FORMS OF TENURE IN SWEDEN; THE CASE OF THE TENANT OWNER

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1. INTRODUCTION

Housing is a field which is always in the centre of political discussion not least because of its social importance. Issues such as housing shortage, the cost and standard of housing, parity between forms of tenure, speculation in real estate, etc.,[1] attract daily attention in the media and also constitute some of the most frequent topics of discussion, in which every citizen claims considerable expertise.

Housing is also an area of law which is subject to frequent reforms. Regardless of which political party is in power, increased regulation of the housing area seems inevitable. With the possible exception of agriculture, housing seems always to be the most regulated, or over-regulated, field in society, characterized by a combination of various forms of regulation such as land law, zoning law, health and safety regulations, credit regulations, landlord and tenant law, rules on government subsidies in various forms, company law, social law and even by direct government or local intervention by the setting up of housing enterprises or socialized housing (council housing and similar forms).

The complexity of housing law regulations does not diminish with the variety of forms of tenure one finds in various countries. It would seem as though each country has developed a unique combination of forms of tenure,[2] in which different forms of tenure are adapted to different needs in the housing market, although the same form may be adapted to different needs in different countries. It seems that, as is often the case with land law, national policies and traditions, historical developments and perhaps even chance provide the most likely basis for explaining these differences. In this paper the develop-

[1] See e.g. A. Victorin, "The Economic Effects of Rent Control", *Law and the Weaker Party*, vol. I, pp. 39 ff., Abingdon 1981, with references.

[2] The term "form of tenure" is used here not only to denote certain basic forms, such as tenancy or owner-occupation, but also to denote unusual forms or combinations of forms, such as credit arrangements, co-ownership schemes or equity-sharing arrangements.

In this connection it should be mentioned that the particular form of tenure based upon a credit arrangement between the tenant and the landlord will not be treated here. Such arrangements are given particular relevance in some countries, e.g. Norway, cf. K. Krüger, C.F. Wyller (eds.), *Boligrett*, Bergen 1978, pp. 38 ff., but not in Sweden. During the period of rent control such arrangements were even illegal, cf. U. Gad and H. Stark, *Hyresregleringen*, Stockholm 1969, p. 52. To-day, such arrangements are not illegal, at least as long as the loan is not given on terms which are so unusually advantageous for the landlord as to constitute illegal compensation for the granting or transfer of the right of user, cf. sec. 65 of the Rent Act and L. Holmqvist, *Hyreslagen, en kommentar*, Stockholm 1985, pp. 408 f.

ment and role of co-operative housing in Sweden will be discussed from such a perspective. Some comparisons will be offered, mainly because of the increased interest in other countries in experimental forms of tenure, where the Swedish and Scandinavian experience may be of some relevance.

Because of the national peculiarities of the field, terminology often poses a problem. To overcome some of the obstacles a certain terminology will be used, in which some stipulative definitions will be given. As far as possible ordinary English terminology will, however, be used.

2. FORMS OF TENURE IN SWEDEN; A BIRD'S-EYE PERSPECTIVE

2.1 *Terminology*

For reasons of convenience a simple system of classifying forms of tenure will be used in this paper, with three main groups: owner-occupation, tenant-ownership and tenancy.[3] Here owner-occupation in its typical form means land-ownership, tenant-ownership in its typical form means that the tenant is a member of an association that owns the house (and the land) in which the tenant lives, whereas tenancy means that the tenant normally has no other legal connections with the landlord (normally the owner of the land and the house) than the tenancy agreement.

Although this simple system of classification certainly will give rise to difficulties concerning the classification of certain forms of tenure such as the ownership of flats (*Wohnungseigentum*) of the continental type, or the use of very long leases in Britain, it still seems to capture the most commonly used forms of tenure in most European countries. It also reflects the most common terms of the socio-political debate. Furthermore, it reflects the position of Swedish law, where attempts have been made to limit the number of tenures, as will be discussed in the following.

2.2 *Owner-occupation*

Owner-occupation is the most common form of tenure in Sweden in the sense that most of the population is housed that way. Normally owner-occupation

[3] Cf. A. Victorin and P. Melz, *Bostadsrätt*, 2nd ed. Stockholm 1986, pp. 17 ff. It should also be added that two common forms of tenure involving dwellings have been purposely excluded from this presentation, viz. (a) site leasehold right (*tomträtt*), which in Swedish law only can be granted by a public land owner and which also in many respects is close to land ownership, and (b) housing leasehold right (*bostadsarrende*), which is a form of lease of land upon which the tenant is allowed to erect and maintain a building for housing purposes, in Sweden used mainly for simple huts and cabins for recreation. In both cases the leasehold right is in principle a lease of land rather than a lease of a dwelling, i.e. a building or a part of a building. Furthermore, land leases for agricultural purposes are also excluded, although such leases, in some cases, are connected with a right of dwelling for the tenant (*gårdsarrende*).

signifies a small detached or semi-detached house or a terraced house built for one family. Out of the 3.7 million housing units for permanent living approx. 1.6 million are small houses (43 per cent). Since owner-occupation is the most common form of tenure for families with children and since they also are in general bigger than rented flats, 57 per cent of the population live in small houses. A comparatively small proportion of the small houses are rented (8 per cent) whereas an increasingly large proportion are in tenant-ownership (19 per cent).[4]

Although legislation on ownership of flats has been proposed several times, Sweden does not have such legislation, nor is such ownership possible because of general rules on land registration and ownership of land, something which sets Sweden apart from most countries in Europe (including the Nordic countries Denmark, Iceland and Norway). The reason is mainly connected with housing policy.[5] The tenant-owner form of tenure has been preferred over ownership of apartments. In spite of this, however, co-ownership of real property is tolerated, and sometimes used as a kind of "ownership" of apartments, something which will be discussed later on. It should only be mentioned here that such arrangements, as far as they are set up as a conscious alternative to, *i.a.*, the tenant-owner form of tenure, only comprise a few thousand apartments, mainly in the city areas. This kind of tenure cannot be compared to genuine ownership of flats, mainly because individual flats cannot be subject to registration as land units. The right of co-ownership is only an abstract right in the property as a whole. Nor can it be compared to such ownership schemes on the Continent which are based on co-ownership for the reason that co-ownership of real property cannot be mortgaged. Swedish land law rests firmly on the principle that real property is land. Co-ownership of land can be registred, but it does not constitute a right to any particular part of the land, nor can it, as just mentioned, be mortgaged. In spite of this, however, the co-owners can agree on how the land and the buildings are to be divided amongst them, etc., and in that way form a kind of association (although without the character of a legal person) with "bye-laws" containing the necessary rules for an effective administration of the house.

2.3 *Tenancy*

Tenancy is the most common form of tenure in blocks of flats and other multi-apartment buildings. Only 8 per cent of the small houses are let under

[4] For recent statistics, see e.g. *SOU* 1984:35 *Bostadskommitténs delbetänkande*, Part 1, pp. 17 ff., *Prop.* 1986/87:48 *Om bostadspolitiken*, pp. 86 ff.

[5] A. Victorin, "Aganderätt till lägenhet", *Förhandlingarna vid det tjugonionde nordiska juristmötet*, Part II, Stockholm 1982, pp. 195 ff., P.Blok, *Ejerlejligheder*, Copenhagen 1982, pp. 18 ff., "Freehold Flats in Danish Law", 26 *Sc.St.L.*, pp. 11 ff., *SOU* 1982:40 *Ägarlägenheter*, pp. 247 ff., all with references.

this kind of tenure, although the figure is increasing in new production. In blocks of flats 70 per cent of the flats are let as rented accommodation, whereas 24 per cent are tenant-owner apartments. In the rental housing sector public utility enterprises dominate with holdings of approx. 800,000 apartments (24 per cent of the total housing stock), whereas private owners have some 556,000 apartments (19 per cent of the total stock). The private sector is rapidly diminishing wheras the tenant-owner and public sectors are increasing.[6]

Since the Second World War tenancy has been developed along the lines of a social housing policy, increasing the rights of the tenants in relation to the landlord. The tenants now enjoy an almost all-embracing tenancy protection,[7] they have a right to let their flats second hand when they temporarily have no need for them,[8] they have a right to exchange their flats to obtain another dwelling (also in owner-occupation or in tenant-ownership), the landlord has a duty regularly to provide for repairs to the flats, etc. Furthermore, the tenancy form of tenure is guarded by means of a complex system of rent control and an equally complex system designed to prevent the creation of slum districts and also to prevent "obscure" persons from acquiring rental property.[9] The fact that municipally-owned public utiltity enterprises dominate this sector also implies an increasing amount of socialization. Finally, one may add that in terms of direct subsidies the rented sector is the most heavily subsidized.[10]

2.4 *Tenant-ownership*

Tenant-ownership, according to the definition given earlier, presupposes that the tenant-owner is a member of an association (a legal person) granting him the right of user. In theory it would seem that most kinds of legal persons can be used for the purpose of being the "intermediary", and in fact that has been the case in Sweden. Share-holding companies, partnerships and co-operatives have been used for that purpose, something which will be discussed in the following. Although there still exist a number of such schemes involving legal persons other than associations the overwhelming majority of new associations are formed as co-operatives (fully mutual) of a special kind under the Tenant-Owner Act (1971:479). The legislator has for many years consciously tried to prevent the formation of legal persons of other kinds (including limited com-

[6] *SOU* 1984:35, pp. 32 ff.
[7] See e.g. A. Victorin, "Tenants' Protection in Sweden", *Law and the Weaker Party*, vol. II, Abingdon 1982, pp. 43 ff.
[8] Rent Act (ch. 12 of the Land Code), sec. 40. The Rent Act is translated into English in *Law and the Weaker Party*, vol. III, Abingdon 1983 (eds. A. Neal and A. Victorin).
[9] Cf. Victorin, *op.cit.* (footnote 1).
[10] *ib.*

panies and partnerships). These rules and the policies underlying them will be discussed at length in the following.

