

STRATA TITLES ARE INTRODUCED IN SWEDEN

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Key words: 3D Cadastre, land management, tenant-owned apartment properties

SUMMARY

New legislation for multi-dimensional real property formation (3D Cadastre) came into force in Sweden on January 1st 2004. The Act is considered to be the most important basic change that had taken place in Swedish cadastral legislation during the past 30 years.

The limitations in the legislation that previously applied concerning formation of multi-dimensional property units for housing purposes have now been removed. Earlier a real property unit could not be a space comprising only a single dwelling unit and, therefore, the legislation did not permit the creation of strata titles (apartments/condominiums). The previous Swedish government did not consider that ownership of apartment units should be permitted. Therefore, a multi-dimensional real property unit for dwelling purpose could only be created if it comprised at least five dwelling units.

However, the present government decided that changes should be made to the legislation that would make it possible to create so-called tenant-owned apartments. The change to the legislation means that it is possible to form a tenant-owned apartment property that comprises only a single apartment. It is also possible to own, rent out or transfer the property without any special restrictions. A pre-condition is, however, that there must be at least three such property units in the apartment building. Furthermore, it is only possible to form tenant-owned apartment properties in newly built buildings. In an existing building it is, however, possible to create tenant-owned apartments on condition that the building has not been used as an apartment building during the eight year period prior to the property formation.

From a political viewpoint it is considered that tenant-owned apartment properties offer several advantages: the diversity of the property market will be increased, there will be a wider choice of homes and an increase in the influence that can be exerted by home owners. An increase in the number of newly produced housing units is also anticipated, as well as an increased availability of apartments for renting. It is estimated that between 3 000 and 5 000 tenant-owned apartment properties will be formed annually.

In Sweden, multi-dimensional real property units are created through a cadastral procedure. An application for implementation of such a procedure must be made to Lantmäteriet (the Swedish mapping, cadastral and land registration authority). Tenant-owned apartments units are included in the Real Property Register.

The new rules for strata titles came into force on May 1st 2009. During the first seven months Lantmäteriet has received applications for the formation of approximately 300 tenant-owned apartment properties.

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Kommentar [IB1]: ej en benämning!

SUMMARY (Swedish)

En ny lagstiftning om tredimensionell fastighetsbildning (3D) trädde i kraft i Sverige den 1 januari 2004. Lagändringen ansågs då vara den viktigaste förändringen som hade skett i Sverige inom fastighetsrätten under de senaste 30 åren.

Den begränsning i lagen som gjordes 2004 angående möjligheten att bilda tredimensionella fastigheter för bostadsändamål har nu tagits bort. Tidigare kunde ett fastighetsutrymme som bestod av en enda lägenhet inte bildas. Den tidigare regeringen i Sverige ansåg att äganderätt till endast en lägenhet inte skulle tillåtas, bl a eftersom boendeformerna hyresrätt och bostadsrätt fanns. En tredimensionell fastighet för bostadsändamål kunde därför endast bildas om den innehöll minst fem lägenheter.

Den nuvarande regeringen beslutade att ändra lagen så att det blev möjligt att inrätta s.k. ägarlägenheter. En ägarlägenhetsfastighet, avsedd att inrymma endast en bostadslägenhet, kan nu bildas. En sådan ägarlägenhetsfastighet kan ägas, hyras ut och överlåtas utan några särskilda begränsningar. En förutsättning är dock att det ska vara sammanhållna enheter om minst tre sådana fastigheter intill varandra. Vidare kan ägarlägenhetsfastigheter ännu så länge endast bildas i nyproducerade byggnader. Dock kan ägarlägenheter bildas i en befintlig byggnad om det står klart att det utrymme som lägenheten ska omfatta inte inom de senaste åtta åren använts som bostadslägenhet.

Från politisk synpunkt bedömdes det vara många fördelar med ägarlägenhetsfastigheter. På bostadsmarknaden blir det en ökad mångfald, ökad valfrihet i boendet och ökat boendeinflytande. Ett tillskott av nyproducerade bostäder förväntas också samt ett större utbud av lägenheter att hyra. 3 000-5 000 ägarlägenhetsfastigheter bedöms bildas varje år när lagstiftningen kommit till användning om några år.

I Sverige bildas tredimensionella fastigheter genom lantmäteriförrättning. Ansökan görs hos lantmäterimyndigheten. Innan tillstånd till fastighetsbildning lämnas prövar lantmätaren om de generella lämplighetsvillkoren och de särskilda villkoren i lagen angående tredimensionell fastighetsbildning är uppfyllda. Ägarlägenheterna införs i fastighetsregistret på samma sätt som vanliga tvådimensionella fastigheter.

