

Real Estate Development Agreements in Sweden

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SUMMARY

Land management or management of real estate also means development of land for new purposes.

Real estate development agreements in Sweden regulate development of an area of land. These agreements play an important role in the development process. The paper gives an overall description of the use of real estate agreements in Sweden. The paper summarises an analysis of structure and content of real estate development agreements.

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1. INTRODUCTION

A real estate development agreement regulates the development of an area of land. In this context, development means the construction of new buildings or the refurbishment of buildings, with the intention of changing the use or making the use of an area more productive. These agreements are set up between Municipalities and so-called Developers. The Developer, the counterparty in the agreement with the Municipality, is the person or the company responsible for the real estate development and construction of buildings and facilities.

Such agreements are used more or less extensively to apply to the whole or parts of the development process.

2. THE DEVELOPMENT PROCESS

The development process could be described as commencing with the wish: “somebody wants to build something”. One of the parties initiates the idea of development. Often the Municipality does so. For example the administration of the municipality or its politicians may see a need for more housing and workplaces. The developer may need construction projects for employment and development and therefore begins the development process. Alternatively the developer may also be a landowner and wants to make a piece of land more profitable. Often several different needs come together, leading to development.

When the development project has been started, a number of steps follow. Detailed planning, project design, purchase of land and property formation is all closely connected in the development process and is carried out consecutively or partly simultaneously.

A complete development starts with an idea and continues until buildings and constructions are ready to use, see Figure 1. In the process the Municipality’s plans must be considered. Detailed planning, technical investigations and project design are needed. Roads, parks and other facilities have to be planned. The land ownership must be regulated depending on who owns the land before the buildings are constructed. Utilities like roads, water and sewage systems, parks, heating systems, electric power and telephone lines require investment and financing must be found.

Work on the detailed plan is seen as a part of the development process. The detailed plan gives the landowners a right to get building permissions if the application complies with the detailed plan. Therefore, the approval of the detailed plan is comparable to a building permission in a local housing committee.

Many activities and the co-ordination of many activities are needed before the building construction is complete. Development agreements have become necessary to solve problems of co-ordination. The agreements include mechanisms for carrying out the development.

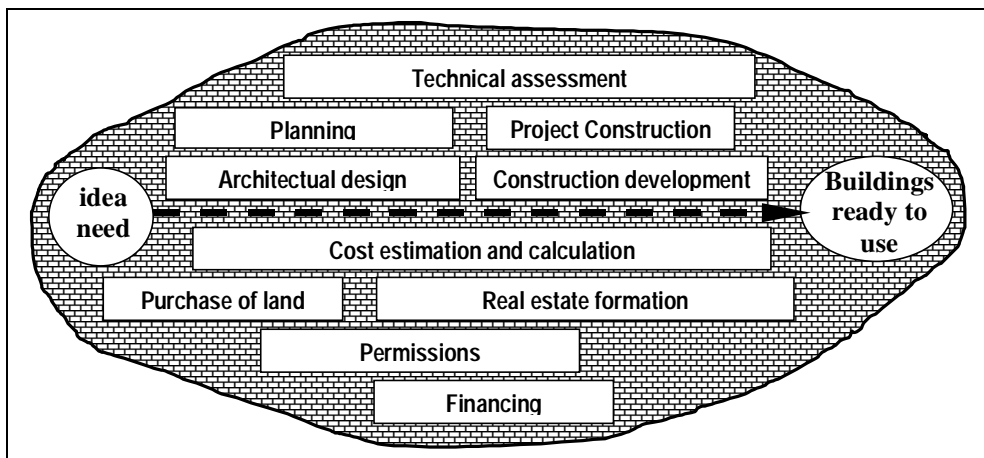


Figure 1: The development process and how it can be described to run from an idea until the buildings are ready to use.

The development process ends when buildings and other facilities are ready for use. After this the owner has to care for and maintain the land, the buildings and any other facilities. Development gives way to maintenance. People and companies will move into the buildings. Roads and utilities have to be maintained in the future. When the development process ends and the buildings are ready for use land development passes to maintaining and becomes a maintaining process.

3. THE CONTENT OF THE REAL ESTATE DEVELOPMENT AGREEMENT

Real estate development agreements regulate rights and obligations between the Municipality and the developer and the carrying out of a development.

The broad content of a Swedish real estate development agreement is described in table 1.