> The rules of company law in Sweden will not be discussed here, but it should be noted that the law makes it possible to classify most legal persons into one of the following types: (1) trusts, which will not be discussed here, because they are not associations in the strict sense of the word, (2) partnerships, of which there exist two kinds—the "simple" partnership and the "trading" (businessmaking) partnership; only the second kind is regarded as a legal person, (3) associations, of which there also are two kinds—the co-operative (fully mutual) association and organisations, clubs etc.; the co-operative is a mutual association doing business with the members as producers, consumers or workers (e.g. as taxi owner-drivers), although it may of course do business with non-members as well—the tenant-owner association is a special type of the cooperative form; other associations such as trade unions, football clubs, are characterized by the fact that either the object or the activity is non-economic—such associations will not be discussed in this context.[11]
>
> (Apart from this general typology there exist a number of other kinds of associations for which special rules exist, e.g. banks, insurance companies or mutual associations, not to mention various public or quasi-public associations.)

The tenant-owner association is thus a mutual co-operative association under the Tenant-Owner Act. The right of tenure granted by such an association is of a special kind: it can only be granted to a member of the association and the right of user is for an unlimited period of time and is also tied to the share in the association. The combination of the share and right of user is under Swedish law called a tenant-owner right. Only a tenant-owner association may grant a tenant-owner right.[12]

In order to describe the essence of the tenant-owner right more characteristics have to be mentioned. The fact that the right is for an unlimited period of time means in practice that the right can be transferred as a whole for a consideration. Transfer is, as a matter of principle, the only way in which the right can pass to another person, who then will have to become a member of the association in order to enjoy the right of user. Of course the tenant-owner right can also be transferred by way of partition of joint property, bequest, will, division of company assets, etc. This system presupposes that in case of transfer the association will not be involved. The right of user has been granted once and for all and transfer does not mean that a new right of user is established, as is most frequently the case with rental housing.[13]

[11] Cf. H. Nial, *Svensk associationsrätt*, Stockholm 1975, pp. 28 ff.

[12] Tenant-Owner Act, secs. 1 and 2.

[13] Victorin and Melz, *op.cit.*, p. 37. A. Knutsson and I. Lindqvist, *Bostadsrättslagen*, Stockholm 1972, pp. 58 f. The association may, however, refuse to accept the transferee as a member in certain cases.

Furthermore, what sets the tenant-owner right apart from the right of user under a tenancy agreement is the fact that a tenancy agreement under Swedish law cannot be made without any limitations in time. According to ch. 7 sec. 5 of the Land Code (covering tenancy of land as well as tenancy of a building or part of a building), a tenancy agreement under the Code is not valid for more than 25 years in towns and for 50 years outside towns (actually areas subject to detailed plans or outside detailed plans); it can also be made for the lifetime of the tenant. This means that after the expiry of the maximum period the agreement is invalid although the housing tenant still enjoys statutory tenancy protection. The main effect of the rules on the limitation of the validity of the tenancy agreement as far as housing is concerned is thus to make it possible to renegotiate tenancy agreements.

In contrast the conditions of a tenant-owner right are not subject to contractual rules on renegotiations, nor are there rules on tenancy protection. The conditions concerning the "rent" etc. connected with the tenant-owner right are fixed by the internal decisionmaking procedure of the tenant-owner association. Because of the fact that the tenant-owner right is granted without limitation in time there is no need for tenancy protection rules in the form of a right to prolongation of the agreement. On the other hand, there are rules on forfeiture of the right of user in case of breach of contract from the side of the tenant-owner. These rules of the Tenant-Owner Act are very similar to the corresponding rules of the Rent Act.

The rules on the economic settlement upon a forfeiture of the right of user of a tenant-owner are peculiar in that the economic value of the tenant-owner right is retained by the tenant-owner. Upon forfeiture the tenant-owner right is to be sold. If no buyer can be found in the open market, the tenant-owner right will be sold at a public auction. The association, which arranges the auction,[14] has a right to set off its claims for compensation, *i.a.* for unpaid rents, for costs incurred in the repair of the apartment and for the costs of the sale (or auction) against the proceeds from the sale. Whatever remains belongs to the former tenant-owner and will be paid to him. (However, if the tenant-owner right is mortgaged, the creditor has a prior claim on the remainder of the proceeds of the sale over the tenant-owner.)

As was mentioned above, the Swedish legislators give priority to the tenant-owner form of tenure over other kinds of co-operative arrangements. However, during the last few years the tenant-owner form of tenure has become the object of criticism.

The tenant-owner form of tenure was originally conceived as a low-cost form

[14]According to a Government Bill (*Prop.* 1986/87:37) the Tenant-Owner Act will be amended on this point. The auction is to be arranged by a trustee appointed by the court.

of tenure for people in the low and middle-income brackets. As will be discussed in the following, the tenant-owner form of tenure was for a long time regarded as a more "democratic" alternative to tenancy which was particularly attractive because of the right of self-determination enjoyed by the tenants, individually and collectively. Efforts have also been made to ensure that the form is not subject to "speculation". During the last years, however, the scene has changed.

The critics claim that the tenant-owner form of tenure is unfair because of the profits made, mainly by the tenant-owners themselves. Tenant-owner rights are not subject to rent control nor to pooling of rents, which is common in public utility housing enterprises.[15] Therefore the "rents", particularly in older tenant-owner association houses, tend to be lower than in rented housing. The difference can of course be capitalized as a price for the tenant-owner right, particularly since the advantage of having a low rent is not taxed.[16] Furthermore, apart from this, the prices of tenant-owner rights in the urban centres of Sweden have risen dramatically in recent years, partly as a consequence of the housing shortage in such areas, and partly because of other factors, such as the fact that tenant-owner rights constitute a free sector in the otherwise rent controlled rented housing sector.[17] The demand for housing in urban centres seems to have grown because there is very little rent differentiation between the attractive central areas and the less attractive suburban areas. Therefore, the tenant-owner form of tenure, which, as mentioned above, was originally a form intended for people on low incomes, has changed to become a form for the wealthy.

In order to rectify the situation a number of measures have been discussed, including a limitation of the right of the tenant-owner to demand compensation in excess of a certain sum in the event of transfer. What is particularly interesting, however, is the experimentation that is now taking place involving alternative or experimental forms of tenure, usually hybrid forms between the tenancy and the tenant-owner form of tenure. In this connection the matter may be approached either as a modification of the tenancy form or of the tenant-owner form. This paper will discuss these developments and their background.

[15] A. Victorin, *op.cit.* (footnote 1 above), pp. 66 ff., and *Kollektiv hyresrätt*, Stockholm 1980, pp. 83 ff., B. Bengtsson and A. Victorin, *Hyra och annan nyttjanderätt till fast egendom*, Stockholm 1985, pp. 72 f., B. Rittri, *Bruksvärdeshyra*, Lund 1985, pp. 284 ff.

[16] A. Victorin and P. Melz, *op.cit.*, pp. 40 ff.

[17] See e.g. *DsBo* 1981:2 *Priser och omsättning på bostadsrättslägenheter*, *SOU* 1981:74, pp. 273 ff., *SOU* 1985:6, pp. 79 ff., with references.

3. THE MAKING OF A TENURE FORM STRUCTURE IN SWEDEN

3.1 *The introduction of co-operative housing in Sweden*

The development of the structure of forms of tenures in Sweden must be seen against the background of the development of the co-operative movement in general in this country. The co-operative movement gained momentum during the latter part of the 19th century, apparently inspired by the British experience, and it may be said to have consisted of four more or less independent branches: consumer co-operatives, producer co-operatives, working co-operatives and housing co-operatives.[18] However, until 1895 there was no legislation regulating such associations, nor could they be regarded as legal persons. They were simply termed "unsanctioned associations". Some of the associations, however, had chosen to register as limited companies under the then valid 1848 Ordinance on limited companies, which was based on a permit system—the articles of association of each company had to be approved by the King in Council—and which contained very few rules specifying what kinds of companies could be granted a permit.[19] Thus a small number of housing co-operatives were registered as limited companies, and some of them still exist in that form.

The 1895 legislation meant a fundamental reform of Swedish company law with three completely new pieces of legislation, viz. a new Act on Limited Companies, a new Act on Partnerships and a new Act on Co-operatives. The co-operative associations were then given a definite legal form—co-operatives could register under the Act and gain recognition as legal persons. Formal rules on decision-making procedures, on shares and on limitation of responsibility were introduced, in essence similar to the rules for limited companies. Based on, as it seems, German concepts, a distinction was made between co-operatives and companies in the sense that co-operatives were regarded as "open" with a shifting number of members and with an undetermined share capital, whereas companies were based solely on the existence of a determined

[18] Mutual insurance associations and savings associations formed groups of their own. They will not be discussed here. It should also be noted that the various co-operatives were awarded a limited capacity as legal persons, since they were allowed to be registered as owners of real property in the land register—see *Bolagskommitténs betänkande*, Stockholm 1890, p. 135. The almost simultaneous development of another movement—the so-called home-owner movement, aiming at land development for the purpose of providing middle-income inhabitants in the cities and towns with owned housing—detached houses and terraced houses—is also of some interest in this connection, it will, however, not be discussed here. It should only be noted that this movement was organized along different lines, but that it increased the momentum of the housing co-operative movement for political reasons. It seems that both movements could present claims of equal weight.

