



BUYING A NEW APARTMENT

A GUIDE FOR BUYERS



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(changed the chapter Payment of Transfer Tax and corrected
The Consumer Disputes Board)

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TO THE READER

The member companies of The Confederation of Finnish Construction Industries RT are engaged in building a significant portion of homes and apartments in Finland. Reliable building firms, accepted as members of the federation, underscore the importance of competent construction work and customer satisfaction. Through their long-term activities, the companies are highly aware of the importance of their work, the future homes, of their clientele.

The association also wishes to make its contribution to the successful purchase of an apartment. We have therefore prepared this guide, giving buyers and everyone interesting in the housing industry the most important information on the purchase of a new apartment, concluding the sale and the first stages of occupancy. The first edition of this guide came out in Finnish in 2003. The present guide is its second edition, revised as a result of amendments to the Housing Transactions Act in 2006. More information of interest to consumers is available on our webpages at www.rakennusteollisuus.fi.

The initiative for preparing the guide came from the Southwest Finland building district of the Confedera-

tion of Finnish Construction Industries RT. Both editions of the guide have been written by Kirsi Palviainen, a lawyer in the service of The Confederation of Finnish Construction Industries RT.

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We hope this guide will serve those who require information on buying a new home. More information on matters related to customer protection, legislations and procedures is available from the webpages of the Finnish Consumer Agency at www.kuluttajavirasto.fi and from local consumer counsellors.



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Mesta housing, builder Mesta Kodit Oy.

1

INTRODUCTION TO THE PURCHASE OF A NEW APARTMENT

The sale of shares conferring the right of possession to apartments in housing corporations organized as companies is regulated in the Housing Transactions Act. This is an act for the protection of the consumer, which means that in a transaction of this kind the consumer will have at least the rights laid down in law and no other agreement can be validly made regarding them. The act includes provisions on concluding the sale, the protection of the shareholder during the construction stage and a number of other issues.

With regard to the buyer, the sale of a new apartment can be of two types. Apartments already on sale during the construction stage, known as RS apartments, entail security provisions required by the Housing Transactions Act for safeguarding buyers and the housing company. Also on sale on the market are apartments that are sold and reserved only when the building supervision authorities have given their approval for all the buildings of the company in question. Although these apartments do not entail the security provisions mandatory in the construction-stage apartments, the seller must also arrange the security for insolvency described on page 19 of this guide. This guide mainly discusses the sale of apartments in the construction stage.

Apartments under construction

Most new apartments are already sold while under construction. For buyers, this procedure usually permits the planning and design of the interior well in advance of moving in and the possibility to have ad-

ditional work or alterations done in the apartment where permitted by work schedules and other factors, thus making the apartment correspond to the buyer's wishes down to its colour scheme and surface materials.

The interests of the buyers of apartments sold while under construction must be safeguarded in the manner stipulated in Chapter 2 of the Housing Transactions Act. The main provisions for this purpose are:

- The sale during the construction stage must be done in writing.
- The seller shall deposit the safekeeping documents required by the Housing Transactions Act for safekeeping in a bank or with the local provincial government authorities. These documents constitute the framework for the realization of the building project and they include, among other items, certificates of securities, the project's financial plan, information on the property concerned, the building permit, permit-related drawn plans, description of the manner of building, descriptions of special work to be carried out and the contract concerning the building work.
- The seller shall post the security required in the Housing Transactions Act for the housing corporation and the shareholders.
- The buyers are entitled to select as their representatives a construction-work observer and an auditor.

Housing corporations belonging to the security system are designated RS in related advertising in Finnish.



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ADVANCE MARKETING

Advance marketing will be carried out before apartments are included in the RS system. This marketing seeks to establish demand for the planned housing and whether other conditions for launching it are met. The housing will be advertised in the press, on the Internet and via other channels, and interested potential buyers will make non-binding advance reservations.

After advance marketing the housing can be included in the RS system and the buyer may decide whether or not to purchase. The reservation fee to be paid by the buyer along with the advance reservation shall be no more than 4% of the purchase price. The fee shall be returned to the buyer if the advance reservation is cancelled.

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INFORMATION PRIOR TO THE SALE

Information on new RS housing is available in the safekeeping documents and sales brochures. Safekeeping documents include the company's articles of association, security certificates, financial plan, documents concerning the property, the building permit and related drawn plans, description of the manner of work, descriptions of special work and the contract for the building work.

Security certificates

The founding shareholder of the corporation, i.e. the seller, shall post the security required by the Housing Transactions Act for the benefit of the corporation and the buyer. When sales begin, the seller will have posted security in case of insolvency and for the construction stage. The security documents are included among the safekeeping documents.

Information on the property

Safekeeping documents shall include information stating whether the housing corporation owns the site where its building will be erected or whether the plot is rented. Appended to the safekeeping documents shall be a certificate of legally confirmed possession of the real estate and a title deed pertaining to it, or the rental agreement for the land in question, or other written information on the right of ownership or possession regarding said land.

Technical information

Information on the technical realization of the housing is to be found, among other material, in building-permit documents and a written description of the manner of building, which are included among the safekeeping documents. Permit-related documents are the building permit and the main plans, including a site plan, floor plans, sections and elevations.

The description of the manner of construction gives the main details, generally on one or two pages, concerning the manner in which the house is to be built. The description usually states briefly details such as the foundation, structural, heating and ventilation solutions and the main surface materials of the façade and the apartments.

