

Legal Counsel in European Real Estate Conveyances: Brokers and Notaries

*This paper is a brief summary of my doctoral dissertation "Impartial Counsel in Real Estate Conveyances: The Swedish Broker and the Latin Notary, defended at the Royal Institute of Technology in Stockholm on January 29th, 2013. The dissertation is available in PDF format at kth.diva-portal.org/smash/get/diva2:589190/FULLTEXT01.*¹

Introduction

The European Union, far from being a homogeneous legal and cultural entity, houses three legal families: the romanistic or civil law family, the common law family, and the Scandinavian family which is more related to civil law than common law since it relies mainly on statutory law but is nonetheless a separate family. These families have great bearing on the way real estate conveyances are accomplished in the EU member states. As is the case with any differences between the legal orders in the EU, two interrelated issues are brought to the fore: 1) that of analyzing and comparing the economic efficiency of the different solutions, and 2) the general ambition to harmonize the laws of the member states to remove obstacles against the free movement of goods, services, capital, and people.

It was against this backdrop that Centre of European Law and Politics (ZERP) at Bremen University, acting at the behest of the European Commission, conducted a study to explore the economic impact of regulation on the conveyancing services market. Spearheaded by Christoph Schmid, a group of contributing experts produced the report COMP/2006/D3/003 *Conveyancing Services Market*, presented in 2007.² Four regulatory models were identified in the report:

1. *The Latin-German notary system.* Under this régime, real estate conveyances are accomplished by the notary, a specialized lawyer/jurist operating in the service of the public. Notarial intervention in real estate transactions is either mandatory or quasi-mandatory in these countries. The profession is highly regulated with respect to rules of conduct, assigned tasks, organization, remuneration, etc. Among the most prominent conduct rules is the obligation to act impartially.
2. *The deregulated Dutch notary system.* Previously belonging to the traditional notary system, the Netherlands deregulated its notariat in 1999 with respect to conduct, fees, and market structure.
3. *The lawyer/solicitor system* prevails on the British Isles, Hungary, and the Czech Republic. The role of the lawyer varies between the countries, but the common characteristic is that the conveyancing services are provided by lawyers.
4. *The Nordic licensed broker system* prevails in the Nordic countries, of which Sweden, Denmark, and Finland are EU member states. The chief characteristic is that conveyancing services are typically provided by real estate brokers whose profession is

¹ For the sake of convenience, I will refer to the dissertation throughout the paper as *Jingryd*.

² Schmid et al. (ZERP Report).

regulated with respect to assigned tasks and rules of conduct.³ In former times this system could encompass regulation of fees as well, but modern competition laws have made such regulations impossible.⁴

The report concluded that there are, particularly in the Latin-German notary model, regulations that generate costs for consumers without producing enough utility to be defensible. Sweden, among others, was highlighted as an example of how high quality can be produced at low costs without unnecessary regulation. Deregulation of the notary profession was proposed as a way to lower costs for consumers and increase utility.

Given that the ZERP Report identified the highly regulated notary profession and its prominent role in real estate conveyances as an obstacle to economic efficiency, it is perhaps natural that the Council of European Notariats (CNUe) appointed an independent consultant to produce a report of its own. The study was conducted by scholars from Harvard University, headed by Peter L. Murray, with the title *Real Estate Conveyancing in 5 European Union Member States: A Comparative Study* (the Murray Report).

Where the ZERP Report concludes that the services performed by notaries can – with the right institutional framework – be performed just as well by private legal professionals or even brokers, the Murray report states that the German, French, and Estonian regimes offer high consumer protection by requiring notaries to disclose information and give impartial advice. The Swedish broker, however, is held in the Murray report to be incapable of offering impartial legal advice as a result of her conflict of interest and her modest legal training.⁵

It seems there is an important dimension lacking in both studies, namely the institutional dimension: how well do the different regimes perform? Is the institutional framework such that the respective regimes can or could function properly? One issue in particular stands out: that of impartial advice to the contracting parties. Under the Latin-German regime, the professional assigned this role is the notary. Under the Swedish regime, the assigned professional is the real estate broker. Before assessing which regime performs better, one must study how they function.

This paper studies, compares, and discusses the activity of impartial advice given to consumers under the Swedish and Latin-German regime. To that end, the duty to counsel of the Swedish real estate broker and the French notary, as well as the role played by the two professionals in the conveyance process, will be juxtaposed. Following that, the two regimes will be discussed briefly with respect to functionality and economic implications.

³ The Danish regime resembles the lawyer/solicitor system insofar as it is common for lawyers to be involved in drawing up the sales deeds and giving advice to their client.

⁴ *Mäklarsamfundet*, the largest real estate broker association in Sweden, issued the so-called *Riksprovisionstaxan*, recommended fees, until the enactment of the 1993 Competition Act (today replaced by the 2008 statute with the same name).

⁵ Murray, p. 91.

The Swedish Broker

Under 4:1 of the the Swedish Land Code (1970:944), a valid real estate conveyance requires a written contract, signed by both parties, with a specification of the property and a declaration of transfer of ownership. The buyer must apply for title registration at the Land Registry within three months (20:1-2 LC), and for the application to be granted, the seller's signature on the sales deed must be attested by two witnesses (20:7 1 p LC). However, title registration is of declaratory significance only. Hiring a broker or any other professional is optional, but it is estimated that roughly 90 % of all conveyances are accomplished through brokers.