[19] Similar developments took place in other countries. Thus it seems that in Great Britain as well as in Germany the associations had a choice whether to register as associations or as companies. *Bolagskommitténs betänkande*, Appendix, pp. 17 f., 22 f.

number of shares and a (not completely) fixed share capital.[20] Furthermore, as far as the purpose was concerned, companies and partnerships were intended for business-making purposes, whereas the co-operatives could be used also for purposes of consumption—housing co-operatives were seen as a kind of consumer co-operatives. This meant that the company form in practice became closed to such enterprises.[21]

However, because of the particular character of housing limited companies, the company form does not appear inappropriate. The fact that the number of flats in a block of flats is limited fits very well with the fact that the number of shares in a limited company is restricted to those originally issued (unless of course, a decision has been made to increase the share capital). Actually, one may even add that the open character of the co-operative does not suit the housing co-operative at all. As noted earlier, some of the housing limited companies started before 1895 still exist in Sweden. Here developments in Sweden differ from those in Finland, where the limited company became the most popular form for what in reality must be seen as housing co-operatives. Special legislation on housing limited companies has been enacted. To be sure, there is legislation on housing co-operatives (*andelslag*), but their role in housing seems much less important than that of the limited housing companies.[22]

The 1895 legislation also meant a decision on the then current issue of ownership of flats. In the *Riksdag* bills from individual members had been introduced as early as 1881 with proposals for the introduction of ownership of flats in the sense of full and registered ownership. The proposals were, however, rejected. Such reforms would conflict with the basic principles for registration of land units. Real property under Swedish law is always land.[23] The matter was again raised in 1901, but the Minister of Justice refused to introduce such legislation, referring *i.a.* to the negative experiences of ownership flats from France and Germany. On the other hand, certain problems involved in the co-ownership of land called for a solution. In 1904, therefore, new legislation on joint property was introduced. The legislation was applicable also to real property, and one could say that with this legislation, which is still in force, the question of ownership of flats was settled. Ownership of flats is not possible under Swedish law. However, co-ownership is permitted, although, as mentioned earlier, such arrangements cannot be compared to co-ownership schemes of the continental type, where the co-owner enjoys a right of user connected to the co-ownership.[24]

[20] *Op.cit.*, p. 22.
[21] Cf. H. Nial, *Handelsbolag och enkla bolag*, 2nd ed. Stockholm 1983, pp. 56 ff., with references.
[22] G.W. Norrmén, *Om bostadsaktieköparens rättsliga ställning i det s.k. gründerförhållandet*, Borgå 1968 (diss., summary in English), pp. 3 f., 30 ff.
[23] Cf. *SOU* 1928:16, p. 9.
[24] The responsible Minister in the Bill to Parliament, *NJA* II 1905, pp. 4 f.

The issue of ownership of flats has been raised again on several occasions. In 1982 a government investigation committee published a report with a complete proposal for reforms and statutory texts,[25] a proposal which has not led to legislation, and which probably never will, for political reasons. At present only one of the parties represented in the Swedish *Riksdag*, the Conservative Party (*Moderata samlingspartiet*), supports the introduction of ownership of flats.

Here developments in Sweden differ from those in the other Nordic countries (with the exception of Finland). Denmark, Iceland and Norway all have legislation on ownership flats.[26]

3.2 *Legislation on housing co-operatives*

The 1895 Act on Co-operatives did not contain any provisions concerning the tenancy relationship between the tenant-owner association as "landlord" and the tenant-owner as "tenant". Any such provisions therefore must be put into the bye-laws of the association or in the contract granting the right of user, something which was rather impractical. The bye-laws of the associations formed during the early decades of the 20th century were short and unclear. A number of basic issues were not solved. The existing basic unclarities as to the legal character of the tenancy relationship did not improve the situation.[27] It should be added that some such unclarities still remain; a great number of such associations still exist, with their bye-laws virtually unchanged and unaffected by new legislation.

In retrospect, however, and perhaps only as a construction imposed on the then current developments, one may discern two major trends or techniques utilized in the formation of such housing co-operatives as far as the tenancy relationship is concerned. One technique was based on a tenancy relationship without limitation in time, whereas the other was based on a tenancy relationship limited in time—the underlying idea was to make the Rent Act of 1907 applicable to the tenancy relationship in the latter case only. Thus a basic distinction was established between two types of tenant-owner associations.[28] They may, for reasons of convenience, be called tenure-associations and tenancy-associations, respectively. (The Swedish terminology *besittnings-föreningar* and *hyresföreningar* is based on the distinction between the formulations usually found in the bye-laws of such associations, viz. that the tenants shall enjoy tenure without limitation in time or that the tenants shall be

[25] *SOU* 1982:40 *Ägarlägenheter*.
[26] Cf. above, footnote 5.
[27] See further below p. 213.
[28] *SOU* 1928:16, pp. 7 ff.

tenants of the association, the word tenants being used to indicate the applicability of the Rent Act.[29]

In this context the problems connected with these forms of tenure will not be discussed in any detail. It should only be noted that the legal character of tenancy relationship in tenure-associations was highly unclear, since it was obvious that it was in conflict with the above-mentioned basic rules on the limitation of tenancy agreements to 25 years in towns and 50 years in rural areas. It seems, though, that the subsequent Tenant Owner Act of 1930 meant a retroactive recognition of such associations and the establishment of their unique character in relation to the rules of the Swedish Land Code (although as mentioned above some questions still remain unanswered).

The basic unclarities called for legislation in the field. But there were other, more important reasons for legislative intervention. First of all, there was a need for more detailed rules on the tenancy relationship in tenure-associations, specifying the rights and obligations of the parties, particularly with regard to forfeiture of the tenant-owner right. Secondly, legislative intervention was called for in order to protect those signing up as members in such associations and paying shares in order to obtain a flat, against financially unsound enterprises and against improper business methods used by certain entrepreneurs in the field.[30]

Thus, the resulting Tenant Owner Act of 1930 only covered tenure-associations, taking as its point of departure the granting of a right of user without limitation in time. It was provided that such right of user could only be granted by a tenant-owner association registered according to the provisions of the Act. In consequence the tenancy-associations were left without any particular regulation, except such rules as were to be found in the Act on Co-operatives and in the Rent Act.[31] One could, of course, argue that the rules

[29] One may compare with the German law distinction between *Mietrecht* and *Dauerwohnrecht*. Although the *Dauerwohnrecht* in contradistinction to the Swedish tenant-owner right is not unlimited in time, it implies considerably stronger tenancy protection than the *Mietrecht*, and it is also commonly used in German tenant-owner associations.

[30] *SOU* 1928:16, p. 8.

[31] The 1931 Act on Tenant-owner Associations thus implied a prohibition against the letting of right of user without limitation in time for any other association or company except tenant-owner associations. At the same time, however, another prohibition was, curiously enough, introduced in the Act on Co-operatives against any co-operative granting a right of user for an unlimited period of time. The prohibition was introduced at the suggestion of the Draft Legislation Advisory Committee for the reason that it was difficult for the general public to appreciate the difference between a tenant-owner right of user without limitation in time and a tenant's right of user unlimited in time—the latter of course being a genuine tenancy with the tenancy agreement running without a fixed term. One may, however, agree with the Committee that the difference indeed is difficult to appreciate, not only as one of terminology, but also as one concerning the basic contractual relationship between the association and the tenant. When the tenancy relationship runs for a fixed term, the tenant is frequently reminded of his position, but when the tenancy agreement is made for an indefinite period, the difference is noticeable only when the terms of the agreement are to be changed. In spite of this, however, the fundamental difference between a

of those Acts in combination gave a satisfactory regulatory system, which in a sense was true. It would, however, soon be evident that the legislative rules were still inadequate.

The 1930 Tenant-Owner Act introduced two fundamental innovations in order to solve the problems raised in connection with the old tenure-associations, viz.[32]

(1) a system according to which an economic plan for the future activities of the association had to be drawn up and made available for anyone interested in becoming a member, so that his decision would be based on reasonably firm factual grounds as to the economic stability of the enterprise, the extent of his economic undertaking, etc.,

(2) firm rules on the forfeiture of the right of user, similar to those valid under the Rent Act, but combined with rules on the sale of the right of user in combination with the share in the association to the effect that the value was retained by the tenant-owner; any sum remaining after the settlement of the claims of the association against him would be paid to him.

It should be added that the tenant-owner right was made transferable, much as a corollary to the fact that the tenure was without limitation in time. This meant in fact that once a tenant-owner right of user had been granted, it remained as a transferable right in relation to the association. The fact that there was a new owner did not mean that a new right of user was granted. Furthermore, in order to increase the possibilities for the tenant-owner to transfer his right of user, the association was obliged to accept the transferee as a member, provided he fulfilled the conditions for membership laid down in the bye-laws and the associations could be reasonably satisfied with him as a tenant-owner.[33]

It is obvious that these two innovations constituted a dramatic improvement so that the tenant-owner form of tenure now seemed very much superior to the tenancy-association form of tenure. In the tenancy-associations there were no firm rules protecting those applying for membership while the association was formed and engaged in a building project. Nor were there any similar rules granting the tenant such generous protection in the case of forfeiture.[34] The subsequent development also proved that tenancy-associations were used by entrepreneurs who found the protective rules of the Tenant-Owner Act incon-

tenant-owner right and a tenancy remains, viz. that most changes concerning the terms of the right of user are made through decisions by the association in a tenant-owner relationship, whereas, at least formally, such changes have to be brought about through a contractual mechanism in a tenancy relationship.

[32] See e.g G. Siljeström and C. Svennegård, *Lagen om bostadsrättsföreningar*, 5th ed. Stockholm 1965, pp. 43 ff., pp. 138 ff.

[33] *Op. cit.*, pp. 80 ff.

[34] Such rules could, however, be laid down in the bye-laws of the association.

venient. Nevertheless, a large number of such associations were formed during the 1930s. A contributory factor was that the then current Act on Co-operatives did not stipulate that co-operatives must be fully mutual. A number of associations, so-called "real property associations" (*fastighetsföreningar*), were formed for the purpose of providing a convenient form for owning and administering real property as an alternative to partnerships and limited companies. Naturally the form also provided for the selling of shares to tenants combined with the right of user, apart from making it possible to transfer the property through the transfer of all the shares.[35]

Up until then one can hardly discern any clear policy in relation to what forms of tenure would be preferred or tolerated under Swedish law. Apart from the determined policy against the ownership of flats the legislator had only reacted to developments in the housing market, providing patchy legislation where the pressure was greatest. The innovations just described in the Tenant-Owner Act, however, formed a basis for such a policy. The tenant-owner form of tenure proved to be so successful that the legislative activity from the early 1940s and onwards can be seen as the gradual development of a policy of tolerating only three forms of tenure in Sweden: the owner-occupier form, the tenant-owner form and the tenancy form. In the following this development will be traced with regard to the tenant-owner form.

3.3 *The tenant-owner form of tenure in a developing housing policy*

In spite of the obvious success of the tenant-owner form of tenure, rented housing was during the 1930s by far the most common form of tenure, and it should be added that most of the rental property was owned by private landlords. The dominant tenant-owner organisation of those days was (and still is) the *HSB* (The National Association of Tenants' Savings and Buildings Associations) which was initiated in 1923 as a sister organisation to the Swedish tenants' organisation.[36] The tenants' organisation sought to improve the conditions of tenants through the lobbying of political parties and through collective bargaining in relation to the private landlords. The *HSB* was seen as a co-operative alternative—an attempt by tenants to reach improved conditions through co-operative housing. Developments during the 1930s seemed to point towards increased collective bargaining over rent and other conditions for housing and also towards tenancy protection, the increased use of standard

[35] Cf. 1952 NJA 37.

