

12 March 2021

TAKING CARE WHEN SELLING A PROPERTY WHICH IS SUBJECT TO A LEASE AGREEMENT

Selling a property which is currently being leased does not automatically cancel such a lease agreement. The common law rule of “**huur gaat voor koop**” is applicable which stipulates that a lease agreement takes precedence over a sale agreement. This means that even though ownership may pass to the purchaser, the tenant may occupy the property until expiry of the lease agreement.

Our advice is that the purchaser be informed of the lease agreement and a copy thereof be provided to him. It is a misconception that the purchaser can renegotiate the lease, all rights and obligations in terms of the existing lease are ceded to the purchaser. It is also advisable to insert a clause in the deed of sale referring to the lease agreement, but even if there is no reference thereto the “huur gaat voor koop” rule will still be applicable. It is further pertinent to agree on whether the purchaser will take over the rental mandate of the rental agency or not, as the “huur gaat voor koop” principle” does not cover the rental agency’s mandate.