

RELEASE THE FIRE WITHIN

Pre- & Post Possession Agreements

#AARconv



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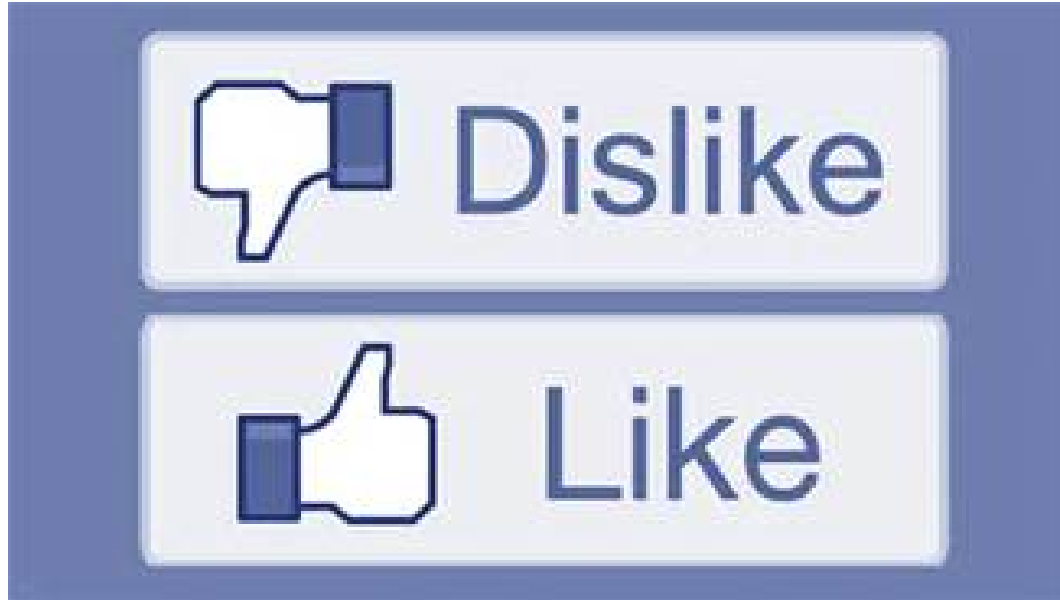
Becoming More Common?

New regulations are delaying a high amount of loans, new research finds



More than 75% of banks say TRID compliance is delaying loan closings between one and 20 days according to [a survey by the American Bankers Association](#).

Pre- & Post Possession Agreements



Pre- & Post Possession Agreements



Pre- & Post Possession agreements carry inherent risks, and raise a variety of legal and practical issues.



Commissioner's Rule

R4-28-1101(K): “A salesperson or broker shall recommend to a client that the client seek appropriate counsel from **insurance**, **legal**, **tax**, and **accounting** professionals regarding the risks of pre-possession or post possession of a property.”

Arizona Revised Statutes



Arizona Residential Landlord and Tenant Act

33-1304. Applicability of chapter

This chapter shall apply to the rental of dwelling units. Any conflict between the provisions of chapter 3 and chapter 7 of this title with the provisions of this chapter shall be governed by the provisions of this chapter.

Arizona Revised Statutes

There is no exception to the rule that every rule has an exception.

(James Thurber)

The following arrangements are NOT covered:

“Occupancy under a **contract of sale** of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.” A.R.S. 33-1308(2)

Arizona Revised Statutes

“Contract of Sale”

“While the exceptions include occupancy under a contract of sale, this exemption does not apply [to a pre-possession agreement] because a ‘contract for sale’ (also called an agreement for sale) is legally different from a purchase and sale agreement.” – unnamed Arizona attorney

Arizona Revised Statutes

The following arrangements are NOT covered:

“Transient occupancy in a hotel, motel or recreational lodging.” A.R.S. 33-1308(4)



Landlord & Tenant Act

“A rental agreement shall not provide that the tenant does any of the following:
1. Agrees to waive or forego rights or remedies under this chapter.”