The real estate development agreement may contain commitments regarding the area of land and/or rights to land. Such commitments in the agreement cover purchase of land, the granting of rights such as easements, rights to the use and enjoyment of land, utility easements and real estate formation (the creation of new real estate) etc. The agreements may contain commitments concerning different facilities, and obligations to construct or pay for them.

Real estate development agreements may regulate the design of the buildings in detail. Obligations regarding administration concern the organisation and management of the development. Some commitments in agreements may refer to issues valid when the development is completed. Some commitments refer to the application of standards for construction and buildings. The agreements also regulate what will happen if the parties break the agreements, so-called obligations intended to plug loopholes.

Real estate development agreement is nowhere specifically mentioned in Swedish law. There is no legal regulation of the real estate development agreement itself. The laws that regulate developments and implementation of developments affect the agreements. They are also affected by contract law and the laws governing the municipality's competence.

There are many varieties of real estate development agreement in Sweden. Neither the title of the agreement nor the content is uniform. Agreements with the same purpose may have other titles or headings than real estate development agreement. A relatively common title or heading is "Real estate development agreement". Sometimes agreements are called "implementation agreements" emphasising the fact that the agreements are being used for the implementation of a development project.

Table 1 The content in a real estate development agreement from a general point of view.

Real Estate Development Agreement
The parties in the agreement
The area of land
Conditions for the validity of the agreement
Goals, purpose and the accomplishment of the agreement
Commitments concerning the conveyance of land and conditions regarding the conveyance
Rules about the payment and on the taking possession
Commitments regarding real estate formation
Commitments regarding easements, Right of Use and "utility easements"
Commitments and regulations regarding facilities
Commitments and regulations regarding building and construction
Joint Facilities and Joint Facilities Associations
Commitments regarding the assignment of constructions and facilities
Commitments and regulations regarding compensations and payments
Regulations concerning the shape of the ground the vegetation and interference in nature
Regulations of building area, storing place etc.
Regulations and commitments concerning time-schedule
Regulations of the performance of an contractor
Regulations of control, inspections, responsibility of guarantee
Regulations of sanctions and consequences insufficient or defective carrying out, fine and penalty
Regulations of security
Special conditions
Regulations of the Municipal right of way
Regulations of the transfer of the agreement
Regulations of disputes
Signatures

Not all agreements made during the development process are “real estate development agreements”. During the development process “agreements in terms of contracts” may be entered into. These agreements are made between the developer and the contractor. However, in real estate development “agreements commitments in terms of contract” may also entered into, e.g., when the developer commits himself to build facilities paid for by the municipality.

3.1 Rules and Regulations

Urban development is regulated by many laws and regulations and hence the rights and obligations in the real estate development agreements. The planning and building acts, the law governing public water and sewage systems, the Code of Land Laws, the Law of Real Estate Formation, the Law of Joint Facilities and the law governing municipalities’ competence, all influence real estate development agreements. The rules of governmental financing of housing developments may also influence some agreements. These rules are not to be found in one Act. Nor do the laws that affect the development process prescribe steps for the implementation of development.

An array of different special laws with different procedures regulates the relations between landowners and the municipality in the different stages of the development process. The law regulating development is a dynamic juridical area. During the last 40-50 years, there have been many changes in the regulation of developments. The issue of implementation of developments took on a more prominent role in 1987 with the approval of a new planning and building act. This contains rules regulating the municipalities’ responsibility for the construction of common facilities such as roads and parks etc. It is the same with rules for the landowners’ contribution to these facilities. The details of these rules have changed over the years but the fundamental meaning has stayed the same.

The agreements indirectly depend on laws regulating development and the fact that different kinds of laws regulate developments makes the legal consequences of the real estate development agreement ambiguous. The real estate development agreement may not override or coerce rules in the laws. The legal consequences of the agreements are complicated and a mix of public law and civil law.

4. THE USE OF REAL ESTATE DEVELOPMENT AGREEMENTS IN SWEDEN

4.1 An Analysis of Typical Obligations in Real Estate Development Agreements

The agreements are multiple-page written documents. The content of the agreements varies widely, although it is usually based on standard agreements and recommendations issued by, *inter alia*, the Associations of Municipalities in Sweden.

To be able to investigate the structure of real estate development agreements and the obligations they contain a method to handle very large amounts of information has been developed.

The method was used in analysing 80 agreements of real estate developments (development agreements) collected from a period of 40 years.

The commitments as they are presented in the agreements were categorized in types and transformed to standardised terms. Fact and rules influencing real estate development and the design of agreements were identified. The structure of commitments and its association with external facts the demographic circumstances at different times the economic situation, and extent of construction in the whole country) and internal facts (the landowner context and the physical plan situation) were analysed statistically.