[36] A. Victorin, "Landlord and Tenant Relations in Sweden, a Case of Collective Bargaining", *Law and the Weaker Party*, vol. I, Abingdon 1981, p. 7.—Actually, the National Association was formed in 1926, although the first local association was formed in 1923.

contracts jointly made up by the organisations, etc. All these developments seemed to favour the tenants.[37]

The Second World War and the subsequent defense effort brought new building virtually to a standstill. In the face of a threatening housing shortage severe rent control was imposed on rental housing in combination with strong tenancy protection.[38] The rent control had effects on the tenant-owner form of tenure as well, which will be discussed presently. It should, however, be made clear that the post-war housing policy meant the birth of a new and far more ambitious housing policy, where the main attention of the legislator was fixed on the creation of non-profit public utility housing enterprises, which were to be the main instruments for the implementation of the new "social" housing policy. To be sure the owner-occupier form of tenure also played an important part in the new policy and subsidized loans were made available in order to make it possible also for working class people to acquire homes of their own. Swedish post-war policy was thus in congruence with the housing policies of most of the countries in Western Europe. Again, one difference should be stressed. In some countries on the Continent the flat-ownership form of tenure was encouraged during the post-war period, perhaps mostly in order to make capital available for housing.[39] This did not happen in Sweden. One should also add that the new public utility housing enterprises only used the tenancy form of tenure. Here Sweden differs from *i.a.* Denmark, where public utility housing is usually connected with some kind of co-operative scheme. In Denmark, apart from the fully mutual association, one also finds a form involving companies, where the tenant-owners own the shares of the company. There is also a kind of trust scheme, although it also implies that the tenants participate in the financing of the enterprise (*kapitalinskud*).[40]

Thus, one may say that the tenant-owner kind of tenure played only a minor part in the development of Swedish housing policy during the 1940s. But the housing policy had instead a major impact on the tenant-owner tenure.[41]

The rent control of the early 1940s did not directly affect the tenant-owner form of tenure under the Tenant-Owner Act, which was not regarded as tenancy under the Rent Act. Instead tenant-owner tenure was subject to a separate regulation with price control over the granting and transfer of tenant-

[37] Victorin, *op.cit.*, pp. 7 f.
[38] Lag om hyresreglering 1942 and Lag om kontroll och överlåtelse av bostadsrätt, m.m. 1942.
[39] Blok, *op.cit.*, p.1.
[40] *SOU* 1969:4, pp. 264 ff. Börge Höilund, *Beboerdemokrati for alle*, Copenhagen 1975, pp. 9 ff.
[41] Co-operative housing was perhaps rather regarded as a "social" form of housing, a less important alternative to public utility housing enterprises. They were, and still are, subsidized on conditions similar to the public utility housing enterprises (cf. Victorin, *op.cit.* (footnote 1 above), pp. 50 ff.). Their purpose was seen as one of being able to provide low-cost housing and also of being price-leading. With the growth of co-operative housing it was awarded increasing recognition (cf. *Prop.* 1967:100 and *SOU* 1981:74, p. 46).

owner rights, as well as a limited rent control (only applicable to new buildings).[42] On the other hand, it was clear that the rent control over tenancy was applicable to tenancy associations and other similar enterprises to the extent that the right of user was to be regarded as a tenancy right under the Rent Act.[43] Furthermore, it was felt necessary to prevent the future creation of tenancy associations since that form now was used in order to circumvent rent control.[44] The method used was simple—the land-owner simply sold the house at a very high price to an association formed by him for the purpose of granting rights of user to tenant-members. This seems to be a mere technicality, but it meant in effect the end of the formation of tenancy-associations in Sweden. But one must make one reservation—the forming of such associations only concerned the particular case where the tencancy was tied to the share of the association, i.e. normally the transfer of the share also meant the transfer of the right of user.[45] It was, therefore, still possible to form associations where the right of user was separate from the share, so that the member could transfer his right of user and still be a member, or, more practically, leave the association and claim the return of the share capital, and still retain the right of user as an ordinary tenant, enjoying the usual tenant's protection. Obviously such a system appears insecure and often impracticable, but it is still used in certain cases where it has seemed desirable to circumvent the Tenant-Owner Act, and also where tax advantages have been obvious. This will be discussed in the following. It seems that the prohibition against tenancy-associations of this particular form was not yet an expression of a more conscious policy in relation to forms of tenure in Sweden.[46]

The issue of what forms of tenure should be accepted in this country was decided in connection with the abolition of the Rent Control Act and the introduction of a new Tenant-Owner Act in the late 1960s. The matter was

[42] Siljeström and Svennegård, *op.cit.*, pp. 160 ff.
[43] U. Gad and H. Stark, *Hyresregleringen*, Stockholm 1969, pp. 51 f.
[44] Siljeström and Svennegård, *op.cit.*, pp. 170 f.
[45] *Prop.* 1986/87:37, pp. 47 f. The statement in the Bill is doubtful and is contradicted by the fact that special permits were given to such associations as granted tenancies without any such connection to the share. This will, however, not be discussed here.
[46] Thus the statement by the responsible Minister in the Bill for the 1971 Tenant-Owner Act that the legislators as early as since the middle of the 1940s had taken the position that the letting of dwellings should be made by rent or tenant-owner rights only must be seen as a rationalisation—it is true only to the extent that the rent control of those days necessitated a prohbition against other forms of tenure. *Prop.* 1971:12, p. 92. It is true, though, that the Government Rent Board, an agency in charge of administering the rent control system, in 1945 suggested that ordinary tenancy agreements and tenant-owner rights should be the only permitted forms of tenure, based *i.a.* on the argument that any reasonable demand for freedom of action from the building industry could be met with those two forms and that any fair need for any form in between was not present. The Rent Board suggested a far-reaching prohibition including not only tenancy associations and companies but also the purchase of a share of the property or the granting of a loan to the owner-landlord—see *SOU* 1969:4, p. 92. However, these proposals were not followed up.

extensively discussed in the Government Committee Report[47] on the reform of the Tenant-Owner Act. The Government Committee charged with the task of drafting a new Act found the prohibition against tenancy-associations contained in the Rent Control Act well founded, not only because of the need to make the rent control effective, but also because of a need to prevent circumvention of the particular protective rules of the Tenant-Owner Act. The Committee also found that the general public was not aware of the differences involved between a tenant-owner right and the right under a tenancy-association arrangement. There was, according to the Committee, no genuine need for associations or companies that granted rights of user for a limited period of time as far as housing was concerned. On the other hand there was, according to the Committee, no particular need for a prohitition as far as apartments other than dwellings were concerned, something which meant a softening up of the Rent Control Act rules. Nor did the Committee see any reason for prohibiting rights of user granted by associations or companies, as long as the rights were not tied to the share.[48]

Furthermore, the Committee discussed the use of parternships, but found no reason to include these in the prohibition rules of the draft Act. On this point the responsible Minister and the *Riksdag* thought otherwise. Partnerships were included in the final Act, the argument being that there had been recent cases were partnerships were used for dwelling purposes.[49]

The Committee finally discussed the purchase of shares of the real property under co-ownership schemes. In spite of the suggestions made earlier to prohibit such arrangements for dwelling purposes the Committee saw no reason to do so, particularly in view of the hope which existed then of reaching a balanced housing market.[50] The responsible Minister agreed.[51]

Thus the 1971 Tenant-Owner Act contains a section (sec. 79) spelling out the prohibitions discussed here:[52]

Prohibition on grant of share rights

sec. 79 (1) An association or a limited company may not grant a share right under which there follows a right for a limited period to occupy or rent a dwelling apartment. The provisions herein shall be correspondingly applicable in any question concerning shares in a trading company.

(2) If, on a grant of an apartment, a reservation is agreed on an acquisition of a share right in contravention of subsection 1 of this section, that reservation shall not apply in relation to the person to whom the apartment has been granted.

[47] *SOU* 1969:4 *Bostadsrätt.*
[48] *SOU* 1969:4, pp. 94 ff.
[49] *SOU* 1969:4, p. 95.
[50] *SOU* 1969:4, p. 95 f.
[51] *Prop.* 1971:12, pp. 92 f.
[52] The Tenant-Owner Act is printed in *Law and the Weaker Party*, vol. III, Abingdon 1983, translation by A. Neal and A. Victorin.

3.4 *Developments during the 1970s: growing tensions in the housing market*

Two conclusions are obvious from the account given above. First, the policy in relation to form of tenure had changed with the abolition of the wartime statutory price control from one of preventing circumvention of a rent control system to one of stressing the private law protection afforded under recognized forms of tenure.[53] Secondly, the regulation was patchy, providing obvious loopholes for those seeking other forms of tenure. However, it also seems that the Government was convinced that the situation was under control. The late 1960s was a period of great efforts in the building sector: a million new homes were to be built, thus, at least temporarily, eliminating the housing shortage and creating a balanced housing market.[54] There seemed to be little interest in the other forms of tenure.[55]

It is obvious that the policy of the Government was firmly based on the notion that a housing shortage was a thing of the past.[56] For quite a long time this also seemed to be the case. Particularly during the early 1970s the price level for tenant-owner rights was very low.

During the late 1970s and increasingly during the 1980s the housing market in Sweden has been characterized by imbalances. There is now an adequate supply of housing outside the cities, whereas the housing shortage is increasing rapidly within the cities. The effect on the price levels for tenant-owner rights in the cities and particularly in Stockholm has been dramatic. Price levels in Stockholm are now approaching those in London or Paris.

There is also a black market for rented flats, where prices are increasing, although not at the same rate as for tenant-owner rights. In this connection attention should also be paid to the fact that in sec. 65 of the Rent Act there is a prohibition against the transfer of a tenancy right for a consideration.

[53] One may also see a somewhat parallel development in the treatment of tenancy associations during the gradual introduction of more protective rules for tenants in the Rent Act during the 1960s and 1970s. Since the tenancy associations were covered by the Rent Act dispensation was necessary from the most protective rules. Such dispensation was given only reluctantly, as it seems to underline the undesirability of that form of tenure.

