



## **NEW RULING BY THE EASTERN HIGH COURT OF DEN- MARK RE. TIME-BARRING OF TENANTS' PRE-EMPTION RIGHT**

*16 May 2023*

### **Introduction**

According to a recent ruling from the Danish Eastern High Court, tenants' pre-emption right to purchase property in connection with a contemplated transfer of property or shares in a property company to a third-party, or alternative the tenants' right to compensation for not having received such an offer from the selling entity, will become time-barred after 10 years in accordance with the Danish Limitations Act, Sections 1 and 3(3)(4).

## **Background**

For residential properties covered by Section 24 of the Danish Rent Act (in Danish: *tilbud-spligtige ejendomme*) the title holder is obliged to offer the tenants the option to purchase the property prior to its disposal. The same applies for an owner of a limited liability property company with the title to such properties in case of a transfer of a controlling part of shares in the property company to a third-party.

In the event that the seller of the residential property, or of the shares in the property company, as the case may be, for whatever reason does not comply with these rules, the seller will be liable to the tenants for any losses suffered by the tenants. Furthermore, the tenants will be entitled to demand the property offered to them on the same terms, including the price.

Until recently, it was unclear in both legal theory and in practice whether a claim for compensation or a claim to purchase the property would be subject to time-barring. However, a new ruling of 14 February 2023 passed by the Eastern High Court has settled the question.

The crux of the ruling centered on whether a transfer of shares in a property company back in 1998, which undisputedly had triggered an obligation for the owner to offer the property to the tenants, an obligation which had not been complied with, could now (more than 20 years later) trigger a right for the tenants to purchase property – or whether such right for the tenants would be time-barred.

The High Court found that the tenants' rights to have a property offered to them, and, alternatively, their claim for compensation due to violation of their statutory pre-emption right, was time-barred under the Danish Limitations Act after 10 years, cf. the Danish Limitations Act, Section 3(3)(4), cf. Section 2(4). The High Court applied a literal interpretation of the Danish Limitations Act's Section 25(5), whereby individual claims related to real property in Denmark are subject to time-barring.

## **Our Comments**

Moalem Weitemeyer welcomes the new ruling from the Danish Eastern High Court as a step towards a clearer and more transparent state of law entailing a significant decrease in risk of claims from current or former tenants related to potential violations of pre-emption rights as stipulated in the Danish Rent Act.

At Moalem Weitemeyer, we have vast experience in assisting landlords in matters related to tenants' pre-emption rights in connection with real estate transactions. For further information please do not hesitate to reach out to us.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us.**



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