The legislation concerning real estate development agreements is the interpretation frame of the method. The method comprises two parts; on the one hand studies of the documents of the agreements and laws and regulations concerning real estate development agreements and on the other hand statistical work.

4.2 The Use of Land Reflects the Spirit of Time

The types of commitments are related to the rules. The rules changed during the 40 years representing the period of investigation.

The real estate development agreements reflect the development of society and the changes in its political landscape. In particular, some milestones in society can be distinguished. For example: the culmination of construction during the Million Programme, the discovery of the radon problem, the introduction of the energy norm, the installation of district heating, and changes in the rules for granting of government credits for dwellings, all made impressions on such agreements. However, the economic trends and the state of the market and the change in birth rate are also of significant importance for the Municipalities and developers land strategies.

4.3 The Planning Monopoly of the Municipality

The planning monopoly of the Municipality plays an important role in that it allows the Municipality to adopt a detailed plan, and through that means to direct the construction of buildings. This is illuminated in the use of development agreements. The detailed plan status can be seen to have a great influence on the content of the agreements. However, it is also clear that the structure of commitments depends on both the land ownership and the detailed plan status. Typically there are commitments directly concerning the transfer of land.

4.4 Obligation of the Developer to Finance Facilities

In real estate development agreements in Sweden, the most common obligations are developers' commitments, but the Municipalities make promises as well. The types and the number of types of commitments show the existence of a vast amount of negotiation.

One question that is discussed is how the obligation of the developer to finance facilities like roads, utilities, parks, pedestrian areas, bicycle paths and so on, is expressed.

The material confirms that this financial obligation can be transformed into practical commitments, i.e. the construction of facilities such as roads and utilities. There are also mixed forms: the developer may contribute to these obligations both financially and practically.

As far as payment of fees for facilities is concerned, there are differences depending on the kind of facility. The rules oblige the developer to pay for the part of the street-network that is directly related to the development. It is confirmed in the material that when the developer builds streets he will not pay fees relating to street costs. For water and sewage installations, there are standard fees. In the material it is confirmed that the developer may sometimes be committed to build such installations for the municipality as well.

For the various forms of costs, for example, costs for plans and administration, there is a great variety of commitments. Sometimes the cost seems to be distributed in a way that is different from what is directly apparent in the rules. In some cases, the developer pays for administrative functions that normally should be charged to the Municipality.

4.5 Are Real Estate Development Agreements Abused?

The question has been raised whether real estate development agreements are abused, i.e. whether the Municipality forces the developer to make financial commitments beyond what is called for in law, simply because of its advantage of planning monopoly. Based only on a study of the agreements, it is not possible to determine if such injustices exist. On the other hand, there is a clear consistency in the design of the agreements. Simply by studying texts of the agreements transformed to standard formulations it is not possible to confirm or reject hypotheses that the agreements are in any way illegal. To investigate the use of real estate development agreements from the point of legality, other sources of information would have to be consulted, including a follow through of the process of development. However, it is not established that the information required to obtain an answer exists in open sources, since negotiations that could shed light upon the situation for example may be undocumented, or discussed only within political party groups. Moreover, where negotiations result in signed agreements this means that the parties, at least formally, agree and that the parties think the agreements are useful.

The obligations in the agreements are generally consistent. However, in some cases the commitments seem to be contradictory or redundant. Generally, this may be explained by reasonable assumptions concerning the parties' behaviour regarding rules and established practice.

The content of the real estate development agreements seems complementary to the rules existing in the law. It is not at all easy to interpret the laws and regulation of development and an answer as to which are the commitments that conform to the rules and regulations and which ones who do not. The reason for this is e.g. that the laws are so widely written that they allow much space for interpretation. Another reason is that solely looking at the agreement is not enough to judge if the agreement conforms with the law.

Agreements enable development to be accomplished and in doing so, make administrative action unnecessary. For example, they remove the need for decrees from the County Administration Board after applications from the Municipality.

4.6 The Agreements are Advantageous

Real estate development agreements are advantageous to the administration of the development but also to the democratic process. If the agreement is brought to the local government councillor to be adopted, the popularly elected politicians are informed about what has been negotiated.

5. CONNECTION BETWEEN ACTIVITIES, ACTORS, LAWS AND AGREEMENTS

5.1 Space of Action

The space of action for the parties during a construction project is defined through the interaction of regulations and agreements. Several actors carry out activities or decisions. A model of the development process with actors is presented in Table 2, Table 3 and Table 4. The model explains why the different commitments exist in the agreements and how they fit into the different parts of the process, e.g., construction of roads and water and sewage systems, that are regulated according to the performance, and the distribution of costs.