[54] Cf. A. Victorin, *op.cit.* (footnote 1 above), pp. 42 ff.

[55] Furthermore, the Government also relied on the housing subsidy system; subsidies were only given to the accepted forms of tenure, although the right to make tax deductions for any loans or mortgages remained also for other forms of tenure.

[56] Technicalities involved in the government subsidy system of that time also contributed—the system was in principle a system of distributing costs over time through the use of increased loans during the initial period of the loan, whereas the repayment would occur during the later period; this meant that loans were taken automatically well over the actual mortgage value of the property and this tended to make the shares seem worthless. One could also add that it was not uncommon for the tenant-owner associations to have rules on the limitation of the transfer price of tenant-owner rights in their bye-laws. During the early 1970s these were abolished. There seemed to be no need for them. They also seemed unfair when there was a substantial risk that the tenant-owners would make a loss in a transfer, e.g. when they had to sell the apartment in order to move to a place where they could find work. This will be discussed in the following. *SOU* 1981:74, *Från hyresrätt till bostadsrätt*, pp. 272 f., *SOU* 1969:4, *Bostadsrätt*, p. 153 ff.

Partnership schemes and tenancy-associations (although not co-ownership schemes)[57] constitute in effect statutory tenancy and are covered by this prohibition. Sec. 65 of the Rent Act was perhaps seen as an affective instrument against speculation. The sec. 65 rules are derived from the old Rent Control Act, and the milder form of rent control contained in the Rent Act after the abolition of the old rent control system still warrants rules that prevent the circumvention of rent control through the sale of rented dwellings. Sec. 65 criminalizes any transfer for a consideration (except in very minor cases), although only the transferor is liable for punishment—fines or imprisonment.

According to the system of the old Rent Control Act the transfer of any share in e.g. a tenancy association was permitted, as long as a price only for the value of the share was charged, the price being calculated according to certain norms, but if the price was in excess of that value, it was regarded as also a price on the right of user and hence was punishable.[58] The same system exists under the new Rent Act. Unfortunately, this system has proved to be extremely inefficient in relation to transfers of tenancy.[59] Few cases are prosecuted. The black market is particularly difficult to combat in cases where the tenant exercizes his right to transfer his right of tenancy through an exchange with a view to obtaining another dwelling, where the other dwelling is either owner-occupied or a tenant-owner apartment. Because of the wide variation in prices between different purchases, even when the owner-occupied dwelling and the tenant-owner apartment are comparable in value, it is virtully impossible for the prosecuting authorities to prove that a price has been set on the right of tenancy of a rented flat. This has become so usual, even commonplace, that even respectable brokers take part in such deals.[60]

So it is not surprising that the rules of sec. 65 of the Rent Act are not respected at all in cases of transfers of flats in tenancy associations nor in partnership schemes.[61] This development must, on the other hand, have been quite unexpected for the Government, although it now must be included in the circumstances for a renewed policy, since it certainly weakens the credibility of the old one.

However, the increasing housing shortage in the cities has created a new

[57] 1952 NJA 37.

[58] Siljeström and Svennegård, *op.cit.*, pp. 189 ff.

[59] *Svart lägenhetsförsäljning i Stockholms innerstad*, Stockholms kommun, 1979.

[60] In such cases the transfer can, however, be denied by the Rent Tribunal if the difference between the price charged and the market price is too obvious although no criminal intent can be proved. According to sec. 35 of the Rent Act, the transfer can be denied if special reasons so warrant, a rule used in such cases.

[61] One even finds confusion in official reports—see e.g. *SOU* 1981:74, p. 146, where it is said that it is "difficult" to maintain that sec. 65 of the Rent Act applies to tenancy associations, where the share and the right of user are tied to each other.

interest in forms of tenure other than tenancy. Again it is a development which might be termed "speculation". What is involved here is the conversion of rental housing to tenant-ownership, as well as other, more unusual forms. First, however, a few words should be said about the taxation aspect of such transformations, since these are of vital importance for the understanding of the processes involved.

Tenant-owner associations under Swedish law are normally taxed according to a certain schedule, applied to "genuine" housing associations and limited companies, which means that the activities of the association or the company must consist exclusively or largely in letting dwelling apartments to the members (or shareholders). The schedule implies that the association or company only pays tax on an imputed income calculated at 3 per cent of the value of the real property owned by the association, from which only the interest paid on the mortgages may be deducted.[62] The taxation of the members or shareholders is thus not affected by the income taxation of the association or company. In an number of situations, however, it would be desirable for the members or shareholders to be able to utilize a right to make deductions for interest paid by the association or the company from their personal income tax. Such a right is *i.a.* enjoyed in home ownership, although the right to make deductions on interest paid on personal loans since 1983 is limited; interest on any loan may be deducted, but the tax relief is limited to correspond to a marginal tax rate not exceeding 50 per cent.[63]

The 1983 reform has considerably lessened the attractiveness of any arrangement aimed at giving the members a right to deduct the interest paid by the association from their personal taxable income, all the more so as such arrangements cannot be combined with subsidized government loans, e.g. for the purchase of a house or for renewal purposes. In spite of this it can be done and is done in certain situations. The technique is quite simple—the loan is taken by the members as a personal loan, for the repayment of which they are personally responsible, whereas the association or the company offers a mortgage in the real property as security.[64, 65]

[62] A. Victorin and P. Melz, *op.cit.*, pp. 170 ff.
[63] Cf. *op.cit.*, p. 43.
[64] *Op.cit.*, pp. 43 ff., 187 ff.
[65] The attractiveness of such an arrangement has been diminished by an older rule under which each member has been liable for taxes of property should the capital value of his share exceed 50,000 SEK. The technique here involved meant that the capital value of the share in the association increased because the association had no debts, since the members have been responsible for the repayment of the loans. Taxes have been computed in such a way that 3 per cent of the share value in excess of 50,000 SEK has been taxed as imputed income from property (capital). *Op.cit.*, pp. 190 ff. The capital value of the share has been computed on the basis of the value of real estate property of the association as calculated by the tax authorities plus other assets (debts deducted from the total). However, from 1988 these rules will be abolished, reportedly because they have been complex to administer and also because the yield has been low.

The situation is quite different for co-ownership and partnership arrangements. The "members" are taxed as owners of rented housing, which is in effect a business taxation, except for the fact that they have to pay taxes on imputed income calculated as an imputed rent for a flat in the house. The fact that the partnership is regarded as a legal person has no importance in this connection, since the partnership is not a tax subject under Swedish law—any profit or loss made by the partnership is taxed as income or loss of the partners. Naturally, the partnership will operate at a healthy loss under such schemes.[66]

What made partnership and co-ownership schemes so attrative from a taxation point of view during the 1970s was, however, another factor, viz. the right to make immediate deductions for any costs involving repairs and maintenance. This right was utilized in situations where the building was taken over by e.g. a partnership and made subject to renovation. Any costs for repairs (although not real improvements) could be deducted immediately by the partners, thus making it possible for the partnership to undertake the renovation with the aid of a considerable tax subsidy. After the completion of the renovation, the partnership was often reconstituted as a tenant-owner association, where the members enjoyed tax relief by accepting personal responsibility for the repayment of the loans.[67] Since 1982, however, this right to make deductions has been limited; the partners or co-owners are only allowed to deduct the costs of repairs, etc., annually to the extent the costs exceed 10 per cent of the value of the co-owner's or partner's share of the real property calculated on the taxation value of the real property. Needless to say, these rules have made such schemes much less attractive.

In a wider perspective the taxation aspect of the developments during the 1970s is of limited interest. The tax relief schemes constituted important incentives for the utilization of the tenant-ownership as well as atypical forms of tenure, making it possible for land developers, brokers and other interested parties to reconstitute rented housing as tenant-owner housing and similar forms at high price levels. The tax relief schemes seemed so attractive that the buyers could be persuaded to pay a high price for the houses (or the shares) and still make a good deal in terms of housing costs.

However, after the various tax reforms during the 1980s order has been restored. Most of the "loopholes" of the tax legislation have been plugged and rough parity between various forms of tenure has been achieved. The tax reforms also fit in the wider picture of making atypical forms of tenure less likely to be used, thus retaining the superiority of the preferred form—the

[66] *Op.cit.*, pp. 34 f.
[67] *ib.*, *op.cit.*, pp. 228 ff.

tenant-owner form of tenancy. What is more important in the wider perspective is the fact that the 1970s saw the introduction of a process of converting rental housing to tenant-owner housing and similar forms, a process that started at about the same time in many other countries in Western Europe. During the 1980s this process was to continue, accelerated by increasing regional imbalances and housing shortages.

3.5 *Conversion of rental housing as tenant-owner housing; legal responses*

The non-socialist Governments in Sweden between 1976 and 1982 pursued a policy of increasing housing "democracy". Two main pieces of legislation stand out which have fundamentally affected Sweden's housing market, viz. the introduction of the Tenancy Bargaining Act (1978), originally a Social Democratic initiative, bringing legal form to the collective bargaining system in the rented housing sector and stressing the right of the tenants to be represented by an organisation of their own choice,[68] and the introduction of the Act on the Right of Acquisition of Rental Property for the Purpose of Reconstitution to Tenant-owned Property (1982), hereinafter referred to as the Tenant-Owner Acquisition Act.[69]

The Tenant-Owner Acquisition Act is based on the assumption that a take over of rental property by tenants is in the interests of society as long as it does not interfere with the role of the municipalities in providing housing in the community. Thus, property owned by the municipalities and by the public utility housing enterprises is exempted from the Act, as is housing owned by the Government.[70] It is certainly feasible for tenants to take over municipally-owned housing, but no right to do so has been created. In this respect the policy of the Swedish Government differs radically from *i.a.* that of the British one.[71] Instead the right of acquisition is valid in relation to private landlords and even so it is a fairly weak right; one may say that it has been consciously been made weak since the objective of the Act does not seem to be to force any unwilling landlord to sell, but rather to improve the negotiating position of the tenants in case of acquisition.[72] Needless to say, the balance that must be struck here is a difficult one, and opinions differ concerning whether the balance struck in the Act is the right one. The objective of the Act in this respect can be described as one of making it difficult for the owner to charge a

[68] A. Victorin, *op.cit.* (footnote 36 above).
[69] *Prop.* 1981/82:169, A.Victorin and P. Melz, *op.cit.*, pp. 79 ff.
[70] See on the role of the public utility housing enterprises, e.g. Victorin, *Kollektiv hyresrätt*, Stockholm 1980, pp. 31 ff., and *op.cit* (footnote 1 above), pp. 64 ff.
[71] Housing Act (Great Britain) 1985, secs. 118–88.
[72] A. Victorin and P. Melz, *op.cit.*, pp. 80 ff.

higher price for the property than he would have got in the open market should it have been sold as rental property. In other words, the increase in value caused by the conversion of the property from a rent-regulated market to a free market should not be enjoyed by the landlord, but by the tenants. On this point the rules on government-subsidized loans for the acqusition of such property support the Act.[73] No such loans are given, should the price for the property exceed what is paid for comparable rental property. Usually such loans are necessary in order for the acquisition to be acceptable to the tenants.

