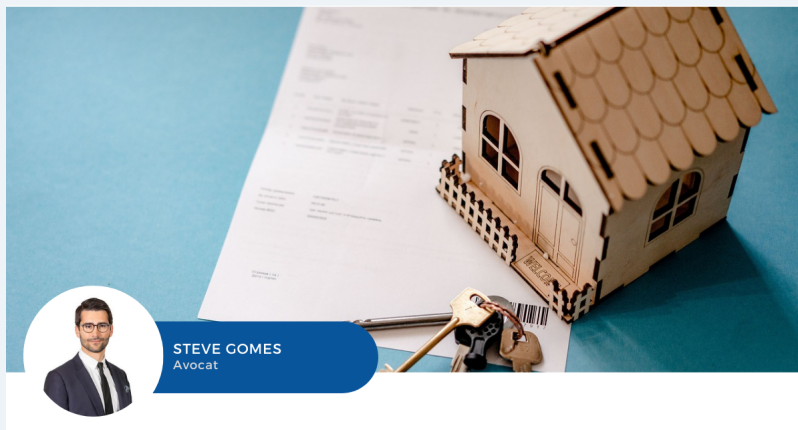


Wilhelm AVOCATS

DROIT DES CONTRATS

Défaut(s) dans une vente immobilière : comment calculer la moins-value ?



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Auteur: Sandra Gerber | Le : 3 July 2023

The rise in the mortgage reference rate is causing quite a stir and raising fears of rent increases

These increases may already have been sent to tenants at the end of June. But what's really going on?

As a reminder, "the reference interest rate has been established since September 2008 with a view to adjusting rents on the basis of changes in the mortgage rate". It is based on [the "average mortgage rate of banks" and is published quarterly by the Federal Housing Office \(OFL\)](#). For the year 2023, there will be a publication on March 1, a publication on June 1, a publication on September 1 and a publication on December 1. At the time of the last publication on 1 June 2023, the reference interest rate rose from 1.25% to 1.50%.

To find out what impact this may have on rents, the Ordinance on leases and farm leases of residential and commercial premises (OBLF) has to be consulted. According to article 13 OBLF, "an increase of 1/4% in the mortgage rate entitles the tenant, as a general rule, to a maximum rent increase of:

- a. 2% when mortgage rates exceed 6%;
- b. 2.5% when mortgage rates are between 5% and 6%;
- c. 3% when mortgage rates are below 5%".

This means that, from 1 June 2023, the rent could be increased by 3%. A rent of CHF 1,000 per month could therefore be increased by CHF 30 per month.

However, the rent increase is not automatic.

Firstly, in order for the increase to be applicable, due notice must be given. The tenant must be notified of the increase on an official form approved by the canton in which the property is located. On this form, the landlord must give reasons for the rent increase.

In addition, the rent increase cannot come into effect until the next expiry date of the lease, and the notification must be received by the tenant 10 days before the start of the notice period. The purpose of this period of 10 days before the start of the notice period is to give tenants the opportunity, if they so wish, to terminate the lease on the next due date and ultimately avoid the rent increase.

For example, if the lease expires *“on 31 March of each year, with a notice period of 4 months, the tenant will have the option of terminating the lease on the next due date. A rent increase must be sent to the tenant no later than 20 November of the previous year (4 months + 10 days). Given the time taken for the post to be held, the landlord will send the registered letter around 10 November”* ([Le Droit du bail en 400 questions, des plus simples aux plus pointues, 2nd edition, Jacques Ansermet, Martine Jaques, Sandra Pereira, CVI, Lausanne 2021, § 39](#)).

Upon receipt of notification of a rent increase, the tenant may also contest it by bringing the matter before the competent authority within 30 days.

If the increase is not contested within the 30-day period and/or if the tenant does not terminate the lease, the increase will come into effect on the next due date.

Secondly, a rent increase due to a rise in the reference interest rate from 1.25% to 1.50% is not always possible. An increase is only possible if the rate set today, i.e. 1.50%, is higher than the rate in force when the lease was signed.

This will be the case for lease contracts signed after March 2020. At that time, the mortgage rate had been lowered to 1.25%.

For leases signed before March 2020, the situation will differ from one tenant to another. Only tenants who have had their rent reduced as a result of successive reductions in the reference rate should be notified of an increase. Since 2009, the reference rate has fallen 9 times. For those who have never had their rent reduced as a result of a fall in the reference rate, the rate is already above 1.50%.

It should be noted that property specialists are predicting a further rise in mortgage rates of 1/4% next winter or during the year 2024. These few details and explanations show that both the landlord, who intends to give notice of a rent increase due to the rise in the reference rate for the next term of the lease, and the tenant, who is notified of such an increase, should be cautious in ensuring that the conditions for such an increase are met in the case in question, and in [following to the letter the formal and time requirements imposed by the law](#).

Source :

<https://www.wg-avocats.ch/en/actualites/tenancy-law/the-rise-in-the-mortgage-reference-rate-is-causing-quite-a-stir-and-raising-fears-of-rent-increases/>