Activities and decisions in the development process and parties involved are described in accordance with the regulation in the legislation and regulation in real estate development agreements. In principle, all described parts are included in a development project. The order of the different parts may differ from project to project.

Every development project has its own ways and needs its own set of arrangement. It is only under certain circumstances that there is an obvious chronological order between the activities, e.g. that building permission should be approved before the construction starts. Implementation of the development process and activities and decisions are shown in Table 2 above. A development project always begins with a need and an idea: "somebody wants to build something". The need to implement a development project can of course have different reasons.

The municipality and the developer are the main actors in the development process. The major difference between these actors is that the municipality also takes authority decisions. Through a complicated interplay between the main actors and the other actors, a development project emerges bit by bit.

As the development progresses, there are fewer and fewer decisions and consequently less and less possibilities for the parties involved to influence the result. No party has total control of the whole development process. It is therefore necessary to compromise and modify the original intentions to satisfy political goals.

Table 2: Model in three parts for activities and decisions in the development process in relation to laws and regulations in real estate development agreements. Part I shows the process up to the approval of the detailed plan

Parts in the development process	The Municipality	The developer	Other involved parties	Regulated through laws and administrative processes	Real estate development agreements
Idea or Need	The responsible committee in the Municipality and the municipality administration	Developer	Parties concerned with interests in competing land use, landowners, citizens and authorities.		May be regulated in real estate development agreement
Decision about Planning	Municipality committee and Town councillor			The detailed plan is regulated in the law (planning and building act)	
Detailed Plan, (Proposal, Consultation with the public and concerned parties, exhibition)	Municipality official	Developer	Consult, landowner, neighbours, citizen, authorities, interest organisations	The process of the detailed plan is regulated in the law (planning and building act)	May be regulated in real estate development agreement
Preliminary study of project plan	Municipality official	Developer	Ev. Consult		May be regulated in real estate development agreement
Design	Municipality official	Developer	Ev. Consult	May be regulated in the detailed plan. Can be regulated in a building permission	May be regulated in real estate development agreement
Decision of the approval of the Detailed Plan	Town councillor or delegated committee			The process of the detailed planning is regulated by the law (Planning and building act)	

The main actors conduct the development process, allocating responsibilities, initiating activities, e.g., applications for permissions and producing documents etc.

In real estate development agreements, the distribution of responsibilities is regulated e.g. responsibility for different parts of the implementation of the development process. How this is done differs from project to project.

In legislation, many issues regarding development are regulated, influencing the agreement conditions between the municipality and the developer, e.g. the rules for detailed planning and for land, facilities and fees. Sometimes a third party may be involved as well.

The tables above show how different parts and activities are connected to each other. A rational development process needs knowledge about how these parts fit together.

Through the real estate development agreements the parties may choose to regulate only parts of the process and to leave some commitments to be solved in the administrative processes.

5.2 Regulation in Law or Agreement

The question of distribution of responsibility between agreements and legislation has to do with expectations on legislation and agreements. Of course the expectations depend on the point of view. The municipality wants to have an easy and smooth way to obtain essential expenses from the developer. The developer wants to start his development quickly and to obtain a good profit. For the inhabitants and others who are affected by the development it is important that the agreement is economical and environmentally favourable and is not in conflict with any legislation.

Table 3: (continue from Table 2) Part II refer to the process after the decision of approval of the detailed plan up to approval of building permission

Parts in the development process	The Municipality	The developer	Other involved parties	Regulated through laws and administrative processes	Real estate development agreements
Writing Negotiation of real estate development agreement	Representation for the municipality official and politicians	Developer			May be regulated in real estate development agreements
Approval decision of real estate development agreement	Town councillor			The municipality's competence regulated in the laws.	
Land Assignment, conveyance (Deed of transfer)	Town councillor or delegated committee	Ev. developer	Landowner, County administration authority	The process of purchase of land is regulated in the law. The municipalities right to redemption of land are regulated in the law and goes through an administrative routine.	May be regulated in real estate development agreements
Application of real estate formation, Joint facility formation.	Responsible municipal committee and administration	Developer	Landowner, holders of easements, holders of right of use and leaseholder	Application procedures is regulated in the law	May be regulated in real estate development agreements to be given in together with the application for real estate formation
Decision and procedure of real estate formation, Joint facility formation etc.			Cadastral and land survey authority	Regulated in the legislation	
Project planning	Municipality official		Ev. Consult, constructor		May be regulation in real estate development agreement
Economical calculation,	Municipality official Administration	Developer	Ev. Consult	Municipality fees Rules and regulation for rates and fees	Regulation in real estate development agreement
Technical assessment,	Municipality authority (only control)	Developer	Ev. Consult	Regulated in the legislation	Regulation in real estate development agreement about the procedure
Financing	Municipality bail	Application by developer	Financing institutes and banks	Rules about governmental financing	Regulation in real estate development agreement about the procedure
Application about special permission	Municipality official	Developer		Regulated in the legislation	May be regulation in real estate development agreement
Decision about special permissions such as			Decisions by other authority e.g. County	Regulated in the legislation	