The buyer may rely on the apartment being realized in the manner described, with care and in accordance with good building practice. Minor adjustments, however, are possible. The seller is entitled to replace the described solutions with similar ones. In addition, the yard design, for example, is often tentative, as shown for example with dashed lines in the related plans. Alterations of some kind may prove necessary when, for example, the final slope of the site is ascertained and it is seen how the yard area can be made into a balanced and pleasant entity in other respects.

Financial information

A financial plan is to be drawn up for each housing company. The plan shall list, among other information, the initial outlay of the corporation, financing in terms of equity and borrowed capital, the corporation's loans and encumbrances, insurance for the construction stage and a budget for the accounting period following the construction stage.

The most concrete items of information for the buyer are the company's estimated maintenance fees for the accounting period after construction stage and loans from the construction period payable by the company. When the financial plan is drawn up the maintenance fees are estimated from available information. Additional services chosen by buyers, unexpected changes in overall costs or special measures impacting the rates of the fees in the later care and upkeep of the company may raise them and they have been taken into account in the financial plan.

Measures contrary to the financial plan are normally ineffective with regard to the company. After the sale of even one of the shares in the housing company, the total amount of debt stated in the plan may be raised or other liabilities may be increased only in the following situations:

1. All the shareholders give their consent to changes in writing.
2. The rise in costs is due to one of the following reasons and the right to amend the financial plan for said reasons is stated in the Deed of Sale:
 - a rise in building costs resulting from amendments to law, the rulings of authorities or an unexpected, force-majeure obstacle to the construction work whereby the company is under obligation to pay a raised price according to the construction or renovation contract in question;
 - a legally permitted consideration of change in the value of money whereby the company is under obligation to pay a raised price according to the agreement on construction or renovation in question; or
 - other added obligations of the company resulting from amendments to law or the rulings of authorities that could not have been anticipated when the financial plan was drawn up.

3. The buyers shall appoint as their representatives an observer of the construction work and/or an auditor, whose fees and other costs arising from their work can be added to the costs of the housing company even though they have not been evaluated or mentioned in the financial plan.

The seller's background and references

In addition to information on the apartment on sale it is advisable for buyers to find out with whom they are entering into one of the most important transactions of their lives. A number of basic items of information on companies are available on the Internet from the authorities' Finnish Business Information System at www.ytj.fi where registration in the pre-paid and value-added tax registers and their duration can be checked.

The previous references of construction companies or developers and activities over the course of several years generally imply intent to remain in business. The member companies of The Confederation of Finnish Construction Industries RT, for example, have been professionally active for many years. Contact information for member companies of the federation is available on its webpages at www.rakennusteollisuus.fi. If a company has been accepted in the register of the Finnish Construction Quality Association, information on it, references and its record of attending to its official obligations can be checked at the association's webpages at www.rala.fi.

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CONCLUDING THE SALE

The construction-stage sale shall be done in writing. The Deed of Sale form of the Suomen Rakennusmedia publishing company is generally used for these purposes. The form is of comprehensive content, in accordance with the Housing Transactions Act and approved by Finland's Consumer Ombudsman. Some of the terms and conditions stated in the Deed of Sale are discussed in the following.

Parties to the transaction

The parties to the transaction, i.e. the seller/s and buyer/s are marked in section 1 of the Deed of Sale.

If there is more than one buyer and the share of ownership is not equal, the desired shares of ownership are to be considered prior to the transaction and entered into the Deed of Sale. The Deed of Sale may not be altered later without extra liability to pay tax.

In the sale of a new apartment, there may be a period of up to a year or even longer from signing the Deed of Sale to moving in. Should the buyer move into the apartment during the construction stage, his/her new address and contact information are to be given to the seller in order to invoice instalments, send offers for additional work and alterations and to send any other post and contacts to the right address.

The object of sale

In the sale of an apartment the shares entitling possession to it are the object of sale. Legally, a housing company owns all of its buildings. The owners of the shares are its shareholders who have both rights and obligations resulting from the ownership of shares. The main right is to have control and possession of the apartment, which is entitled by the shares. The main obligation is to pay the company maintenance fees to cover its costs. The relations between the company and the shareholder are laid down in the Housing Companies Act.

The name of the housing company, its business identity code number and the address at which the buyer is purchasing the housing company shares are entered into the Deed of Sale as information related to the object. Also entered are, among other items, the numbers of the shares bought, the type of apartment, its floor area and the floor in buildings of several storeys. In buildings on sloping sites, the purchased apartment can be at ground level on one side of the building and on the second floor on the other side.

Purchase price

When referring to the purchase price, **purchase price and debt-free price are important concepts**. The purchase price is the sum of money paid by the buyer to the seller, while the debt-free price means the purchase price + the share of loans taken out by the company that is due to the shares on sale.

The bank account for payment of the purchase and the name of the bank are entered in connection with the price. In many cases, the buyer has paid a reservation fee or down payment prior to the sale. This sum is entered into the Deed of Sale and it is included in the purchase price.

According to the Housing Transactions Act the purchase price can be agreed to become due for payment in instalments as the building project proceeds. The two last instalments marked in the Deed of Sale may not become due for payment until the buyer has been able to carry out an inspection of the apartment prior to occupancy. The calculation of the last instalments due for payment is laid down in the Housing Transactions Act. The instalments generally amount to a total of 10% of the purchase price. Should company loans amounting to more than 30% of the debt-free price apply to the shares, the last instalments due for payment shall be calculated from a sum that is 70% of the debt-free price. This rule does not affect the amount of the purchase price, but only the proportion



Tilikka Asunto Oy Helsingin Lapis, YIT Home

of it that is due for payment when the building is completed. The larger the company's loans, the larger the proportion of the purchase price to be paid by the buyer to the seller that will be due for payment at the end of the process. Information on when instalments become due for payment is entered in the Deed of Sale.

