



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Sweden: Real Estate (3rd edition)

This country-specific Q&A provides an overview of the legal framework and key issues surrounding real estate law in Sweden.

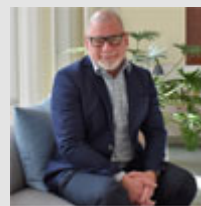
This Q&A is part of the global guide to Real Estate.

For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/real-estate-third-edition/>

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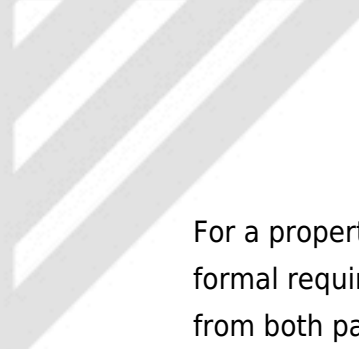
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1. Overview

Real estate law in Sweden is essentially based on statutory law with interpretive influences from case law.

All Swedish land is divided into independent property units (Sw. fastigheter), all registered in a central cadastral register, the Land Register (cf. below). A Swedish real property is traditionally a two-dimensional unit including all the land below ground within its boundaries and the air space above it. Since 2004, three-dimensional property units may also be created, allowing buildings or parts of buildings to become separate, transferrable properties within a two-dimensional ground unit.



For a property transfer agreement to be legally binding under Swedish law, certain formal requirements must be fulfilled. Requirements include written form, signature from both parties, a clear declaration of transfer, statement of purchase price and any conditions precedent. It is possible to transfer only a part of an existing property, such purchase will however become null and void unless sufficient parcelling measures in order to separate the purchased land from the original property are applied for within six months from the purchase and subsequently implemented. As a consequence of the formal requirements on real estate transfers, options on real estate acquisitions are not legally binding under Swedish law.

Lease law in Sweden is quite extensively regulated in statutory law, under provisions which essentially are mandatory to the benefit of the tenant. Swedish lease law includes provisions granting tenants a right to prolongation at the expiration of a lease term, sanctioned by an obligation for landlords to pay damages if prolongation is denied (unless specifically prescribed exceptions to the general rule are at hand).

From an international perspective, the Swedish real estate legal system is relatively well-organized, predictable and transparent, and generally provides a stable legal platform for investors.

2. **How is ownership of real estate proved?**

Legal title to real estate is generally transferred immediately when a binding transfer agreement is executed, unless there are specific conditions precedent. Ownership and other real estate related rights/encumbrances are registered in the public Swedish land register, administered by the Swedish government agency the Land Registry (Sw. inskrivningsmyndigheten). The land register is easily accessible online and generally considered to be very reliable.

Registration of ownership creates a strong presumption for title for the registered owner, but does not directly affect the legal validity of the underlying acquisition. A legally binding written contract, verifying the buyers acquisition, must however be submitted to the Land Registry in order to obtain registered title. Anyone purchasing Swedish real estate is required under law to apply for registered title following the acquisition.

3. Are there any restrictions on who can own real estate?

There are no such restrictions under Swedish law. As a general principle any legal entity may purchase and own any type of land. One limitation to this general rule can however be found in statutory restrictions for business entities to acquire agricultural land from natural persons. For such an acquisition to be valid, the purchaser must obtain a permit from the Swedish Board of Agriculture (Sw. Jordbruksverket) within the legally stipulated timeframe.

4. What types of proprietary interests in real estate can be created?

As an alternative to full title ownership, a long-term right of use to a property called site leasehold right (Sw: tomträtt) may be granted under Swedish law, legally constructed to essentially be comparable to ownership (from the site leaseholders perspective). A site leaseholder may grant leases and other usufructs on and mortgage the property in the same way as an owner with full title. A site leasehold is granted for a property in its entirety, generally for a longer time period (normally 20-60 years per term) against a yearly fee. Site leaseholds were introduced in order to enable public property owners, such as the state and municipalities, to retain the long-term market value increase of the land while still being able to distribute land for private interests (both residential and commercial). Site leaseholds can only be granted on land owned by public entities.

