

Rules regarding tenant owned associations

Daniel Goldman, 2011-01-17

Introduction

The purpose of this essay is to explain the most basic rules applicable to tenant owned associations. The paper discusses the most fundamental law on the subject, The Right of Residence Act (Swe: Bostadsrättslagen) as well as The Act of Economic Associations (Swe: Lag om ekonomiska föreningar).

Living in a condominium

Right of residence, is a housing form that has existed since the late 19th century. At first, the housing form was controlled by the Act of Economic Associations. The law was however not suitable for housing questions, and the first condominium law came in 1930. A new condominium law came in 1971 and the current law stems from 1991. Some amendments to the current law were made in 2003.

Right of residence is a Swedish phenomenon, but similar types of housing are also available in Norway and Finland. The right of residence holder has the right to use the apartment for an indefinite period. An important distinction between a right of residence holder and a tenant is that the tenant can only use the apartment for a limited time period. It is the tenant owned association that owns the property and the apartments; furthermore, the right of residence owner must be a member of the tenant owned association. As a member you need to take into account the association's rules, which are called the statutes, as well as the laws governing the right of residence. As a member of a tenant owned association, you have a great opportunity to affect your accommodation and this is one of the reasons why this housing arrangement has become so common and popular. Members can submit proposals to the tenant meeting and if enough people support the proposal, and a majority is reached, the proposal becomes a reality. The proposals may concern living environment, service, renovation or other housing issues. Of course, the proposal may result in an increase in cost, which means that the monthly charge must be increased, but the opportunity to affect their homes is worth much more to many people.

Today there are about 26,000 tenant owned associations and about 800,000 condominiums in Sweden.

Basic rules for tenant owned associations

A tenant owned association is a business association with the purpose of renting out a right of residence in the apartments of the association's property. A tenant owned association must be registered. The Act of Economic Associations applies to some extent to tenant owned associations. The tenant owned association needs to have at least three members. In addition, the association has adopted statutes and appointed a Board of Directors and at least one auditor.

Transfer of an apartment with a right of residence may only be made to a member of the tenant owned association. Right of residence is the right that the member has because of a grant from the tenant owned association. The transfer of a condominium to a new person should be made through payment. The right of residence is without a time limit and only the tenant owned association can grant such a right. A right of residence may only cover a building or part of the building. However, a right of residence may also include land which is situated in connection to the tenant owned association's building.

The tenant owned association needs to have an approved business plan. For registration to be possible, the business plan requires that the association's property consists of at least three apartments which is intended to be granted a right of residence. If the tenant owned association consists of more than one property, the buildings need to be close enough to make an *efficient interaction* between the residents of the building possible.

A residential apartment is an apartment that is intended to be totally or to a significant amount, be used as a residence. Commercial area refers to other area than residential.

The member of the tenant owned association

General provisions for membership

The decision to accept a new member in the tenant owned association is made by the Board of Directors subject to the conditions of membership set out in its statutes and the provision of the Swedish Right of Residence Act. The statutes may provide for the application to join the tenant owned association to be in writing and that the application must have

been witnessed.

Such statutes for membership are *not* acceptable:

- (i) That states a certain nationality or a certain level of income or wealth should be provided in order for acceptance into the tenant owned association;
- (ii) That a potential buyer should be appointed by someone other than the person having the right of residence or authorized for reasons other than provided for by the Right of Residence Act or
- (iii) That the condition otherwise in view of its contents or otherwise is unfair to those who wish to gain entry into the tenant owned association or sell his or her condominium.

Right to membership in the tenant owned association

The buyer of a condominium may not be refused entry into the tenant owned association if the conditions for membership laid down in the statutes are met and the tenant owned association reasonably should accept the person. A legal person who has acquired a condominium, which is not intended for recreational purposes, may be refused entry to the tenant owned association even if the conditions for membership are met or the tenant owned association reasonably should accept entrance. However, a municipality or a county council cannot be refused entry.

