

# Processes of Sale in the Nordic Countries – Comparisons

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**Key words:** Property sales, purchase processes

## SUMMARY

This paper goes through sale and purchase of real property in the five Nordic countries, but with focus on Denmark, Finland and Sweden. The comparison is then used to develop a standard model, i.e. the most interesting characteristics from the three mentioned countries are combined to a process model. The model gives priority to simplicity from a buyer and seller perspective. From a European perspective it might also be worth noting that there are no requirements for notaries participating in purchase and mortgage. This contributes to the possibility of keeping the transaction costs low.

The paper is a translated extract from the chapter “Köp- och avstyckningsprocesser i Norden-jämförelser” (in translation Processes of sale and purchase and subdivision in the Nordic countries – comparisons) written by Hans Mattsson. The chapter is part of the book “Dannelse og transaktioner vedrørende fast ejendom i de nordiske lande”, Kort- och Matrikelstyrelsen 2006, Copenhagen (a joint Nordic publication by several different authors). The intention is that the entire book shall be translated into English.

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## 1. INTRODUCTION

Comparisons between processes of real estate purchases in different countries can focus on a variety of aspects, such as cost, rapidity and simplicity of the processes, risk elimination and legal safeguards. The emphasis here will be on efficiency in the sense of rapidity from the viewpoint of parties in the market, the reason for this prioritisation being that rapidity probably reduces the cost of the process in time and money, to the benefit of both the general public and society. The question is whether activities which delay processes can be avoided or whether the sequence of activities can be altered so as to improve efficiency without augmenting legal uncertainty and risk assumption. Rapid processes, with elements of risk built into them, can actually reduce legal uncertainty and risk assumption, by shortening the duration of the elements of risk.

First a synoptic comparison will be made between the minimum requirements for sale and purchase of real estate in the Nordic countries. Denmark, Finland and Sweden will then be studied more closely. This serves to highlight specially important comparable activities in order to bring out characteristic features revealing both similarities and dissimilarities. An evaluation is presented in a separate section following each comparison. This is solely intended to present queries concerning elements of the individual processes with reference to corresponding activities in the other countries. In this way ideas can be obtained for efficiency improvements, even if the general structure of legislation and the existence of powerful interest groupings can stand in the way of change. The ideas may therefore be impossible to implement in practice.

After that a standard process is set up to give ideas for possible rationalizations of the entire process of sale and purchase. This can be regarded as a potential ideal model, a “standard model”.

## 2. TRANSFER OF PROPERTY (basic principles)

### 2.1 Process comparison

The first comparison concerns the simplest possible property purchase, in which the parties trust each other implicitly. This, then, will bring out the minimum statutory requirements.

First of all we may note that the formal requirements regarding purchase and sale differ between all the Nordic countries (figure 1). There is, however, one point of similarity. In all five countries the transaction has to be put down in writing and, in order to qualify for registration, must include the seller's signature and the signatures of witnesses to it. The buyer's attested signature, on the other hand, is not needed in all five countries. The purchase

price has to be stated in all five countries, but in Finland and Iceland it need not be paid before a final deed of sale is signed, nor before the transaction is registered. Registration of the sale is not stipulated in Denmark, Iceland or Norway but is in Finland and Sweden. Non-registration, however, does not void the transaction in any of the five countries. Forms of agreement and consequences of registration, on the other hand, are very similar, apart from verbal agreements being valid in Denmark and Norway (figure 2).

**Figure 1.** Deed of sale criteria for ownership registration.

	Denmark	Finland	Iceland	Norway	Sweden
Requirement for written deed of purchase	√	√	√	√	√
Requirement for seller's signature	√	√	√	√	√
Requirement for attest by witnesses of seller's signature	√	√	√	√	√
Requirement for purchaser's signature	√	√			√
Requirement for attest by witnesses of purchaser's signature		√			
Requirement for paid purchase sum before signing of deed of purchase	√			√	√
Requirement for stated purchase sum in the deed of purchase	√	√	√	√	√
Requirement for paid purchase sum before registration of ownership	√			√	√
Mandatory registration of ownership		√			√