Site leaseholds may only be terminated by the property owner (not by the site leaseholder) in certain legally stipulated instances, and a valid termination generally entitles the site leaseholder to compensation from the property owner. A site leasehold can be transferred freely without the consent of the property owner, however commonly requiring a notification to the land owning entity, and the same formal requirements apply for the transfer of site leaseholds as when land is transferred.

5. **Is ownership of real estate and the buildings on it separate?**

Ownership of a real property includes, by legal definition, all buildings present on that property. When transferring real estate, as a general rule, the land and all buildings erected upon it automatically follow the transfer of the ownership to the buyer, without any need for specific contractual regulations in that regard.

Some exceptions to the general rule do of course exist. For instance, a site leaseholder automatically owns all buildings on the property upon which the site leasehold is granted, and the property owner must compensate the site leaseholder for the value of the buildings upon termination of the site leasehold. A similar situation occurs when buildings are erected by a land leaseholder, in such case the building is separately owned by the land leaseholder and is legally not a component of the real property unit on which it is placed.

6. **What are common ownership structures for ownership of commercial real estate?**

Since 2003 the typical structure of a real estate transaction is through a sale and purchase of the shares in a limited liability special purpose vehicle (SPV) holding the real estate or property in question. In Sweden there are, as of now, no 'thin capitalisation' or similar rules, meaning that a dormant limited liability company with only SEK 50,000 in share capital may purchase real estate worth SEK 100 million (or more, with no limitation based on legal requirements), establishing an SPV structure for sale of the property (known as 'packaging'). The background behind this structuring is that since 2003, such share transfers are, as a general rule, tax exempt, meaning that there will be zero income tax on the profits made on the sale of the shares. Applicable taxes will then be stamp duty and income tax on the property transfer into the SPV holding. However, the property transfer into the SPV will normally be made on a price or value equal to the tax residual value involving zero income tax also in this step of the structuring.

Direct real estate transfers carry a stamp duty of (currently) 4.25 percent for legal persons (less for physical or private persons and some other legal entities) based on the higher of the purchase price and the tax value of the property the year before the

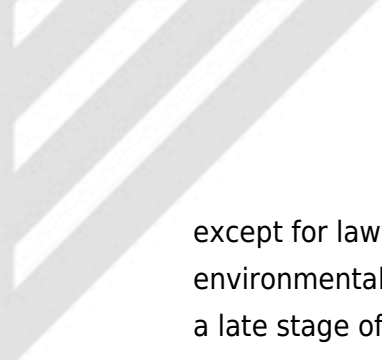
transfer. If there is no tax value on the property – because it involves a property category that under law is exempt from property tax (such as certain public service properties, for instance schools or care properties) or involves a newly established property through land parcelling measures – there will be a need for a valuation report. Currently, there is no stamp duty on the transfer of shares of real estate companies. This means that most transactions, from a processing and documentation standpoint, are made as indirect share transfer deals, rather than direct property transfers.

There has been a proposal for change in the tax legislation for packaging of real estate into SPVs, involving inter alia proposed income taxation on the sale of shares and changes of applicable rates of stamp duty, possibly also extending stamp duty charges to property amalgamation measures and to the sale of shares. A government inquiry (Sw. SOU 2017:27, Vissa frågor inom fastighets- och stämpelskatteområdet) released its report on such issues in 2017. However, several government representatives, many market players and tax experts have criticised the suggested changes and it is commonly believed that the proposal, in its current form, will not lead to legislation.

Commercial real estate is typically owned and managed through one or several limited liability corporations, but ownership under other forms of association also exists. Direct ownership of commercial real estate by individuals/natural persons is relatively unusual. The main driving factors behind the ownership structures currently in use are, naturally, tax optimization and limitation of owner liability.

7. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

The legal DD normally includes all company and real estate information and any information on disputes or litigation and similar matters, excluding tax and VAT, financial issues and technical or environmental issues (unless it concerns disputes or similar issues). Typically, M&A and real estate lawyers conduct the legal DD. There is a great variety in scope and thresholds, as well as reporting format, depending on the individual client's needs. Usually, international investors and Nordic institutions request full DD, while Swedish real estate companies and private investors normally complete parts of the DD themselves, with their own personnel. Other specialists involved,



except for lawyers, are accountant firms, corporate finance houses and technical or environmental consultants. Normally, more thorough DD activities are initiated at quite a late stage of negotiations, after agreement on exclusivity or some kind of cost coverage by the seller, since DD will drive costs for the buyer.

On certain occasions, the seller initiates vendor DD, in order to introduce and organise the data room in an effective manner and in order to reduce the need for buyer DD, but more often in order to clean up the company or property documentation or information to be presentable to investors.

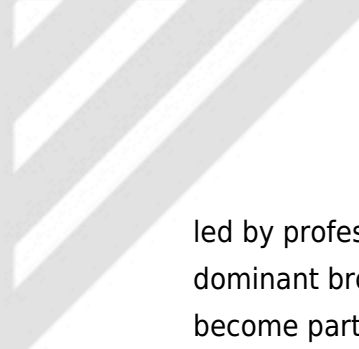
Information on title, bankruptcy, litigation etc. is normally found in the data room presented by the seller, as supported by representations and warranties relating to the accuracy of the data room information and independent searches by the buyer in public registers or information. Title issues rarely occur regarding commercial properties in Sweden. The Land Registry provides online information on title to real estate, supported by the government. In addition to this, full DD is normally conducted with regard to title to shares with uncapped representations and warranties by the seller to support this position.

8. What legal issues (if any) cannot be covered by usual legal due diligence?

Legal issues relating to title, use, access rights, mortgages and other encumbrances, planning/zoning, litigations etc. are normally relatively easy to cover under a normal due diligence procedure, thanks to publically available and reliable information. The exception would of course be contractual liabilities that are not registered with any public authority, such risks will however normally be addressed through Q&A and/or sufficient SPA regulations.

9. What is the usual process for transfer of commercial real estate?

Real estate transactions are often enacted through structured bid auction processes



led by professional brokerage firms. On the Swedish and Nordic market there are a few dominant brokers or corporate finance houses, of which many in recent years have become part of larger international firms, such as JLL, Cushman & Wakefield, Savills, CBRE etc., though there are still a few large independent Nordic firms such as Nordanö, Pangea etc.

In such processes, the transactions are typically initiated by the distribution to selected investors of an IM, the collection of indicative bids and the selection of a short list of bidders, of which one bidder will be given exclusivity for a certain period of time through a non-binding LOI or heads of terms. In certain cases, from time to time, two or three bidders are invited to compete during the first phase of negotiations, with limited DD and a first round of comments to the seller's SPA. Normally, this requires the seller to carry an amount of sunk transaction costs for the unsuccessful bidders. Other transactions, arguably quite a few, are made off market through direct contacts between seller and buyer. Sweden contains quite a transparent and transaction intense real estate market, which regularly involves repeat business or restructuring second sales after larger transactions. In addition, it is not uncommon – specifically in larger transactions – for different investors to form bid consortiums together, for instance combining international capital with local asset management or development knowledge.

Negotiations and drafting may be conducted in Swedish or English, depending on the parties' needs. Other languages are very rare in drafting. International investors are well advised to use local representatives. Legal documentation is by tradition relatively short, compared to Anglo-Saxon standards, but has under international influence become more extensive during recent years.

Completion may rely on different market standard conditions precedent to closing, such as approval of the transaction by the parties' boards, sufficient buyer financing or authority decisions (e.g. regarding land parcelling measures gaining legal force and the enactment of a new detailed development plan). The need for other authority decisions, such as clearance from the competition authorities in Sweden or the EU, is limited, depending on the size of the transaction. The actual completion measures at closing of the transaction are completely within the control of the parties (seller and buyer).