The broker is bound to a duty of due care under 8 § of the Estates Agents Act (2011:666). The due care duty means that the broker is held to a quite high standard of diligence and prudence, with the aim of safeguarding the interests of both buyer and seller. For instance, if the broker is alerted of a particular risk, she must take appropriate measures to prevent injury or loss on the part of the concerned party.⁶

Further, 16 § EAA provides that the broker must give the parties such information and advice as they may need concerning the property and other relevant issues in connection to the conveyance. For instance, if the broker knows of a defect, she must disclose that defect to the buyer notwithstanding that doing so may be detrimental to the seller. She must also explain the significance of the defect, and give advice on the proper course of action. The duty to disclose information also applies to other relevant facts, such as changes in zoning and planning that are known to the broker.⁷ 16 § further stipulates that the broker must strive to ensure that the seller provides, prior to the sale, such information as the buyer may need. This is not merely directed at providing information to the buyer: it is also of importance for the seller to disclose information in order to avoid liability under the Land Code or the Sale of Goods Act. Therefore, the broker must explain those rules to the seller so as to ensure that the seller understands the significance of disclosing or withholding information. 16 § further obliges the broker to strive to ensure that the buyer inspects the property prior to the sale. Again, to ensure that the buyer understands the full significance of inspecting the property, the broker must explain the relevant rules in the Land Code or Sale of Goods Act. The current statute has introduced a new obligation in this regard: to inform the buyer *in writing* of their duty to inspect. This new formality must not, however, overshadow the overriding principle, which is that the broker must give both parties all the information and advice necessary to ensure that they understand the full implications of the situation at hand.⁸

17 § EAA requires the broker to verify who is entitled to dispose of the property, by what mortgages, easements, or other rights it is encumbered, and whether it is part of one or more joint facilities. The question of who is entitled to dispose of the property encompasses an obligation to verify whether the consent of another party is needed - e.g. a co-owner, a spouse, or another estate beneficiary - and to ensure that such consent is at hand before the sale is effectuated. The duty to verify is absolute in the sense that if it is possible to obtain the correct information, it constitutes an infraction of the provision not to obtain it. Besides the duty to verify, the broker is held to a duty to investigate. The latter duty follows from the general due care duty, and applies where 1) information given by the buyer, the seller, or a third party is

⁶ Jingryd, pp. 56-57.

⁷ RÅ 2006 ref. 53.

⁸ Jingryd, pp. 60-62, 171-188, 195-217.

uncertain, unlikely, unusual, or in any other way remarkable, 2) the issue at hand is of importance to the buyer and/or the seller, e.g. given the economic risk at stake or the complexity of the issue, and 3) verifying the information does not place undue burden on the broker. A duty to investigate can also result from observations made by the broker (Jingryd, pp. 132-156).

21 § EAA stipulates that the broker must strive to ensure that the parties reach agreement on issues that need to be resolved in connection to the conveyance. Unless otherwise agreed (which, as a practical matter, very seldom happens), the broker must also draw up all necessary documents. The aim is to prevent future disputes. In conjunction with the due care duty and the duty to advise, this results in the following responsibility with respect to the sales contract: 1) to identify the potential pitfalls and problems, 2) to present adequate solutions, e.g. contract clauses, 3) to formulate said clauses in an adequate manner, 4) to explain the contract clauses to the parties, including their relation to applicable law, and 5) to strive to ensure that all agreements are documented.⁹

The French Notary

French law does not, as a general rule, prescribe any particular formalities for the validity – as regards the buyer-seller relation - of the real estate conveyance. The fundamental rule is Article 1583 of the Code Civil, which provides:

"It [the sale] is complete as between the parties, and property passes in law to the purchaser from the seller as soon as both the thing and price have been agreed upon notwithstanding that the thing has not been delivered or the price paid".

The provision describes a consensual agreement with no other requirements than the agreement upon the thing to be sold and its price. That being so, buyer and seller are mutually bound by the agreement without the need to observe any particular formalities. There are, however, exceptions to the rule. Art. L 261-11 of the Construction and Habitation Code¹⁰, read in conjunction with Art. L 261-1 of the same Code, provides that a sale whereby the seller undertakes to construct one or several buildings within a timeframe specified in the contract is concluded by *acte authentique*. Thus, many sales of newly built homes must be accomplished through a notarized deed.

Although the general rule is that the sale itself can be accomplished without formalities, it is a fact that real estate conveyances entail several formality requirements, both *de jure* and *de facto*. Firstly, as is widely known and intuitively understood, a verbal agreement - though valid and binding as such - is of scant use if one cannot prove its existence or its terms. The more costly the transaction, the less appealing the prospect of taking chances in that regard. Thus, it is common practice in France as in other places for buyers and sellers to use written agreements.

Secondly, notarial intervention is mandatory in two other important parts of the transaction: the mortgage agreement and the *publicité foncière*.¹¹ As to the mortgage agreement, the seller is of

⁹ Jingryd, pp. 232-253.

¹⁰ *Code de la construction et de l'habitation*.

¹¹ The Land Register in France is called the *publicité foncière*, which is made up of a number of *bureaux des hypothèques*.

course not a party to that agreement. However, since most buyers need to finance their purchase with a loan, it seems fair to consider the mortgage agreement inherent in the transaction. As to the *publicité foncière*, the sale through mutual consent is only binding between buyer and seller. It is not until the sale is recorded at the *bureau des hypothèques* that the sale becomes binding towards third parties. The *bureau des hypothèques*, in turn, will only accept a notarized deed. Thus, the intervention of a notary is practically mandatory in the real estate conveyance despite the lack of prescribed formalities between buyer and seller.