**Figure 2.** Forms of contract and legal consequences.

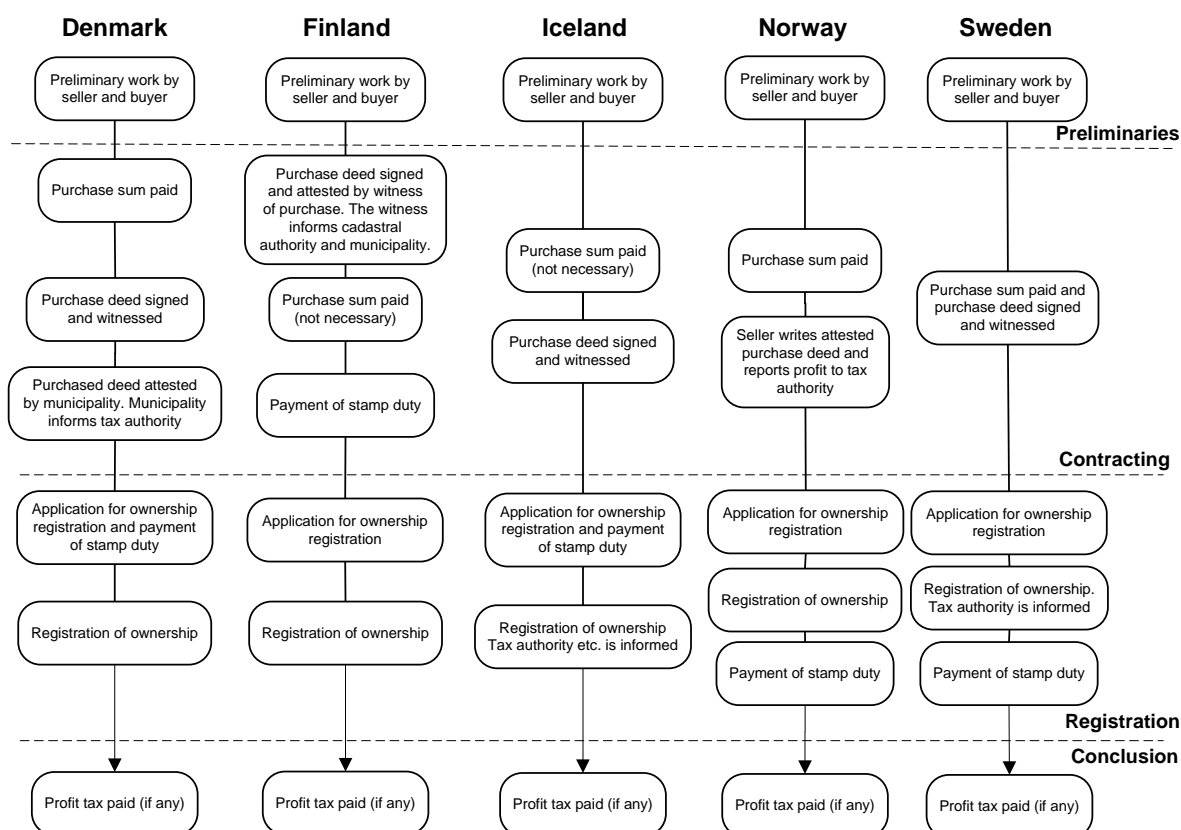
	Denmark	Finland	Iceland	Norway	Sweden
Valid contract	Verbal agreement	Written contract of sale	Written contract of sale	Verbal agreement	Written contract of sale
Contract form for registration of ownership	Written	Written	Written	Written	Written
Possibility to secure preliminary contract	Dormant registration	Registration	Dormant registration	Dormant registration	Dormant registration
Fulfilled purchase	Deed of purchase	Deed of purchase	Deed of purchase	Deed of purchase	Deed of purchase
Transfer secured relative third party	Ownership registration	Ownership registration	Ownership registration	Ownership registration	Ownership registration
Total legal control over property	Ownership registration	Ownership registration	Ownership registration	Ownership registration	Ownership registration

The actual process of purchase and sale differs somewhat between the Nordic countries (figure 3). To highlight the differences, the process has been divided into the following phases:

- *Preliminaries*, during which the parties find each other and negotiate conditions of sale.
- *Contract-drafting*, in which the parties draw up a binding contract.
- *Registration*, when the purchaser applies for registration of the purchase to protect it from third parties.
- *Conclusion*, when sales profit tax, if any, becomes payable.

Major differences between purchase-and-sale processes in the various countries will be commented on with reference to figure 3. Items which are not necessarily included in the process but can be put off till later are specially marked “not necessary”. These have been included because they are nonetheless fundamental to an understanding of the matter.

**Figure 3.** Simplest possible purchase.



Concerning *preliminaries* there is little that needs to be said. This is only an introductory part of the process and it is for the parties to decide what is to be done, e.g. the extent of archive searches and investigations on the spot, how much the prospective purchaser is willing to pay, what the contract is to look like. This is an informal process leading to a contract situation.

In the *contract-drafting phase*, the contract is drawn up and signed. The basic principles are the same everywhere insofar as a deed of sale is signed and the purchase money paid. In all five countries the seller's signature has to be attested by witnesses (figure 1). But, as we have already seen, the purchaser's signature is not needed in Iceland and Norway. Neither in Finland, Iceland nor Norway does the purchase money need to be paid in order for the purchase to be complete and registrable. There is no stipulation of a particular professional category or organisational representative as witness to the seller's signature, except in Finland, where the signature has to be witnessed by a "public witness of purchase".