Under våren 2009 behandlades lagändringen av Sveriges riksdag. De nya reglerna om ägarlägenheter trädde i kraft den 1 maj 2009. Under de första sju månaderna har Lantmäteriet fått in ansökningar att bilda ca 300 ägarlägenheter.

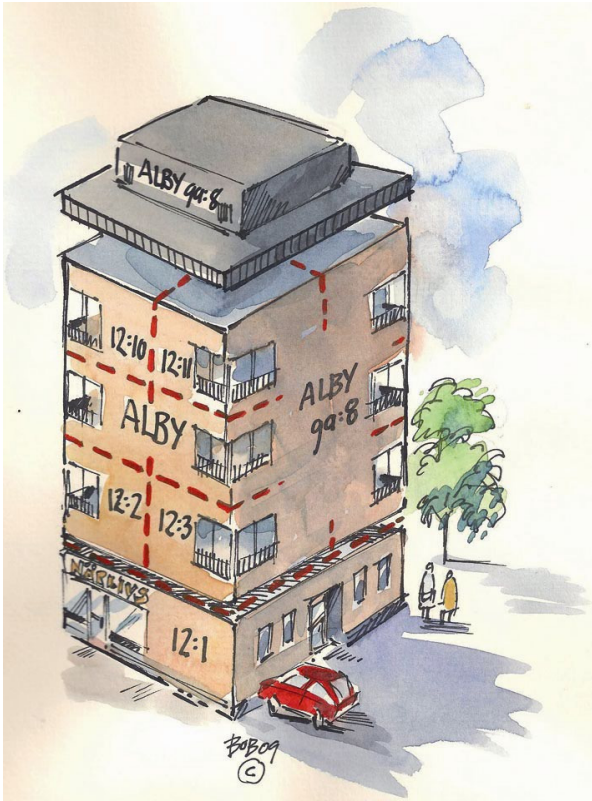


Figure 1: Tenant-owned apartment properties (Alby 12:2-12:11) with joint facility (Alby ga: 8).

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1. INTRODUCTION

To facilitate an understanding of the background to the legislation for the multi-dimensional information system, an overview description will first be given of the Swedish cadastral system and of the cadastral procedure for creating and changing real property units.

1.1 The Swedish cadastral system

The first cadastral system in Sweden was created in the 17th century. In 1628 Lantmäteriet (the Swedish mapping, cadastral and land registration authority) was established.

All land in Sweden and, in principle, also all water areas, is subdivided into either property or joint property units. This comprehensive division into property units is recorded in the Real Property Register.

The Swedish cadastral system consists of the Land Law, the Real Property Formation Act, the Utility Easements Act, the Joint Facilities Act, the Land Survey Code and the Real Property Register, which includes the Land Register. The Swedish cadastral system is considered to be a well-functioning, straightforward, efficient and secure system for all concerned parties.

1.2 The Land Law and The Real Property Formation Act

The formation and re-formation of property units in Sweden can only be carried out through an official decision. Changes to property are normally made through a cadastral procedure under the Real Property Formation Act. This is the responsibility of the public cadastral authorities. There are both central and local government cadastral authorities and the national responsibility is vested in Lantmäteriet.

The current Land Law and Real Property Formation Act were introduced in 1972; the legal structure is, however, still modern and logical. Together with the Planning and Building Act (1987) and the Environmental Act (1999), the government has also created a number of other valuable instruments for implementing its land policies.

The Real Property Formation Act covers subdivision, reallocation, amalgamation, and re-establishment of property boundaries, registration and more. The law is applied in both urban and rural areas and is a powerful tool that authorises the cadastral surveyor to make decisions concerning changes in the division of land, even those that are not voluntary.

The view taken in Sweden is that the division of land into property units should reflect the current use of the land. Thus property units cannot be freely formed, and this is reflected in the provisions of the Property Formation Act, which require property units to be deemed suitable for their intended use and to be sustainable on a long-term basis.

Kommentar [I. R.2]: Inga stora bokstäver – detta är en förklaring och inte en benämning)

The law includes compulsory purchase and, therefore, the cadastral survey process is frequently used in infrastructure projects instead of time-consuming expropriation processes.