Turning to the actual conveyance process, a standard residential real estate conveyance takes place roughly in the following manner. The buyer and seller find each other in the marketplace, either through a real estate broker or in another manner. Brokers are involved in relatively few transactions, merely 25-50 % of all conveyances. The parties sign a sales contract, called the *compromis de vente* (sales agreement) or *avant-contrat* (pre-contract). The *compromis de vente* is a traditional contract. Once agreed upon, buyer and seller are mutually bound to the sale, with the exception that the buyer has a statutory right under the *Loi SRU* to a cooling-off period of at least seven days, during which the buyer is unilaterally entitled to cancel the contract. This right applies where the buyer is a private person, and cannot be contracted out.¹² Further, the contract commonly stipulates one or several contingency clauses, such as mortgage clauses or contingencies related to encumbrances or restrictions due to zoning and planning. The parties are free to draw up the contract themselves, but in actuality notaries account for 80 % of all *avant-contrats* (Jingryd, pp. 124-126).

As an alternative to the *compromis de vente*, the seller may issue a *promesse de vente* (a pledge to sell). The *promesse de vente* differs from the *compromis de vente* in that whereas the latter is a mutually binding consensual agreement, the former is a unilateral declaration that only binds the seller. In short, the *promesse de vente* means that the seller pledges, for a specified period of time, to sell the property to a specified party. During that time, the seller cannot sell to another party. The unilateral obligation becomes a mutually binding sales agreement once the seller agrees with a buyer on a sales price; C.C. Art. 1589. No particular formalities are needed. Since the *promesse de vente* is nonetheless by definition an asymmetrical arrangement, to balance the scales it usually specifies a certain sum, called *indemnité d'immobilisation*, to be paid by the beneficiary should they choose not to purchase the property. The sum is usually 10 % of the sales price, which corresponds to the standard deposit sum provided for in mutual sales contracts. This is no mere happenstance. There are three possible outcomes: 1) the completion of the sale, in which case the *indemnité d'immobilisation* is discounted from the sales price, 2) the buyer defaulting, in which case the sum is paid to the seller as indemnification, or 3) the non-completion of the sale due to a contingency clause. The mutually binding *compromis de vente* seems to be the most common choice, though there are regional variances throughout France in that respect.¹³ Though there is no requirement to do so, the parties are free to avail themselves

¹² The *Loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains* (commonly referred to as the “Loi SRU”) amended several laws, including the *Code de la construction et de l’habitation* (CCH). Through Art. 72 of the Loi SRU, Art. L271-1 and L271-2 of the CCH now stipulate a mandatory seven-day cooling-off period for buyers of residential real estate who are private persons.

¹³ There are three more options besides the *compromis de vente* and the *promesse de vente*. First there is the *offre d’achat*, which is a unilateral pledge from a prospective buyer to purchase the property at a given price. Then there is the *pacte de préférence*, which is a right of first refusal. Finally, there is the *vente à réméré*, regulated in C.C. Art 1659 to 1670, where the seller is granted the option to repurchase the property within five years.

of the services of a notary to draw up the *compromis de vente*. If they choose to do so, Art. 64.1 of the Règlement National confers the responsibility to draft it on the notary of the seller (Jingryd, pp. 124-126).

Once the parties have agreed, a notary is appointed. The choice of notary usually falls on the buyer though this is by no means a legal requirement. It is also possible to involve two notaries, one for each contracting party. If this is done, then one of them is understood to be the *notaire instrumentaire* – the drafting notary. However, both notaries are held in to the same duty to counsel.

Once the drafting notary is appointed, a date is set for the *rendez-vous de signature*, when the *acte de vente* is signed by the parties. Prior to that meeting, the notary goes about collecting the information prescribed by law or otherwise needed, such as e.g. existing mortgages and other encumbrances, and prepares the *acte de vente*, which is the official conveyance deed. The *acte de vente* is an *acte authentique* with full probative value and immediate enforceability. During the meeting, the notary gives (or is at least legally obliged to give) all relevant information and advice to the parties. Once the *acte de vente* is signed, the buyer pays the remainder of the sales price and receives the keys to the property. After the meeting, the notary sends the *acte de vente* and the rest of the documents to the *bureau des hypothèques* for recording in the land register.

The notary is held to a quite strict counseling duty (*devoir de conseil*), evolved through the case law of the Cour de Cassation (the French Supreme Court) on the basis of Art. 1382 of the Code Civil. As in the case of the Swedish broker, the notary's counseling role entails four distinct duties: 1) to ascertain facts by conducting verifications, 2) to disclose information, 3) to give adequate advice, and 4) to draw up all necessary documents in an appropriate manner.¹⁴ The overriding principle is that the notary must ensure the validity and efficacy of the deeds and the transaction. Validity means that the transaction is valid and binding to all parties, whereas efficacy means that the deed and the transaction actually accomplish that which the parties seek out to accomplish.¹⁵

As in the case of the Swedish broker, the French notary's duty to ascertain facts applies mainly to information concerning the seller's right of disposal and encumbrances such as mortgages and easements. Unlike the broker, the notary must also check the zoning and planning situation of the property, which is done by obtaining a *certificat d'urbanisme* from the municipal authorities.¹⁶ Disclosing relevant information is arguably an intrinsic part of an advisory role such as that of the notary, and seems to have been taken for granted in by the courts.¹⁷ As to advice, it should be borne in mind that the notary must see to their impartiality, never treating one party as client and the other as counterpart. As a result, the advice given is mainly directed at ensuring that the contracting parties are aware of all risks and opportunities involved in the transaction, and that they understand the full significance of the present facts and of the choices made. This could involve making the concerned buyer or seller aware of an applicable statutory provision, explaining the parties' rights and obligations under applicable law, or recommending

¹⁴ Jingryd, pp. 156-170, 188-194, 217-231, 254-264.

¹⁵ de Poulpiquet, pp. 11-12; Biguinet-Maurel, pp. 172-173; Jingryd, pp. 126-131.

