

SWEDEN

ESTATE AGENTS' ACT (1995:400)

General provisions

1. By estate agent in this Act reference is made to physical persons, professionally acting as an intermediary for the sale of estates, parts of estates, buildings on other person's land, site-leasehold rights, tenant owner's flats, joint owner's rights with regard to flats, lease rights or tenancy rights.
2. What is stipulated in this Act with regard to estates is also applicable to the other intermediary sales objects referred to in 1 above. On intermediary sales of site-leasehold rights or tenancy rights Sections 18, 21 and 22 are not applicable. On such transfers of usufruct, what is stated with regard to seller shall pertain to the person who assigns or grants the use of the usufruct and what has been stated with regard to the buyer shall pertain to the opposite party.
3. The provisions of this Act are applicable irrespective of where the estate is situated, if an essential part of the estate agent's commission is carried out in Sweden. To the extent that the Act (1998:167) on Law Applicable to Agreement Obligations is applicable, the issue of choice of legal system is however determined pursuant to that Act. The Act 1998:168.
4. If not otherwise specified in the below, the provisions of this Act must not be deviated from to the disadvantage of a consumer purchasing an estate mainly for individual use or selling an estate mainly possessed for individual use.

Registration of estate agents

5. Each estate agent must be registered with the Board of Estate Agents. This does not apply, however, with regard to lawyers or estate agents only arranging transfers of tenant owner's flats.

More detailed provisions with regard to the Board of Estate Agents are issued by the Government.

6. In order for an estate agent to be registered, the requirement is that he
 1. is not below age, is not declared bankrupt or subject to ban on carrying on business, or has an administrator acting for him pursuant to Chapter 11, Section 7 of the Parenthood and Guardianship Act;
 2. has an insurance against indemnity liability falling on him if he neglects his obligations pursuant to Sections 11 – 19,
 3. has a satisfactory education,

4. intends to be professionally active as an estate agent, and

5. is honest and otherwise suitable as an estate agent.

More detailed stipulations with regard to the conditions for registration and to the registration procedure is issued by the Government or by the authority appointed by the Government. Fee of registration in the form of an application fee and an annual fee is determined by the Government.

7. Supervision of the estate agents registered pursuant to Section 5 is carried out by the Board of Estate Agents. The Board is to see to it that the estate agents, in conducting their business, observe their obligations under this Act.

A registered estate agent is obliged to let the Board of Estate Agents scrutinise files, book-keeping and other documents associated with the operations as well as to provide the information requested for the supervision.

8. The Board of Estate Agents is to revoke the registration of such estate agent who
1. no longer meets the requirements under Section 6,
 2. does not pay the stipulated registration fee, or
 3. acts in contravention of his obligations under this Act.

A decision of revocation is immediately applicable.

If regarded as sufficient, the Board of Estate Agents may, instead of revoking the registration, issue a warning. If the fault is insignificant, sanctions may be omitted.

9. The Board of Estate Agents' decision under this Act may be appealed against before a Public Administrative Court.

Review permit is required when appealing to the Fiscal Court of Appeal.

10. Whoever intentionally, professionally arranges transfers of house properties in contravention of what is stipulated regarding registration in Section 5, is to be sentenced to fines or imprisonment for maximum six months.

The Estate Agent's commission

11. A commission agreement is to be drawn up in writing. The estate agent must not invoke contractual terms not entered in the commission agreement or in any other way agreed upon in writing. This does not apply, however, to agreements on changes in the price of the object offered by the estate agent and other conditions governing the transfer or the grant.

If the commission involves sole right, the period of the sole right must only be maximum three months at a time. An agreement on prolongation may be entered into not earlier than one month prior to the expiry of the commission agreement.

12. The estate agent shall carry out his commission carefully and in all observe generally accepted estate agency practice. In so doing, the estate agent shall watch and protect the interests of both the seller and the buyer.