A tenant owned association that has acquired a property for the purpose of converting it to a tenant owned association owned property may not refuse a tenant entry in the tenant owned association. This does *not* apply if:

- (i) The area is a non residential area and the area will not be converted to a residential area
- (ii) The area is used because of employment and the area will not be converted to residential area
- (iii) Such circumstances apply that a tenant owned association have the right to refuse the person who acquired the right of residence entry into the tenant owned association

The tenant owned association has the right to refuse a tenant's entry into the tenant owned association, if

- (i) The person was not a tenant when the tenant owned association acquired it, or
- (ii) The tenant applied for membership in the association later than one year after the tenant owned association's purchase of the property.

Business Plan

Before a tenant owned association issues apartments with a right of residence, the Board of Directors needs a business plan to be registered with the Swedish companies registration office (Swe: Bolagsverket). The business plan should contain all the

information that is considered *relevant* to an assessment of the activity of the tenant owned association.

The business plan should be provided with a certificate from two people stating:

- (i) That the conditions for registration by the Swedish companies registration office are fulfilled
- (ii) That the information provided in the financial plan is accurate and consistent with the available documents, and
- (iii) That the calculations are authoritative and that the business plan seems to be sustainable

If something occurs that is of significant importance in assessing the activities of the tenant owned association, after the business plan has been registered, the association cannot issue apartments with a right of residence until a new business plan has been prepared by the Board of Directors and registered by the Swedish companies registration office. The Board of Directors should hold a registered business plan available for anyone that is interested in the document.

The right to exercise the right of residence after the sale

When a condominium is sold, the person who purchased the right of residence, can only exercise the right if membership in the tenant owned association has been granted.

A legal person may exercise the right of residence without being a member of the association. If the legal person has acquired the right of residence at an executive sale or forced sale and the legal person has a pledge on the property. Three years after the acquisition, the tenant owned association can urge the legal person that within a six month period show that someone who may not be refused entry into the tenant owned association has acquired the right of residence and applied for membership. If the request is not followed, the right of residence law can force a sale on behalf of the legal person. A legal person may, in the statutes of the tenant owned association, allow a more extensive right.

An estate of a deceased (Swe: dödsbo) may exercise the right of residence even though the estate is not a member of the tenant owned association. After three years, the same procedure as for the legal person is applied.

If the right of residence has been transferred because of for example a division of residence (Swe: bodelning) or inheritance, and the acquirer is not admitted membership in the tenant owned association, the acquirer has six months from the request or such

a lengthy period as may be specified in the statutes to show that someone who may not be refused entry into the tenant owned association has acquired the right of residence and applied for membership. If the request is not followed, then according to Swedish law a sale on behalf of the acquirer can be forced.

The rights and obligations of the person with the right of residence

The tenant owned association's responsibility for the apartment's condition

When the condominium is sold, the tenant owned association must provide the apartment in a such condition to the general perception that the purpose intended of the condominium is fulfilled. This applies unless otherwise agreed. If the apartment, when inspected the first time after the transfer of the right of residence, is not in the condition that condominium owners are entitled to claim, the person may overcome the lack at the tenant owned association's expense, unless the Board of Directors ensures that measure will be realized, as soon as possible.

After access to the condominium is granted, it is the tenant owned association responsibility to hold the apartment, house and land in a condition that is appropriate.

The right of residence owner may not use the apartment for any other purposes other than that intended. The tenant owned association may only invoke the anomaly if it is of considerable importance for the tenant owned association or any other member of the association.

The condominium owner may not, without the Board of Directors authorization, perform an apartment task involving:

- (i) Interference in a supporting structure,
- (ii) Modification of existing pipelines for sewage, heat, gas or water, or
- (iii) Any other significant change in the condominium

The right of residence owner can *not* accommodate non-members in the apartment, if it may harm the tenant owned association or a member of the tenant owned association. When the condominium owner use the apartment he or she must ensure that those living in the surrounding area will not be disturbed to such an extent that can be harmful to health or otherwise adversely affect their residential environment that they can not reasonably tolerate. The right of residence owner is also, in their use of the apartment, required to maintain soundness, order and good condition within or outside the property. The condominium owner may sub-let his or her apartment only if the Board of Directors gives its consent.