1.3 The Cadastral Process

The activities of the cadastral authorities are regulated by the legislation in the Real Property Formation Act, the Utility Easements Act and the Facilities Act. A chartered cadastral surveyor carries out cadastral procedures. A cadastral procedure differs from a judicial procedure in that the cadastral surveyor, independently, has the task of investigating and taking decisions concerning the suitability of the measures needed. This includes carrying out investigations, contacts with landowners and liaison with relevant public authorities.

Property formation procedures are documented in cadastral documents, which normally comprise minutes together with a description of the property formation and a cadastral map. When a cadastral procedure has gained force of law an entry to this effect must be made in the Real Property Register. A cadastral procedure is deemed to be complete when this entry has been made.

The cadastral surveyor must be totally impartial and independent and his/her decisions must be fair and take into consideration the needs of both society and the concerned parties. In addition to being responsible for implementation, the surveyor is also responsible for preparing a budget for the procedures. If any of the parties is dissatisfied with the Cadastral Authority's decision, an appeal can be lodged within four weeks.

2. THE MULTI-DIMENSIONAL INFORMATION SYSTEM, 3D CADASTRE

2.1 Introduction: tenant-owned apartment properties

New legislation for multi-dimensional real property formation (3D cadastre) came into force in Sweden on January 1st 2004. The Act is considered to be the most important basic change that had taken place in Swedish cadastral legislation during the past 30 years. During the period 2004-2008, 240 3D property units were formed. There is a trend towards an increased annual demand.

The 3D legislation has now been in force for five years, so what conclusions can be drawn? In 2007 Lantmäteriet carried out an evaluation of the implementation of the legislation. This indicated that the Act had functioned well and that 240 multi-dimensional property units had been formed. There is a trend towards an increase in the number of new 3D properties that are formed each year. Although the 3D legislation offers many new possibilities for property formation it is clear that it takes time for full awareness of the significance and value of the new legislation to develop. There is, however, a great interest in this type of real property formation, particularly for forming 3D real property dwelling units.

There were certain limitations in the 2004 legislation which prevented the formation of tenant-owned apartment units. The limitations that applied concerning formation of multi-dimensional property units for housing purposes have now been removed. Earlier, a real

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Kommentar [IB3]: 240 ovan!

Kommentar [I. R.4]: En omformulering. OK?

property unit could not be a space consisting of only one dwelling unit which meant that the legislation did not permit the creation of strata titles (apartments/ condominiums). In 2003, the then Swedish Social Democratic government did not consider that ownership of apartment units should be permitted. Therefore, at that time, a multi-dimensional real property unit for dwelling purpose could only be created if it comprised at least five dwelling units.

However, the present government (a right-centre coalition) which came into power in 2006 decided that changes should be made to the legislation that would make it possible to create tenant-owned apartments. The changes to the legislation mean that it is now possible to form a tenant-owned apartment property that comprises only a single apartment. It is also possible to own, rent out or transfer the property without any special restrictions.

A parliamentary bill was presented and passed during the spring of 2009. From May 1st 2009, it became possible for someone to own his/her apartment in an apartment block. A tenant-owned apartment is defined as a three-dimensional property unit that is intended to only contain a single apartment, a tenant-owned property. This has been a warmly welcomed change to the Swedish real property legislation.

The 2009 bill was, to a large extent, based on the government report, 2002:21: "Att äga sin lägenhet (Owning an apartment)", and on comments on the draft report that was circulated for consideration prior to its final formulation. The evaluation carried out by Lantmäteriets in 2007 also contributed to the present legislation.

2.2 Purpose and reason

The political background to the legislation is that the government recognises the value of diversity and freedom of choice of housing type. Currently in Sweden the following housing types exist: tenant-ownership, tenancy, co-operative tenancy and freehold tenant-ownership. Compared with the previous types of occupation, freehold tenant-ownership offers the owner increased influence over his/her choice of housing as, in principle, there are no restrictions. For example, a person who purchases a freehold tenant-owned apartment can apply for registration of ownership in accordance with the same rules that apply for other real properties; and he/she can mortgage and take loans with the property as collateral. The owner also has the right to independently utilise the property by renting it out without the need for any special permission. The government hopes that the legislation will lead to an increase in housing production and believes that there will be an increase in the number of apartments available for renting.

Definition: "Tenant-ownership" (*bostadsrätt*) is a right of use related to a share in tenant-owner association that owns the apartment building.