Finland, then, presents idiosyncratic features where the contract-drafting phase is concerned. In the first place, with its stipulation of a witness to the purchase it has opted for something midway between the Scandinavian principle of no special criteria for witnesses to signatures and the continental stipulation of attestation by a notary. Witnesses to purchase in Finland are specially appointed persons acting in an official capacity. They also have the task of informing the contracting parties of the consequences of the transaction. They have to inform the municipality of the sale and also the cadastral authority, which in turn informs the tax authority. But there are two other deviant points involved in Finland. The purchase money can be paid after the deed of sale has been signed and title registration is obtainable even if the property has not been paid for. Furthermore, the transfer tax (stamp duty) has to be paid in advance to the tax authority and a receipt for it appended to the application for ownership registration of the purchase to the land registration authority.

Conditions in Denmark are very much the same as in other countries, but with one exception. The municipality has to endorse the contract of sale and at the same time inform the tax authority of the purchase. Thus Denmark has inserted a local government transaction which is handled by the purchase witnesses in Finland and by the registration authorities in the other three countries.

*Registration* means the purchaser sending the deed of sale to the registration authority for registration of ownership. In Denmark and Iceland, stamp duty is payable with the application, whereas in Norway and Sweden the registration authority presents a bill afterwards. In Finland, as already stated, the charge is payable in advance.

In Iceland and Sweden it is the registration authority that informs the tax authority of the sale. In Denmark it is the municipality, in Norway the seller, and in Finland the information is conveyed through the purchase witness.

The form of *conclusion* entailed by the payment of capital gains tax on the profit from a sale can occur in all five countries, but, the rules on this point being beyond the scope of the present work, we will not go into this aspect any further.

## 2.2 Evaluation

Viewing these processes from an efficiency viewpoint, one may ask why the municipality needs to be involved through endorsement by the municipality in Denmark while other countries manage without. This naturally delays the purchase-and-sale process. One may also ask why public purchase witnesses are necessary in Finland when the other countries can manage without. This seems all the more strange considering how many impulses Finnish legislation has absorbed from the other Nordic countries.

In computerised societies the most rational arrangement seems to be for the registration authority and no one else to inform other authorities of purchases, which is the Icelandic and the Swedish principle. Finally, the Norwegian and Swedish principle of billing stamp duty after the purchase seems to be a smoother proposition than various forms of payment in advance.

It can also be seen as an oddity that registration is not obligatory in Denmark, Iceland and Norway. True, most people register their purchases anyway, to secure them against third parties and also in order to take out mortgages, but the absence of obligatory registration impairs the reliability of the registers, to the detriment of the property market's long-term efficiency.

Finally we may note that in all five countries, when profit tax is due it is paid subsequently without jeopardising the purchase. That is to say, the purchaser's standing is not affected.

The question is which processes are smoothest from the point of view of parties in the market. Judging from the process descriptions, Iceland and Sweden have the smoothest processes. Norway has the additional stipulation of early declaration of profit to the tax authority, but this is unlikely to affect the time taken by the process, because no documentation confirming this is required for registration of ownership. In Finland the process is complicated by the stipulation of a purchase witness and by the procedure for payment of transfer tax. In Denmark the process is delayed by the stipulation of municipal endorsement of the documents of sale prior to registration of ownership.

We can now turn to consider purchases involving more stages than are absolutely necessary for the accomplishment of a valid transaction. These purchases can be regarded as normal purchase, i.e. they are the form of purchase usually applied in the real estate market. They will be instanced with the purchase of a residential property.

Only Denmark, Finland and Sweden are regarded, since for studies of principals these countries give ideas for rationalizations.

### 3. NORMAL PURCHASE OF A RESIDENTIAL PROPERTY

#### 3.1 Process comparison

When describing a normal house purchase, we will assume that estate agents are involved, as well as a bank or some other financial institute. Here the purchase process can be divided into the same phases as earlier, but the conclusion in the form of payment of tax on sales profit has been removed, having already been mentioned in connection with the simplest possible purchase. This leaves:

- *Preliminaries*, during which the parties find each other and negotiate conditions of sale.
- *Contract-drafting*, in which the parties draw up a binding contract.
- *Registration*, when the purchaser applies for registration of the purchase to protect it from third parties.

Since we are dealing with normal purchases, we will not concern ourselves with situations where public permits are required, nor with pre-emption situations. Nor are the complications complicated by indicating the timing of a binding agreement, change of ownership and taking of possession.