Consent is *not* required however:

- (i) If a condominium has been acquired on execution or forced sale of a legal person that had a pledge in the condominium and who is not admitted to membership in the association, or
- (ii) If the condominium is intended for permanent housing and housing rights of the apartment is owned by a municipality or county council.

If the Board of Directors refuses to give consent to an alternative assignment, the condominium owner can still sub-let an apartment if the rent tribunal (Swe: Hyresnämnden) has authorized the grant. Permission must be given, if the condominium owners have considerable grounds for the grant and the tenant owned association has no legitimate reason to refuse consent. The permit should be limited to a certain time.

The owner to the right of residence should at his or her own expense keep the apartment in a good condition. This also applies to land, if included in the grant.

Right of residence owners are not responsible for the repair of pipelines for sewage, heating, gas, electricity and water, if the tenant owned association has provided the condominium with wires and more than one apartment profits from them. The same applies to ventilation ducts.

For repairs due to fire or water damage, the condominium owner is responsible only for damage caused by:

- (i) His or her own negligence or misconduct, or
- (ii) Negligence or misconduct of
 - a) Someone who belongs to the owners household or who visits them as a guest;
 - b) Someone else that has been housed in the condominium, or
 - c) Someone for the owners behalf has carried out work in the condominium.

For repair due to fire damage caused by the negligence or misconduct by someone other than the owner of the right of residence, the owner is liable if he or she failed in their duty of care and supervision.

The tenant owned association's right to remedy the deficiency

If a condominium owner neglects responsibilities for the apartment's condition to the extent that others are compromised or are at risk of extensive damage to property of others and not been given notice to remedy a defect in the apartment's condition as soon as possible, the shortage may be adjusted at

the expense of the condominium owner.

Access to the apartment

Representatives of the tenant owned association has the right to enter the condominium when they need for supervision or to perform work that the tenant owned association is responsible for or is entitled to do. Condominium owners are obliged to tolerate such restrictions in the usage right which is based on the measures necessary to eradicate pests in the house or on the ground, even though the condominium is not bothered by pests.

Charge to the tenant owned association

Every member should pay a fee to the tenant owned association in the form of an condominium charge (Swe: Insats) when the right of residence is purchased. The tenant owned association has also the right to charge an annual fee for its ongoing operations.

Forfeit

The right of residence to a condominium is forfeited and the tenant owned association is therefore entitled to make the person move out:

1. If the person delays payment for the operation or assignment fee in addition to two weeks or such longer period as may be specified in the statutes of the tenant owned association after the date the tenant owned association demanded the person to fulfill their payment obligations,
 - 1 a. If the person delays payment of the annual fee, in the case of a residential area by more than a week after the due date or, in the case of a non residential area, more than two business days after the due date.
2. If the person without the required consent or authorization sub-lets their condominium.
3. If the condominium is used in violation of the intended purpose of the condominium
4. If the condominium is leased second hand and through negligence vermin is spread in the apartment, or the condominium owner without undue delay, does not inform the Board of Directors that there is vermin in the apartment, and this contributes to the spread of vermin in the building,
5. If the condominium is otherwise neglected or if the person having the right of residence fails to fulfill their general obligations in the use of the condominium,
6. If the condominium owner do not provide access to the apartment because of maintenance etcetera and they cannot demonstrate a valid excuse,
7. If the condominium owner fails to fulfill obligations that go beyond what they should do under the Swedish Right of Residence Act, and it must be considered to be of extraordinary importance for the tenant owned association that the obligation

is fulfilled

8. If the apartment wholly or partially is used for business or similar, which represents or in which to a not insignificant part includes, criminal acts or for occasional sexual relations for money.

Tenant owned association dismissal is valid for many of the numbers above, if the right of residence owner fails to take corrective action without delay after being told.

