

# How sale affects a lease deal

## Stepping into landlord's shoes

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WHAT are the rights and obligations when another person buys the dwelling occupied by the tenant?

- ❑ The new landlord steps into the shoes of the previous landlord without any change to the lease.
- ❑ The tenant must abide by all the terms and conditions of the lease that existed with the previous landlord.
- ❑ The new landlord cannot prevent the tenant from re-occupying the dwelling in the instance of a suspended lease.
- ❑ The tenant does not have to pay a security deposit to the new landlord.
- ❑ Should the new landlord intend to increase the security deposit, a notice must be given to the tenant drawing his or her attention to a written clause in the lease that allows for such an increase.
- ❑ The new landlord cannot present a new lease to the tenant or, in the case of an oral lease, require the tenant to sign a written lease.
- ❑ Similarly, where a lease was suspended, the tenant is not legally obliged to enter into a new lease.
- ❑ The tenant must abide by all the terms and conditions of the lease that existed prior to its suspension.
- ❑ Rental must be paid in full, on time, at the place agreed to, and in the manner it was previously paid (cash, cheque or money order).
- ❑ If the tenant agreed with the previous landlord that he / she would be responsible for internal maintenance, this obligation will continue.
- ❑ The lease ends when the lease period is over or when the new landlord and the tenant mutually agree to end the lease or the landlord has legal basis to terminate the lease.

If the dwelling is sold, the new owner is bound to honour any rental agreement existing at the time of the sale. The tenant is also bound by the lease [Genna-Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd 1995 (2) SA 926 (A)]. In the case of a lease, whether oral or written, that is suspended due to renovations, the tenant moves back to the dwelling under the same terms and conditions, resumes payment of rental and all rights, duties and responsibilities are reinstated. The sale of a dwelling generally does not affect the lease concluded between the tenant and the previous owner (seller).

The *huur gaat voor koop* maxim, is a common law principle of great importance. In simple terms, it

means “lease goes before sale”; the new owner “steps into the shoes” of the previous owner / landlord. In other words, the sale of the dwelling that leads to the change of ownership does not break the lease. The new owner becomes the landlord and the relationship between the tenant and the “new” landlord continues. The new owner acquires all the rights of the original or previous landlord under the lease.

An owner does not have to be a landlord and the legal term “lessor” is used for a person who rents out the dwelling. Even if a person has no permission from the owner to be the landlord, if a lease is concluded, the tenant has a contractual relationship with the landlord. The new owner may allow the landlord to continue with the lease and no contractual relationship will exist in this case with the new owner who does not take over the lease but acquires ownership right to the dwelling.

If the dwelling was sold in an auction and the new landlord (e.g. a bank) notifies the tenant to vacate the dwelling, the tenant is entitled to certain information. It is possible that the previous landlord did not disclose relevant information to the new owner, such as an existing lease agreement. It is important for the tenant to provide a copy of the lease agreement to the new landlord.

The following documents (issued by Court) will give the tenant an idea of the conditions under which the new landlord bought the dwelling: - **Conditions of Sale:** Sales Notice: If the landlord becomes insolvent, it does not end the lease. There are exceptions to *huur gaat voor koop* rule. If the landlord had mortgaged the property then the property is subject to a prior real right and is sold with the lease to recover the money owed to the bank. If the buyer's or the highest bidder's offer is lower than the mortgage debt, the law allows for the property to be sold without the lease.

It is advisable to consult someone who has knowledge of purchase and sale agreements, preferably an attorney. Generally, any competent attorney will be able to advise the tenant of his or her rights regarding change of ownership, especially when matters are not clear cut.

Dr. Sayed Iqbal Mohamed, Chairperson, Organisation of Civic Rights; Member of the KwaZulu Natal Rental Housing Tribunal and Council of Canadian Administrative Tribunals.

[www.ocr.org.za](http://www.ocr.org.za) For advice, contact Pretty Gumede or Loshni Naidoo on 031 304 6451