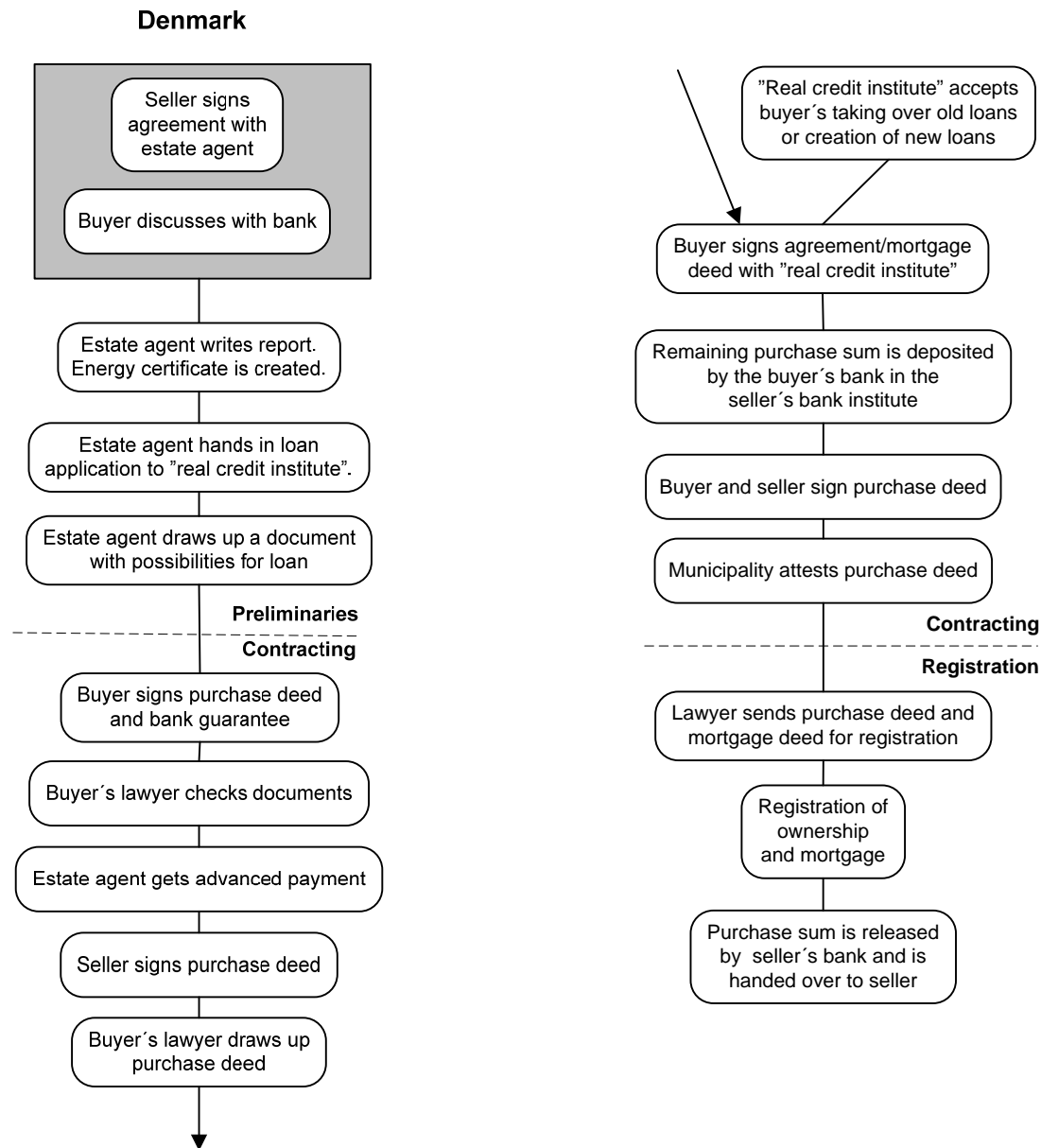
The *preliminaries* of a normal purchase can be pretty complicated, because estate agents are engaged and the purchaser's possibilities of obtaining credits have to be investigated. Both the purchaser's creditworthiness and the mortgageable value of the property have to be assessed.

The *contract-drafting* phase comes when purchaser and seller have settled on a transaction. At least five parties have to be taken into account in a way which guarantees the security of all of them, namely seller, purchaser, the respective banks or other credit institutes of the parties and estate agents. A contract has to be written. This is often done in two stages, with an introductory contract of sale to settle the conditions of sale and then a deed of sale to confirm that the necessary conditions have been satisfied and the transaction can be registered. Parallel to this, mortgage rights and credits have to be managed in such a way that the seller is discharged from his borrowing and the purchaser assumes responsibility for his.

To secure ownership title against third parties and to secure the mortgage for the credit-provider, the sale/purchase has to be *registered* as well as mortgage deeds. This takes place during the registration phase.

The co-ordination of all these activities has been differently organised in Denmark, Finland and Sweden and in order to make them comparable the activities will be described systematically and briefly, country by country. Figures 4 and 5 have been drawn to elucidate similarities and dissimilarities. The first figure shows Denmark, the second Finland and Sweden.

