

# BUYING AND BUILDING COMMERCIAL AND INDUSTRIAL PROPERTY IN SWEDEN

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## ESTABLISHMENT GUIDE

Swedish property law protects the interests of all parties – investors, creditors, tenants and the public. It strikes a good balance between security, reliability, transparency and cost efficiency.

### PROPERTY REGULATION

The Code of Land Laws (Jordabalken) regulates all essential aspects of real estate, such as property fixtures, formal requirements, mortgages, usufructs (the right to use and derive profit from a property), easements, leases and the registration of property rights.

Land is divided into property units individually identified by name and code. A property unit may be demarcated horizontally as well as vertically, creating a three-dimensional unit.

Ownership is not only restricted to land. The property unit also consists of accessories such as buildings or other facilities built above or below ground by the owner for permanent use. Furthermore, fixtures that have been installed in buildings by the property owner and that are intended for permanent use in the building are considered part of the property unit.

In principle, ownership of land also includes the soil below and the airspace above, although the working and extraction of minerals may require permission from the County Administrative Board (Länsstyrelsen) and may be granted to someone other than the land owner.

### PLANNING (ZONING) AND BUILDING REGULATIONS

Local municipalities are responsible for issuing building permits and adopting plans for the use of land and water, as stated in the Planning and Building Act (Plan- och bygglagen). Zoning plans are normally carried out on two levels consisting of the comprehensive plan (översiktsplanen) and the detail development plan (detaljplanen).



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For some locations, a regional plan (regionplan) is also included. However, only the detailed development plan is legally binding. A detailed development plan applies to a limited part of a municipality and regulates the use of land (zoning). It may also regulate matters such as maximum building height, lot coverage (the portion of a zoning lot covered by a building), general design of buildings and similar characteristics. Building permit (bygglov) applications must be sent to the municipal building committee and granted before any construction work can be started. The property owner is entitled to a building permit if the development conforms to the plan and building codes.

#### IN BRIEF

- *Uncomplicated procedure for investing in commercial and industrial property*
- *No restrictions on foreign ownership*
- *Easy to apply for building permit*

The decision of the municipality building committee can be appealed if considered incorrect. Permits are in general required for altering, extending or demolishing buildings and for changed use of a building. In order to have the opportunity to appeal a decision to adopt, revoke or change a detail development plan, you must, as a general rule, have submitted written comments

at the latest during the review phase. This is called the activity requirement.

An environmental impact assessment (miljökonsekvensbeskrivning) is often part of the permit application process for property developments, infrastructure and similar projects. The assessment must identify and describe the environmental impact of the project. It should also include measures taken to reduce negative environmental impact.

A building considered of great significance due to cultural or historical value may be declared a listed building (byggnadsminne) under the Cultural Heritage Act (Kulturminneslagen). The County Administrative Board decides how the building should be protected and cared for and specifies restrictions in respect of changes to the building. The protective regulations must, as much as possible, be determined in cooperation with the property owner. Landowners must also take precautions with regards to ancient monuments, remains and finds (forminnen). In principal, the landowner must examine whether such finds could be affected by a construction project.

#### ENERGY PERFORMANCE OF BUILDINGS

Sweden has implemented the EC directive on the energy performance of buildings. The directive has been in force since 2006 and essentially means that the energy performance of buildings needs to be declared. The declaration is carried out by certified experts.



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## THE REAL PROPERTY REGISTER

The boundaries of all property units and their ownership are registered in the Real Property Register (Fastighetsregistret). The register also includes the location of the property unit, the titleholder, plans and regulations, mortgages (inteckningar), registered easements (servitut), tax assessment values and the purchase price for the last transfer.

A buyer must register for title within three months of completing the transfer of property. Although most legal protection for a buyer derives from the sale contract, registration is important for many reasons, for instance when applying for mortgages on the property.

There is no need for title insurance in Sweden. Instead, if the registered titleholder is proven not to be entitled to ownership of the property and has been granted new mortgages, the Swedish government guarantees compensation for any losses incurred by a creditor who, in good faith, has relied on the information in the Real Property Register.

## SALES PROCESS AND DUE DILIGENCE

There are no restrictions on foreign ownership of property. Share purchase agreements, real estate sale and purchase agreements, and lease agreements are in general less comprehensive than in many other countries.

Most commercial properties are sold through dedicated real estate consultants, although direct sales from the property owner do occur. Negotiations are often conducted directly with the prospective buyer or through its legal adviser. The sale may also be performed through a controlled auction.