2.3 The structure of the legislation and restrictions

The real property formation legislation that is applied for the creation of 3D properties is also applied for creating tenant-owned apartment properties. This means, that this type of property

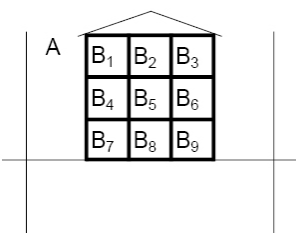
is created through a cadastral procedure and that is the responsible chartered land surveyor to determine whether or not the special conditions of the Act are satisfied. A pre-condition is, however, that there must be at least three such property units, adjacent to each other, in the apartment building. Common items, such as the roof, the façade, stairwells and storage space will, normally, be included in a joint facility, which is managed by a joint property association of which the owners of the properties will be members. In addition, it is only possible to form tenant-owned apartment properties in newly built buildings. In an existing building it is, however, possible to create tenant-owned apartments on condition that the building has not been used as an apartment building during the eight year period prior to the property formation, i.e. are not in an already existing apartment building. An office building can, for example, be reformed to create tenant-owned apartment properties provided that the property has not been used as an apartment building during the previous eight years. It is also possible to subdivide the addition of tenant-owned apartments above existing buildings.

The regulations that apply for a transfer, compulsory management and mortgaging of real property also apply for tenant-owned apartments. There are no restrictions in the right to transfer a tenant-owned apartment. Nor is there anything that prevents a property owner from owning several apartments.

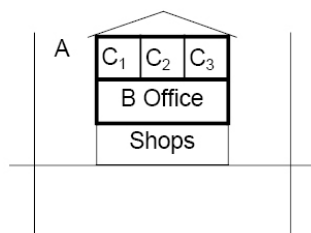
Provisions have been included in the Land Code that regulate how neighbours, or a joint property association, can handle the problem of apartment owners who are guilty of significant antisocial behaviour. These give the association the right to formulate rules of behaviour, such as how a common laundry room should be used.

With regard to taxation issues, the regulations that apply for tenant-owned apartments are the same as for single-family homes. The maximum annual real property fee paid to the municipality for a tenant-owned apartment is, at present, 600 Euro.

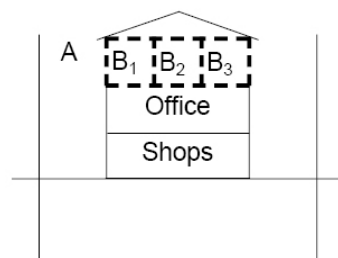
**Figure 2: New building
Tenant-owned apartments
(B1-9) in a newly
constructed building**



**Figure 3: Mixed purposes
Tenant-owned apartments
(C1-3) in a newly constructed
building which is divided into
several different types of
properties**



**Figure 4: Additions
Tenant-owned apartments (B1-3)
within an addition built onto an
existing building**



2.4 Implementation of the legislation

The boundaries of tenant-owned apartments i.e. the property boundaries are defined in a more standardised way than for other three-dimensional properties. Normally, the physical area of an apartment comprises the living space plus the distance up to the middle of the dividing walls and joists. The living space includes the outer surface of the walls and floor and also windows, entrance door and balcony. A tenant-owned apartment must not comprise more than one dwelling unit.

Kommentar [IB6]: Skrivna för att stämna med PP

A joint property unit is created for those parts of the building that are not part of the tenant-owned apartments. The joint property unit will, thus, include load-bearing structures such as walls and joists behind the outer surface layer, stairwells, elevators and more as well as other common parts of the building such as roof, façades, loft and foundations.

When a tenant-owned apartment is created, the rights that are required in order for it to be used for its intended purpose must be guaranteed. This means that the property must have access to the common facilities and rights to the roof, facades, stairwells, electricity, water and drains. The best solution is to establish one or several joint facilities for which the tenant-owned apartment properties have a shared responsibility. The joint facilities are managed by a joint property association of which the property owners are members. The creation of such an association is mandatory. A committee must be elected and rules and regulations adopted at a formal meeting of the members.

Should it be necessary to secure financing for planned but, as yet, not built tenant-owned apartments, the real property formation can be carried out at an early stage in the process. In this way, register property units can be formed. This process facilitates obtaining loans for building and marketing. Thus, under a shorter period of time it is possible to own a so-called "bogus property". In the property formation decision regarding apartments for which the building process has not yet started, the chartered surveyor must take a decision regarding the timeframe for completion of the building work.

Kommentar [IB7]: korrekt??

