

## Agree occupational rent at the outset

One of the more contentious and less understood clauses in many estate agency groups' Agreements of Sale documents relates to the charges that can be levied if the seller stays on in the premises for a time after the transfer has taken place or the buyer is given occupation prior to transfer.



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"While it is widely accepted that the owner has to be compensated for this type of occupation, there is often massive disagreement on what level this 'rental' (for that in effect is what it is) should be charged. There have been several cases in the Cape Peninsula where the sum asked was hotly disputed," said John Weston, the Rawson Property Group's franchisee for Bergvliet in Cape Town.

This problem, said Weston, can be totally avoided if the estate agent insists on a clause in the Agreement of Sale stipulating clearly at what rate occupational rental will be charged - and if the occupant is there for less than a month or for longer than a month, the rental is calculated on a pro rata basis.

Most Agreements of Sale do have such clauses in them, said Weston, but some agents fail to make use of them because another clause in the agreement may state that possession and vacant occupation are given to the purchaser on transfer or on a stipulated day - the date in each case being made 100% clear. Another clause adds that this can only take place if the purchaser has signed all the documents necessary for the transfer to proceed.

### A fixed and final agreement?

"Most estate agents see the transfer date clause as a fixed and final agreement," said Weston, "but any experienced agent will tell you that amendments may be needed often. The new owner may need the home as soon as possible, i.e. before transfer, or the seller may, for whatever reason, ask to stay on for a few weeks after transfer, sometimes even for a few months. Provision for this has to be made even if it is not expected at the outset provided the other party agrees to it. This should always be covered in the Agreement of Sale from the beginning."

Weston added that irrespective of who the occupant is, all risks associated with the property, e.g. fire, flooding or damages as the result of a break in, and all rates, taxes and levies pass directly to the new owner the day transfer occurs. Sometimes, he said, it is assumed by the new owner that the occupant will somehow be responsible for these, but that is not the case. In particular, said Weston, a new insurance policy should be in place on the home the moment the transfer takes place, particularly if the sale is in cash, with no request to the purchaser for building insurance, as would be the case if a commercial bank raised a bond over the property.

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