Deposit received by the estate agent shall be handed over to the seller without delay, unless something else has been agreed on in special order. Money and other assets taken charge of by the estate agent on behalf of some other party shall be kept apart from his own assets.

13. The estate agent must not purchase an estate, which he has been commissioned to transfer in his capacity of intermediary. Nor must the estate agent arrange the transfer of an estate to any such closely related person as is referred to in Chapter 4, Section 3 of the Bankruptcy Act (1987:672),

If the estate agent or any person close to him acquires an estate, which the estate agent previously has been commissioned to arrange the transfer of, the estate agent shall immediately report such acquisition to the Board of Estate Agents.

14. An estate agent must not pursue trade in house properties.

Nor must the estate agent pursue other activity of a kind to shake the confidence in him as an estate agent.

15. The estate agent must not represent a buyer or a seller in capacity of proxy. The estate agent may, however, take on limited measures to be taken, to the extent that this is accepted in accordance with generally accepted estate agency practice.

16. An estate agent shall, to the extent required by generally accepted estate agency practice, provide advice and information about the house property and other conditions with regard to the transfer needed by the buyer and the seller. The estate agent shall act thus that the seller, prior to the transfer, provides the information about the house property which may be regarded as of importance to the buyer, also thus that the buyer, prior to the acquisition, inspects the house property or has it inspected.

17. The estate agent is to make sure who has the right of disposal of the house property and with what mortgages, easements and other rights the house property is encumbered.

18. When the arranging of the transfer pertains to a house property being bought by a client mainly for private use, the estate agent shall provide the buyer with a written description of the house property. The description shall contain information in respects stated in Section 17 as well as information about the house property designation, rateable value and area. The description shall also contain information as to the age, size and construction method of the building.

In case of arranging of transfer as referred to in the first paragraph, the estate agent shall, prior to the transfer of the house property, provide the buyer with a written estimate of the housing costs.

19. The estate agent shall act thus that the buyer and the seller agree on issues, which need to be settled in connection with the transfer. Unless otherwise agreed upon, the estate agent shall assist the buyer and the seller in drawing up the documents necessary for the transfer.

20. If the estate agent intentionally or negligently disregards his obligations pursuant to Sections 11 – 19, he shall compensate resulting damages incurred by the buyer or the seller. If reasonable, the damages may be reduced or completely excluded.

If the estate agent has paid damages to the buyer due to damage incurred by the latter as a result of the house property deviating from what the buyer has had reasons to expect, the estate agent may claim the damages in return from the seller to the extent that also the seller is responsible for the damage and that it is not unreasonable that the seller finally assumes this responsibility alone.

Compensation for the estate agent's assignment

21. Unless otherwise agreed upon, the estate agent's compensation is to be calculated on a certain percentage of the purchase price (commission).

The estate agent is entitled to commission only if the transfer agreement has been concluded with the estate agent as intermediary between the employer and a person assigned by the estate agent.

If the estate agent has received the assignment with sole right and should, without his acting as intermediary, a transfer agreement be concluded within the applicable period of the sole right, the estate agent is entitled to commission as if the agreement had been achieved by him as an intermediary.

22. If the estate agent's assignment is to be paid for on a commission basis, the estate agent shall be entitled to cost compensation only if this has been separately agreed upon.
23. The estate agent's commission may be reduced, if the estate agent, on carrying out the assignment, has disregarded his obligations to the buyer or the seller. This does not however apply if the negligence is insignificant.

1. *This Act will gain legal force on 1 October 1995, when the Act (1984:81) on Estate Agents will cease to apply.*
2. *Earlier provisions apply to assignment agreements entered into prior to the new Act entering into force.*
3. *Earlier provisions apply to matters of supervision initiated prior to the entering into legal force.*
4. *The provisions in Section 13 of the new Act apply, even if the assignment agreement has been entered into prior to the entering into force.*
5. *Even if the assignment agreement has been entered into prior to the entering into force, the prohibition in Section 15 of the new Act applies, unless the estate agent has, prior to the entering into force, accepted to act in capacity of representative.*