

# The Lessor is Selling the Property

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987* (the Act). This fact sheet explains the law in Western Australia and incorporates the changes made to the Act, which came into effect on 1 July 2013. Please note that while changes were made to the Act effective 1 July 2013, some of the old laws may still apply to you. If, for example, you entered into a lease prior to 1 July 2013, the old laws may still be valid. Accordingly we strongly encourage you to get appropriate legal/tenancy advice from your local tenancy service concerning the application of the new laws.

A lessor can sell their property during your tenancy even if you have a fixed term tenancy agreement.

In the Residential Tenancies Act the landlord is referred to as the lessor.

## VIEWING AND INSPECTIONS

The lessor has the right to show the premises to prospective buyers and you have a responsibility to allow them entry. The lessor must also ensure they protect the tenant's right to 'quiet enjoyment' of their property when inspections are conducted.

For the purpose of showing the property to prospective buyers, the lessor can enter the property:

- At any reasonable time,
- On a reasonable number of occasions,
- After giving the tenant reasonable notice in writing

**Reasonable time** means:

- 8am – 6pm on a weekday
- 9am – 5pm on a Saturday
- At any other time agreed between the lessor and each tenant.

**Reasonable notice** means:

The Act does not define reasonable notice for showing prospective purchasers through the property.

It is up to you to negotiate an agreement with the lessor about when and how often entry to the property is required. If the lessor wishes to take people through the property on a regular basis you may be able to negotiate a rent reduction to compensate you for the inconvenience.

If you reach an agreement, you should get it in writing and make sure that it is signed by yourself and the lessor.

Examples of some agreements:

- The lessor will only show the property if they have made a convenient appointment time with the tenant
- The property will be open for inspection at an agreed time each week (or fortnight, month etc.), up until an agreed date.
- The tenant will pay reduced rent as compensation for the inconvenience caused by inspections

You must not unreasonably refuse to agree to days and times for showing the property.

If the lessor is not giving you enough written notice or coming to the property too often, that may be considered unreasonable.

If you think the lessor is being unreasonable, you can collect evidence about what is happening. For example, keep a diary of details such as the number of times that people are shown through the property and how long they stay each time.

## ADVERTISING

**NOTE: You are not obliged to go to any special effort or expense (e.g. hiring professional cleaners or gardeners) to make the property more attractive to prospective buyers. If this is what the lessor wants, it's up to them to provide it.**

**Your obligation under the Act is simply to keep the property in a reasonable state of cleanliness.**

As part of the sales process, lessors usually want to have the interior photographed for their sales board and internet advertising. If the lessor wants to take photographs for advertising the property for sale you should try to negotiate an agreement about what will be photographed and how the photographs will be used.

If you are worried that the photographs will put your possessions at risk of theft, you should remove any valuable items before the photos are taken. Photographs should not include any identifying features<sup>1</sup>. If you are concerned about your safety if the photos reveal where you are living, then you should seek further advice as you may have protection under the Restraining Orders Act.

## DO I HAVE TO MOVE OUT?

**Just because the owner is selling the property, does not necessarily mean you have to move out of the property. Your tenancy agreement must be terminated in the proper way.**

## FIXED TERM AGREEMENT

If you have a fixed term agreement you cannot be required to vacate before the end of the fixed term.

If the property is sold while you are living there, the new owner purchases the property subject to your tenancy and takes over the rights and responsibilities of your previous lessor.

Your current agreement and the existing terms and conditions continue until the end of your fixed term agreement.

If the property is put on the market and you want to vacate, or the owner wants to sell the property vacant, you may come to mutual agreement about the termination of the tenancy. This may include compensation for the other party's inconvenience. Get any agreement in writing.

## PERIODIC AGREEMENT

In a periodic agreement if the lessor has entered into a contract for sale of the property that requires them to provide vacant possession of the premises, they can give you a 30 day termination notice.

The property can be sold subject to the tenancy, which means that your tenancy will continue with the new owner.

Either party can still give a "no grounds" notice of termination at any time in a periodic tenancy. You can end a periodic tenancy by giving at least **21 days' written notice** to the lessor, the lessor can end the tenancy by giving you at least **60 days' written notice**.

If you have a periodic tenancy and want to stay after the property has been sold, negotiate an agreement with the purchaser to stay on a periodic tenancy or sign a new fixed term agreement with him/her. The purchaser does not have to agree to this.

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<sup>1</sup> The Privacy Act and Australian Privacy Principles apply to most real estate agents.

## FURTHER HELP – TENANTS’ ADVICE AND ADVOCACY

Tenancy WA provides state wide telephone advice services and referrals.

Metro: (08) 9221 0088 • Country: 1800 621 888 (free call) • [www.tenancywa.org.au](http://www.tenancywa.org.au)

Department of Commerce 1300 304 054

METROPOLITAN COMMUNITY LEGAL CENTRES	REGIONAL COMMUNITY LEGAL CENTRES
<b>Fremantle CLC (Western Suburbs)</b> 9432 9790 <a href="http://www.fremantle.wa.gov.au">www.fremantle.wa.gov.au</a>	<b>Albany CLC (Great Southern)</b> 9842 8566 <a href="http://www.albanyclc.com.au">www.albanyclc.com.au</a>
<b>Gosnells CLC (South Eastern Suburbs)</b> 9398 1455 <a href="http://www.gosclc.com.au">www.gosclc.com.au</a>	<b>AccordWest (South West)</b> 9729 9000 <a href="http://www.accordwest.com.au">www.accordwest.com.au</a>
<b>MIDLAS (Eastern Suburbs)</b> 9250 2123 <a href="http://www.midlas.org.au">www.midlas.org.au</a>	<b>Geraldton Resource Centre (Mid-West/Gascoyne)</b> 9938 0600 <a href="http://www.grc.asn.au">www.grc.asn.au</a>
<b>Northern Suburbs CLC (Northern Suburbs)</b> 9440 1663 <a href="http://www.nslc.org.au">www.nslc.org.au</a>	<b>Goldfields CLC (Goldfields)</b> 9021 1888 <a href="http://www.gclc.com.au">www.gclc.com.au</a>
<b>SCALES (South Western Suburbs)</b> 9550 0400 <a href="http://www.law.murdoch.edu.au/scales">www.law.murdoch.edu.au/scales</a>	<b>Kimberley CLS (Kimberley)</b> 9169 3100
<b>Sussex Street CLS (South Central Suburbs)</b> 6253 9500 <a href="http://www.sscls.asn.au">www.sscls.asn.au</a>	<b>Peel CLS (Peel)</b> 9581 4511 <a href="http://www.peelcls.com.au">www.peelcls.com.au</a>
<b>Welfare Rights &amp; Advocacy Service (North Central Suburbs)</b> 9328 1751 <a href="http://www.wraswa.org.au">www.wraswa.org.au</a>	<b>Pilbara CLC (Pilbara)</b> Karratha - 9185 5899 Newman - 9175 0148 Roebourne - 9182 1169 South Hedland - 9140 1613 <a href="http://www.pcls.net.au">www.pcls.net.au</a>
	<b>Wheatbelt CLC (Wheatbelt)</b> 9622 5200 <a href="http://www.wheatbeltclc.com.au">www.wheatbeltclc.com.au</a>

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