As the liability of the sellers, especially in controlled auctions, is limited to the warranties given in the sales contract, the due diligence process is important. In the context of environmental issues, the Swedish Environmental Code (Miljöbalken) is primarily based upon the “polluter pays” principle, though it also contains provisions that may lead to a subsidiary liability for the property owner.

## THE USE OF SPECIAL PURPOSE VEHICLES

The Code of Land Laws stipulates formal requirements that must be observed for a property transfer to be valid. Although direct sales of property have become more common, majority of transactions concern sales of property through legal entities. The latter structure reduces transaction costs, because the sale of a company does not incur stamp duty. Sellers are also normally exempt from capital gains tax on the sale of shares in a limited liability company. In addition, an option to buy or sell shares in a company is legally



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binding whereas options on property are not. The property-owning company is often a newly established special purpose vehicle whose sole function is to own and operate the specific property. This ensures that the company’s contingent liabilities are limited.

## PROPERTY DEVELOPMENT PROJECTS

No restrictions exist on the acquisition of property development projects, and agreements can be entered into during any phase of the project. The investor generally enters into a conditional sale and purchase agreement with a property developer. At the completion date, the developer is to deliver to the investor a fully developed property, including buildings and tenants. Incentive schemes are often built into the agreement, whereby the purchase price is a factor of the property’s rental value. The parties can also agree on a model lease agreement and a model construction agreement that would be used for the development and letting of premises within the property. It has also become more common to structure development projects as forward funding-projects.

## CREATING AND PLEDGING MORTGAGE SECURITY

The holder of the legal title to a property may take out a mortgage on the property. Mortgages can be of any amount, but as there is a two percent stamp duty on the face value of the mortgage, the owner and its lender generally limit mortgages to the lower end of the amount of the loan and the market value of the property.

Mortgages are given chronological priority in the Swedish Land Register. Each mortgage is evidenced by a mortgage certificate (pantbrev). The property owner must enter into a pledge agreement (pantförskrivningsavtal) whereby the mortgage certificates are pledged as security for a claim from a creditor, and the mortgage certificate must be delivered to such a creditor. A mortgage certificate can be used and reused without incurring any stamp duty or transaction costs other than the initial stamp duty of two percent when applying for the mortgage.

## MORTGAGE FINANCING PROVIDES STRONG SECURITY

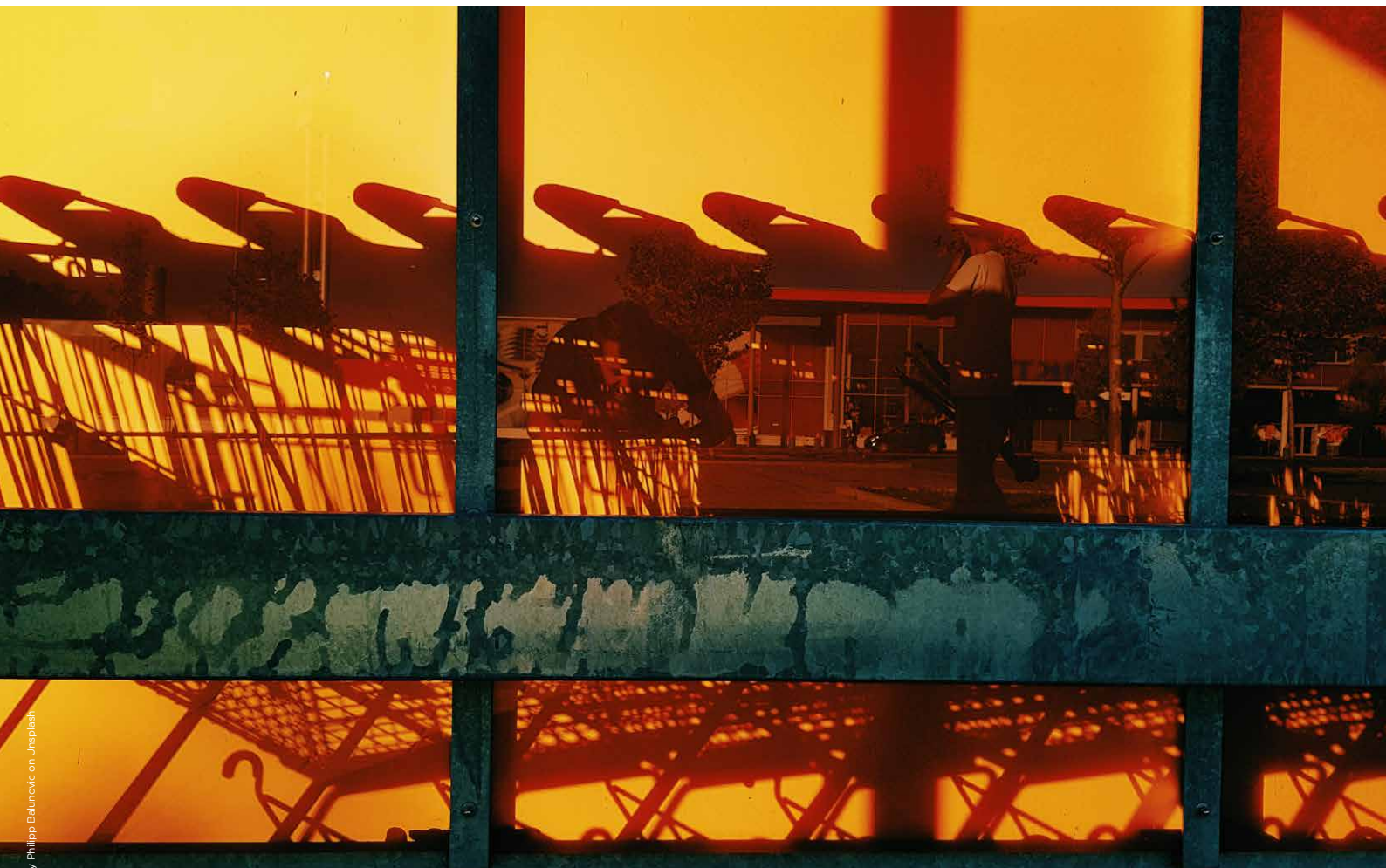
The security interest of a creditor holding valid security in a property cannot be extinguished if the property is sold. In the case of bankruptcy proceedings, the creditor has priority and is entitled to an amount up to the face value of the mortgage certificates pledged to the creditor, plus an additional 15 percent of the sales revenue from an executive sale of the property.