Normally, the financing banks will attend the closing meeting or prepare relevant documentation in advance. Thus, there is no need for third-party notarisation or similar formalities at closing, irrespective of whether the transaction is a direct property transfer or a transfer of the shares in a property owning SPV. However, certain closing and post-closing actions, such as necessary registrations with the Swedish Companies Registration Office or the Land Registry will require involvement of different authorities.

Transaction Steps	Seller	Buyer	Comments
Pre-agreement	<ul style="list-style-type: none"> ◦ Preparation and negotiation of LOI/ heads of terms ◦ Preparation of draft sale and purchase agreement ◦ Negotiation of sale and purchase agreement with buyer ◦ Agreement on final SPA, including appendices 	<ul style="list-style-type: none"> ◦ Due diligence, as outlined above 	<ul style="list-style-type: none"> ◦ LOIs are typically short and essentially non-binding, with indicative industry standard terms and conditions
Signing to Closing	<ul style="list-style-type: none"> ◦ Execution of transfer agreement ◦ Satisfaction of any conditions precedent to closing ◦ Preparation of closing documents 	<ul style="list-style-type: none"> ◦ Arrangement of purchase price funding (including any third party debt) ◦ Satisfaction of any conditions precedent to closing 	<ul style="list-style-type: none"> ◦ Deposit/escrow arrangements are typically not demanded from a financially strong buyer ◦ A deposit of 5-10 % of the purchase price may however be required if the buyer lacks sufficient financial strength. Such deposit is paid on signing and will be forfeited if the buyer fails to complete the purchase

Closing	<ul style="list-style-type: none"> ◦ Repayment of any existing debt and discharge of mortgages (if any) ◦ Closing documents, such as power/s of attorney, leases and other relevant material, are handed over to the buyer 	<ul style="list-style-type: none"> ◦ Execution of transfer agreement ◦ Payment of purchase price 	
Post-closing	<ul style="list-style-type: none"> ◦ Preparation of closing balance sheet and calculation of final purchase price ◦ Satisfaction of post-closing obligations, if any 	<ul style="list-style-type: none"> ◦ Registration of new BOD and other company formalities (in case of indirect transfer) ◦ Payment of stamp duty on land acquisition (in case of direct transfer) ◦ Registration of title with Land Registry (in case of direct transfer) ◦ Payment of stamp duty on new mortgages 	

10. **Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?**

Commercial real estate transfers are (currently) most commonly conducted by way of share transfer, please see Q6 above for a more thorough description. As noted, one of the main driving factors behind this is applicable tax (including VAT) rules.

11. **On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer**

In principle, occupational leases, including the right to receive rental payments, automatically transfer to the new owner when a property or site leasehold is

transferred.

12. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

Leases may be granted orally or in writing under Swedish law (written contracts are of course to be recommended, oral leases are very unusual). A lease constitutes an exclusive right granted in return for payment for the use of a house or part of a house. According to case law, the latter requirement implies that the object of a lease agreement must be a confined space with walls and ceiling in order for the agreement to constitute a lease under Swedish law. As mentioned, Swedish lease law is extensively regulated under statute and is essentially mandatory to the benefit of the tenant, irrespective of size and strength of tenant. Please see Q15 for a more elaborate description of commercial leases in Sweden.

Another right of use to real property is land leasehold (Sw: arrende). A land leasehold is a right to use land for a specific purpose, e.g. residential, agricultural or commercial, against a fee. Land leaseholds may be granted indefinitely or for a fixed term, but will be valid for a maximum of 25 or 50 years (depending on the existence of a development plan for the leased land).

