

Short notes on:

## **LEASE AGREEMENT- MUST LESSEES VACATE A PROPERTY ONCE IT IS SOLD?**

### ***Introduction***

Depending on one's financial situation and preferred style of living, leasing a property can have its advantages. There are tremendous financial benefits to leasing as opposed to buying a property of your own, but often times Lessees neglect to enquire about their legal position and rights should it happen that property is sold while a Lease Agreement is still in place.

According to South African law, a property owner is not prohibited from selling the leased property to another person while the property is still occupied by a Lessee and there is a Lease Agreement in place. However, it begs the questions, *what happens to the Lease Agreement? Are the Lessees obliged to move out because of the sale?*

### ***The "Huur gaat voor koop" principle***

In terms of the *Huur gaat voor koop* principle, the Lessee's rights are protected. This means that the Lease Agreement is given precedence over a Sale Agreement, and therefore, the Lessee is allowed to occupy the property until their Lease Agreement expires. Even if the property is transferred to the Purchaser, the Lessee cannot be asked to move out before the expiry of the Lease Agreement. The Purchaser will be obliged to abide by its terms and conditions until the lease period expires.

### ***The Purchaser steps into the shoes of the Seller***

The Purchaser acquires all the rights and obligations which the Seller had in terms of the Lease Agreement. The Purchaser must permit the Lessee to have access to undisturbed occupation of the premises in terms of the lease and the Lessee in turn, continues to pay the rent and otherwise observes his/her obligations in terms of the Lease Agreement.

It is the duty of the Seller to make sure that the Purchaser knows that the property is occupied by a Lessee and to make sure that the Purchaser is aware of the contents of the Lease Agreement. Also, it is possible for Purchasers to purchase property which has a Lease Agreement in place.

### ***Conclusion***

It is highly advisable that before the Lessee starts making alternative accommodation arrangements, that they check their lease to see what stipulations are in place about the property being sold while they are still in occupation or alternatively, to employ the services of a legal expert.

It is important that before one enters into a Lease Agreement or purchases property subject to a such an Agreement, they should first consult a legal expert in order to avoid any unintended ramifications.

Contact SchoemanLaw today for assistance with all property related matters.