**Figure 4.** Normal purchase in Denmark (figure continues on right side).



In *Denmark* (figure 4) a seller can engage an estate agent to assist with the sale. The important point is that the estate agent is the seller's representative and has no duty of balancing the interests of seller and purchaser. The estate agent inspects the property and draws up other information of importance. The party who has shown interest in purchasing the property for his part contacts a bank for assessment of his creditworthiness. There are usually also special financial institutes (*realkreditinstitut*) involved in financing the transaction. The estate agent often works together with such an institute and asks it to offer what is called a real credit loan (*realkreditlån*). The purchaser then decides whether he is interested in going through with the purchase. In this connection an energy consultant inspects the building and a structural



inspection can also be carried out. The purchaser is advised of the possibility of taking out insurance for hidden defects, since he will not be able to plead them if the inspections now mentioned take place.

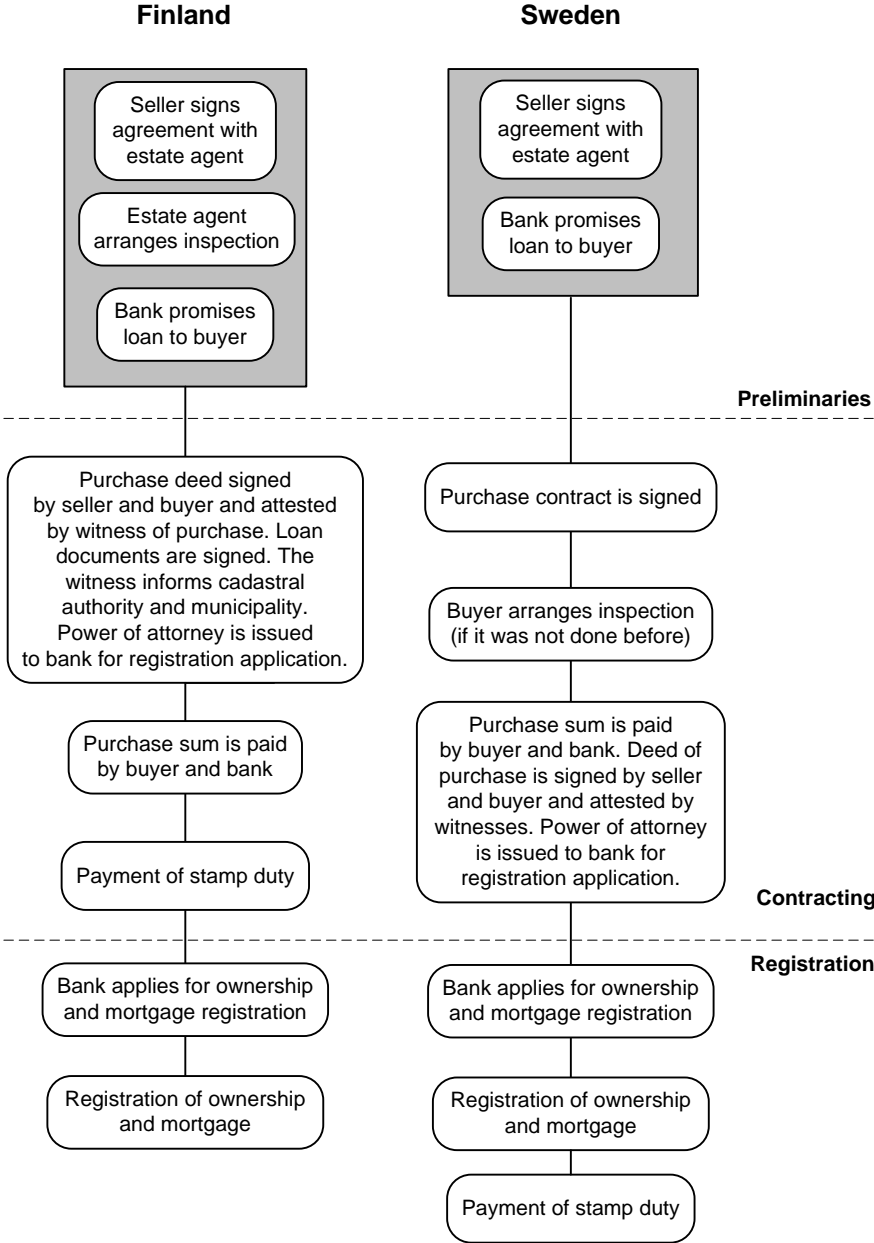
The estate agent draws up a contract of sale for the purchaser to sign. This usually entitles the purchaser to cancel the purchase within six days. The purchaser takes this opportunity of getting a lawyer to vet the agreement and of discussing any contractual problems with the estate agent. After any adjustments have been made to the agreement, the estate agent obtains the seller's signature. In this connection an advance payment is made to the estate agent. The lawyer is then tasked with drawing up the definitive deed of sale.