From another point of view the objective of the Act is questionable. Since there are as yet no price regulations on the acquisition of tenant-owner rights, the original tenants will profit from the conversion. Those who acquire the tenant-owner rights from those who participated in the conversion will have to pay the market price. On the other hand, one must admit that it is virtually impossible to achieve some kind of fair distribution. Even if the profits from such a sale are subject to taxation, this does not help the buyer.

The Tenant-Owner Acquisition Act is based on the notion of a right of purchase for a tenant-owner association in which the tenants are members to acquire the property should the landlord contemplate a sale. When the acquisition takes place it must be approved by a majority of two-thirds of the tenants of the rented apartments, who also must be members of the association exercising the right of option.

In order for the association to be qualified under the Act it must file a notification of willingness to buy with the land register. This notification will be registered and thus be observed by any possible buyer of the property. The notification must be supported by a majority of two-thirds of the tenants, and the association must file proof of this. The right of option is triggered when the owner files an offer to buy with the Rent Tribunal. The offer must be in writing and it must also be complete, stating all the conditions for the purchase. The association can only exercise its right of option by accepting the offer without reservations. Strangely enough, the Act contains no rules as to unfair offers. The legislator has thought it sufficient to enjoin the owner from selling the property to another buyer on conditions that on the whole are more advantageous, or, as far as the price is concerned, at any lower price.

As mentioned earlier, the Act does not apply to property owned by the municipalities, the municipally-owned public utility housing enterprises or the state. However, in relation to private owners a number of exceptions also apply. Thus the Act only covers transfers by sale or barter, whereas transfers by way of will, bequest, division of company assets or the transfer of the property to a company or a partnership as an asset in return for a share are

[73] *Bostadsfinansieringsförordning* (1974:946), p. 10.

excluded. Furthermore, transfers between spouses, acquisition by the state or by a municipality as well as sales made at public auctions, e.g. in bankruptcy proceeding, or when a creditor forecloses on the mortgage, are also excluded. Finally there is a general clause excluding cases where it would be unreasonable for the owner to offer the property to the association, e.g. with regard to the relationship to the buyer—a topical case is a sale to a cohabitating unmarried partner. Naturally the association can abstain from its right of purchase by permitting any sale without an offer.

It is obvious from the account given above that the procedure involved is quite complex, and one may perhaps conclude that it was never intended to be used, but only to serve as a possibility, should the owner and the association be unable to agree to a voluntary transfer. In practice it rarely happens that a transfer actually takes place through the association exercising its right of option.

Even if the acquisition takes place without the association exercising its formal rights under the Act, the transfer still has to be approved by a majority of two-thirds of the tenant-members of the association (sec. 60(a) of the Tenant-Owner Act). However, this rule does not apply to certain association (mainly those that are affiliated to the HSB and the Riksbyggen), which are thus given an advantage over other (mostly non-affiliated) tenant-owner associations. There are no particular reasons for this differentiation, except such as are explained by the close links between those organisations and the present Social Democratic government. The fact that the organisations provide a firm organisational network is a reason which may be considered to have some significance, but on the other hand a municipality (or a large rental property owner) selling rental property to a housing association could undoubtedly make it a condition for the sale that the municipality exercise influence over the association, e.g. concerning the contents of the bye-laws. The important point concerns the right of the association to exercise control over the price of the tenant-owner rights, something which will be discussed later. One may add that the fact that those organisations are exempt from the demand for a qualified majority makes it much easier for municipalities in particular to transfer rental property to them for the purpose of conversion.

It should also be added that those tenants who do not want to join the association continue to be tenants. The association will play the role of the landlord. It is not permitted to grant a tenant-owner right in a flat that is subject to a tenancy agreement unless three months or less remains of the tenancy period and the parties agree that it shall terminate without the tenancy right being transferred to another person.[74]

[74] Tenant-Owner Act, sec. 2, *Prop* 1980/81:148.

In the big city areas in Sweden, particularly in the Stockholm area, a great number of rental properties owned by private persons or enterprises are now being subject to conversion. In the Stockholm area alone, about 2.000 flats annually are converted, which means that rental housing is diminishing at a steady pace particularly in the most attractive areas of the city. With the increasing housing shortage prices have, as mentioned earlier, soared to a level where it has become impossible for ordinary low or middle-income people to even consider buying such a flat. This has triggered a new discussion on price controls also on tenant-owner rights and on alternative forms of tenure, as well as on municipal control of the conversion from tenancy to tenant-ownership.

3.6 *The issue of price controls on tenant-owner rights*

As mentioned above (pp. 216f.) rent controls during and after the Second World War necessitated price controls also on tenant-owner rights. This price control was constructed as a prohibition against charging a price in excess of the capital value of the share, calculated as a proportion of the assets of the association represented by the share. (sec. 5 of the Act on Control of Tenant-Owner Rights). Any transfer of a tenant-owner right had to be approved by the Rent Tribunal; approval was denied if the price was in excess of the controlled amount.[75]

Even before the introduction of the rent control it was possible to introduce price controls in the bye-laws of the association and such were quite common.[76] E.g. in the biggest organisation of tenant-owner associations, the *HSB*, the principle had always been enforced that the price of a tenant-owner right must not exceed the original price paid for the share plus amortizations.[77] A similar principle was applied within the second big organisation, the *Riksbyggen.* These price controls were so strict that quite often the price allowed was lower than that imposed by statutory price control, something which stirred up a heated discussion. The matter was even brought up in the *Riksdag*, which, however, declined to legislate on the matter,[78] i.a. with reference to the sovereignty of organisations to settle matters through their bye-laws. In spite of the inactivity of the *Riksdag*, it was doubtful from a legal point whether the voluntary price controls could be made effective, at least when the price set was lower than that allowed by the statutory price controls. A buyer could probably not be

[75] Cf. p. 217 above on rent control concerning tenancy associations.
[76] *Prop.* 1942:341, p. 13.
[77] *SOU* 1969:4, p 159.
[78] 3*LU* 1961:19.

denied the right of membership even if the price he paid was in excess of the voluntary price controls, but within the statutory limits.[79]

After the abolition of the statutory price controls the matter was discussed again in connection with the introduction of the 1971 Tenant-Owner Act. The result of the discussion was that the right of the tenant-owner associations to impose voluntary price controls was retained. In practice this meant that such price controls only could be imposed during the formation stage of the association, before the tenant-owners had become members. The Act stipulates that any individual tenant-owner has a right to veto the introduction in the bye-laws of any voluntary price control affecting him (sec. 62(2)).[80]

Partly as a result of the discussion and partly because of the difficulty of enforcing voluntary price controls the big organisations decided in 1973[81] that such price controls would no longer be introduced in the bye-laws of new associations. As a result a great majority of associations abolished existing price controls from their bye-laws. One may add that the dramatic drop in prices of tenant-owner rights during the early 1970s was certainly a contributory factor. It was thought unfair to maintain voluntary price controls eliminating the chance of a profitable sale, while it was obvious that the tenant-owner still stood the risk of any loss.

The issue was again brought to the surface by the rapid increase in prices of tenant-owner rights during the 1980s. The root of the difficulties was the prohibition introduced during the 1971 reform of the Tenant-Owner Act against rules in bye-laws on the right of purchase for the association in relation to tenant-owner dwelling apartments. This prohibition was a novelty caused by the almost simultaneous introduction of a right for tenants to transfer their right of tenancy for the purposes of obtaining another dwelling throught an exchange. Rules on the right of purchase for tenant-owner associations in relation to the tenant-owners or buyers of their dwelling apartments meant in fact a restriction on the right to exchange the apartment. Naturally the protection of tenant-owners could not be inferior to that of tenants in this respect. It seemed that any scheme aimed at making the voluntary price controls effective also would in one way or another be in conflict with the right of exchange.

The two big organisations sought new methods to make any voluntary price control system effective, and it also appears that some municipalities were active, developing various models and proposals. The main result of the new

[79] *SOU* 1969:4, pp. 172 f., and Siljeström and Svennegård, *op.cit.*, pp. 192 f.
[80] Tenant-Owner Act, sec. 62 (2), cf. also on the technique of forming associations, Victorin and Melz, *op.cit.*, pp. 45 ff., *SOU* 1969:4, pp. 85 ff.
[81] Cf. above p. 219 (footnote 56) and *SOU* 1981:74, pp. 270 ff.

discussion was that it was obvious that in order for any scheme of voluntary price controls to become effective it was necessary to introduce some kind of right of purchase for the organisation at a fixed price, thus creating a risk for the parties in a transfer should they agree on a higher price, or to break the contact between buyer and seller by letting the transaction take place through the association.

One such scheme, developed by the *Riksbyggen* aimed at forcing the seller to sell only to persons approved by the municipality's housing exchange service, but was expressly outlawed by an amended provision in the Tenant Owner Act (sec. 11(a)).[82] Another scheme developed by *HSB*, the objective of which was to introduce a contractual right of purchase for the regional *HSB* organisation during a three-year period in combination with rules on the price, was declared illegal by the Market Court,[83] but then, again, made lawful by the *Riksdag*, through another amendment (sec. 14(2)).[84] Because of the limited time—three years from the initial granting of the tenant-owner right—this scheme, however, is of limited importance in combatting the rising prices for tenant-owner rights.