¹⁶ Cass. 1^{re} civ., Bull. 1980 I n^o 112, ruling of April 15th, 1980; Cass. 1^{re} Civ., Bull. I 1990 N^o 160 p. 114, ruling of June 12th, 1990; de Poulpiquet, pp. 89-90; Jingryd, pp. 164-165.

¹⁷ See e.g. Cass. 1^{re} civ., Bull. civ. I, n^o 6, ruling of January 6th, 1994; Jingryd pp. 188-194.

a particular course of action that is fiscally favorable.¹⁸ As for drawing up the necessary deeds in an adequate manner – meaning above all that it accomplishes the intended goals of the parties – it seems intrinsic in the notary’s role that the deeds produce their desired legal effect. The notary must remain especially alert to any factors – e.g. factual circumstances or applicable legal provisions – that may affect the validity or efficacy of the deeds.¹⁹

Comparison and Discussion

The juxtaposition of the roles and duties of the two professionals reveals remarkable similarities. Despite a few variations on the task-specific level, the duty to counsel of the Swedish broker and that of the French notary are similar enough that it is possible to venture a uniform definition. Thus, the duty to counsel is:

the duty to diligently and prudently safeguard the interests of the parties, with particular regard to the validity and the efficacy of the transaction. That duty is accomplished by fulfilling the four sub-duties of ascertaining facts, disclosing relevant information, giving adequate advice, and drawing up deeds that are suitably tailored to the transaction at hand.

The first question that is brought to the fore is whether either regime is desirable in the sense that it produces utility that exceeds the costs. That is an important issue to be studied. However, such an assessment presupposes that all utility and costs can be measured in a clear and unambiguous way – something that cannot be said to be the case. For instance, embedded in the field of law-and-economics is the idea of liberty and the postulate that state intervention should be kept at a minimum. How does one put a price on such an ideal? How does one put a price on diverging or opposing views? Another factor is consumer protection. While consumer protection can in part be justified in terms of consumers being more willing to spend money in the marketplace if they know that they have adequate protection, such as cooling-off periods and a duty of disclosure on the part of producers, there is at the heart of consumer protection policy the idea that those with less information and/or power should not be abused by those with more information and/or power. How does one put a price on that?

Another perspective for evaluation, that can account for economic as well as other factors such as consumer protection, but which does not hinge on being able to measure utility and costs in numbers, is to assess the regimes’ *institutional robustness*. Is either regime viable in the sense that it can be expected to function as intended? Here, the same incentives that are studied in economic theory, and which can be detrimental to economic efficiency, constitute challenges to the functionality of the regime. Institutional robustness is not a universal model that yields a perfect answer as to whether a regime is desirable. For instance, it could well be that a regime is institutionally robust and works exactly as intended while at the same time being so costly as to offset the benefits. The reverse may also hold true: it could well be that a regime is economically sound in the sense that it produces low transaction costs, while being so institutionally flawed that it cannot function in the intended manner.

¹⁸ See e.g. Cass 1^{re} civ., Appeal n^o 10-14170, ruling of April 28th, 2011; Cass. 1^{re} civ., Bull. I 1987 n^o 288 p. 207, ruling of November 12th, 1987; Jingryd, pp. 217-231.

¹⁹ See e.g. Cass. 3^{me} Civ., Bull. 1990 III N^o 119 p. 66, ruling of May 16th, 1990; Jingryd, pp. 254-264.

In the case of the notary regime, there are a number of economic issues that are or could potentially be of interest.²⁰ For instance, the classic notary model can be construed as hampering with both supply and demand, since the *numerous clauses* rules and barriers to entry limit the number of players on the market; at the same time, mandatory intervention can be viewed as tantamount to an artificial demand for those services.

On the other hand, notaries are expertly qualified for the legal tasks assigned to them. Arguably, to draw up and authenticate deeds is the very essence of the notary's work. A certain measure of ascertaining facts is inherent in the craft, at least as regards information that could affect the validity of the deeds, as is ensuring that the deeds are worded in an adequate manner. While perhaps not inherent in the authentication process, disclosing information and giving advice seem a natural extension. Moreover, for a legal professional, giving counsel to the parties is no alien concept. There should therefore be no insurmountable challenges to the proper performance of the notary's duties. However, the tendency among notaries in the relatively near past to hold in their defense in court that they had been hired merely to draw up the deeds suggests that a more reductionist view of the notary's role may still have its supporters among some members of the profession.

The broker model, for its part, raises the issue of market failures. For instance, it is a common trait of all liberal professions that the services are highly qualified. As a result, there is a substantial information gap between the professional and the client. Professional services thus have attributes of credence goods, meaning that consumers cannot without difficulty – or not at all – measure its quality either before or after the purchase. Since consumers cannot measure quality, they will not be willing to pay more to receive a high quality service. This leads to what is described as a market for lemons, also known as adverse selection: assuming that there is a causal relation between quality and price – meaning that professionals will only be willing to provide high quality for a higher price – service providers will be disinclined to provide high quality since consumers are not willing to pay for it. Consequently, high quality providers are driven out of the market.

Another factor that is likely to contribute to adverse selection is the way brokerage is commonly defined. 1 § EAA defines brokerage as ““(…) an operation based on an agency agreement whose purpose is to designate an opposite party with whom the principal can reach an agreement on an assignment or a grant”.”²¹ Furthermore, 23 § EAA makes the broker's right to remuneration contingent on a successful conveyance. The efficient course of action for a broker is therefore to perform only that which is instrumental in order to receive her commission. As a result, the broker has poor incentives to spend time giving the parties detailed legal counsel regarding the contract and other important issues in the transaction. On the contrary, the duty to counsel is likely to be perceived as an encumbrance rather than an integral part of the craft.