Payment of transfer tax

The transfer tax on the transaction shall be paid by the buyer.

The buyer shall produce verification of paid tax to the board of the housing company. No entry can be made into the list of shares before the shareholder has presented verification of paid transfer tax.

HOW TO PAY TRANSFER TAX:

- Pay the tax into the account of the taxation authorities and fill in the transfer tax declaration form. The forms are available in banks and from the Finnish tax authorities' webpages at www.vero.fi.
- Take the receipt of payment of transfer tax, the transfer tax declaration and the Deed of Sale to your local tax office.
- Present verification of paid transfer tax to the housing company.
- Should any special features apply to the transaction ask for instructions from the tax office or the seller of the shares entitling possession of the apartment.

The buyer of a first apartment as stipulated in the Transfer Tax Act is not required to pay transfer tax.

The buyer of a first apartment is, however, required to declare transfer tax.

Completion period and handing over the apartment

The period for the completion of the apartment is marked in the Deed of Sale, being given either as the estimated date of completion or as being completed no earlier/no later than a set date. If alternative 1, the estimated date of completion, is marked in the Deed of Sale, the apartment shall be handed over no later than 30 days from the estimated date of completion. If alternative 2, i.e. no earlier/no later, is given, the apartment shall be handed over no earlier and no later than the date entered in the Deed of Sale. In both cases the seller shall give notification of the date of completion no later than one month before completion. Alternative 3 is marked if the apartment has been completed when sold but the administration of the company has not been transferred.

The apartment shall be handed over to the buyer after the building has been approved for use by the building inspection authorities and the buyer has had the opportunity to inspect the apartment. If instalments of the purchase price or completed additional work and alterations agreed upon with the buyer and due for payment have not been paid, the seller is not required to hand over the keys of the apartment to the buyer, unless agreed otherwise.

Transfer of ownership of shares and the handing over of shares

According to the Housing Transactions Act, the buyer receives ownership of the shares once their purchase price has been paid in full. The share certificates are handed over when the buyer has paid the purchase price and any completed additional work or alterations agreed upon with the buyer that have become due for payment, and has attended to other obligations stated in the purchase agreement that are comparable to payment of the purchase price.

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AGREEING ON ADDITIONAL WORK AND ALTERATIONS

In many cases, though not always, the purchase price covers optional materials and colour schemes among, as in the case of wallpaper, tiles and kitchen cabinet doors.

Any additional work and alterations must be distinguished from the options included in the price. These are to be ordered and paid for separately. Balcony glazing and fireplaces, for example, must often be ordered separately if desired.

If sales brochures note “reservation for fireplace”, the construction companies and developers usually imply that there is a location in the apartment with a base built for a fireplace. In most cases, this does not, however, mean that the apartment has a ready-made fireplace, flues or chimney, which must be ordered separately if so desired.

It is advisable to confer with the buyer regarding possibilities to carry out additional work and alterations prior to the sale or as early as possible. The buyer can thus learn which alterations are feasible and the dates by which they must be agreed upon.

Additional work and alterations can already be agreed upon when concluding the sale and they can be recorded in the Deed of Sale. Work ordered after the sale is usually subject to separate agreement and paid after completion as according to agreement.

Additional work and alterations are agreed upon with the seller or a contractor authorized by the latter. The agreements and their related offers and replies should always be done in writing. Offers for additional work and alterations are usually given to buyers at a fixed price. According to Section 25 of Chapter 8 of the Consumer Protection Act, contractors are not required to itemize the pricing structure of fixed-price services to clients. The prices are to be given to consumers listing Value-Added Tax.

Buyers may not, without separate agreement, commission their own contractors during the construction stage to the building site or have their own materials ordered to the site to be installed in their apartments. After the apartment has been completed and ownership has been transferred, buyers may carry out alterations to their apartments within the bounds of the Housing Companies Act

REPRESENTATIVES OF THE BUYERS IN THE CONSTRUCTION STAGE

The construction-work observer

The seller is responsible for the proper execution of the building project and has the personnel necessary for the purpose. Also the buyers often wish to follow the progress of the work in concrete terms. The seller may arrange an opportunity to visit the building site if so desired by the buyers. The buyers, however, may not freely visit the work site, as access permits are needed and for security reasons movement at work sites is restricted to employees, suppliers and other parties involved in the building project.

The Housing Transactions Act gives buyers the opportunity to choose as their representative a construction-work observer with authorized access to the building site and the right to obtain information for inspection from the company and the founding shareholder. Such information includes the building contract, plans, designs and written descriptions of building work, which are necessary for monitoring the progress of the work. The buyers may appoint the observer of their choice, with two restrictions. The observer must have the professional qualifications necessary for the task and he or she must not be in any dependent relationship to the building contractor or the founding shareholder.

The role of the observer is to monitor adherence to the building schedule, proper working methods and materials and the completion of the building according to the construction agreement.

