

Have you considered buying and or selling your property?

The information below is general information for investors in relation to notice periods for tenants when selling property plus what must be done if a property is sold during a tenancy.

Notice Periods for vacant possession for a contract of sale

Fixed term tenancy

If a buyer enters into a sales contract with a tenant on an existing tenancy which will be in place upon settlement, the buyer inherits the encumbrance meaning the tenancy. Section 242 of the RTRA Act requires notice of transfer of the lessor to be given to tenant within 14 days. The tenant could agree mutually to end the tenancy early.

Periodic tenancy

Section 286 of the RTRA Act is the relevant provision in relation to a contract of sale entered into when a tenancy is periodic. Note the section below states that the contract of sale has vacant possession. The notice to leave is commonly given to the tenant when the contract is unconditional and salespeople usually negotiate a longer contract and settlement time frame to allow for conditions (if any) to be met under the contract and to allow for the notice period for the tenant to vacate. The reason for the notice to leave is "section 286 – premises being sold – sale contract" and the time period is 4 weeks' notice plus postage if the notice is posted to the tenant.

Transfer of tenancy by the lessor

As the tenancy contract is a legal binding contract between the lessor and the tenant, notice must be given to the tenant by the lessor when the property is sold. Section 242 of the RTRA Act below sets out the requirements of the lessor. Generally, the lessor has 14 days after the sale to provide notice to the tenant as per section 206 RTRA Act. Best practice is to write to the tenant within 14 days of the lessor selling to the 'new lessor' and advise the tenant that the lessor name as per Item 1 of the General Tenancy Agreement has changed. Advise the tenant of the new lessor name.