These are but a few examples of the institutional factors that may affect the proper functioning of the two regulatory models. Other important factors include the education level and self-image of the members of the respective professions.²²

²⁰ ZERP Report; Murray Report.

²¹ Non-official translation, available at the website of the government supervisory body; www.fmi.se.

²² Jingryd, pp. 279-293.

Conclusions

It would be an impossible task in a paper such as the present one to provide an answer as to which regulatory model is the most desirable. However, by juxtaposing the roles and duties of the Latin-German notary and the Swedish broker, I have highlighted the function of impartial counsel in real estate conveyances. I have also presented a new, broader perspective for evaluation of the regulatory models than the calculation of transaction costs. This perspective includes 1) taking into account that not all relevant factors are easily measured, and 2) the concept of *institutional robustness*, i.e. how well the regulatory model functions or can be expected to function due to institutional factors such as the incentives of the key professionals.

Future research regarding real estate conveyances should focus on incentives and institutional robustness, e.g. on how to provide optimal incentives for the key professional. In the end, a regulatory model that can combine low transaction costs with high performance is arguably the best choice. The work that yet remains lies in identifying that regulatory model.

References

Official Sources – Sweden

Statutes

Anti-Discrimination Act (2008:567)
Competition Act (2008:579)
Estate Agents Act (2011:666)
Estate Agents Act (1995:400)
Estate Agents Ordinance (2011:668)
Income Tax Act (1999:229)
Land Code (1970:944)
Land Register Act (2000:224)
Act on Measures to Prevent Money Laundering and
Terrorist Financing "Money Laundering Act" (2009:62).
Sales Act (1990:931)
Social Security Act (1962:381)
Supervision of Dogs and Cats Act (1943:459)
Tax Procedure Act (1990:324)
Tenant Ownership Act (1991:614)
Torts Act (1972:207)

Travaux Préparatoires

Prop. 1983/84:16
Prop. 1988/89:76
Prop. 1994/95:14
Prop. 2010/11:15

SOU 2008:6, *Fastighetsmäklaren och konsumenten*
SOU 2000:110, *Konsumentskyddet vid småhusbyggande*
SOU 1981:102 *The Report of the Home Ownership Commission*

Dir. 2005:140, *Översyn av fastighetsmäklarlagen.*

Case Law

Supreme Court

NJA 1986 s. 146	Broker's right to commission
NJA 1991 s. 625	Duty to advise, taxes
NJA 1991 s. 729	Duty to investigate, living area
NJA 1993 s. 468	Resale restriction
NJA 1996 s. 598	Seller's liability for defects, movable property
NJA 1997 s. 127, I & II	Advice, contract-engineering, mortgage clause

NJA 1997 s. 667	Duty to investigate, living area
NJA 1998 s. 792	Seller's liability for defects, tenant ownership home
NJA 2007 s. 86	Seller's liability for defects, real estate
NJA 2010 s. 390	Resale restriction

Court of Appeals

Western Sweden Court of Appeals T 3278-00	Ascertaining facts, easement
Skåne Blekinge Court of Appeals T 209-04	Information disclosure
Svea Court of Appeals T 10086-10	Information disclosure, advice

Supreme Administrative Court

RÅ 2002 ref. 30	Acting on advice of counsel
RÅ 2003 ref. 51	Advice, tenant ownership mortgage
RÅ 2006 ref. 53	Information disclosure
RÅ 2006 ref. 84	Impartiality, integrity
RÅ 2008 ref. 63	Impartiality, integrity

Administrative Court of Appeals

RK 5135-1999	Remuneration method
RK 7861-03	Impartiality, representing a party
RK 1995-04	Contract, adapting contract to instant transaction
RK 2226-04	Impartiality, related person
RK 3836-04	Contract, inspection clause
RK 4882-04	Impartiality, related person
RK 6721-04	Impartiality, related person
RK 8375-04	Information disclosure
RK 8008-05	Impartiality, integrity, trustworthiness
RK 6550-06	Impartiality, related person
RK 1948-07	Impartiality, integrity, loan to contracting party
KamR 7165-07	Impartiality, bidding process
KamR 9347-08	Contract, inspection clause
KamR 1344-09	Impartiality, related person
KamR 7171-10	Ascertaining facts, physical condition of property

Administrative Court of First Instance

LR 7338-01	Impartiality, assisting a party in dispute
LR 11645-04	Impartiality, representing a party
LR 21503-05	Impartiality, related person
LR 23380-05	Contract, inspection clause, unclear clause
LR 28148-05	Contract, impartiality
LR 645-06	Contract, inspection clause, regulate all relevant issues

LR 889-06	Contract, documenting the agreement
LR 1683-06	Contract, inspection clause, unclear clause
LR 9244-06	Impartiality, trustworthiness, loan to contracting party
LR 19859-06	Advice, incorrect information
LR 20260-06	Contract, inspection clause, unclear clause
LR 20385-06	Contract, inspection clause, unreasonable clause
LR 8600-09	Advice, membership clause
FR 15631-10	Information disclosure
FR 1692-10	Contract, inspection clause

Estate Agents Inspectorate (FMN/FMI)