The observer may confer with the building contractor or the latter's representative and may make present any comments and suggestions as he or she feels necessary. The observer shall report his or her observations to the buyers for example in writing or by calling a meeting of the buyers, who must decide whether or not the observations or remarks give cause for action. The observer is not a supervisor of the building under construction, nor does he or she have any power of authority with regard to the seller/builder or the buyers of the shares entitling possession of the apartments. Nor can the observer, on the basis of his or

her position alone, draw up solutions that are binding for the company or individual buyers of shares entitling possession of apartments. The observer's term lasts until the end of the building stage.

The appointment or non-appointment of an observer has no effect on the obligations of the seller.

The appointment of an observer is decided by a meeting of the apartment buyers. The housing company's board for the duration of the construction work shall call a meeting when one-fourth of the company's apartments have been sold. The summons to the meeting shall be sent by registered letter or in some other verifiable way. At the meeting of the buyers, shares entitling possession of one apartment shall provide one vote.

If a construction-work observer is appointed, his or her fee and other work-related costs may be added to the costs of the housing company according to the Housing Transactions Act even when such costs were not taken into account in the company's economic plan. As costs incurred by the housing company, the fee will later be payable by the shareholders. The payment will be applied to all shareholders through regular maintenance fees payable to the company, even when not all shareholders were involved in selecting the observer.

The auditor

The meeting of the apartment buyers is also entitled to select an auditor as their representative. This auditor has the same authority as the regular auditor of the housing company. The right to carry out an audit applies to the accounts and administration of the housing company and the payment account for the purchase prices as laid down in Section 12 of Chapter 2 of the Housing Transactions Act. The auditor's term extends to the end of the accounting period during which the construction stage ends.

The auditor's fee may be added to the costs of the housing company in the same manner as the observer's fee.

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INSPECTIONS OF THE APARTMENT

Occupancy inspection

Before the two last instalments of the purchase price become due for payment as noted in the Deed of Sale, the buyer shall be allowed to inspect his or her new apartment. This is known as occupancy inspection and the seller shall notify buyers of the related arrangements. In this inspection buyers are usually given a form for recording defects or faults where such can be observed.

Defects and faults shall be rectified prior to occupancy. According to the Housing Transactions Act, the seller may postpone the repair of minor defects that do not hinder occupancy until the one-year inspection, when repairs can be agreed upon with reference to specific cases.

One of the purposes of the occupancy inspection is to document the condition of the apartment with regard to easily inspected surfaces when it is handed over to the buyer. Notification of faults can generally be made still at the one-year inspection, but in that case the document on the occupancy inspection will be compared with the records of the one-year inspection. This permits evaluation of whether easily observed defects of surfaces and finish (scratched parquet, fissures in washbasins) have come about in use during the year, whereby they would be the responsibility of the buyer.

The one-year inspection

In the one-year inspection, notifications of defects are gathered from all buyers of apartments. The one-year inspection is held after a period of 12–15 months, i.e. approximately one year of occupancy. If the company has several residential buildings the inspections are to be arranged within the time limit concerning each building separately.

The inspection is usually arranged so that the seller sends the buyers and the housing company forms for stating defects. The forms are returned to the seller, who inspects the defects, responds to them and carries out repairs.

The act requires the seller to draw up minutes of the inspection. There are no particular formal requirements for the minutes, which means that a defect notification form returned by the buyer can suffice for this purpose. The main consideration is that the respective reported defects are stated in the minutes. After inspection, the minutes are to be given to the buyer for comment. The period for giving comments is three weeks from notification of the inspection minutes. Additions may be made to the minutes within this period.

In situations involving defects, the right to make notification is divided between the buyers and the housing company according to maintenance obligations. This generally means that the buyer makes notification of defects on the interior surfaces of the apartment in his or her possession and of defects in the yard area or other space if the shareholder's maintenance obligation concerns them according to the company's articles of association. The company makes notification of defects in other parts of the building and in yard areas belonging to it.

The buyer has the right to record, or have recorded, all matters that he or she regards to be defects. The seller party generally records in the same minutes its view of the matter, i.e. stating whether or not it regards the notified matter to be a defect for which it is liable. If the parties disagree on a matter, this will be interpreted according to the provisions on defects of the Housing Transactions Act.

Notification of all observable defects shall be made in the one-year inspection. After this inspection the seller will no longer be liable, as for defects, for matters that could have been observed. Defects shall be repaired after the inspection process.



THE POST-COMPLETION SHAREHOLDERS' MEETING

During the construction stage, the housing company is administered by a board generally consisting, for example, of the personnel of the building firm or the developer. The shareholders' meeting is held when the buildings have been completed and the buyers have taken occupancy.

This meeting is usually called the transfer of administration meeting, for its practical significance is that the company is transferred from the control of the building firm to the administration and care of its shareholders. This meeting, however, has nothing to do with matters such as noting defects.

A representative of the building firm can still be elected to the board if he or she consents to this. In practice, the building firm's representative may continue to sit on the board if the builder has not yet been able to sell all the apartments when administration is handed over.

The meeting is usually held approximately three months after the building work has been completed. By that stage, matters to go before the meeting are prepared, the documents to be handed over to the company are compiled and other matters related to construction are finished before administration by the shareholders begins. In some cases, however, it may take longer to arrange the meeting, since, owing to the specific conditions of each case, a longer than average period may be required to organize the shareholders' meeting.

The agenda of the meeting for the transfer of administration includes the following matters, among others:

- The company's interim financial statement, the realization of the financial plan and related auditors' statements are presented.
- Information is given on the technical realization of the construction work:
 - In most cases, construction will be noted to have been completed according to plan and the main areas concerned are reviewed.
 - The observer of the construction work presents his statement if such a person has been appointed.
 - The meeting may also address, for example, the company's maintenance issues and buyers may have their questions answered.
- The election of a board and auditors for the company for the remaining term.
- In many housing companies securities for the construction stage are released in practice and replaced by post-construction securities. Releasing securities, however, is not a mandatory item of the agenda of the meeting for the transfer of administration.