A third possibility was to re-introduce the old tenancy-association scheme, where the technique of granting a new tenancy in preference to accepting a regular transfer made it possible to impose a more effective price control than in the case of tenant-owner rights. To be sure, the presence of a right of transfer for the purpose of exchange of flats does constitute a problem. But it has been argued that the system of old tenancy-associations can at least become as effective as the system of price controls in relation to tenancy agreements.

One may thus summarize the Swedish discussion on price regulations on tenant-owner rights in the following way:

Without legislative intervention price restrictions on old tenant-owner rights could not be imposed. Needless to say, the Government and the *Riksdag* have hesitated to impose such restrictions, partly for political reasons but also because of the difficulty in finding a rationale for how the restrictions should be calculated. Therefore, imposing price restrictions would only affect new associations as would any introduction of rules on the right of purchase for the tenant-owner association, the municipality or some other party.[85]

[82] Sec. 11 (a), *Prop.* 1981/82:169, Victorin and Melz, *op.cit.*, pp. 110 ff.
[83] MD 1984:29.
[84] *BoU* 1984/85:12. This scheme was subsequently also accepted by the *Riksbyggen.*
[85] Proposals for the introduction of a right of purchase for the municipality, the tenant-owner association or an organisation of tenant-owner associations in connection with rules of price control on tenant-owner rights were presented by a government committee in 1985 (*SOU* 1985:6). The proposals did not, however, lead to legislation.

It was felt that price controls on tenant-owner rights were impracticable for the reason that they would fundamentally affect the right of exchange of a dwelling apartement, a right enjoyed by tenants in Sweden.

Finally, there was a notion that price controls were contrary to the very idea of tenant-owner rights under Swedish law. As has been discussed earlier, it is basic to the Swedish system that once a tenant-owner right has been granted, it should not cease to exist. The tenant-owner must transfer it to a new owner and cannot return it to the association and get his share back. Thus the tenant-owner stands the risk of loss and he should therefore also enjoy the opportunity of making a profit.

Although these arguments are by no means conclusive, it has been felt that for practical and political reasons it has been better to introduce other forms of tenure which are better suited to the purpose of imposing price controls. Thus it seems that since it has become more or less impossible to "develop" the tenant-owner right to a social form of tenure, which it was originally intended to be, the tide has turned once again. Diversification is once again allowed, but this time on conditions set by the authorities, and not by free associations or land developers.

4. THE INTRODUCTION OF EXPERIMENTAL FORMS OF TENURE IN SWEDEN

Although experimental forms of tenure are now being introduced in Sweden it would be a mistake to say that the process of favouring the tenant-owner right over other forms of tenure has been brought to an end. Thus the policy of setting limits for the creation of the other alternative forms, viz. tenancy associations, partnership and co-ownership schemes still prevails.

Thus in 1984 a government committee[86] proposed limitations on the right to acquire flats under co-ownership schemes. According to the proposal, a permit to acquire a share of a real estate used for dwelling purposes would not be granted under certain conditions, *i.a.* when the municipality had taken the initiative to introduce rules on the right of purchase in the bye-laws of new tenant-owner associations. Furthermore, the committee proposed certain restrictions in relation to limited company schemes. Neither of these proposals led to legislation.[87]

In 1986 a government committee received terms of reference to investigate what measures were required to facilitate the conversion of various atypical forms of tenure to tenant-owner rights, *i.a.* old tenure and tenancy associations

[86] Cf. above, footnote 85.
[87] *Dir.* 1986:5.

as well as limited company, partnership and co-ownership schemes.[88] Furthermore, measures should be considered in order effectively to counteract the further development of co-ownership schemes, as well as to introduce such measures that give the tenant-owner form an advantage above the co-ownership form of tenure. The committee has not yet delivered its report.

The introduction of experimental forms of tenure on the Swedish housing market is seen rather as a continued development of the tenancy form of tenure than as a clear-cut alternative to the tenant-owner form of tenure. So far no clear indication has been given that the conversion of tenancy to tenant-ownership will be prevented or replaced with the conversion of tenancy to some other experimental form, although, as mentioned earlier, proposals have been put forth to increase municipal control in cases of conversion.[89] It is, however, quite possible that this will be the eventual result once enough experience has been gained of the "new" experimental forms. As noted before, one of the main advantages of the experimental forms is that price control can be more easily enforced than with the tenant-owner form as the latter has developed during the last years. It should perhaps also be noted that the City of Stockholm, where the problems of increasing prices of tenant-owner rights is most acute, belongs to the most ardent supporters of new forms of tenancy and has developed a project along those lines in co-operation with *Riksbyggen,* one of the major organisations in the tenant-owner field, which has long been trying to develop some effective way of imposing price controls.[90]

The introduction of experimental forms of tenure must also be seen in conjunction with developments which have taken place within tenancy legislation, particularly in relation to collective bargaining over "co-determination" and more recently new legislation from 1983 giving individual tenants decisive influence concerning the repair and standard of utilities, etc., of their flats, depending on collective agreements between the landlord and the association of tenants.[91] Quite paradoxically, the strong position of the tenant in Swedish legislation constitutes a hindrance to the development of collective rights as well as of individual influence. One obstacle was thus removed in 1983 when collective bargaining was allowed to replace otherwise mandatory legislation rules, viz. the state of repair of individual flats. This system of individual influence under norms determined in collective bargaining is now in operation in a number of major real estate enterprises, private as well as public utility enterprises.[92]

[88] *ib.*
[89] *Mot.* 1985/86:419.
[90] *Dir.* 1986:5, *Prop.* 1986/87:37, p. 50.
[91] *Prop.* 1982/83:146.
[92] *Prop.* 1986/87:37, pp. 106 ff.

A further development which has begun, although on a smaller scale, is that tenants, through their organisations, undertake to perform certain services under contract with the landlord. The main impetus for this development has naturally been the greater degree of self-determination it involves for the tenants over the physical condition of the building and the immediate environment and perhaps also in regard to exercising control over who moves into the house. However, one has also to consider the fact that it also gives an opportunity for the tenants to lower the costs and thus their rents. This can be achieved through the tenants' shifting the balance of services, e.g. by putting more money into the playground connected with a particular block of flats than into the renovation of a ventilation system, or by the tenants themselves doing a number of minor, but actually quite expensive tasks, such as cleaning, exchanging light bulbs, trimming the lawns, etc. Needless to say, such a development has been less popular with the trade unions organizing supervisors and other employees of the landlords. It is also characteristic of developments in present-day Sweden, where the tax-wedge effect has made a do-it-yourself approach all over the housing sector seem increasingly attractive.

> To the extent the tenants perform the duties of upkeep and repair they naturally avoid the costs of paying artisans and workers, but they also avoid the taxes levied on the wages of workers (including social costs), which tend greatly to increase the costs of any service. The chances of exercising control over the selection of future occupiers, etc., is however not very big. Of course, also the democratic nature of the organisation will contribute towards enriching social life in the neighbourhood.—It is arguable whether such schemes will extend the potentials of tenant control above what can be reached through collective arrangements under the Tenancy Bargaining Act. In fact that Act allows agreements on "co-determination" along the lines of the labour market with elements of decisionmaking powers for the tenants, and indeed a few such agreements have been concluded.

Thus, developments in the tenancy form of tenure has brought it somewhat closer to the tenant-ownership form as far as the power of self-determination is concerned. In the eyes of the legislator it has, however, been desirable to continue this development through the introduction of tenancy-associations, which, under the legal rules of tenancy, will greatly increase the powers of self-determination of the tenants, and perhaps also give a chance of lower costs in the administration of real estate.

Three kinds of associations were originally considered by the committee charged with the responsibility of presenting proposals for legal reforms.[93] One was entrepreneurial associations, performing service and administration tasks on property under a contract with the landlord of the kind mentioned above. A

[93] *SOU* 1986:6, Part 2, pp. 43 ff.

second one was tenancy associations renting the property from the landlord. A third one was tenancy associations owning the property, but with bye-laws made in accordance with certain conditions set by the municipality. This third kind is in effect identical with the old form of tenancy association outlawed in this country since 1945.[94]

The legislator decided to regulate the two latter kinds, thus forgoing the first kind, which did not require new legislation, and also seemed rather superfluous considering what could be achieved under collective bargaining. Therefore, according to a statute,[95] the validity of which is limited to a five-year period (1987-1991), tenancy associations may be given government permission to grant share rights with which there follows a right to rent a dwelling apartment in spite of the prohibition contained in sec. 79 of the Tenant-Owner Act.[96] Such a permit may be given only if the municipality approves the activity and if the bye-laws of the association prescribe that the municipality is allowed to appoint one member to the board of the association. The municipality is obliged continually to follow the activies of the tenancy association and, on request from the Government, to give any information necessary for the evaluation of the activity. The municipality must also assist the association with advice and information when needed.

It should be stressed that the statute aims at establishing an experimental activity with these "new" forms of tenure, although the associations concerned will be allowed to continue their activity should the statutory arrangements expire without being prolonged or consolidated.

As mentioned, two forms of experminental tenure will be introduced, viz. tenancy associations which own the house (and the land) and tenancy association which rent the house from a landlord, presumably the municipality or a public utility housing enterprise. From a policy point of view, as well as from the point of view of the tenant-members of the association, there is potentially a great difference between those two forms, depending on how the municipality or the public utility housing enterprise chooses to act as a landlord in relation to the tenancy association.

First, the fact that the tenancy association owns the house means that the association will be exempt from any effective rent control. Although the Rent Act is applicable to such associations, with certain exceptions, rents will be set by the board of the association, based on the financial position of the association. It may happen that in some cases the rents will exceed what is acceptable for ordinary rented flats, and in such cases the tenants will be in a position to complain. It is, however, doubtful whether this will occur. One may

[94] Cf. above p. 217.
[95] *SFS* 1986:1242.
[96] Cf. above p. 218.

actually say that if the economic position of the tenancy association is such that the rents charged are in excess of the rent regulation level, the application of the Rent Act will put the association in an untenable position. One may conclude that the application of the rules of the Rent Act is impossible. The tenants will probably understand this, although the legislator apparently has not. In many cases, however, the rents will probably be lower than in ordinary rented dwellings, because of the absence of any rent pooling affecting the association. To some extent this will upset the balance on the housing market.