2003-02-21:1	Impartiality, loan to contracting party
2003-05-28:6	Impartiality
2004-02-25:1	Information disclosure
2004-02-25:2	Information disclosure, defects on property
2005-12-14:4	Contract, inspection clause, unclear clause
2004-12-15:4	Impartiality, representing a party
2005-01-19:3	Contract, obligation to be active
2005-02-16:1	Impartiality, representing a party
2005-02-23:6	Contract, unclear clause, regulate all relevant issues
2005-02-23:7	Impartiality, representing a party
2005-03-16:2	Information disclosure, uncertain information
2005-03-16:7	Information disclosure
2005-03-16:8	Contract, unclear clause, regulate all relevant issues
2005-06-15:4	Contract, inspection clause, unclear clause
2005-09-28:5	Information disclosure, uncertain information
2005-09-28:4	Contract, inspection clause, unclear clause
2005-10-26:7	Impartiality, loan to contracting party
2005-11-16:2	Contract, unclear clause, regulate all relevant issues
2005-12-14:3	Information disclosure, uncertain information
2005-12-14:1	Contract, documenting the agreement
2006-02-22:1	Impartiality, related person
2006-02-22:2	Impartiality, trading in real estate
2006-03-22:1	Impartiality, trustworthiness, loan to party
2006-05-10:2	Information disclosure, uncertain information
2006-05-10:1	Impartiality, loan to contracting party
2006-06-07:5	Advice, inspection prior to or after signing the sales contract
2006-08-23:5	Advice, buyer's inspection obligation, inspection clause
2006-08-23:6	Advice, buyer's inspection obligation, inspection clause
2006-08-23:1	Contract, advice, explaining implications to parties
2006-08-23:5	Impartiality, representing a party
2006-09-27:4	Contract, unclear clause, regulate all relevant issues
2006-09-27:6	Contract, unclear clause, regulate all relevant issues
2006-09-27:5	Impartiality, representing a party
2006-09-27:6	Impartiality, representing a party
2006-10-25:9	Contract, unclear clause, regulate all relevant issues
2006-10-25:9	Contract, inspection clause, unreasonable clause
2006-10-25:3	Contract, documenting the agreement
2006-11-15:11	Ascertaining facts, resale restriction
2007-03-28:5	Impartiality, trading in real estate
2007-06-20:1	Ascertaining facts, easements

2007-04-25:2	Impartiality, trading in real estate
2007-08-29:4	Negligent tax advice
2007-08-29:7	Impartiality, trading in real estate
2008-04-23:1	Information disclosure
2008-11-19:4	Ascertaining facts, mortgages
2008-11-19:9	Information disclosure
2008-12-17:11	Ascertaining facts, benefits
2009-04-22:5	Ascertaining facts, easements
2009-04-22:8	Ascertaining facts, pre-emption rights
2011-05-27:1	Contract, identifying issues to be resolved
2009-12-16:9	Advice, pre-inspected property
2009-12-16:11	Ascertaining facts, right of disposal
2010-03-25:8	Advice, pre-inspected property
2011-01-26:4	Information disclosure
2011-03-31:17	Advice, spousal consent
2011-04-27:6	Contract, inspection clause
2011-05-25:7	Ascertaining facts, advice, spousal consent
2011-06-22:13	Advice, new tenant ownership association
2011-11-23:2	Advice, contract, invalid contract
2011-12-14:8	Information disclosure
4-2192-08	Ascertaining facts, duty to investigate

National Board for Consumer Complaints (ARN)

ARN 2006-46-13 Negligent tax advice

Regulations and Reports from Government Agencies

KOVFS 1996:4, *Guidelines for the Offering, Performance, and Marketing of Real Estate Brokerage Services for Consumers* (rescinded 30 April, 2007).

RiR 2007:7, *Den största affären i livet: tillsyn över fastighetsmäklare och konsumenternas möjlighet till tvistelösning*, available at http://www.riksrevisionen.se/PageFiles/1149/RiR_2007_7.pdf (2012-09-10).

Official Sources – the Latin Notary

EU Legislation

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

National Statutes

See figures 2-7, Jingryd (2012).

Case law

European Court of Justice

C-47/08 Commission v. Belgium
C-50/08 Commission v. France
C-51/08 Commission v. Luxembourg
C-52/08 Commission v. Portugal
C-53/08 Commission v. Austria
C-54/08 Commission v. Germany
C-61/08 Commission v. Greece

National Courts

Cour de cassation de Belgique, arrêt n° C.01.0201.N/1 du 31 janvier 2002, *Institut Professionnel des Agents Immobiliers et al v. Notarishuis van het Arrondissement Leuven*.

Supremo Tribunal de Puerto Rico, *In re Colon Ramery* (1993) – see Malavet.

Other cases cited through literature references.

Official Sources – France

Statutes

Code civil
Code de la construction et de l'habitation
Code général des impôts
Code de la santé publique
Code de l'urbanisme

Loi du 25 Ventôse an XI contenant organisation du notariat
Loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains ("Loi SRU")

Ordonnance n° 45-2590 du 2 novembre 1945 relative au statut du notariat
Ordonnance n° 45-1418 du 28 juin 1945, relative à la discipline des notaries et de certains officiers ministériels

Décret n° 45-117 du 19 décembre 1945 portant règlement d'administration publique pour l'application du statut du notariat

