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WHY THE OCCUPATIONAL CLAUSE IS IMPORTANT IN A CONTRACT OF SALE?

Occupation refers to the date that the purchaser is placed in a position to take control of the property purchased, which will be the date the keys to the property are handed to the purchaser. It does not refer to the date of actually moving into the property. Thus if the contract stipulates that occupation is on 1 July and the purchaser moves in on 3 July, occupational rent will be charged from 1 July.

The purchaser becomes an occupant on date of occupation and not a tenant as defined under the Rental Housing Act, and as such the protection of the Rental Housing Act is not applicable to the occupant. The agent must guide the parties in coming to an agreement which protects both sides and doesn't expose the seller to unnecessary risk.

It is important to always agree on the specifics of the occupation date and the occupational rent when signing the agreement and not to leave it to be decided at a later date, even if the agreement states that occupation will only be on registration. If the circumstances change later, occupation can be arranged by way of an addendum drafted by the conveyancer, and the amount for occupational rent does not have to be negotiated at that stage, avoiding potential difficulties.