

Understanding Licence Agreements



By **LOUISE AITKEN**

REQUESTS FOR Licence Agreements have become common place within conveyancing in Victoria.

A licence agreement provides a party to a residential Contract of Sale (Vendor or Purchaser) the right to early occupation of the property prior to settlement where you are the Purchaser, or the right to stay on in occupation of the property after settlement if you are the Vendor.

This arrangement does not always work for all parties and, whether you are the Vendor or the Purchaser, if a Licence Agreement is requested you should note that you are under no obligation to agree to any such request.

These types of agreements usually work in circumstances where a Vendor has already moved out of the property prior to settlement or a Purchaser has no intention of moving into the property straight away after settlement.

Often discussions with the Real Estate Agent may have been had early on and those arrangements may be discussed.

However, a licence agreement must be formalised and entered into before it can be relied upon.

A licence agreement is set up as a short-term agreement, and a licence fee can be charged.

It should not be set up for longer term arrangements as it does not create a landlord/tenant type arrangement.

Licence Agreements when you are the Vendor and what to consider

If you are entering into a licence agreement and you are the Vendor, there are certain matters to be mindful of.

While the risk of the property will pass to the Purchaser, it is, however, advisable to retain your current

insurance until settlement.

A Purchaser cannot complete any renovations or cosmetic works to the property until settlement, unless they have consent from the Vendor.

If consent to complete works is provided, this should be documented within the licence agreement and should expressly detail the works to be completed.

The Purchaser must accept the property "as is".

Vendors are rightfully sceptical around consenting to a Purchaser moving into the property prior to settlement.

Accordingly, you should ensure that your Conveyancer or Property Lawyer has drafted the agreement to ensure the acceptance of the property is included.

A final inspection by the Purchaser is required prior to early occupation under the Contract of Sale.

You must have removed all possessions from the property before the licence agreement starts, and you should ensure you have disconnected all utilities including electricity, gas, internet and telephone.

Outgoings including rates and water charges are usually calculated from the date of early possession of the Purchaser.

The agreement is usually for the benefit of the Purchaser only, and you can charge a weekly licence fee.

Any legal costs can also be passed onto the Purchaser.

Licence Agreements when you are the Purchaser and what to consider

If you are the Purchaser, there are also important matters to consider.

The risk of the property will pass to you as at the date of early occupation, which means that you must have your building replacement and contents insurance in place from that date and provide a copy of the insurance to the

Vendor's representative.

They must be satisfied with the insurance cover and may request an updated policy if they deem the insurance provided to be insufficient.

The property is accepted "as is" from the date of moving in under the Licence Agreement, meaning that you should ensure your final inspection is completed.

If you are not satisfied with certain matters relating to the property once you have moved in, you will have limited recourse, and in most cases no recourse.

You will be required to accept the property 'as is' and settle on the date specified within the Contract of Sale.

If you wish to complete works prior to settlement you can request this, and a Licence Agreement can be drafted accordingly.

The Vendor is not under any obligation to consent to any of the works requested.

The agreement is for your benefit only and you must not sub-let.

You will be liable for all utility costs including rates and water from the date of early occupation under the Licence Agreement.

You may also be able to negotiate a nominal licence fee with the Vendor in some circumstances.

There are additional risks associated with licence agreements for both a Vendor and Purchaser and, before you agree and enter into an agreement, you should ensure that you obtain the appropriate advice from a Conveyancer or Property Lawyer.

If you have any questions or would like to have a chat relating to your purchase or sale, please feel free to reach out.

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