

Issues for Buyers to Address When Allowing Sellers to Remain on Property after Closing

Lowndes Leasing Lawyers Blog
01.28.2021

The Central Florida housing market is still going strong at the moment, with the result that developers are continuing to create new residential subdivisions in traditionally rural areas. Much of this rural land is comprised of large parcels owned by families for many years. Sometimes the parcels are large enough to be developed by themselves, but in other cases developers are placing multiple adjoining parcels under contract for purchase in order to aggregate them into a single large development, using contracts that are conditioned upon all of the sellers closing at once. These contracts also typically contain numerous conditions to the buyer's obligation to close that may include rezoning, subdivision plan approval, and engineering approval for the proposed subdivision that the developer wants to build.

Given that such contracts include more than a few contingencies to closing that are not present in a typical contract to sell a home, some rural owners are concerned about the potential liability associated with contracting to buy a new home in advance of selling the old one. Additionally, they are concerned that they not be obligated to close on the new home until they receive the proceeds from the sale of the old one. It is very difficult for them to contract to buy a new home if that contract is contingent on selling their old home.

Many sellers address these concerns by requiring that the buyer of their family home give them a period after closing within which to remain in possession while they arrange to buy a replacement home and move into it. Many developers who are buying these parcels are not ready to begin development immediately, so they are willing to give the seller a few months to stay on before they are required to leave. Accordingly, the parties are putting a simple clause to that effect in the purchase and sale contract.

Such an arrangement presents several issues that a buyer must consider. For a short period after the closing, the seller will continue to occupy their old home. Upon closing, is the buyer now the seller's landlord? It is probably worth establishing a landlord/tenant relationship, as this gives the buyer

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certain statutory rights to evict the seller at the end of their occupancy period, using summary or abbreviated procedures established in the Florida Residential Landlord and Tenant Act, found in Chapter 82, Florida Statutes. Without a landlord/tenant relationship, the seller who fails to move out on time could be considered a squatter or trespasser, as opposed to a tenant, which is a different legal relationship. This could require the buyer to institute a lawsuit against the seller for detainer or ejectment, actions which are brought to dispossess one party of property belonging to another. Such legal actions are less common and can potentially take longer than tenant eviction actions.

While it benefits the buyer to provide in the purchase contract that the seller will be considered a tenant while they are occupying the property after closing, it is important to clarify that the seller's occupancy will be rent-free during the permitted post-closing occupancy period, which is what the seller expects. However, after that period expires, if the seller has not vacated the property, the contract should provide that the seller will be subject to eviction and must also pay rent as long as it continues in occupancy until the seller either leaves the property voluntarily or is evicted. The rent should be high enough to deter the seller from remaining on the property, and the buyer should also be entitled to recover its attorneys' fees incurred in any eviction.

While the buyer wants the remedies available to a landlord under the Florida Residential Landlord and Tenant Act, they will not want any of the obligations of that Act other than allowing the seller to occupy the property for the post-closing period that has been agreed upon. The buyer will be demolishing the home in connection with its development of the property, so the buyer has no interest in maintaining the home. The seller should agree that by staying in occupancy after closing, the seller accepts the property in its "as-is, where is" condition as of closing, and that any and all maintenance thereafter is the sole obligation of the seller, who should also be responsible for any desired insurance and the payment of all operating expenses, such as utilities.

Finally, the seller should agree that it will not allow any liens to encumber the property as a result of its occupancy, that it will maintain liability insurance naming the buyer as additional insured, and that it will indemnify the buyer against any liability associated with its occupancy of the property.

As long as these issues are adequately addressed in the purchase and sale contract, and a provision added that they expressly survive closing, it should not be necessary for the parties to go to the time and trouble of negotiating and signing a lease.