With reference to the offer of credit, the purchaser signs an agreement with the *realkreditinstitut*. The institute draws up a mortgage deed which the purchaser signs. The purchaser's bank (separate from the credit institute) then remits the purchase money to the seller's bank, whereupon seller and purchaser can sign the deed of sale. The municipality then receives the deed of sale for signing, after which the lawyer sends it to the registration authority, which registers the sale and the mortgage deed. The authority returns the mortgage deed to the lawyer. The seller's bank can now release the remainder of the purchase money for transfer to the seller.

In *Finland* the seller contacts an estate agent and signs a contract with him (figure 5). It is to be noted that the estate agent is also duty bound to safeguard the purchaser's interests. The purchaser for his part contacts a bank to obtain a grant of credit approving the property as security. The purchaser can have the property inspected by an inspector, but this is neither stipulated nor necessary, because the seller is liable for defects which could not have been discovered by the purchaser. To guard against hidden defects, the seller usually gets an inspector to go over the property and write a report which is shown to the purchaser.

Usually only one document (purchase deed) is used for the sale, although preliminary agreements do occur. As a result, the same model applies to the contracting phase as for the simplest possible purchase, apart from the added factor of credit processing. This too is very easily managed. Credit documents are signed with the bank simultaneously with the deed of purchase. Often an advance is paid. The bank obtains power of attorney from the purchaser, empowering the credit-providing bank to apply for ownership registration and registration of mortgage deeds later on in the purchaser's stead. The power of attorney is transmitted to the bank disbursing the purchase money to the seller's bank, which in turn collects the portion of the amount covering the seller's loan before remitting the remainder to the seller. Existing mortgage deeds are sent to the purchaser's bank. The purchaser can also make a cash payment to the seller or his bank. If the old mortgage deeds do not cover the purchaser's debt to his bank, the bank will have the task of obtaining new mortgage deeds from the land registration authority, simultaneously with title registration being applied for. As has already been made clear, transfer tax has to be paid before the purchase can be registered.

**Figure 5.** Normal purchase in Finland and Sweden.



In *Sweden* (figure 5) a seller usually contacts an estate agent and a contract is signed setting forth the terms of the assignment. Although engaged by the seller, the estate agent is duty bound to safeguard the interests of both seller and purchaser. The estate agent advertises the property. An interested purchaser contacts his bank to investigate the possibility of obtaining credit and, all being well, obtains the promise of a loan. It is not uncommon for the estate agent to arrange contact with a bank. Seller and purchaser negotiate the conditions of the sale together with the estate agent. The purchaser must be given an opportunity of inspecting the

property. He has an extensive duty of investigation, and because so much depends on the investigation a special inspector is often engaged for the purpose. The seller, however, remains liable 10 years after the sale for hidden defects which could not have been discovered. He can insure himself against hidden defects, but policies of this kind are severely limited. The estate agent also drafts a contract of sale, which is signed by the parties. Often an advance payment is made at the same time.

Once signed the contract of sale cannot be repudiated unless includes a special clause to this effect. Sometimes the first contract of sale is used for applying for a dormant registration of ownership, which has the effect of making it public. If the property inspection has not already taken place it is carried out now (which is not unusual). This can create problems if serious defects are discovered, because the parties are already bound by contract. The purchaser, therefore, may have included in the contract a proviso for discovery of defects. The conditions of getting the property mortgaged for the purchaser are also cleared up, if this has not been done already. One very common condition in the contract of sale is that the sale is only to be completed if the purchaser is granted credit.

When all the formalities have been completed, the seller, estate agent and purchaser usually meet at the purchaser's bank while keeping in touch with the seller's bank by telephone. The deed of sale has to be signed and witnessed, credit documents signed and necessary powers of attorney issued. The purchase money is paid over in this connection, even though in reality the banks may settle this between themselves afterwards.

The deed of sale confirms that the purchase price has been paid and that title to the property has been transferred. The deed of sale may refer to the terms of the contract of sale, but not necessarily. The basic principles for the processing of pledge and loan are the same as in Finland. The purchaser contracts a loan from his bank and the purchase price can be paid by the purchaser and his bank. The seller's credit provider obtains payment for his credits and the remainder of the purchase money passes to the seller. The purchaser's bank then takes over existing mortgage deeds from the seller or his bank (in reality this is an electronic transaction which takes place after the event) and the mortgage deeds provide the purchaser's bank with security. If new mortgage deeds need to be obtained as security (due to the amounts of the old ones not covering the debt which the purchaser is incurring), the purchaser's bank receives power of attorney to apply for a new registration of new mortgage deeds. This, however, requires the purchaser to be registered owner, and so the purchaser's bank is granted power of attorney to apply for both registration of ownership and registration of mortgage deeds on the purchaser's behalf. With the bank handling contacts with the land registration authority, its interests are secured. If the seller's bank approves and the purchaser is interested, the purchaser can take over the seller's loans instead. The reason for the signing of contracts usually taking place at the purchaser's bank and for all transactions passing through that bank is that this bank is the principal interested party and also the risk-taker in the process of sale and purchase, responsible as it is for disbursement of all or part of the purchase price. As has already been shown, the bank must have both old and new mortgage deeds as security for loans.