Easements (Sw: servitut) may be created on a property following a written agreement between two (or more) property owners (or, if applicable, site leaseholders) or through cadastral procedure. An easement grants one property (the dominant property) a specific right to use a part of another property (the serving property) for a specifically defined purpose, such as for passing through, sewage and water facilities, fire evacuation purposes etc. Agreements on easements must comply with certain formal criteria and may only be created in order to satisfy a long-term, sustainable need for the dominant property. An easement can be registered in the land register in order to ensure the survival of the easement when title is transferred.

Joint facilities (Sw. gemensamhetsanläggning) constitute a form of joint ownership and/or use of property related facilities such as e.g. roads, sewage facilities, power stations, a parking garage etc. Joint facilities are created by cadastral procedure,

granting each of the properties participating in the facility arrangement a right to use the facility in question, as well as an obligation to carry a share of the total construction and operational costs related to the joint facility. A property's share in a joint facility is appurtenant to the property and automatically follows the transfer of the property.

13. Are split of legal and beneficial ownership of real estate (i.e. trust structures) recognised?

Split of legal and beneficial ownership of real estate is not recognized under Swedish law. There is no Swedish legal equivalent to the Anglo-Saxon definition of a trust structure. Fund structures resembling a trust structure could be formed through contractual arrangements, but cannot form independent legal entities under Swedish law. Non-profit foundations (Sw. stiftelser) can be formed under Swedish law as independent legal entities without external ownership, and may own and manage real estate and other assets for specific (often charitable) purposes.

14. What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?

- Following recent legislative changes that entered into force on 1 January 2019, Swedish corporations will generally be charged corporate tax at a flat rate of 21.4 percent on their net profits (previously 22 percent). The corporate income tax will be further reduced to 20.6 percent in 2021.
- As noted above, share transfers are generally tax exempt meaning no capital gains tax will apply when transferring an SPV holding real property. However, the tax residual value of the target property will be of importance to the buyer, as a transfer of the property from the SPV may trigger deferred taxes. Market standard practice indicates a price deduction of part of the deferred taxes, ranging between zero and 50 percent, but sometimes up to 100 percent.
- A state property tax is levied on owners of commercial properties, ranging from about 0.2 up to about 3 percent of the tax value of the property depending on its fiscal classification.

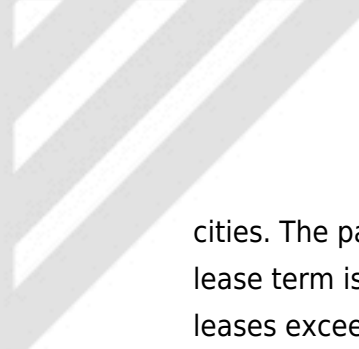
- Both real estate and share transfers are exempt from VAT. As a general rule, income (rent) from property leasing is also exempt from tax, meaning that no VAT deductions are allowed on expenses related to the property owner's rental business. A landlord may however choose to become voluntarily registered for VAT liability for commercial leasing, which is market standard practice, allowing the landlord to charge and deduct VAT (25 percent) on income and expenses related to such leases.
- Direct real estate transfers carry a stamp duty of (currently) 4.25 percent for legal entities, based on the higher of the purchase price and the tax value of the property the year before the transfer. No such tax is imposed on indirect transfers however, an additional factor behind the popular use of transaction structures involving indirect real estate transfers through share sales.
- Registrations of new mortgages carry a stamp duty of 2 percent of the total mortgage amount, increasing costs of financing when purchasing a property with no or few existing mortgages.

15. **What are common terms of commercial leases and are there regulatory controls on the terms of leases?**

Swedish lease law prevents property owners from enforcing in certain regards contract terms that are less favourable to the tenant compared to the mandatory minimum requirements set forth under statutory law. Such terms are non-enforceable, meaning the legally stipulated terms will apply where contract provisions fail to comply with the minimum requirements. Swedish lease law prescribes such minimum requirements on e.g. rent calculation formulas and service charges, form and service of termination, termination notice periods, lease prolongation periods etc.