SECURITIES

In the case of RS housing company shares sold while under construction, securities are posted to safeguard the company and the shareholder. This system has been designed to keep one of three securities in force, in accordance with the Housing Transactions Act, from the first transaction until 10 years have passed since the official approval of the building for use.

Security during construction

According to the Housing Transactions Act, security during construction can be in the form of a bank deposit, a bank guarantee, or applicable insurance. In practice, the most common form of security is the bank guarantee issued by a bank operating as a so-called RS bank (i.e. entrusted with storing the safe-keeping documents among other duties).

When sales begin the security shall be to the amount of 5% of building costs, and as sales continue no less than 10% of the total purchase prices of the sold shares. If the company has taken out loans to over 30% of the debt-free price, the purchase price used for calculating security shall be 70% of the debt-free price.

Security shall be released upon fulfilment of the obligations of the sales agreement and the contracting agreement. The seller shall send consent documents for the release of security to be signed by the buyers and the company after the building supervision authorities have held the inspection for use and the building has been approved for use. The shareholders shall sign the consent documents with regard to their respective apartments. The consent of the company is given as an excerpt from the minutes of the board meeting stating the decision to release security. Statements of consent can be sent to the seller via the post-completion shareholders' meeting, i.e. the meeting for handing over administration, or in other ways stated by the seller. The seller forwards the statements of con-

sent to the keeper of security, generally a bank, which upon receiving consent will release the securities after a minimum period of three months after the building has been approved for use.

Post-construction security

When security for the construction stage is released, it is replaced by post-construction security to the amount of 2% of the purchase prices of sold apartments. If the company has taken out loans to over 30% of the debt-free price, the purchase price for calculating the security shall be 70% of the debt-free price. The obligation to post security shall end 15 months after the building inspection authorities have approved the building for use. Bank security is the usual form of security.

Security shall be released when the obligations of the apartment sale agreement and the contracting agreement have been fulfilled. The shareholders shall sign the consent documents with regard to their respective apartments. The consent of the company is given as an excerpt of the minutes of the board meeting in which the decision to release security is stated. The consent documents shall be signed after the one-year inspection has been held and the matters notified in the inspection that are to be regarded as defects according to the Housing Transactions Act have been rectified.

The statements of consent shall be sent to the seller party, which forwards them to the keeper of security, usually a bank, which in turn will release the security when a minimum period of 15 months has passed since official approval for use, i.e. the same period during which any defects noted in the one-year inspection have been rectified.

Release of construction-period or post-construction security does not affect the seller's responsibility for faults and defects.



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Withholding security

According to the Housing Transactions Act, security may not be withheld without due cause. If the buyers or the company do not release security, the seller is to be informed in writing of the refusal and reasons thereof without delay. The seller can thus respond to the matter and any unclear issues can be resolved.

Release of construction-period security and post-construction security without consent

Even without consent from the buyers and the company, the securities will be released no later than 12 months after the one-year inspection of all the buildings of the company, if a board as stipulated in Section 23 of Chapter 2 of the Housing Transactions Act has been elected for the company.

Securities, however, will not be released if the company or a buyer of a residential apartment opposed the release and takes this matter through application to be settled by the Consumer Disputes Board of Finland or a court of law. Any party opposing the release of securities shall notify the party posting security or the bank which has received the deposit given as security and shall supply them with a certificate issued by the Consumer Disputes Board or a local district court on this matter having been taken up within the above-mentioned 12-month time limit. Otherwise, the securities will be released.

Security against a founding shareholder's insolvency

Security against a founding shareholder's insolvency is taken out already before the sale of apartments begins. The security certification is one of the safekeeping documents. The security shall not be released separately but shall be in force for 10 years after the building has been approved for use. If the company

has several buildings that are completed at different times, the term of the security is calculated for each building separately from their respective approval for use.

In practice, security against insolvency is in the form of insurance obtained from an insurance company. With certain limitations and after deduction of excess the security can be used for repairing defects noted after the one-year inspection if the seller is not solvent and no other security is available. The maximum sum of compensation is 25% of the costs of construction.

Special situations: if securities are required

Securities may be required if construction is interrupted or a building has a defect of the kind stipulated in the Housing Transactions Act that the seller will not repair or compensate though under obligation to do so.

Construction-period security and post-construction security are in most cases bank guarantees. Banks do not generally release security or part of it automatically for the use of shareholders or the company, if the right to use security is unclear. In practice, the buyers and the company must present to the bank an account of the right to use security. In this case, an outside body, such as a court of law, rules on whether the matter at hand is a defect as stipulated in the Housing Transactions Act. The Consumer Disputes Board may also give its recommendation in discords related to securities.

Security against insolvency is usually in the form of insurance. Should it be needed, the insurance company that granted the insurance is to be contacted.

It must be noted that securities safeguard construction according to plans and agreements. On the other hand, they cannot be used, for example, to commission additional work and alterations or for raising the standard of apartments from what has been originally agreed.

LIABILITY FOR DEFECTS IN A NEW APARTMENT

Defects in an apartment are judged according to the related provisions of the Housing Transactions Act. The apartment shall be as agreed and in accordance with supplied information, requirements laid down in law, and the proper standard of health and safety, among other requirements. The apartment shall be constructed of proper materials, with professional skill and care in keeping with good building practice.