Case law

Cour de Cassation, published in Bulletin

Cass. 1 ^{re} Civ., D 1925, 1 p. 29	Advice
Cass. 1 ^{re} Civ., D 1965, p. 449	Advice
Cass 1 ^{re} civ., JCP N 1966, II, 14590	Ascertaining facts, mortgages
Cass. com. 12 nov 1969 N 328	Ascertaining facts, right of disposal
Cass 1 ^{re} civ., Bull. 1979 1 n° 45 p. 39	Ascertaining facts, identity
Cass 1 ^{re} civ., Bull. 1980 I n° 112	Ascertaining facts, zoning & planning
Cass. 1 ^{re} civ., Bull. I 1985 n° 268 p. 238	Ascertaining facts, zoning & planning
Cass. 1 ^{re} Civ., Bull. I 1985 n° 340 p. 305	Ascertaining facts, licenses
Cass. 1 ^{re} Civ., Bull. I 1987 N° 288 p. 207	Advice
Cass. 1 ^{re} Civ., Bull. I 1990 N° 160 p. 114	Ascertaining facts, obtaining <i>certificat d'urbanisme</i>
Cass. 3 ^{me} Civ., Bull. 1990 III N° 119 p. 66	Contract-engineering
Cass. 1 ^{re} Civ., Bull. I 1994 N° 6 p. 5	Ascertaining facts, identity
Cass 1 ^{re} civ., Bull. civ. I, n° 6	Information disclosure
Cass. 1 ^{re} civ., Bull. III 1994 n° 38 p. 23	Ascertaining facts, easements
Cass. 1 ^{re} Civ., Bull. I 1995 N° 226 p. 158	Advice
Cass. 1 ^{re} Civ., Bull. I 1996 N° 423 p. 294	Information disclosure
Cass. 1 ^{re} Civ., Bull 1998 I n° 21, p. 14	Ascertaining facts, identity
Cass. 1 ^{re} civ., Bull. I 2003 n° 62 p. 47	Ascertaining facts, trusting veracity of documents
Cass. 1 ^{re} Civ., Bull. 2005 I N° 323 p. 267	Advice

Cour de Cassation, not published in Bulletin

Cass 1 ^{re} civ., Appeal no 88-10448	Ascertaining facts, easements
Cass 1 ^{re} Civ., Appeal n° 90-18775	Ascertaining facts, mortgages
Cass. 1 ^{re} Civ., Appeal n° 94-14436	Ascertaining facts, mortgages
Cass. 1 ^{re} Civ., Appeal n° 96-12874	Advice
Cass. 1 ^{re} civ., appeal n° 97-15947	Contract-engineering
Cass. 1 ^{re} civ., Appeal n° 99-12216	Ascertaining facts, trusting veracity of documents
Cass. 1 ^{re} Civ., Appeal n° 99-15642	Contract-engineering
Cass. 1 ^{re} Civ., Appeal n° 00-11036	Advice
Cass. 3 ^{me} Civ., Appeal n° 00-11411	Information disclosure
Cass 3 ^{me} Civ., Appeal n° 04-13200	Advice
Cass. 1 ^{re} Civ., Appeal n° 07-18057	Contract-engineering
Cass. 1 ^{re} Civ., Appeal n° 08-11564	Contract-engineering
Cass. 3 ^{me} Civ., Appeal n° 08-20250	Contract-engineering
Cass. 1 ^{re} Civ., Appeal n° 10-14170	Advice
Cass 3 ^{me} Civ., Appeal n° 10-16954	Ascertaining facts, building permit
Cass. 1 ^{re} Civ., Appeal n° 10-17259	Contract-engineering
Cass. 1 ^{re} Civ., Appeal n° 10-18066	Contract-engineering
Cass. 1 ^{re} Civ., Appeal n° 10-19942	Advice
Cass. 1 ^{re} Civ., Appeal n° 10-25583	Ascertaining facts, easements
Cass. 1 ^{re} Civ., Appeal n° 10-26219	Ascertaining facts, right of disposal
Cass. 1 ^{re} Civ., Appeal n° 10-25741, 10-26560, and 11-14663	Advice

Cass. 1^{re} Civ., Appeal n° 10-26934
Cass. 1^{re} Civ., Appeal n° 10-27305

Contract-engineering
Contract-engineering

Books, Articles & Reports

Ankarloo, Bengt (1994), *Romersk rätt*, Lund: Universitetsförlaget Dialogos.

Armbrüster, Christian, Preuss, Nicola & Renner, Thomas (2009), *Beurkundungsgesetz und Dienstordnung für Notarinnen und Notaren: Kommentar* (5th ed.), Berlin: De Gruyter Rechtswissenschaften Verlags-GmbH.

Arruñada, Benito (1996), The Economics of Notaries, *European Journal of Law and Economics*, 3(1), pp. 5-37.

Arrañuda, Benito (2001), Pasado, presente y futuro del notariado, *Folio Real*, vol. 2, núm 6, octubre, 2001, 135-53.

Arrañuda, Benito (2006), *Managing Competition in Professional Services and the Burden of Inertia*, in Ehlermann, Claus-Dieter & Atanasiu, Isabela, eds., *European Competition Law Annual 2004: The Relationship Between Competition Law and the (Liberal) Professions*, Hart Publishing, Oxford and Oregon, 2006, pp. 51-71.

Arruñada, Benito (2007), Market and Institutional Determinants in the Regulation of Conveyancers, *European Journal of Law and Economics*, Vol. 23, No. 2, pp. 93-116; available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=987348 (2012-09-10).

Baier, Matthias & Svensson, Måns (2009), *Om normer*. Malmö: Liber.

Bettini, Serge & Bettini, Sophie (2011), *Acheter, vendre, louer: Les bons réflexes de l'immobilier*. Magny-les-Hameaux: Éditions Chiron.

Biguenet-Maurel, Cécile (2006), *Le devoir de conseil des notaires*. Paris: Defrénois.

Bogdan, Michael (2003), *Komparativ rättskunskap*, 2 ed., Stockholm: Norstedts Juridik.

Brandelli, Leonardo (2004), *Atas notariais* in Brandelli (ed.), *Ata Notarial*, Porto Alegre: Sergio Antonio Fabris Editor; article available at [http://fm.cartorios.net/plugins/filemanager/files/1jundiai/artigos/Atas Notariais.pdf](http://fm.cartorios.net/plugins/filemanager/files/1jundiai/artigos/Atas_Notariais.pdf) (2012-09-10).

Commission of the European Communities, *Professional Services – Scope for More Reform*, Brussels, 5.9.2005, COM(2005) 405 final.

