

## OCCUPATION BEFORE TRANSFER? LIMIT THE RISKS!

Most of us have horror stories to tell about purchasers moving into a property before transfer and then raising all kinds of issues about the property, some legitimate and some not, in an attempt to renegotiate the sale. Often this results in the transfer being delayed.

Our standard advice on this topic is to refuse such a request for early occupation, but in many cases the sale rests on it and we have to agree.

In these circumstances we recommend adding a short clause into the contract (or the subsequent addendum) which will give some measure of comfort for the agent, the conveyancer, and the seller that the transfer will not be delayed. It can be added after the clause where the date for early occupation is recorded.

See suggested clause below:

*The Purchaser acknowledges that they will not be entitled to delay the transfer or cancel the sale or withhold funds as a result of any alleged defect/s of whatsoever nature that they might find in the property after taking occupation and accepts that their remedy for such defect/s (if any) will be limited to a claim for damages which shall be instituted after the date of registration of the transfer.*

A clause like this will, in most cases, allow the transfer to be registered on time, and then leave the seller and the purchaser to argue the matter on their own time.

The clause should not however be seen as a substitute for the usual safeguards – before a purchaser moves in all suspensive conditions need to be fulfilled, all transfer and bond documents need to have been signed, all costs must be paid, and the purchase price must be fully secured.