Described in the following are the provisions of the Housing Transactions Act regarding defects.

General provision on defects

According to this provision an apartment shall, among other things, be as agreed, conform to building regulations and shall be constructed according to good building practice. The last-mentioned requirement is interpreted with reference to building regulations and the so-called general building quality criteria (RYL) of the Finnish building industry containing instructions regarding quality requirements and estimating quality.

Information-related defects

The seller shall inform the buyer of all essential information affecting the transaction prior to the sale. In the sale of a new apartment essential information is contained in the safekeeping documents providing the framework within which the apartment is constructed. If an item is not mentioned in these documents, the buyer may assume that it will be realized through normal standard practice of good quality.

If an apartment does not correspond to information supplied before the transaction, the transaction may involve an information-related defect. Estimations of defects take into account, among other matter, whether the incorrect information can be assumed to have influenced the transaction, whether the buyer was aware of the real state of affairs before the transaction and whether incorrect information has caused losses.

Section 14, Chapter 4 of the Housing Transactions Act GENERAL PROVISION ON DEFECTS

An apartment is defective if:

- 1) it does not meet the terms that can be considered to have been agreed;
- 2) it does not meet the requirements laid down in the provisions or regulations for a building to be approved for use by the buildings inspection authorities;
- 3) its properties are or can be justifiably assumed to be detrimental to health;
- 4) its construction or repair has not been carried out in accordance with good construction practice, or competently and with care;
- 5) a material used in construction or repair is not of normal good quality with respect to durability or other properties, unless its quality has been specifically agreed on; or
- 6) the apartment otherwise fails to meet the buyer's reasonable general expectations in the light of transactions involving comparable housing.

Financial irregularity

Financial irregularities are a kind of subset of information-related defects. A transaction may entail financial irregularity, among other situations, when a buyer has received prior to the transaction incomplete or incorrect information on matters concerning the ownership or use of the apartment or the economic status of the housing company, and this information can be assumed to have influenced the transaction.

Section 15, Chapter 4 of the Housing Transactions Act
**INFORMATION CONCERNING
THE APARTMENT**

The apartment is also defective if:

- 1) it does not correspond to the information provided by the seller before the transaction, and such information can be assumed to have influenced the transaction;
- 2) the seller has neglected to provide the buyer, prior to the transaction, with information on any matter concerning the apartment, which he or she should have provided under the decree on information to be provided in marketing housing, and it can be assumed that such failure to provide information influenced the transaction;
- 3) the seller has otherwise failed to provide the buyer with any specific information concerning the apartment of which it must be assumed that he was aware and of which the buyer might reasonably expect to be informed, and it can be assumed that such failure to provide information influenced the transaction; or
- 4) the seller has not provided the buyer with the necessary specific information on the use or upkeep of the materials or equipment in the apartment or has provided incorrect or misleading information thereon.

The provisions on defects shall also apply subject to the stipulations in subparagraphs 1-3 of paragraph 1, if the seller has provided incorrect or misleading information concerning the surroundings of the apartment or on services in the area or has failed to provide information on any related matter affecting the use or value of the apartment.

The provisions on defects in paragraph 1 shall also apply if the seller has provided or neglected to provide information after the transaction but before the assignment of possession of the apartment, and this can be assumed to have influenced the buyer's decision.

The provisions of chapter 6, paragraph 27, shall apply similarly to the seller's liability for information which someone other than himself provided or failed to provide.

Section 27, Chapter 4 of the Housing Transactions Act
FINANCIAL IRREGULARITY

A transaction is financially irregular if, before the transaction was concluded, the seller:

- 1) provided the buyer with incorrect or misleading information about the financial obligations or liabilities associated with ownership or use of the apartment concerned, such as the maintenance charge or that part of the housing company's debt which encumbers the shares sold, or about the financial standing of the housing corporation, and it can be assumed that said information influenced the transaction;
- 2) failed to provide the buyer with information concerning any matter referred to in subparagraph 1 which he was liable to provide under the decree on information to be provided in marketing housing, and it can be assumed that said failure influenced the transaction; or
- 3) otherwise failed to provide the buyer with information concerning any matter referred to in subparagraph 1, if it must be assumed that he was aware of the matter and the buyer might legitimately expect to be informed thereof, and it can be assumed that said failure influenced the transaction.

A transaction is also financially irregular if the financial standing of a housing company to which the provisions of chapter 2 of this Act apply is inferior at the end of the construction stage to that stipulated in the current financing plan.

If the transaction is financially irregular, the provisions of section 19, paragraph 3, and sections 21, 25 and 26 shall apply. The buyer shall not claim financial irregularity unless he notifies the seller of the irregularity within a reasonable time after he detected or should have detected the irregularity. Notwithstanding, the buyer's failure to notify shall not have this effect if the seller or his representative has acted with gross negligence or contrary to the rule of good faith.

Section 28, Chapter of 4 of the Housing Transactions Act
LEGAL IRREGULARITY

A transaction is legally irregular if a third party owns the object of the transaction or part thereof or if a third party has a lien or other title thereto, and it does not follow from the contract that the buyer must accept the restrictions imposed on the object of the transaction by the third party's title. The buyer can also demand that action be taken on account of legal irregularity if a third party claims the title referred to above with probable justification.