### 3.2 Evaluation

In all countries the basics of a normal house sale are essentially the same. Purchaser and seller draw up a contract between themselves. The marketing is attended to by an estate agent. The seller's loans are paid off, while the purchaser obtains new ones. And yet the processes evolved in the countries under consideration still differ to a greater or lesser extent. This is probably an accident of history, but the question is whether the existing processes are truly necessary in their entirety in each of the countries concerned or whether possibilities of efficiency improvement are discernible. True, one can argue that the rule of law demands complexity, but every country is likely to claim that its particular process exists for the security of all parties. So the rule of law does not go very far towards explaining why the processes have to look the way they do today. To address this problem, certain factors will be highlighted and a "pattern model" will then be sketched.

Clearly, the stipulation in all countries except Denmark that the estate agent must safeguard the interests of both seller and purchaser means that they do not both need to have legal representatives. A change of legislation in Denmark would presumably eliminate the need for a lawyer. If a purchaser still feels constrained to retain one, there is nothing to prevent him from doing so.

Inspection is another factor. We can begin by noting that in Denmark the estate agent is duty bound to prepare a report on the property. In Finland, where the seller has been made liable for defects in the property, it is in his own best interests to order an inspection of the building in order to inform the purchaser of any defects. In Sweden the seller is only liable for those defects which the purchaser cannot reasonably discover for himself, and so it is normally the purchaser who arranges the inspection. This is expensive, and in the meantime there is the risk of someone else stepping in and buying the property, since a verbal agreement is not binding on the parties. To avoid this problem, the inspection often comes in between the contract of sale and the deed of sale, and the conditions of sale made contingent on the outcome of the inspection. Denmark alone stipulates energy inspection, but Finland and Sweden are going to do the same, by reason of EU directives.

A special comparison between Finland and Sweden shows it to be more economical for the seller, rather than the purchaser, to pay for and be responsible for inspection (i.e. draw up a "declaration of contents"). The present order of things in Sweden can in the ultimate analysis result in the same property being inspected several times over.

In all countries but Finland, two contracts are normally used. The first of these ties the parties to each other for a transitional period. Credit issues, inspections, and the sale or purchase of another property can take time. The second contract confirms the change of ownership. Since the first contract shows the parties' intent, it is common for an advance payment to be made to the seller as a form of confirmation of the purchaser being in earnest. The fact of only one contract being used in Finland, despite the possibility of having two, suggests that the existing process is found secure and efficient.

Credit issues complicate the processes, particularly in Denmark, which has a system of two credit-providers. A bank takes care of short-term loans, while a *realkreditinstitut* handles long-term ones. It is hard for an outsider to understand why the system has not been changed into long-term credits at a fixed rate of interest. The process figure 4 shows how complicated the present system makes things for all concerned.

The management of credits naturally affects the payment of the purchase money. It is a good hypothesis that smooth processes for the management of the collateral lead to a smooth procedure for paying the purchase money. The use of mortgage deeds separated from credit documents (Finland and Sweden) simplifies matters, especially in case where banks are credit institutes and can transfer the mortgage deeds between themselves after the event. Banks ought reasonably to be able to rely on each other sufficiently for no mistakes to occur.<sup>1</sup>

There are two more factors which impair the efficiency of the processes, namely municipal involvement in Denmark and payment of transfer tax in Finland. It should be possible for both activities to come after registration of the sale. The registration authority can be given the task of informing other bodies (municipality, tax authority, price register etc.). Nowadays information transfers of this kind are easily accomplished electronically.

One may also ask whether obligatory registration of property sales would not ensure the dependability of registers in those countries where it is not obligatory. Unregistered sales occur in all five countries, but the actual proportion of them in each country is not clear. No country has gone so far as to say that a sale is invalid until registered.

Finally a model process will be expounded for the benefit of those contemplating possible legislative changes (figure 6). This process has been constructed by taking obviously workable ideas from the countries examined (identified in parenthesis). Properly constructed, they should be viable in a new context. The model is based on mortgage deed and loan contract being two separate documents, as in Finland and Sweden.

The model turns out as follows. The seller engages an estate agent who is responsible for the description of the property (this is the case more or less in all five countries). To assist him he has an inspector (Denmark) to draw up a “declaration of contents” (Denmark, Finland). The estate agent engages the inspector. The estate agent is also made responsible for safeguarding the interests of seller and purchaser alike (Finland and Sweden). The purchaser or estate agent contacts banks for an assessment of the credits available (all countries).