One may also presume that the application of the rules of the Rent Act in a number of other cases will appear superfluous, particularly as the rules aim at protecting the tenants against a greedy landlord. To some extent this has been accepted. The new tenancy association will be exempted from the application of rules on the duty of the landlord to provide for the repair of the flats, from the application of the Tenancy Bargaining Act as well as from the Act on Urban Renewal.[97] Such exemptions are, however not a new invention. According to earlier provisions tenancy associations have been able to apply for such exemptions for a long time, in fact since the above-mentioned rules and statutes were introduced. At least one tenancy association has applied for and been granted such exemptions.[98]

What is needed in a tenancy association is rather a set or rules protecting the minority, or individual tenants against discrimination and abuse of power from a minority. Regretfully, the Act on Co-operatives lacks such rules adapted to the needs of tenancy associations, which, as mentioned earlier, was an important reason for the introduction of the first Tenant Owner Act in 1931.

The situation where the tenancy association rents the house (and the land) from the municipality or a public utility housing enterprise is more difficult to assess. This model implies that a co-operative association is granted the right of user under the Rent Act for a number of flats, often a whole block of flats. The definitions contained in the Land Code make such "block-renting" a kind of landlord-tenant relationship where the actual tenants formally must be second-hand tenants. The rules on tenancy of dwellings have however been modified so that it is possible to make the association responsible for the upkeep and repair of the flats and furthermore the "second-hand tenants" are often guaranteed tenancy protection in relation to the landlord (the owner of the house).[99] One may, however, entertain grave doubts as to the appropriateness of such an arrangement, because of the weak position of the tenancy association when bargaining with the municipality or public utility enterprise

[97] Cf. A. Victorin, *op.cit.* (footnote 1 above), pp. 71 ff.; the Act is printed in an English translation in *Law and the Weaker Party*, vol. III.
[98] *Prop.* 1986/87:37, p. 49.
[99] *Prop.* 1983/84:137, pp. 105 f., 111 f.

over the conditions for the lease. One may also question whether it is acceptable for the tenants to be in fact second-hand tenants, as their association is only a tenant in relation to the owner of the house. Furthermore, one may question whether the arrangement is attractive enough for the tenants. Obviously the association will do most of the real estate managment. The result of successful real estate managment should belong to the tenants. However, it may certainly appear tempting for the owner to try and profit, too, through the setting of the conditions for the lease. If the owner is a municipality or a public utility enterprise it is also likely that it will try and involve the house in the ordinary rent-pooling system, which would make this arrangement very much inferior from the tenants' point of view than an arrangement where the association owns the house. It remains to be seen whether the system when the association only rents the house will be a successful one. One may perhaps presume it may be in certain cases as an alternative to ordinary rental housing, e.g. for certain categories of tenants such as allergics, who need more influence over their housing environment.[100] And one may also safely presume that the arrangement is very attractive to the owners, who are to a great extent relieved of the task of managing the estate, and therefore also of the problem of dealing with complaints from tenants, but who still retain the stronger position and the real influence in fixing rents and other economic conditions.

5. OTHER DEVELOPMENTS OF THE TENANT-OWNER FORM OF TENURE

Apart from the developments described in the foregoing, mention should be made of two others, which have taken place without much government legislative interference, and which prove the viability of the tenant-owner form in the Swedish context.

First, the tenant-owner form of tenure has been widely used as an appropriate form for leisure homes under time-share schemes. A number of hotels have been converted in this way. An increasing number of leisure villages or hamlets exist, also with a view to catering for foreigners. The advantages are obvious in terms of costs and convenience. The use of such schemes also means that the absence of ownership-flats as a legal form in Sweden is not felt to be a problem. The tenant-owner right in fact works like an ownership-flat which is let under a co-ownership scheme. Steps are now being taken to improve this form of tenure so that the right involved under a time-share scheme will be valid directly against the tenant-owner association. The present notion of a tenant-

[100] T. Victorin, *Att bo i gemenskap*, Stockholm 1985, pp. 29 ff.

owner right is that it is indivisible in relation to the association. Under time-share schemes the tenant-owners have thus had a co-ownership right in the tenant-owner right, a legal construction which is unnecessarily complicated.[101]

Secondly, tenant-ownership has become increasingly common in small housing, usually terraced houses, which traditionally in Sweden have been owner-occupied. Although the tenant-ownership form of tenure has by no means been restricted to blocks of flats, the number of terraced houses let under this form has traditionally been low, as has the number of rented small houses. The reasons for this development are not entirely clear. One may, however, point to three factors. First, because of the change in the tax rules on the right to make deductions for interest, in combination with the more advantageous subsidized loans given to tenant-owner associations, the tenant-owner form seems economically more advantageous, at least during the first few years. One may perhaps assume that when subsidies decrease, some of the associations will be dissolved and converted to owner-occupation, at least when the land law rules on the formation of lots so permit. Secondly, the personal risk of the tenant-owner is less than that of the owner-occupier. The owner-occupier may leave the association without risking more than his share capital. Furthermore, in most associations, the share capital is low, usually only 1 percent of the value of the real property at the initial stage. Thirdly, the fact that the tenant-owner right can be effectively mortgaged certainly contributes to the popularity of this form of tenure also in small houses. The transfer of the tenant-owner right is facilitated if the buyer is able to borrow money to pay the price, particularly when the price has increased during the occupancy of the seller. There are some minor difficulties with tenancy-ownership to small houses. Curiously enough, tenant-ownership only relates to the house, not to the land, which creates problems concerning the letting of a garden in connection with a tenant-owner right. It seems, however, that this will be rectified.[102]

6. CONCLUDING REMARKS

In this paper an attempt has been made to trace the development of a housing policy in Sweden in relation to forms of tenure. It appears that policies have been guided not by one, but by three important lodestars, causing developments to take a meandering course as values have shifted in society. The first lodestar may be characterized as one of consumer policy.

Basic to the development of the law of landlord and tenant has been the

[101] *SOU* 1982:23, *Fritidsboende*, pp. 117 ff., cf. *Dir.* 1986:5, Victorin and Melz, *op.cit.*, pp. 161 ff.
[102] *Dir.* 1986:5.

interest of protecting tenants' rights in relation to profit-hungry landlords. This interest has also characterized the evolution of the tenant-owner law, particularly in relation to the forming of tenant-owner associations. The rules of the Tenant Owner Act on the disclosure of economic facts relevant to the housing project of the association in the form of an economic plan are intended to protect future tenant-owners against unsound enterprises and attempts at speculation in land on the part of the land developer or the land-owner. The introduction of these rules caused an increase in the use of tenancy associations as an alternative form, with less protection for the tenants.

As strict rent control also affecting tenant-owner rights was introduced in 1941 it appeared necessary further to circumscribe the use of alternative forms of tenancy. The formation of tenancy associations and similar forms was more or less prohibited and the have been retained in the statute book since then and have been extended also to cover partnership schemes. Gradually a policy developed of allowing only two forms of tenancy, viz. rent and tenant-owner right and it appears to have been definitely formulated in the late 1960s.

The rules aimed at limiting or prohibiting the use of alternative forms of tenure have, however, not been all-embracing. The use of tenancy associations and partnership schemes where the share has not been legally followed by a right to rent a dwelling has not been forbidden, nor have co-ownership schemes. These "loopholes" have been used in a relatively small number of cases, also with an eye to gaining tax advantages. The tax advantages have also gradually been discontinued, and these alternative forms have lost most of their attraction, although, as things stand now, co-ownership schemes in particular have retained their attraction as a way for owners to sell shares in the estate to tenants at market prices inflated by the housing shortage.

The second lodestar has, since the late 1940s, been the interest in socializing land in connection with the Government and the municipalities assuming responsibility for providing the population with adequate housing of good quality at reasonable prices. The main tool has been the municipally-owned public utility housing enterprises, which used the tenancy form of tenure. The interest in socializing land and housing did not, however, succeed, perhaps because of this limitation. Owner-occupation and tenant-ownership enjoyed an increasing popularity and both categories were powerful enough to hold their own easily against socialization tendencies. The policies of the Government were instead directed towards achieving cost parity between various forms of tenancy. On the other hand, the policy of socialization and of giving the municipalities a leading role in the development of housing is the reason why public utility housing is not covered by the Tenant-Owner Acquisition Act .[103]

[103] Victorin and Melz, *op.cit.*, p. 81, *Prop.* 1982/83:153.

The third lodestar has been the interest in housing "democracy", i.e. increasing self-determination for tenants and others. In spite of the unique development of a collective system for tenancy bargaining, and of co-determination systems similar to those existing in the labour market, the rights of self-determination of the owner-occupier as well as of the tenant-owner have always been greater, something which, of course, accounts for the popularity of these forms of tenure. Gradually during the 1980s steps have been taken to increase the rights of self-determination also for tenants. At the same time, it has been obvious that the possibilities are limited. Probably tenants can never reach the degree of self-determination, individually and collectively enjoyed by tenant-owners.

It is obvious that in this crossroads of conflicting interests the tenant-owner form of tenure occupies a central and debated position. Since various kinds of price limitation and control have been abolished, it is especially the increasing awareness of the economic rights connected with this particular form of tenure that has contributed to bringing tenant-owner tenure even more into the focus of discussion. Much to the surprise of the legislator, tenant-ownership has proved to be a viable alternative also to owner-occupation. It has proved to be a superior alternative as far as time-share leisure housing is concerned. The increasing conversions of rental housing to tenant-ownership has turned into a political problem, mostly because of the way it comes into conflict with the egalitarian housing policies of the present Government as expressed in the rent control system. Also the enrichment of tenants instead of property owners taking part in a successful conversion poses a political problem.

In this situation one way out has been to reconsider the policy in relation to tenancy associations. Although the rhetoric of government bills and green papers talks about the further development of tenancy, the aim is doubtless eventually to develop an alternative to tenant-ownership suitable for conversion purposes, particularly since tenant-ownership has developed into a form where the financial rights have become central, thus making it impervious to reforms. It remains to be seen whether the new experimental forms of tenancy will be successful. One could argue that it would have been better to try and introduce a completely new form, similar to the tenancy-association schemes, but less dependendent on the Rent Act model as far as the tenancy relationship is concerned. Such a form would better suit the need for a "social", yet "democratic" form of tenure sought by to-day's bewildered housing politicians.