The buyer shall not appeal to legal irregularity unless he has notified the seller thereof within a reasonable time after he detected or should have detected the irregularity. If, however, the seller or his representative has acted with gross negligence or contrary to the rule of good faith, the buyer's failure to report the irregularity shall not have this effect. The provisions of section 19, paragraph 3, and section 21 shall also apply if the object of the transaction is legally irregular.

If the seller does not see to it immediately that the third party's title expires or the irregularity is otherwise rectified, the buyer shall have the right to cancel the transaction or, if the irregularity is not significant, to demand a corresponding price reduction.

If a legal irregularity existed at the time of the transaction, the buyer shall be entitled to compensation for loss if he was not, and could not be expected to be, aware of the irregularity. If an irregularity arose after the transaction was concluded, the buyer shall be entitled to compensation for loss unless the seller proves that the irregularity or loss was not caused by his actions.

Legal irregularity

Legal irregularity is present when the rights of some other party than the shareholder apply to the shares. In practice, the RS system safeguards buyer quite well from this type of error, and there are hardly any disputes related to this regulation.

Claim for damages prior to the one-year inspection

Any defects noted during the first stages of occupancy in a new apartment shall be reported to the seller in the occupancy inspection and the one-year inspection. Minor defects that are not of a hindrance to habitation do not have to be reported between these inspections. If major defects are noted that may damage the building itself these must be reported immediately.

Claims for defects in the one-year inspection

The purpose of the one-year inspection is to chart and repair any defects in a single process. This permits required repairs to be carried out in a single process for the company concerned, with the least possible inconvenience to the buyers. In the one-year inspection the buyer shall report all observable defects. After the one-year inspection the buyer may no longer cite as a defect any matter that should have been observed and reported during the one-year inspection process.



Claims for defects after the one-year inspection

If defects that are the responsibility of the seller according to the Housing Transactions Act appear in an apartment after the one-year inspection and are such that could not have been observed in the one-year inspection, the buyer shall report them and his or her claims based on them to the seller within a reasonable period of time after noting them. A reasonable period of time is estimated according to when the buyer should have noted the defect and become aware of its significance. The time when the effects of the defect appeared and their state at the time are considered. However, any matter of which the buyer was aware before the transaction shall not be considered a defect at any stage.

After the one-year inspection the seller shall only be responsible for any hidden defects that were already in the building when the apartments were handed over to the buyers but were not observable until later. The following issues are considered in connection with claims subsequent to the one-year inspection. If an item on the list is identified in positive terms, the seller is generally not liable for the matter noted as a defect by the buyer:

- A defect that should have been noted by the one-year inspection at the latest and was not subject to claim at the time.
- A defect under the seller's responsibility that was observed or should have been observed after the one-year inspection but for which no claim was presented within a reasonable period of time.
- The defect or need for repairs was caused by wear, use or neglect of use and service obligations regarding the building, apartment or yard area.
- Expired service life of a building component, material or device. Unless quality has been agreed upon separately, the material for construction shall be of standard good quality.
- An error of which the buyer should have been aware before the transaction.
- The 10-year period of liability has expired.

CONSEQUENCES OF DEFECTS

Rectifying a defect

As a rule, the buyer is entitled to demand the rectification of a defect. If this cannot be done or rectification entails unreasonably high costs compared with the significance of the defect for the buyer, the seller shall be entitled to reject the buyer's claim for rectification.

The seller party is entitled to rectify the defect at its own cost if it states that it will do so immediately upon the buyer having present claim thereof. The seller has this right even though the buyer might not call for the rectification of a defect, demanding instead, for example, a lowered price or the cancellation of the transaction.

The buyer may refuse the rectification for particularly compelling reasons, such as the rectification causing major inconvenience, lowering the value of the apartment or the risk of non-compensation of costs incurred by the buyer. If the buyer rejects, without cause, the seller's offer of rectifying a defect, he or she may lose the right to full compensation for costs arising from the rectification of the defect, if said costs are greater than they would have been had the seller rectified the defect.

The seller, however, may not make appeal to not having been given the chance to rectify a defect if the buyer has had the defect rectified and in view of the prevailing conditions the buyer cannot have been reasonably expected to wait for rectification by the seller. Such situations can be, for example, sudden disturbances in heating or water leaks on weekends.

The seller is required to rectify a defect within a reasonable period from its notification by the buyer. The rectification of a defect noted before the one-year inspection can, however, be postponed to be carried

out immediately after this inspection. The requirement for this is that the inconvenience to the buyer caused by the postponement is minor and there is no other particular reason for earlier rectification. For example, the defect itself is of minor inconvenience to the buyer, but of significance for the building (for example damage caused by damp). Typical repairs postponed to the one-year inspection are e.g. surface defects of materials, such as pits in parquet, cracked tiles and scratched doors.

Rectification of a defect is generally the primary course of action before reducing the price or cancelling the transaction.

Other consequences of defects

Reduction of price

If the rectification of a defect cannot be considered or a defect is not rectified, the buyer is entitled to demand a reasonable reduction of the purchase price with regard to the defect. In practice, the reduction of the price has to be defined in each separate case by noting, among other factors, the significance of the defect for the use-value, appearance and exchange value of the apartment.

Withholding payment

The buyer is entitled to withhold the payment of the purchase price as the result of a defect. The amount withheld may not, however, exceed the value of the claims to which the buyer is entitled because of the defect.

