

Very often the Sellers wish to remain in temporary possession of the house they have sold after the closing has occurred. The reasons are varied and we have all been involved in this situation many times.

Frequently the realtor will know at the time the contract is signed that the Sellers cannot or will not vacate the premises on or before the closing date set forth in the contract. In many of these cases the contract will contain brief language stating that the Sellers may stay after the closing pursuant to details to be arranged prior to closing. This “temporary” language can lead to severe adverse consequences for one or both parties. First, since the terms are not clarified in the contract, the parties run the risk of the contract being declared void by a Court in that an essential term of the bargain has not been agreed upon, i.e., no meeting of the minds on post closing occupancy by the Sellers. Secondly, if left to negotiate post contract, the use and occupancy terms may become the source of considerable disagreement thus possibly delaying the closing or in an extreme situation causing a rescission.

I believe it is always better to deal with the issue while the Sellers and Buyers are still in the moment, i.e., when they have agreed upon a sales price and are anxious to sign a contract of sale. My suggestion is that while you are completing the actual contract, you also fill out the **Use and Occupancy Agreement** I am reprinting below and have it signed as an Addendum to the Contract.

Paragraph 1: the **per day** charge is typically the total monthly cost of the Buyers’ prospective mortgage payment (principal, interest, taxes and insurance). If the Buyer is paying cash, you can use Fair Rental Value as the **per day** charge. Sometimes the Seller is in a position of strength to demand that the **per day** charge be no greater than their current payment. In any event, the per day charge will have to be negotiated. The **“through”** date is the date the Sellers will actually give possession of the premises to the Buyers.

Paragraph 7: this amount is like a security deposit given at the time of closing to ensure the Sellers’ compliance with the terms of the Agreement.

Paragraph 11: this amount is usually double the per day charge. This is to encourage the Sellers to leave on the appointed date of possession.

USE AND OCCUPANCY AGREEMENT
(CONTINUED POSSESSION BY SELLER)

This Agreement made this _____ day of _____, by and between _____ (the Sellers), and _____(the Buyers):

WHEREAS, Sellers have sold and conveyed or will sell and convey to the Buyers a certain parcel of land with a dwelling house thereon known as _____, Connecticut, said property hereinafter called the Premises; and

WHEREAS the Buyers are willing to permit the Sellers to occupy said Premises after the date of closing in accordance with the terms and conditions set forth as follows:

Sellers and Buyers agree as follows:

1. Sellers agree to pay to Buyers the sum of \$_____ **per day** for the use and occupancy of the Premises from [date and time] _____ through [date and time]. _____ (the date of possession). If the Sellers intend to remain in possession for at least 30 days, then the Sellers shall pay to the Buyers at the closing a sum equal to the use and occupancy charge for said 30-day period of time. In the event the Sellers vacate the premises prior to the date last mentioned above, then the daily rate shall be paid to and including said date.
2. Sellers agree to deliver exclusive possession of the Premises to the Buyers on the above date of possession no later than _____[time]. In the event Sellers fail to do so, no demand and no re-entry for conditions broken as in common law shall be necessary to enable the Buyers to recover possession pursuant to the statutes relating to

summary process, but that all rights to any such demand, or re-entry, are hereby expressly waived by the Sellers, and Sellers hereby waive any right to any notice to quit possession as prescribed by the statutes relating to summary process.

3. Sellers agree to return possession of the Premises to the Buyers in as good order and condition as it was on the date of closing, or, to make good all of the damage which the Buyers shall suffer by reason thereof.
4. Sellers agree to indemnify and save Buyers harmless against any costs or expenses, including reasonable attorneys' fees, costs for storage of personal property, and alternative living accommodations which may be incurred by the Buyers as a result of the Sellers' failure to deliver possession of the Premises as required in Paragraph 2.
5. During the term of the use and occupancy hereunder, Sellers shall be liable for any injuries or deaths of persons and for any loss or damage to property caused by the negligent acts or omissions of the Sellers, their agents, servants, or invitees and Seller does hereby indemnify and hold Buyers harmless from any liability for any such injury, death, loss or damage. Sellers shall carry their own **liability insurance** coverage and contents insurance as of the date of the closing until they vacate the Premises which said policies shall name the Buyers as additional loss payees.
6. Sellers promise to remove all personal property and other material situated on the Premise and to deliver possession of the Premises to the Buyers in a broom clean condition.

7. It is acknowledged that the Sellers have deposited with the _____'s attorney the sum of \$_____ to be held in escrow under the terms and conditions hereunder until the Sellers vacate the Premises.
8. In the event the Sellers fail to perform any of the terms of this Agreement or in the event any damage is done to the property during the Sellers' occupancy, then the attorney holding the escrowed money will reimburse the Buyers from the escrow for the reasonable costs and expenses of obtaining compliance or performance with the terms of this Agreement, including but not limited to, the cost of repair of any damage, the payment of holdover use and occupancy, and the payment of those expenses referred to in Paragraph 4 above. Any such payment shall in no way limit any other remedies the Buyers may have under statutory or common law.
9. This Agreement shall inure to the benefit of and be binding upon all parties hereto, jointly and severally, and their representatives, heirs and assigns.
10. The Sellers shall pay for all utilities (and common charges, if the Premises are in a common interest community) from the date of closing until the date they vacate the Premises. In the event the premises are heated by oil heat, the retail value of the oil remaining at the time the Seller vacates the premises shall be paid to the Seller.
11. In the event the Sellers hold over beyond the time set forth in Paragraph 2 above, then the Sellers shall pay the sum of \$_____ per day as reasonable use and occupancy. In the event an action is brought pursuant to this agreement, the prevailing

party shall be entitled to reasonable attorney's fees and all court costs.
