

Beware the occupational rent trap

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Occupational rent is an aspect that often gets overlooked in a sales agreement. Setting the rental too high or too low can have disastrous consequences for buyers or sellers.



There's generally a great deal of excitement surrounding a house sale, particularly if you've got your price. However, just because you've found a buyer doesn't mean you have to accept all the terms and conditions attached to the sale. There is usually always room for negotiation and this could become a major factor when it comes to occupational rent.

Occupational rent is the amount a buyer or seller will pay if they move in before transfer (in the buyer's case) or if the seller remains in the home once transfer has taken place. Unfortunately, this is one aspect of the agreement that often gets overlooked in the selling process, something that can lead to arguments at a later stage.

According to Basil Moraitis, [Pam Golding Properties](#) area manager on the Cape's [Atlantic Seaboard](#) and City Bowl, the amount of occupational rent charged is guided by the prevailing rental norms in the area in question.

In other words, an agent will base the figure on the average rentals charged in a particular suburb. This figure should not be a thumbsuck amount and all parties should agree on the amount because it can have severe financial implications should the sale be delayed for any reason.

Let's look at this from a seller's perspective. He sells his home, buys a new property and plans to move out on a certain date. With this in mind, he doesn't query the amount of occupational rent to be paid. However, something goes wrong (as things so often do in property transactions) and the move has to be delayed. Obviously there won't be any problems if the seller's sale hasn't been registered, however, the picture can change dramatically if the home has been registered in the new owner's name and the seller has to pay an inflated occupational rent figure.

It stands to reason that it can also affect the buyer if the transfer is delayed and he's forced to pay an inflated amount for the seller's account.

To put it simply, an unreasonable occupational rent sum can impact on both parties, however, because it has been noted in a binding legal contract, which both parties have signed, there is basically nothing either party can do after the fact.

The easy way to ascertain that the agent has made a mistake in the calculations is to [get online](#) and see what the average rental is in your area. Be realistic and look at the rental price of similar homes and chat to your agent if you feel that the amount being charged is too high. It's important for buyers to know that they cannot force a seller to remain in the home because they themselves can't move in. Likewise, sellers cannot force a buyer to take early occupation because the transfer of their new home has occurred.

Unfortunately, there's very little to be done after the agreement has been signed and yes while either party could cancel the agreement in its entirety, according to Moraitis, the party in breach can be sued for damages as a result of renegeing on the terms of an agreement of sale.

No one should ever sign a contract that contains clauses that could impact them negatively, but surprising, many people overlook the implications of occupational rent. Remember contracts need to be read over with extreme care and shouldn't be signed until all parties are happy with all of the clauses. If you believe the amount set for occupational interest is excessive, state your case (supplying evidence if necessary) and renegotiate the terms.