

Option to buy and tenancy

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SOME tenants and landlords are genuinely confused about the requirement of “the offer to purchase” and its incorporation into an agreement to lease. There are tenants who believe they were “cheated” by their landlords, who ignored their rights by selling or offered to sell the leased property to a third party.

Some tenants aver that they were given the option to purchase the leased property at the time they entered into a lease agreement. There are those who assume that their long period of occupancy entitles them to ownership, or at least, to the right to purchase the leased property, at the exclusion of others.

There are a few instances when tenants refused to vacate the dwelling or property on termination of a lease by becoming “imaginative” about an offer to purchase. Landlord and tenant can mutually agree that the tenant be given the (i) option to purchase the dwelling to be leased or (ii) a preferential right to do so.

This becomes binding once it is written into the lease contract, and upon parties having concluded such an agreement.

The option to purchase is an offer by the landlord / seller and must therefore have the essential elements of a contract of sale that includes the purchase price and the agreement of the (leased) dwelling or property.

Accordingly, a landlord who gave the tenant the option to purchase the leased dwelling cannot sell it to a third party unless it was offered to the tenant and the latter declined or was unable to pay the purchase price.

In the absence of the written lease contract containing the period within which the tenant is required to exercise the option, this has to be done before the lease comes to an end.

Once the tenant exercises the option by accepting to purchase, the landlord / seller cannot refuse or change it; the option to purchase is irrevocable.

If the parties concluded a lease contract that contained a preferential right or a right to pre-emption this means that the tenant has the right of first refusal if a condition in the lease contract is fulfilled.

The condition is usually that when the landlord decides to sell, it must be offered to the tenant first. This preferential right given to the tenant does not mean the landlord must sell the leased property but that when s/he decides to sell or proposes to do so, the tenant has the right of first refusal.

This right may be for a period stipulated in the lease contract or a period that is reasonable. It would appear that the price need not be specified because the landlord may or may not decide to sell the leased property. In other words, the preferential right is not an offer to sell at the conclusion of a lease contract but a right granted to the tenant that becomes operative if the landlord decides to sell.

It is for the tenant or landlord to seek legal advice when there is dispute relating to the option to purchase or a preferential (pre-emptory) right.