All parties, i.e. seller, purchaser, estate agent and the purchaser’s credit-provider, hold a meeting at which they sign the deed of sale (witnessed), loan contract, and powers of attorney for applying for registration of ownership and registration of security. The purchase money

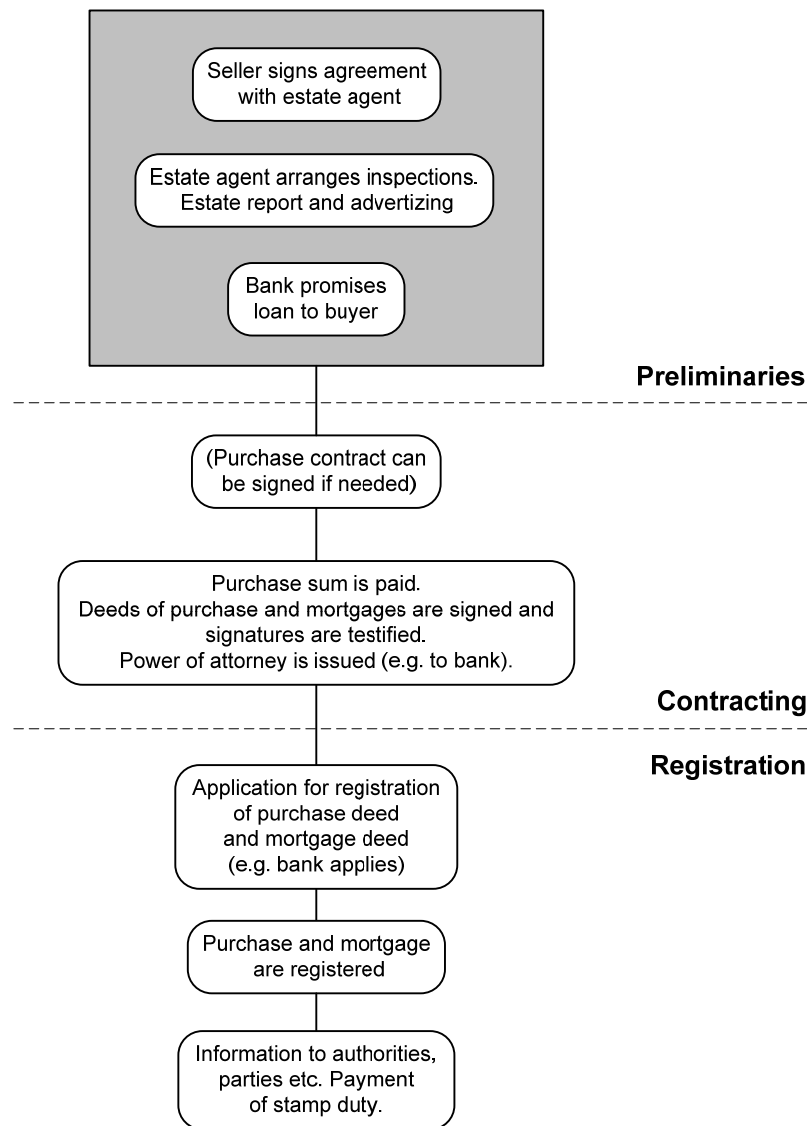
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<sup>1</sup> It should also be mentioned that segregation of mortgage deed and credit document makes it very easy to change banks and in this way put downward pressure on interest rates. This construction, then, provides opportunities for competition in the credit market.

should be paid over at the same time, at least formally, so as to make the purchase complete (Sweden). Any amount outstanding can be turned into a loan secured with a mortgage deed (Sweden).

The party given power of attorney applies for ownership registration and mortgage registration. Registration should be obligatory, in order for the Real Property Register to mirror actual conditions (Finland, Sweden). Once the purchase is registered, the land registration authority or its equivalent informs other public authorities, preferably by electronic means (Sweden). It also sends the documents to the parties, together with invoices for administrative processing and stamp duty (Sweden).

**Figure 6.** Model process of normal purchase.



The model process which has now been proposed applies to a normal purchase and in simplified form is also feasible for what was previously termed the simplest possible purchase, in which the parties all rely on each other and can manage everything by themselves (Sweden). If legislation and routines are constructed in accordance with the standard model proposed, then of course it will also have to be modified for coping with more complex situations, but both Finnish and Swedish experience suggests that this is perfectly possible.

It should also be mentioned that time is sometimes needed between the parties committing themselves and all the formalities being completed. If so, it must be made possible for the process to be supplemented by the signing of a registrable contract of sale (pre-contract), to be superseded by a deed of sale once all the formalities have been completed (all countries).

## **BIOGRAPHICAL NOTES**

**Hans Mattsson** is surveyor, DTech, Dr h.c. (mult) and Professor of Real Estate Planning at the Royal Institute of Technology (KTH), Stockholm. For many years he has been concerned with cadastral issues in practice. Recently, together with Nordic colleagues, he concluded a project concerned with comparing the property purchase and parcelling processes in the different countries. He is in charge of the MSc Land Management programme at KTH and has been actively involved in university support programmes in different countries.

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