2.5 The registration of tenant-owned apartments

Tenant-owned apartments are registered in the Real Property Register in the same way as ordinary two-dimensional properties, but "TENANT-OWNED APARTMENT" is added to the real property designation. No area is shown; instead the living space and floor are given. The property that has been affected by the formation of a tenant-owned apartment must also be identified in the Real Property Register. For ease of identification on the cadastral index map, a tenant-owned apartment is shown with dot and dash boundaries, shading of the property's projected area and with the property designation within backslashes (Figure 6).

Kommentar [IB8]: ??

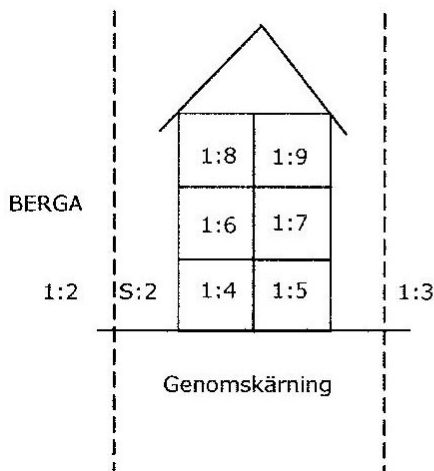


Figure 5: Cross-section

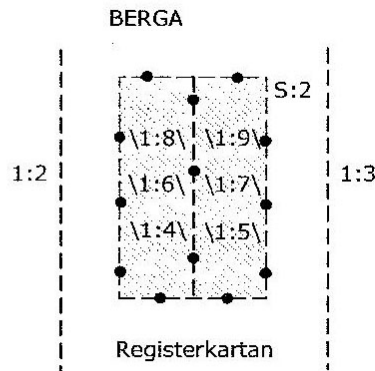


Figure 6: Cadastral index map

2.6 Market assessments and consequences

Building and real estate management companies have shown great interest in the new legislation. Both groups consider that it will definitely lead to an increase in the production of new housing, especially because building of rented apartments has decreased. Financing bodies, particularly foreign companies, have also commented positively. In most European countries tenant-owned apartments are common and the Swedish type of ownership without freehold is not normally found.

The present financial crisis and the economic downturn have resulted in a rapid decrease in activity on the Swedish property market. As a consequence of the present situation there has been a sluggish start to utilisation of the possibilities offered by the new legislation. On the other hand, however, the accumulated demand for creation of tenant-owned apartments can contribute to speeding up the start up of building activities during 2010. During a normal year in Sweden approximately 35 000 housing units are built, but the National Board of Housing, Building and Planning's prognosis for 2009 is that the production of new housing units will decrease to approximately 16 000 units because of the problems on the financial market. Some improvement can, however, be discerned.

How many tenant-owned apartments will be formed in Sweden when the demand for housing returns to normal after the present financial crisis? In the report "Att äga sin lägenhet (Owning an apartment)" (SOU 2002:21) the assessment is that between 3 000 and 5 000 tenant-owned apartments will be formed every year and that urban development will be more dynamic when there is a mixture of housing types.

Kommentar [I. R.9]: Nödvändig omskrivning av bostadsrätt efter som den översätts som tenant-ownership (title) i Swedish Land and Cadastral Legislation!

A tenant-owned apartment can be rented out in the same way as any normal house. A house owner can freely rent out his house to anyone he/she wishes; a tenant-owner of an apartment has the same rights and possibilities. Nor are there any obstacles that can prevent an owner of several tenant-owned apartments renting them out. The regulations in the Rent Act must, however, be applied which means, amongst other things, that parties can agree that a tenant, in certain circumstances, does not have the right to extend his tenancy agreement. This also means that the rent is regulated and should be set at a reasonable level in accordance with the so called a utility value principle.

3. THE **INTERNATIONAL** SITUATION

Kommentar [I. R.10]: Rätt ord?

3.1 The international situation

The concept of tenant-owned apartments is by no means unique: in many countries this type of housing has been in existence for many years. For example, in Australia, *strata titles* have existed since 1960, in the United States there are *condominiums*, and in most European countries, such as the Netherlands, Hungary, Germany and Spain, there are also tenant-owned apartments. Generally, it can be stated that the experiences of this type of housing are good, but that the legislation and the models differ slightly between individual countries. There is considerable international interest in the Swedish model because tenant-owned apartments are formed through cadastral procedures and not through a procedure involving legal representatives in a court of law. In a Swedish cadastral procedure a tenant-owned apartment is formed by subdivision accompanied by the establishment of a joint facility which, thereafter, is managed by a joint property association. This approach guarantees legal security, clarity and straight-forwardness and is an arrangement in which all involved parties can actively participate. The reason for tenant-owned apartments being more common in many other countries is because the Swedish concept of tenant ownership without freehold (*bostadsrätt*, in Swedish) is uncommon.

