

Occupational rent and your rights

The payment of occupational rent is a standard clause in almost every property sales contract, and yet it is also one of the more common causes of contention between buyers and sellers.

Confusion abounds over who is responsible for what, and when these payments should come into play, and disagreements over the details can and have caused many a sale to fall through.

"Occupational rent is also known as occupational interest, designed to protect both the buyer and the seller," says Bill Rawson, Chairman of the Rawson Property Group.

"It can apply to freehold and sectional title purchases, whether you're buying from an individual or off-plan from a developer, and should be carefully considered and negotiated before signing an agreement of sale."

Rawson explains that occupational rent typically comes into play when a buyer moves into the property before transfer and registration has taken place, or a seller remains in occupation of the property for a period after that point.

"Essentially, it's a form of financial compensation for the use of a property that you don't own – it's similar to, but not quite the same, as being a tenant and paying rent," says Rawson."

The differences between occupational rent and ordinary rent lie in the expectation of a change of ownership, and the fact that it occurs as the result of a sale. According to Rawson, occupation rent and ordinary rent for the same property should, however, be very similar figures, and if this isn't the case, the affected party could try to negotiate a better deal before signing the agreement of sale.

Keep in mind that rates and property taxes are always the responsibility of the property owner, unless otherwise specified in the contract, while consumables like water and electricity are normally for the rent-payers account or in this case the purchaser.

"Understanding the details of the occupational rent clause in a sales contract is vital for all property purchases, but even more so in the case of new sectional title developments," Rawson points out. He explains that occupational rent in off-plan sectional title purchases works a little differently to normal, with the developer typically stipulating that the purchaser must take occupation of the premises from the moment the occupational certificate is issued by the council.

"This can happen well before the expected date of transfer, and will continue even if transfer is delayed because of complications on the developer's end," says Rawson. "It also has to be paid whether or not the purchaser chooses to physically occupy the space."

Occupational rent for sectional title development purchases is usually calculated as a percentage of the purchase price. 1% is common, but the figure is, in theory, open to negotiation before the contract is signed. "Given that occupational rent is a vital part of most developers' cash flow plans, it's very unlikely that they will agree to waive payment altogether," says Rawson. "You may be able to negotiate a reduced figure, but if not, rest assured that the cost seldom significantly impacts the profitability of a good investment."

Rawson does caution buyers to make sure that the definition of the purchase price is clear in the contract, however, particularly as it relates to any optional extras.

"You're going to want to know whether the extra expense of that designer bath tub and marble tiling are going to be added to the number on which your occupational rent is calculated," he explains. "In most cases, optional extras are considered additions to the purchase price, and you will need to budget for the resulting occupational rent increase. To avoid this, try to pay for any extras in cash, and negotiate occupational rent as a percentage of the initial purchase price only."

"As with any contract, the most important part of successfully navigating an occupational rent clause is fully understanding all of its implications before signing anything," Rawson concludes. "If you're in any doubt, speak to a qualified real estate agent, or have your lawyer look over the documentation. It's always better to be safe than sorry, especially when signing a legally binding agreement with potentially serious financial repercussions."

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