Commission of the European Communities, *Report on Competition in Professional Services*, Brussels, 9.2.2004, Com(2004) 83 final.

Davey, Charles (2006), *Buying Property in France*, Kogan Page, London and Philadelphia.

Deflem, Mathieu (2010), *Sociology of Law: Visions of a Scholarly Tradition*, Cambridge University Press, Cambridge.

Dougnac Rodriguez, Antoniom, *El Escribano de Santiago de Chile a Traves de sus Visitas en el Siglo XVIII*. *Rev. estud. hist.-juríd.*, 1997, no.19, p.49-93. ISSN 0716-5455.

Dworkin, Ronald (1988), *Law's Empire*, Oxford: Hart Publishing.

Dyson, Henry (2010), *French Property and Inheritance Law*, Oxford: Oxford University Press.

Ferreira, João Figueiredo & Weinzenmann, Luiz Carlos (2006), O Notariado No Brasil, *Notarius International 1-2/2006*, p. 59-67; available at http://212.63.69.85/DataBase/Edition/notarius_01_02_2006.pdf (2012-09-10).

Gaius, *See Poste*.

Geimer, Reinhold (2001), *The Circulation of Notarial Acts and Their Effect in Law*, XXIII International Congress of Latin Notaries: Report of the German Delegation, available at http://www.bnotk.de/downloads/UIINL_Kongress/Athen/GEIMER_ENGLISH.pdf (2012-09-10).

Gonzales, José Ant3nio Marquez, *La fe y la funci3n notarial : evoluci3n hist3rica*, en Revista del Notariado. Ciudad Aut3noma de Buenos Aires : Colegio de Escribanos de la Ciudad de Buenos Aires; a3o 109 886, octubre-diciembre 2006, pp. 255-286.

Gordley, James & von Mehren, Arthur Taylor (2006), *An Introduction to the Comparative Study of Private Law: Readings, Cases, Materials*, Cambridge: Cambridge University Press.

Grauers, Folke (2010), *Nyttjanderätt. Hyra, bostadsrätt, arrende och tomträtt*, 13th ed., Lund: Studentlitteratur.

Grauers, Folke (2012), *Fastighetsköp*, 20th ed., Lund: Studentlitteratur.

Grauers, Per Henning m fl. (2011), *Fastighetsmäklaren – en vägledning*, 4th ed. Stockholm: Norstedts Juridik.

Greenidge, *See Poste*.

Harrisson, Dick (1995), *Europa i världen: medeltiden*, Almqvist & Wiksell, Stockholm

Hellner, Jan (2001), *Metodproblem i rättsvetenskapen – studier i förmögenhetsrätt*. Stockholm: Jure.

Hertel, Christian & Wicke, Hartmut (2004), *Real Property Law and Procedure in the European Union: National Report: Germany*, European University Institute (EUI)/European Private Law Forum, available at <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/Germany.PDF> (2012-09-10).

Illustrated Oxford Dictionary, Oxford University Press, 1998.

Jingryd, Ola (2012), *Impartial Legal Counsel in Real Estate Conveyances: The Swedish Broker and the Latin Notary*. Stockholm: Royal Institute of Technology.

Kreps, David M. (1990), *A Course in Microeconomic Theory*, Prentice Hall.

Lesaffer, Randall (2005), Argument from Roman Law in Current International Law: Occupation and Acquisitive Prescription, *The European Journal of International Law*, Vol. 16 no. 1, pp. 25-58.

- Lindqvist, Sylwia (2011), *Transaction cost and transparency on the owner-occupied housing market: An international comparison*. Stockholm: Royal Institute of Technology.
- Malavet, Pedro A. (1996), Counsel for the Situation: the Latin Notary, a Historical and Comparative Model, *Hastings International and Comparative Law Review*, Volume 19, Number 3, Spring 1996, pp. 389-488.
- Melin, Magnus (2007), *Fastighetsmäklarlagen – en kommentar*, 2 ed. Stockholm: Norstedts Juridik.
- Michaels, Ralf (2005), The Functional Method of Comparative Law (2005), *Duke Law School Faculty Scholarship Series*, Paper 26; available at http://lsr.nellco.org/duke_fs/26 (2012-10-16).
- Milgrom, Paul & Roberts, John (1992), *Economics, Organization and Management*, New Jersey: Prentice Hall.
- Moreau, Alain (1999), *Le Notaire dans la société française d’hier à demain*, Economica, Paris.
- Murray, Peter L. (2007), *Real Estate Conveyancing in 5 European Union Member States: A Comparative Study*; available at <http://www.cnue-nouvelles.be/en/000/actualites/murray-report-final.pdf> (2012-09-10).
- Murray, Peter L. & Stürner, Rolf (2010), *The Civil Law Notary – Neutral Lawyer for the Situation. A Comparative Study on Preventative Justice in Modern Societies*, Munich: Verlag C.H. Beck.
- Murray, Peter L (2011), French Notaries and the American Mortgage Crisis, in Rogoff et al. (eds.), *The Financial Crisis of 2008: French and American Responses – Proceedings of the 2010 Franco-American Legal Seminar*; available at SSRN: <http://ssrn.com/abstract=1973044> (2012-10-29).
- Nahuis, Richard & Noailly, Joëlle (2005), *Competition and Quality in the Notary Profession*, CPD Document No 94, September 2005, The Hague.
- Nooteboom, Bart (2006), *Transaction Costs, Innovation and Learning*, Tilburg University Center for Economic Research, Discussion Paper 2006-36, available at <http://ideas.repec.org/p/dgr/kubcen/200636.html> (2012-09-06).
- Öcürü, Esin & Nelken, David (2007), *Comparative Law: A Handbook*, Oxford and Portland, Oregon: Hart Publishing.