Swedish law imposes no restrictions on the form of a lease contract, it may be concluded orally or in writing. The vast majority of leases are however agreed in written form. For commercial premises, a rather simple standard contract template form, based on what is generally considered to be market standard provisions, is often used for the main part of the contract, adapted to individual commercial terms where necessary. Specific regulations are normally included in separate appendices.

For office and industrial premises a fixed annual rent is most commonly applied. For retail premises and restaurants, turnover rent is often used, especially in the larger




cities. The parties may freely agree on the rent level for commercial premises. If the lease term is less than three years, the rent must however be a fixed amount. For leases exceeding three years, a variable rent may be agreed upon but it must be calculable on basis of the lease contract in order to be valid. Normally, the annual rent is also linked to changes in the consumer price index.

A tenant is not entitled to sublet the premises without the landlord's consent. In certain cases, approval may instead be sought and obtained from the Regional Rent and Tenancy Tribunal (Sw. Hyres- och arrendenämnden), when the landlord's consent is denied. In principle, a tenant is not entitled to transfer a lease without the landlord's approval. An assignment may however be effected irrespective of the landlord's disapproval if the assignment is made as part of a transfer of the business operation conducted within the leased premises. Approval by the Regional Rent and Tenancy Tribunal is required.

The term of the lease may be fixed or indefinite. If the lease period is indefinite, the party wishing to terminate the lease must give written notice at least nine months in advance. If the lease term is fixed, it may be terminated upon the expiration of the lease term with nine months prior notice (shorter notice periods are allowed if the fixed term is less than nine months). The parties are however free to agree on a longer notice period. Irrespective of the above, the parties are free to agree on an immediate expiration of the lease at any time. As a general rule, the parties agree on an automatic prolongation term in the lease contract. A prolongation clause will apply at the end of the lease period if the lease is not terminated by either of the parties.

If a lease is terminated, the tenant has a principle right to compensation. Thus, if the landlord refuses to prolong the lease on market terms, the tenant has a principle right to indemnification from the landlord, unless the landlord can present certain legally prescribed grounds for not prolonging the lease. Damages to be paid by a landlord under these provisions may reach substantial amounts. The tenant's right to compensation can under certain circumstances be voluntarily surrendered, which is not uncommon for parties to agree upon at the start of the lease period. Approval by the Regional Rent and Tenancy Tribunal is generally required for such an arrangement to be valid.



The parties are in principle free to agree on the allocation of liability for maintenance, repairs and insurance etc. Commercial tenants are typically liable for most of the operating expenses pertaining to the leased premises. Such costs may also include expenses related to maintenance of common areas/facilities, real estate tax and unforeseen costs, often allocated between the tenants on the property. The landlord typically bears the responsibility for structural maintenance/repairs.

16. **How are use, planning and zoning restrictions on real estate regulated?**

Planning and zoning is governed at municipal level, with the Swedish municipalities as the only competent decision-making authority (commonly referred to as the “municipal planning monopoly”).

Zoning plans/detailed development plans for the use of land are developed and adopted by the municipalities’ city planning administrative divisions, often at the request of and in consultation with a private developer or property owner. The planning process allows for neighbours and others affected by the suggested development to express concerns/suggested alterations, but the municipal council may however ultimately decide to adopt a plan irrespective of any popular opposition. Municipal decisions on planning can of course be appealed against and contested in court, but under normal circumstances only by a party who has submitted written comments during the planning process, which have been disregarded in the municipality’s final proposal.

A development plan may cover both publically and privately owned land, and may involve obligations for property owners to surrender private land to the municipality for public use. When a development plan stems from a private initiative, the municipality will also demand that the property owners benefitting from the new development opportunities finance the construction of public spaces/facilities serving the area (such as new roads and parks etc.). Private land owners and developers will be required to enter into so called development agreements (Sw. *exploateringsavtal*), allocating the public expenses among the property owners/developers. These agreements may be difficult to negotiate as the municipalities are often reluctant to make any changes to

their template contract formats.