## PUBLICLY OWNED PROPERTY MAY BE LET AS A SITE-LEASEHOLD

A property unit owned by a municipality or another public entity may be let as a site-leasehold (tomträtt). A site leasehold is very similar to ownership. The site leaseholder may transfer, mortgage, let and, in all material respects, use the site leasehold in the same way as the owner of a property unit may use its property.

In return for the site leasehold, the site leaseholder pays a rent based on the property value. The rent is reviewed every ten years, unless a longer period is agreed. If parties fail to agree on a new, revised rent, either party can submit the matter to court for final adjudication. The rent is determined by the market value of the property (taking into account the current use) at the time of review.

The property owner may terminate a site leasehold only at the end of certain periods of time (which are at least 20 years). The site-leaseholder is normally entitled to compensation for the value of buildings and other accessories to the site leasehold if it is terminated. Exemptions from the rules that normally apply to site leaseholds may, in some cases, be made in the agreement, which should therefore be reviewed prior to any site leasehold purchase.



# PROCESS OVERVIEW FOR BUILDING AND LAND DEVELOPMENT IN SWEDEN

Below is an overview of the different steps of the building process in Sweden.



# USEFUL CONTACTS

## GOVERNMENT AGENCIES

### Lantmäteriet

SE-801 82 Gävle

+46 771 63 63 63

[www.lantmateriet.se](http://www.lantmateriet.se)

Lantmäteriet is the Swedish mapping, cadastral and land registration agency. They provide professional services for the development and use of geographic information techniques. They also provide a wide range of products including geographic, land and real property information.

### Swedish National Board of Housing, Building and Planning

(Boverket)

Box 534, SE-371 23 Karlskrona

+46 455 35 30 00

[www.boverket.se](http://www.boverket.se)

The Swedish National Board of Housing, Building and Planning is a central government agency fulfilling the authority-related responsibilities regarding the built environment, use of land and nature resources, town and country planning, building construction, management of the built environment, housing and subsidies administration.

### The Swedish Construction Federation (Sveriges Byggindustrier)

Box 5054, SE-102 42 Stockholm

+46 8 698 58 00

[www.bygg.org](http://www.bygg.org)

The Swedish Construction Federation (BI) represents the interests of the construction industry in Sweden and is the trade and employers' association of the private construction companies.

### Swedish Property Federation (Fastighetsägarna)

PO Box 16132, SE-103 23 Stockholm,

+46 8 613 57 00

[www.fastighetsagarna.se](http://www.fastighetsagarna.se)

The Swedish Property Federation is a highly proactive trade organization promoting an efficient real estate market in Sweden. Their members represent the entire spectrum of the property industry, owning or managing premises and rental apartment buildings, industrial properties and tenant-owners' associations.



## PROGRESS BY TRADE

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