Compensation

According to the Housing Transactions Act, the seller is always responsible for any direct damage caused by a defect. In the case of indirect damage, however, liability for compensation requires negligence on the part of the seller. A substantial loss of the usability of an apartment, among other items, is regarded as an indirect defect. In practice, however, the requirement of substantial loss means that for example normal annual repairs do not cause loss of usability subject to compensation.

Unless guilty of negligence, the seller is not required, by virtue of his or her position alone, to compensate for personal loss caused by a defect of the building material or for resulting material losses, if these losses concern other property than the apart-

ment or moveable items in it that are primarily in private use. According to the Product Liability Act liability lies with the manufacturer of the defective material or product. In this case, the manufacturer's liability is of a so-called strict nature, being independent of any negligence.

Cancellation of the transaction

The ultimate consequence of a defect is the cancellation of the transaction. This can be done by the buyer in the case of substantial breach of contract and if the defect cannot be rectified. The conditions for the cancellation of a transaction are rarely met and other consequences of defects take primacy.





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THE MAINTENANCE OF AN APARTMENT AND THE HOUSING COMPANY

The housing company is given the maintenance manual for the building and the residents are given instructions for the use of their apartments. It is important to follow instructions in order to maintain the value of the property and comfortable conditions of residency. The following instructions are particularly important for the maintenance of an individual apartment:

- Ventilation is to be kept on at all times.
- Parquetry and other surface materials are to be cared for according to related instructions.
- Drains and cooking range fans are to be cleaned regularly according to instructions.
- To aid in drying, the heater of a sauna should be kept on for approximately 20 minutes after use.
- Water is to be wiped from moist spaces after the use of a shower.
- There should be no planting immediately next to the outer wall, or climbing plants on the façades.
- The slope of the yard and its roofing must not be altered to lead rainwater towards the building.

THE STAGES OF PURCHASING AN APARTMENT

ADVANCE **1** RESERVATION

- Preliminary information available on the apartment.
- As an interested client you may make a non-binding reservation for the apartment.

SPECIFYING **3** ALTERNATIVES PERTAINING TO THE SALE

- The purchase price may include the right to choices regarding, for example, different surface materials or tile colours.
- Find out if the purchase price includes the possibility of options. If so, make your choices within the period stated by the seller. Consider your choices carefully, for you may not change them later without paying a separate fee.

CONCLUDING **2** THE SALE

- The sale can be concluded only after the safekeeping documents have been posted.
- Inspect the safekeeping documents and the Deed of Sale before the transaction. Enquire about any unclear matters
- Conclude the transaction in writing using a form approved by the Consumer Ombudsman.
- Pay the instalments of the purchase price as the construction project proceeds. The last two instalments of the purchase price will become due for payment after you have had the opportunity to inspect the apartment.

ORDERING SEPARATELY CHARGED ALTERATIONS OR **4** ADDITIONAL WORK

- In many cases you may commission separately charged additional work or alterations for your future home.
- Consider your wishes.
- Discuss desired alterations with the seller, who will establish what can be done and the date by which you must confirm your order.
- Request an offer in writing for the work or draw up a written agreement on the work that you desire.

THE BUYERS⁵ MEETING

- The seller will call a meeting of the buyers when one-fourth of the apartments have been sold.
- At this meeting, the buyers may, if so desired, elect as their representatives an observer of the construction work and an auditor, whose costs are added to the costs of the housing company. In this way these costs will be borne by the buyers who made the choice and also by later buyers, even though they were not estimated in the financial plan.
- The observer shall be independent of the seller and the building contractor. He or she must also have the professional qualifications required by the task.
- The observer monitors that construction proceeds as agreed.

MAINTENANCE OF THE APARTMENT AND THE HOUSING¹⁰ COMPANY

- The seller has given the housing company and the buyers maintenance instructions for the company and the apartments.
- Please follow the instructions as this will help maintain the value of the property and improve its durability.

THE ONE-YEAR⁹ INSPECTION

- The one-year inspection is held 12–15 months after the building inspection authorities have approved the building for use.
- You will receive a one-year inspection form from the seller for reporting any defects. Wear caused during occupancy is not regarded as a defect.
- Any defects will be rectified after the one-year inspection.
- Security (construction-period and post-construction security, see page 17 of this guide) will be automatically released one year after the annual inspection.

THE OCCUPANCY⁶ INSPECTION

- The seller informs the buyers when they can inspect their apartments.
- During the inspection you will fill in a form on which you record any defects or possibly features still lacking from the apartment at this stage. Rectification of defects will be sought to be carried out before moving in.

MOVING⁷ IN

- You can check the date of completion of the apartment from the Deed of Sale.
- The seller will inform you of the date for moving in one month in advance.
- Unless otherwise agreed with the seller, receiving the keys of the apartment is subject to having paid the purchase price and completed additional work agreed with the seller that has become due for payment. You will receive the right of ownership to the shares once you have paid the purchase price.

THE SHAREHOLDERS'⁸ MEETING FOR THE TRANSFER OF ADMINISTRATION

- The seller calls the buyers to a supernumerary shareholders' meeting where, among other items, an interim financial statement is presented and a board is elected for the company.
- This meeting is usually convened approximately three months after the completion of the company's buildings. In individual cases it may take even longer to arrange the meeting.



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The Housing Transactions Act applies to the sale of residential apartments. This is an act protecting the consumer, with strict provisions on the procedures of the sale of a new apartments and how the rights of buyers are to be safeguarded.

This guide describes the provisions of the act on the sale of new apartment, how the transaction is concluded and the various stages of acquiring a new apartment as a shareholder in a housing company.

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