The adoption of a development plan is followed by an implementation period ranging between five to fifteen years. During this time, the municipality may not alter the plan without compensating any affected property owners. This right to develop land pursuant to an adopted development plan during the implementation period is generally referred to as a building right. Permits are required for demolition, excavation or construction works or altered use of a building, but must always be granted provided that the suggested development complies with the provisions set forth in the applicable development plan.


17. **Who can be liable for environmental contamination on real estate?**

Swedish environmental law is based on the “polluter pays” principle. The polluter is liable towards the public authorities to investigate possible pollution/contamination originating from the polluter’s activities and to take appropriate actions to remediate such pollution (to a reasonable extent, considering e.g. the polluter’s contribution to the pollution and the permissible land use at the time the polluting activities were conducted).

The property owner’s liability is secondary to the polluter’s, and the property owner may only be liable in the event there is no polluter to hold accountable, e.g. because of bankruptcy. In such case, all current and previous owners who have acquired the property after 1 January 1999 (the date on which the Swedish Environmental Code first entered into force) are jointly and severally liable. The property owner’s liability will not exceed the potential liability of the polluter.

18. **Is expropriation of real estate possible?**

Expropriation of real estate is possible under Swedish law, but not commonly practiced as public access to privately owned land normally can be secured with use of



development plans (see Q16). Expropriation may be exercised by the state, a municipality or a private entity after receiving permission from the Swedish government. Expropriation is only allowed for certain purposes as prescribed under statutory law, and must serve a “particular public interest”. Expropriation may be permitted for e.g. large scale development, infrastructure or defence projects or to preserve areas of environmental, cultural or historical importance.

Property owners forfeiting land to expropriation have a statutory right to compensation from the expropriating party, corresponding to 125 percent of an estimated market value of the forfeited property, or if applicable, the market value reduction caused by the expropriation.

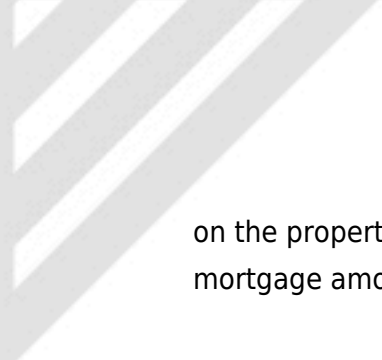
19. **Is it possible to create mortgages over real estate and how are these protected and enforced?**

Mortgages over real estate can be created after application with the Land Registry by the owner of the property. After the application has been registered and granted, a mortgage certificate is issued corresponding to the face value of the mortgage, either as a physical certificate or a digital certificate which may be transferred electronically to a bank or other creditor connected to the mortgage register system. Mortgage rights are protected through possession of the certificate (physically or electronically).

Enforcement of a pledged mortgage is carried out through executive auction administered by the Swedish Enforcement Authority, following an application by the property owner’s creditor/s. The procedure is relatively straight forward but involves some bureaucracy and may be time-consuming, especially if a debtor’s claim is disputed.

20. **Are there material registration costs associated with the creation of mortgages over real estate?**

The only material cost associated with the creation of mortgages is a stamp duty levied



on the property owner. The stamp duty on mortgages is currently 2 percent of the mortgage amount.

21. **Is it possible to create a trust structure for mortgage security over real estate?**

There is no Swedish legal equivalent to a trust in the Anglo-Saxon sense of the word.

22. **What is the main legislation relating to commercial real estate ownership?**

Real estate ownership in Sweden is mainly governed by the Swedish Land Code (Sw. jordabalken), including extensive statutory regulations regarding the transfer and registration of ownership, leases and other usufruct rights and mortgaging etc.

Other important real estate related statutes include the Environmental Code (Sw. miljöbalken), the Real Property Formation Act (Sw. fastighetsbildningslagen) and the Planning and Building Act (Sw. plan- och bygglagen).