

POST-SETTLEMENT OCCUPANCY AGREEMENTS

A brief overview of the perks and pitfalls



USEFUL TOOL FOR MOVE-UP BUYERS

A post-settlement occupancy agreement can be a life-saver for sellers who are purchasing another home but won't be able to close on that purchase until after they sell their current home.

Also known as a **rent-back agreement**, the sellers continue to live in their home after closing, under an arrangement stipulated in the sales contract, where the seller essentially rents the home back from the new buyer. But the buyer and seller do assume some risk.

To fully protect themselves, buyers and sellers must be prepared for the worst. All parties should carefully review any post-settlement occupancy agreement, possibly with an attorney.



Who is liable if the property catches fire during the rent-back period?

It's complicated. Without a clear list of stipulations in the post-settlement occupancy agreement, the new buyer and seller could find themselves dealing with lawyers and insurance companies for some time. Even something less extreme than a whole house burning down can pose some tricky questions in a post-settlement occupancy situation, such as who is liable if the seller breaks the door off the refrigerator versus if the fridge just stops working altogether.

Where can I go for more guidance on post-settlement occupancy agreements?

The attorneys at Federal Title have you covered. Call 202-362-1500 or email services@federaltitle.com.

How will an attorney help me navigate a post-settlement occupancy agreement?

An attorney can help you make a plan for the worst case scenarios. Someone with expertise in real estate law can identify liabilities for issues that arise during the rent-back period and concerning the responsibility for obtaining insurance, while also making necessary revisions to the agreement to protect your interests.

Do I need to alert my lender of a post-settlement occupancy agreement in my contract?

Yes. Typically lenders will allow a short rent-back. For anything longer than 60 days, the buyer could be in violation of the covenant in the loan documents that states that the property will be owner-occupied.

If the seller is paying a security deposit and/or "rent" at closing, these numbers will appear on the closing statement, which the lender needs to review and sign off on.

You don't want the lender learning about the rent-back for the first time when they receive the draft settlement statement from the title company and see those numbers.