



Lancaster, Brooks & Welch LLP
BARRISTERS AND SOLICITORS

From Tenant to Owner

By Michael A. Mann

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Many people have no choice but to pay monthly lease amounts in order to live in their homes. The same is true for several business owners who rent space to run their trade. Often, these tenants do not have a sufficient down-payment that must be made towards the purchase price of the property; and then, depending upon mortgage interest rates and other costs associated with property ownership, it is not always financially viable to be an owner of land.

For those who do aspire to live or work in a property that they can call their own but are caught in the above dilemma, some landlords will entertain an option for the tenant to purchase the property at some future date during the term of the lease. This express right of the tenant must be written into the lease agreement and must be very clear about the procedures to be followed in order for the tenant to exercise the option. When can the tenant enforce the right and purchase the property? How will the purchase price be determined and who will set that value? What happens if the owner gets an offer from a third party to purchase the property before the tenant's option has been exercised? Each of these questions becomes important in the drafting.

In some cases, the landlord may even be willing to credit a portion of the rental payments as deposits towards the ultimate purchase price. This may seem appealing to the tenant since, over time, the tenant is contributing towards an equity interest in the land; but what happens if the lease is terminated for just cause by the landlord? What if the tenant decides not to exercise the option to purchase? Is the tenant entitled to reimbursement of the portion of the rent which was being allocated to a purchase price deposit?

Another key concern relates to improvements. When you own your own property, you renovate as you see fit (subject of course to getting government approvals when required); but as a tenant, your rights to make improvements are limited. In most cases, the owner's consent must be obtained; and even if the tenant is allowed to make alterations, what happens to those improvements if, as mentioned above, the lease is terminated or the tenant does not opt to purchase the property? Will the landlord be required to pay the tenant for any of the tenant's related costs?

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Clearly, lease-to-own arrangements can be very beneficial to tenants, and owners of leased premises may like the certainty or at least the likelihood that they will have a buyer for their property at some point in the future; but care must be taken when drafting such provisions. For this reason, we strongly recommend that tenants and landlords seek appropriate legal advice in these circumstances.

*The foregoing information is provided to you for information purposes only.
We caution you to obtain legal advice specific to your situation in all circumstances*

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