculation

As a buyer, it is of the utmost importance that your financing is in place prior to a binding agreement being signed. Unless the agreement includes a clause on financing, the purchase cannot be cancelled, even if the buyer has not secured financing by the date of access, and a failure to make a payment may cause the seller to cancel the purchase and to claim damages.

The agent in charge will offer those of you buying a residence a written calculation of housing costs. Please let your agent know if you need help with this.

Liability for issues with the residence

The operating assumption is that the tenant-owner-apartment must correspond with what was contractually agreed upon between the parties and not deviate from what the buyer is entitled to expect from the purchase in regards to the apartment's age, price, condition and use.

Under the standard market agreement, tenant-owner apartments are transferred in their current condition. The buyer is also encouraged to inspect the apartment.

However, both parties are discharged from liability concerning the state of the apartment. In other words, the buyer and seller can contractually agree to a delegation of liability that is different from that which is listed below.

The buyer's inspection obligation

Whether the buyer has been encouraged to inspect the apartment prior to the purchase, or if they nonetheless inspected it, the seller is not liable for any issues that the buyer should have noticed during the inspection. In other words, even in the purchase of tenant-owner apartments, the buyer generally has an inspection obligation. As such, it is important for the buyer to thoroughly inspect the apartment.

The seller cannot be held liable for any issues or damages that the buyer has had the opportunity to detect. A buyer must move large furniture and lift curtains and rugs to inspect the state of floors and walls. Particular attention should be paid to detecting possible damage caused by dampness in the kitchen and bathroom. In the kitchen, the buyer should be vigilant about signs of leakage under the sink, and check the angle of floors in the bathroom or other wet rooms, as well as the appearance of water and wastewater fixtures.

If the buyer detects any issues with the residence during their inspection, or if it is generally in such condition as to suspect issues, there are stricter requirements on the buyer's inspection.

A buyer cannot expect anything beyond an apartment maintaining a "normal" standard. Every aspect of an apartment has a limited technical lifetime. In other words, the buyer must expect an apartment and its facilities to change and deteriorate due to age and use. The older an apartment and its components are, the lower the standard a buyer can expect. If a bathroom is three years old, a buyer is generally entitled to expect that the surface of the bathroom can still withstand water and that there won't be damage due to dampness. However, if the bathroom is 30 years old, the buyer can hardly expect the bathroom to be fully functional.

The information provided by the seller also has an impact on the scope of the inspection obligation. For example, if the seller informs the buyer about a possible issue, this may constitute a warning that should prompt a more thorough inspection on the part of the buyer. The inspection obligation is not limited to just the apartment itself. The state of the tenant-owner association should also be inspected. As an example, the buyer should thoroughly investigate the association's financial situation, and ascertain whether the association is about to undertake any major renovations. As such, the buyer's inspection should include getting in touch with a representative of the association, and reviewing its statutes and latest annual report.

The seller's disclosure obligation

There is really no general disclosure obligation that is comparable to the buyer's inspection obligation. However, this does not apply if the apartment is sold in its current state.

An apartment that is sold in its current state, is not deemed proper if, prior to the sale, the seller failed to inform the buyer of any significant circumstance concerning the apartment that they must presumably have known about and that the buyer could justifiably have expected to have been informed of.

If the seller, by way of suppression, has acted in bad faith and dishonourably, the seller also forgoes their right to claim that the buyer has failed to fulfil their inspection obligation. Consequently, it is in the seller's own interest to inform the buyer of any issues or symptoms of issues that they are aware of or that they suspect exist.

The seller is generally bound by claims concerning the condition of the apartment. General praise or statements are not regarded as claims.

Period of liability (Statute of limitations)

The seller's liability for issues generally ends two years after the buyer gains access to the apartment.

The buyer's obligation to raise issues (file a complaint) If the buyer wants to raise an issue about the apartment, the buyer must inform the seller of this (file a complaint) within a reasonable time after they have detected the issue or should have detected the issue. If the buyer fails to file a complaint on time, they generally lose the right to file any subsequent claims arising from the issue.

The agent's role and responsibility

An agent must defend both the seller's and buyer's interests. The job must be carried out with care and in accordance with generally accepted estate agent practices. Within the framework of the requirements of generally accepted estate agent practices, the agent must be mindful of the client's financial interests.

In terms of any issues or flaws in a brokered residence, it is important to understand that the agent is brokering the sale of the residence from the seller to the buyer. The agent is not the party selling the residence. Liability for issues and flaws generally either lies with the seller or the buyer, as above. However, the agent is obligated to inform the buyer of any issues with the residence that the agent has observed or is aware of, or under the circumstances has a specific reason to suspect. However, the agent does not have any inspection obligation comparable to that of the buyer, though the agent does have an obligation to verify who has the right to sell the tenant-owner apartment and whether or not it is being used as collateral.

An estate agent must be registered with the Swedish Estate Agents Inspectorate (FMI). FMI is a state agency that supervises estate agents. The requirements for being registered include an obligation to hold liability insurance. The insurance must cover any financial losses that the agent causes for their clients by way of negligence or intent. [1.]

Ancillary services

An estate, or an estate agent firm, may not engage in confidencejeopardising activities. Providing ancillary services is not deemed to jeopardise confidence, as long as any compensation for these services is not excessive. The agent's, or an estate agent firm, ancillary services and any compensation for these is reported in a separate document.

Journal

The agent must keep notes (journal) of their brokerage work. The journal must include notes of significant aspects of the brokerage assignment and be provided to the seller and buyer when the assignment has been completed (generally upon access).

Complaints concerning brokerage services

If a buyer or seller wants to file a complaint concerning the brokerage services, this must be done within a reasonable period after the customer has realised, or should have realised, the circumstances that form the basis of the complaint. If the customer feels that they have suffered financial damages, the above also applies to providing information about damage claims pursuant to the Estate Agent Act.

Complaints and information concerning damage claims must personally be filed with the estate agent in charge. This can be done verbally or in writing. A written petition must be sent or submitted to the estate agent at the address listed in the property description. Complaints must be filed no later than 10 years as of the time of the purchase agreement (statute of limitations).

Who can adjudicate a dispute with the agent?

When the customer is a consumer, they can turn to the Swedish Property Market's Complaints Board (Fastighetsmarknadens reklamationsnämnd, or FRN) in the event of a dispute with the estate agent concerning damage claim matters or a demand for a reduction in commission under the Estate Agent Act. However, the demand must first have been presented to the estate agent and rejected by him or her.

Furthermore, the FMI can assess whether the estate agent has breached their obligations. However, the FMI cannot adjudicate damage claim matters.

Information on Codes of Conduct

Svensk Fastighetsförmedling's estate agents are members of the Association of Swedish Real Estate Agents and have pledged to abide by the organisation's ethical rules.

Customer Due Diligence

The estate agent is subject to the Anti-Money Laundering Act and must attain customer due diligence regarding their customers. This entails, among other things, an obligation to ask questions about e.g. the purpose of various transactions and how a purchase is to be financed. In some cases, the estate agent may need to see agreements, receipts, invoices or other documents that confirm the customer's explanation.

Further information

www.svenskfast.se
www.fmi.se
www.maklarsamfundet.se
www.frn.se

1) The insurance is applicable both when the estate agent mediates residences as well as Svensk Fastighetsförmedling's central ancillary services.