

Rights of tenants when property is being sold

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Tenants, whose property owner has put their rental property on the market, have certain rights but should consider the current contract before cancelling any lease.



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According to South African legislation a landlord is not prohibited from selling the rental property to a third party while the property is occupied by a tenant and there is a leasing agreement in place. However, in terms of the legal principle 'huur gaan voort koop', (hire takes precedence over sale) the lease agreement precedes the sale. As a result tenants are within their right to retain occupation of the property for the remainder of the agreed upon lease period.

Though tenants can stay for the remainder of the of the lease agreement, some may feel anxious about possibly dealing with a different property owner or the renewal terms of the lease with the new owner. Another concern is what the new owners intend to do with the property. It is possible that the new owners intend on living in the property themselves, rather than letting it out.

If tenants are in this situation, they might want to find alternative accommodation as soon as possible. However, the tenants' right to terminate the agreement will largely be determined by the contract they signed and what the law stipulates. The initial step would be to read their lease agreement to see where they stand and what obligations they have contractually bound themselves to. In certain cases, there may have been a sales provision made in the agreement for such a situation. If agreed upon at the signing of the lease, there might be a stipulation giving tenants the right to cancel their current contract should the property be placed on the market. If these are the terms and there is mutual consent, tenants are absolved from any penalties that may arise due to breaching the agreement.

If no such stipulation exists, then all terms and conditions in the lease before the sale of the property will be carried over to the new owner of the property. This means is that it is far more difficult to get out of the contract, if nothing has been specifically stated in the lease about the sale of the property. In this case, if tenants breach the lease agreement they could face paying a penalty of some kind. The lease agreement will remain in effect under the new property owner and tenants will be obligated by law to respect the stipulated terms, as will the new property owner.

It is possible for a buyer to purchase a rental property with the intention of retaining tenants. If this is the case, they will not want to release tenants from their contractual obligations.

CPA protection

In terms of the Consumer Protection Act (CPA), a fixed term contract can be terminated early within the fixed term, on the condition that the new owner is a supplier that lets property in the ordinary course of business. This is regulated by section 14 of the Act. In this situation, tenants are able to give a 20 business day notice period during the term of the lease. However, they would then be liable for the notice month and possibly a reasonable penalty fee. The CPA will not be applicable if the parties to a lease agreement are both juristic persons.

Ideally, before tenants make any decisions about cancelling their lease agreement, they should first communicate with the property owner. Discussing the matter could help put certain issues to rest and there may be little or no need for concern. There is the possibility that the sale of the property only takes place after the period of the lease agreement has expired, or the new property owner may be better than the current one.

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