3.2 The Nordic Countries

There are a number of different types of tenant-ownership of apartments involving direct or indirect ownership in the Nordic countries. In Denmark, there is the so-called. *ejerlejligheder*, whereby a person owns the apartment itself whereas the ground and joint facilities are held with co-ownership rights. The Swedish model is similar to the Danish. In Norway, there are *eijersektioner*, which means that the apartment block is a co-owned property unit and that the individual shareholders have a right to use (usufruct) of a particular apartment in the block. The Icelandic system is similar. In Finland there is a system with so-called. *aktielägenheter* and *bostadsaktiebolag*, which entail indirect ownership.

What then are the experiences of the Nordic countries? A study of building in the housing sector in the Nordic countries with respect to the number of tenant-owned apartments and the distribution between different types of letting was carried out in the autumn of 2009 by G. Eriksson. The data was obtained from official building statistics supplemented by interviews

Kommentar [IB11]: autumn of 2009??

of colleagues within the framework of the programme for Nordic cooperation in the land service sector. The data covers the years around 2005, before the financial crisis had begun to affect the house building sector and when the preconditions were generally similar in the different countries.

In Denmark *ejerlejligheder* are the commonest type of letting in apartment blocks: approximately 75 % are *ejerlejligheder* and the remaining 25% is tenancy rights. The system, which appears to function well, has influenced the formulation of the Swedish legislation. The statistics from Norway are somewhat uncertain as no clear division between the number of *eijerseksjoner* and tenant-ownership rights is made, although 25% are considered to be *eijerseksjoner* and the remaining 75% tenant ownership and tenancy rights. In Finland (in 2003) 36 % were *aktielägenheter*, 20 % tenant-ownership and 44% tenancy. The system of co-ownership with individual shareholders (*aktielägenheter*) functions well and is not intended to be changed.

Kommentar [I. R.12]: aktielägenheter?

In Sweden, during 2006, 36 000 dwelling units were built of which 14 000 were in single family houses and 22 000 in apartment blocks. Of the units in apartment blocks, 11 500 were with tenant- ownership (without freehold) and 10 500 with tenancy rights. During the next few years, will 30% of the units built in Sweden be tenant- owned apartments, as is the case in Norway and Finland? A decisive difference between the Nordic countries is that it is only in Sweden that the creation of tenant-owned apartments is restricted to new buildings. In the other Nordic countries tenant-owned apartments can also be created in existing parts of the housing stock.

3.3 The present situation. Statistics for Sweden

It always takes some time before new legislation matures and is brought into use. That has been our experience - as has been described above – since 2004 when the concept of three-dimensional properties was introduced in Sweden. There is always a need for interesting pilot projects,” good examples”, are always needed.

Up to now (November 2009) three cadastral procedures have been carried out involving a total of 20 tenant-owned apartments. The first was in Ulleberg close to the town of Karlstad, where an old nursing home building was modified to create six tenant- owned apartments. At present around 10 cadastral procedures are in progress which will result in subdivision for approximately 300 tenant-owned apartments. Many building projects that involve tenant-owned apartments are in progress and several more are planned or execution when the situation on the financial markets eases.

4.0 SOME PERSONAL REFLECTIONS

4.1 Tenant-owned apartments – some private thoughts

We welcome the introduction of a system for tenant-owned apartments in Sweden. Earlier, questions were often asked as to why it was not possible to form apartments with freehold title despite the fact that it was possible to create 3D properties for other purposes. We are convinced that the new legislation is well-balanced and that it can make a positive contribution to the housing market, both in connection with new production in the larger towns and cities and in connection with re-development, especially in places where development in the building sector is at a low level. The incorporation of the rules into the Real Property Formation Act is also a step in the right direction so that this type of cadastral procedure can be used. The new tenant-owned properties will be included in the Real Property Register in the same way as other properties. It will also be an exciting challenge to cadastral surveyors and others who are engaged in building the national social structure, irrespective of whether they work in real property and construction companies, in the municipalities, Lantmäteriet or in the provision of consultancy services.

A question of considerable interest, on the long term, is whether it will also be possible to create tenant-owned apartments in existing housing. But, in Sweden this is a sensitive political issue.

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BIOGRAPHICAL NOTES

Göran Eriksson: Survey Consultant 2007 - .

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