- A.R.S. § 33-1315(A)(1)

* *“Rental agreement” means all agreements, written, oral or implied by law, and valid rules and regulations adopted under section 33-1342 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.*

Landlord & Tenant Act

Does Application of the Landlord & Tenant Act Matter?

- Deposits - A.R.S. § 33-1321
- Entry to Premises - A.R.S. § 33-1343
- Recovery of Premises - A.R.S. § 33-1374

Recovery of Premises

A.R.S. § 33-1374 - Recovery of possession limited

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including forcible removal of the tenant or his possessions...



Recovery of Premises

A.R.S. § 33-1377 – Special detainer actions; service; trial postponement

Special detainer actions shall be instituted for remedies prescribed in section 33-1368.



Key Provisions



Key Provisions

Recovery of Premises



Key Provisions

Recovery of Premises

PRE-POSSESSION: In the event close of escrow (COE) does not occur, Buyer's right of possession ends and Buyer will remove all personal property and vacate the Premises no later than 5:00 p.m. on the day after the COE Date stated in the Contract or any extension(s) thereof.

POST POSSESSION: In the event close of escrow (COE) does not occur by _____, 20____, this Agreement is void.

Key Provisions

Pre-Possession Improvements



BEFORE



AFTER

Pre-Possession Provisions

IMPROVEMENTS

- Buyer shall not perform any alterations, repairs or improvements to the Premises without first obtaining the prior written consent of Seller.
- In the event COE does not occur, any alteration, repairs or improvements made to the Premises by Buyer shall become the sole property of Seller without any compensation to Buyer.

Key Provisions

Utilities / Services

PRE-POSSESSION: Buyer shall have all services placed in Buyer's name by the Possession Date and shall pay all applicable charges and costs incurred during Buyer's use of the Premises.

POST POSSESSION: All utilities and services shall remain in Seller's name. Seller shall pay all charges incurred.



Key Provisions

Insurance



Key Provisions

Insurance

PRE-POSSESSION: Buyer shall obtain insurance policies with minimum coverage limits of \$_____ in contents insurance and \$_____ in liability insurance. Buyer shall provide Seller with proof of insurance upon request.

POST POSSESSION: Seller shall maintain insurance policies for personal property and liability protection. Buyer shall maintain adequate hazard insurance to cover the change in occupancy status of the Premises.

Key Provisions

Occupancy & Assignment



Key Provisions

Occupancy & Assignment



Key Provisions

Occupancy

- Occupancy shall be limited to the following number of: ____ adults; ____ children; ____ pets.

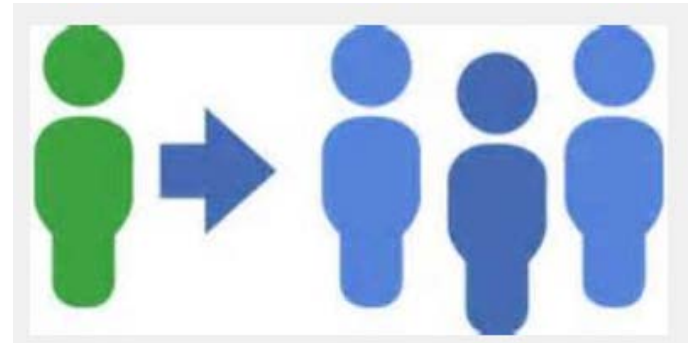
Types of pet(s): _____

- Occupancy for the limited purpose of:
 - physically occupy the property
 - store personal property in the following areas: _____
 - other: _____

Key Provisions

Assignment

- Buyer/Seller shall not assign this Addendum nor lease/sublet the Premises or any portion thereof without the prior written consent of Seller/Buyer, and any attempted assignment or lease shall be void and unenforceable.



Manage Risk



Manage Risk

Does your Broker Approve?



Thank
You!