

Legal information for property 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 a public register, and on information submitted by the seller. As a rule, the property description also includes general information such as the room layout, mechanical equipment, images and plans.

Once the agent has created a property description, the seller is given a copy in order to correct any inaccuracies 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.

Bidding

Bids are non-binding. Parties making bids on a residence are not bound by these bids, not even if the bid is in writing. The seller of the residence 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 contract is binding

For a purchase to be valid, certain formalities listed in the Swedish Land Act must be fulfilled. The contract must be in writing and include information about the property that is being transferred and its price. The contract must also include a statement explaining that the property is being transferred by way of the contract (statement of transfer). The contract must be signed by both the seller and the buyer. A contract of sale in which all of the formalities have been fulfilled is a binding contract that neither the buyer nor seller can unilaterally withdraw from. This also means that there will be no sale until the formalities of the contract have been fulfilled, and that the party who signed the contract can change their mind until such time as both parties have signed

the contract, and that the contract is externally manifested (e.g. by way of the original contract returning to the estate agent).

Open purchase clause

This is a clause that entitles one of the parties to withdraw from the contract and must be included in order for the contract to be valid. Situations that require governing in the form of an open purchase clause include clauses related to a loans or 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 purchase clause is 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

The Swedish Land Code defines what constitutes immovable property. That which is not immovable property is instead movable property. The Code also defines what is deemed to constitute fixtures of immovable property, known as property fixtures (such as buildings or rooted trees).

Buildings also include specific fixtures. Both property fixtures and building fixtures are included in the purchase insofar as they were in place at the time the contract was signed, unless otherwise agreed.

Is the hat rack included?

Examples of building fixtures include the bathtub, 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 contract. 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 contract was signed, even if said item would have constituted a fixture if it had been in place when the contract 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 contract. This also applies if, e.g. the buyer does not want to keep the seller's washing machine, in which case this will be included in the contract. Otherwise, the buyer cannot retroactively demand that the buyer removes the washing machine.

Energy certificate

By law, the seller of a small house must generally show prospective buyers an energy certificate that is no more than 10 years old, 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. The Swedish National Board of Housing, Building and Planning can issue a fine to a seller who fails to provide an energy certificate when the building is put up for sale. If there is no energy certificate, the buyer is entitled to commission an energy certificate at the seller's expense.

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 contract being signed. If the contract does not include 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 make damage claims.

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

Liability for issues with the residence

Under the Swedish Land Code, the property must correspond with what was contractually agreed upon between the parties and not deviate from what the buyer is entitled to presume when making the purchase. The condition of the property is assessed on the basis of the conditions on the date of the contract.

The seller cannot be held liable for any issues that the buyer has had the opportunity to detect or had reason to expect due to the property's age and condition. However, the seller is liable for concealed issues, meaning property issues that the buyer should not have detected, regardless of whether or not the seller was aware of the issue. The seller's liability for concealed property issues remains in effect for 10 years.

The buyer's inspection obligation

The requirements on the buyer's inspection of the property are extensive. Every aspect and function of the property must be inspected. If possible, the buyer must also inspect the attic space, crawl spaces and other areas that are difficult to access. Particular attention should be paid to detecting possible damage caused by dampness, rot damage, damage to water and wastewater fixtures, cracks in the façade and foundation and chimney. If the buyer detects any issues or symptoms of issues in the property, or if the property or if it is generally in such condition as to suspect issues, there are stricter requirements on the buyer's inspection.

If the seller informs the buyer about a possible issue, this constitutes a warning that should prompt a more thorough inspection from the buyer. On the other hand, the buyer does not need to inspect areas of the property that the seller has expressly made claims about or guarantees for, provided that they are not too generally held. Finally, the buyer should bear in mind that the seller is not accountable for issues and shortcomings that the buyer should have expected based on the property's age, price, condition and usage.

If the purchase concerns a used house, the buyer must take into consideration that certain areas and functions have been subjected to wear and, due to age, may even be worn out and require replacement or at least renovation.

Specifics on commissioning an inspector

The Swedish Land Code assumes that the buyer will, in general, personally be able to fulfil their basic inspection obligation, thus meaning that commissioning an expert for this is not required. Nonetheless, most buyers opt to commission a so-called inspector or other expert, and this is recommended if you don't personally possess any specific structural engineering expertise. This also applies if the buyer has initially personally inspected the property and, in doing so, detected symptoms of issues that may be difficult to assess the significance of. As stated above, the buyer must inspect all aspects and functions of the property. If the buyer commissions an expert, it is thus important to pay attention to the scope of a commissioned inspection. Generally, since this type of inspection does not include certain aspects of the property such as electrical systems, water and wastewater, flues, etc., the buyer should consider adding to their investigation.

The seller's disclosure obligation

There is really no general disclosure obligation that is comparable to the buyer's inspection obligation. However, the seller may not withhold information in a fraudulent or dishonourable manner, nor intentionally exploit the buyer's lack of knowledge about a particular matter. Under certain circumstances, the seller can be held liable for damages when omitting significant information.

As a general rule, the buyer cannot claim that circumstances that the seller has pointed out constitute issues. Accordingly, it is in the seller's own interest to inform the buyer of the issues or symptoms that the seller is aware of or that they suspect exist.

Period of liability (Statute of limitations)

The seller's liability for issues ends ten years after the buyer gained access to the property.

The buyer's obligation to raise issues (file a complaint)

If the buyer wants to call attention to the fact that the property has issues, the buyer must inform the seller of this (file a complaint) within a reasonable period of time after the buyer has 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 possess the property and what mortgages, easements and other rights the property bears. The agent must also verify whether the property has an interest in one or more common facilities.

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. This 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 confidence jeopardising activities. Providing ancillary services is not deemed to jeopardise confidence, as long as any compensation for these services is not excessive. The agent's, and the estate agent firm's, ancillary services and any compensation for these is reported in a separate document.

Journal

The agent must keep notes (a 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 of time 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 ten 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.