It is hypothetically possible to establish the developers' obligation to contribute to the costs for infrastructure merely through agreements. The parties themselves should then agree upon the commitments in the agreement.

Table 4: (continue from Table 2 and 3) Part III refers to the process from application of building permission until the buildings are ready to use.

Parts in the development process	The Municipality	The Developer	Other involved parties	Regulated through laws and administrative processes	Real estate development agreement
Application of Building Permission		Developer	Authorities, neighbours	Regulated in the legislation	May be regulation in real estate development agreement
Decision about Building Permission	Responsible municipal committee			Regulated in the legislation	
Wholesale, trade to business	Municipality official and responsible municipal committee and administration	Developer	Consultants	For the municipality there is rules in the legislation.	May be regulation in real estate development agreement
The construction of facilities, roads, utilities, sewage and water systems etc.	Municipality official and responsible municipal committee and administration	Developer	Constructors		May be regulation in real estate development agreement
Charges fees for facilities	Municipality official and administration			Regulated in the legislation	May be regulation in real estate development agreement
The construction of buildings		Developer	Constructors	Regulation in building permission. Rules in legislation	Some parts may be regulation in real estate development agreement
Time schedule				In the detailed plan the time for implementation is regulated	Time schedule is regulated in real estate development agreement
Inspections Control	Municipality Building authority	Developer	Consultants	Regulated in the legislation	Regulation in real estate development agreement
Selling, Sale of or grant of enjoyment	Ev. Municipality administration for municipal housing	Developer	Purchaser and tenants	There are rules connected to governmental financing	Regulation in real estate development agreement
Buildings and facilities ready to use	Municipality official and administration	Developer			Sometimes it is regulated in agreements how the building and facilities should be managed when they are ready to use.

However, it is obvious that regulation merely through agreements is not enough when it comes to regulating big changes. In principle, it is possible to decide upon these obligations solely through legislation and to carry out the implementation of a development by administrative processes.

What is preferable? Legislation or agreements? Neither of the two has ever become pure in Sweden. Both the real estate development agreement and the rules and regulation of development have always existed together. Sweden has chosen a mix of agreements and legislation. There has been no wish to leave the regulation of the cost of development entirely to the parties. There is also legislation.

The present distribution of tasks between legislation and regulation in agreement may be said to be the result of a compromise of two extremes, “all through legislation” and “all through agreement”. Legislation and agreement complement each other.

To some extent the content of the agreements has changed during the last 40-50 years. Other parts of the agreements have remained unchanged. The content reflects the development of society and the development of legislation. The design of the real estate development agreement interplays with the development of legislation.

This is the result of two lines of development. Typical for one line of development is a practical distribution of tasks between legislation and agreements. Issues that cannot be regulated in legislation may instead be agreed on in agreements. Practice established in agreements may later be transferred to legislation. In the other line of development it has been shown that important conditions are not suitable for agreement between the parties, but that instead they should be regulated by legislation. For example the long-term development of infrastructure in society, where both the interest of the municipality and of the developer has to be protected is suitable for legislation.

Many years of experience show that the real estate development agreement is an effective tool in the development process.

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BIOGRAPHICAL NOTES

Dr Maria Ulfvarson Östlund is a chartered surveyor and has a MSc in surveying and a PhD in real estate planning from the Royal Institute of Technology, Stockholm, Sweden. She works as a senior land surveyor at the Cadastral and Land Survey Authority Stockholm County (Lantmäterimyndigheten i Stockholms län). She is currently responsible of a research project concerning common land of no common use and the question of their liquidation.

Other research interests concerns 3D real estate formation, law regulation of real estate development agreements, implementation of development projects and detailed plans and implementation of joint facilities.

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