The content of the statutes

The tenant statutes should include the following:

1. The tenants association's name
2. The location in Sweden of the Board of Directors's headquarters
3. The purpose of the tenant owned associations operations and the nature of the operations
4. The grant fees, transfer fees and pledge fees that may be charged
5. The foundation for calculating the annual fee, the transfer fee, and the pledge fee
6. If the statutes determine that the compensation regarding a sale is restricted, the grounds on which the compensation is otherwise calculated should be stated
7. The basics for which funds should be allocated to ensure that the maintenance of the tenant owned associations property is fulfilled
8. The minimum and maximum number of Directors and auditors and any deputies and the maximum time of their assignment, and if any of them should be appointed otherwise than as provided in the Swedish Right of Residence Act, how it should be.
9. The time scale and format of how the tenant owned association meeting should be convened and how other messages should reach the members' attention.
10. Which questions should be raised at the annual general meeting
11. The tenant owned association's financial year should be specified
12. The criteria for the distribution of the tenant owned association's profits and how to proceed with the tenant owned association's remaining assets when the tenant owned association is dissolved

Name, membership and apartment listing

The tenant owned association's name (Swe: Firma) should include the word "tenant owned association" (Swe: Bostadsrättsförening). The Board of Directors should also keep a list of tenant owned association members and the list of apartments that are open to right of residence.

The management of the tenant owned association

The rules for the tenant owned association management is controlled by the Act of Economic Associations and applies to tenant owned associations with the following *exceptions*:

- (i) The Board of Directors should always be at least two or, if the Board of Directors consists of less than five members, at least one should be elected at the general meeting
- (ii) Unless otherwise agreed to in the statutes, the right of residence holder's spouse or partner can act as a Director or Deputy Director, even if the spouse or partner is not a member of the tenant owned association.
- (iii) The provisions regarding Chief Executive Director does not apply

It is the task of the Board of Directors to establish fees to the tenant owned association, unless otherwise agreed in the statute. Modification of the operation of the tenant owned association should always be decided by the tenant meeting.

If several members own a condominium, they only have one vote, unless otherwise prescribed in the statutes. If a decision on a matter referred to in the tenant meeting should be valid, it has to be taken at a general meeting. For most decisions regarding a change in effort (Swe: Insats) that involves disruption of the inter-relationship between the efforts or general decisions regarding the operation of the tenant owned association, all the condominium owners must have approved the decision. If agreement is not reached, the decision is still valid if at least two thirds of the tenant owned association members have agreed to the decision and the decision also has been approved by the Rent Tribunal (Swe: Hyresnämnden).

A decision on conversion of a rental property to a condominium property

A tenant owned association's decision to acquire a property for the conversion of a rental property must have been taken at a general meeting. The decision is valid, if the tenants of at least two thirds of the rented apartments covered by the acquisition have agreed to the decision. These tenants must be members of the tenant owned association and, in respect of housing tenants, also be registered at the property (Swe: Folkbokförda). Before the decision to purchase the property is taken, a business plan must have been created and made available to the tenants. Attached to the business plan should be a technical inspection report showing the properties condition. The plan should also be provided with a viable certificate.

Amendment of the statutes

A decision to amend a tenant owned association's statutes is valid

if all eligible voters agree. The decision is also valid, if the decision was taken at two consecutive general meetings and at least two thirds of those voting at the most recent meeting agreed to the decision. If the decision relates to amendment on the grounds under which the annual fees are calculated; however, it requires that at least three quarters of those voting at the most recent meeting have agreed to the decision.

Damages, penalties and fines

The provision for compensation regarding economic associations is applicable to tenant owned associations on many accounts.

Sources

Bostadsrättslagen SFS 1991:614 (BRL)

Lag om ekonomiska föreningar SFS 1987:667 (LEF)

www.bobattre.se

Group work: Rules regarding tenant owned associations

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Questions

1. Which two Swedish regulations govern most of the operation of the tenant owned association?
2. If a condominium is purchased, the person can only exercise their right of residence if...?
3. To be able to get the business plan registered, two requirements are mentioned in the text?
4. The business plan should be provided with a certificate stating three things?
5. Give three examples of statutes that are not acceptable?
6. The condominium owner may not, without the authorization from the Board of Directors, perform the following condominium changes? Mention two changes?
7. How can the right of residence owner still second hand lease his or her condominium if the Board of Directors has said no?
8. Mention five reasons that forfeit the right of residence?
9. The name of the tenant owned association should always contain what?
10. What percentage of apartments have to vote in favour of buying a property at the general meeting of a tenant owned association?