

The interim occupancy agreement

Use of the interim occupancy agreement

The interim occupancy agreement, Form 271, is prepared and used by brokers when representing buyers of single family residential units who want to take occupancy before closing their purchase of the property. The use may be as an addendum to the initial purchase agreement offer, but more likely will arise during the escrow period, especially if there are delays which are not likely to interfere with the buyer's ability to close, such as problems the seller has with clearing title, conveyancing, court approval, etc.

The form covers the need for the buyer to have insurance coverage, imposes the risk of loss on the seller for any casualty losses, reminds the buyer any improvements the buyer may make to the property belong to the seller if the sale doesn't close, and avoids applying rent to the purchase price which would turn the purchase agreement into a security device comparable to a land sales contract.

Analyzing the interim occupancy agreement

The interim occupancy agreement has three sections. Each section has a separate purpose and need for enforcement, explained as follows:

1. *Parties and property identification:* Identifies the subject real property, references the purchase agreement and establishes the buyer and seller as tenant and landlord, respectively, for any enforcement of the occupancy agreement.

2. *Terms of agreement:* Establishes a landlord-tenant relationship, sets forth the rent due and details the conditions of occupancy and care of the property, as does any lease or rental agreement. However, the term of the occupancy is controlled by the performance or cancellation of the referenced purchase agreement.
3. *Signatures and date:* The buyer and seller sign and date their signatures.

Preparing the interim occupancy agreement

Note — Check and enter items throughout the interim occupancy agreement in provisions with boxes and blanks, unless the provisions left unchecked or blank are not intended to be included as part of the final agreement.

Enter the date and the place where the agreement is prepared. This date is used to reference this document.

1. *Sales agreement reference:* **Check** the box indicating the type of purchase agreement entered into by the buyer (tenant) and seller (landlord).
 - 1.1 **Enter** the date of the referenced agreement.
 - 1.2 **Enter** the names of the seller and the buyer who entered into the referenced agreement.
 - 1.3 **Enter** the address of the property to be occupied by the buyer prior to the close of the referenced agreement.

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2. *Purpose of occupancy agreement:* The purpose of this agreement is stated as a fact: the buyer is granted occupancy prior to closing the purchase agreement.
3. *Termination before occupancy:* **Check** the box to cancel this occupancy agreement before transfer of occupancy if further- approval contingencies in the referenced agreement are to be eliminated prior to the buyer taking possession, such as loan approval, credit approval or verification of net worth sufficient to perform the referenced agreement. [See [first tuesday Form 183](#)]
4. *Receipt for rental deposit:* **Enter** the amount of rent and security deposit seller is to receive (as a landlord) from the buyer (as a tenant) on the buyer's occupancy.
5. **Enter** the date the buyer is to take possession. The occupancy under this agreement expires on the date escrow is scheduled to close or upon cancellation of the referenced agreement.
- 5.1 *Rent amount:* **Enter** the amount of the periodic rent to be paid by the buyer. **Check** the box for the time period covered by the rent amount.
- 5.2 *Place of delivery:* **Enter** the name of an agent (if selected by landlord) and the address where the rent is to be delivered.
- 5.3 *Advance rent:* **Enter** the day (of the week or month) advance rent is to be paid. **Check** the box indicating whether it is paid weekly or monthly.
- 5.4 *Prorated rent:* Rent will be prorated to the date this tenancy terminates.
- 5.5 *Holdover rent:* **Enter** the amount of daily rent buyer is to pay for the buyer's continued occupancy after the referenced agreement has been terminated. Usually it is a penalty amount of 150% to 200% of the regular daily rate.
6. *Return of security deposit:* **Provides** for the security deposit to be refunded to the buyer on close of escrow. Should escrow fail to close, the refund of the security deposit is controlled by landlord-tenant law which requires an accounting and refund within 21 days after the buyer vacates. [See [first tuesday Form 585](#)]
7. *Condition of premises:* **Check** the box if a condition of premises addendum is attached. [See [first tuesday Form 560](#)]
- 7.1 *Buyer's inspection:* **Check** the box if the buyer has inspected the property and found the premises ready for occupancy.
- 7.2 *Improvements destroyed or damaged:* **Provides** for the buyer to either terminate the purchase agreement and this occupancy or close the purchase and receive any insurance proceeds paid the seller to cover the loss of improvements on the property should they be destroyed or damaged during the occupancy.
- 7.3 *Maintenance of property:* **Provides** for the buyer to maintain the premises during the tenancy. The property shall be returned in the same condition, less normal wear and tear, should the referenced agreement be terminated.
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- 7.4 *Additional improvements:* **Provides** for additional improvements made by the buyer during this occupancy to be approved by the landlord. The buyer must obtain fire and hazard insurance for any additional improvements.
- 7.5 *Tenant improvements:* **Provides** for any buyer improvements made during this occupancy to be the property of the seller, with no compensation for their cost or value, should the referenced agreement be cancelled.
8. *Buyer to pay utilities:* **Provides** for the buyer to pay all utility expenses incurred during the buyer's occupancy.
9. *Indemnity insurance:* **Provides** for the buyer to obtain an insurance policy covering buyer liability.
10. *Seller's right to enter:* **Provides** for the seller to enter the premises for necessary repairs and maintenance. The seller is to enter during reasonable hours and only after giving 24 hours notice, except for emergencies. [See [first tuesday Form 567](#)]
11. *Assignment or subletting:* The buyer may not assign or sublet the premises.
12. *Attorney fees:* The prevailing party in any dispute arising under this occupancy agreement is entitled to recover attorney fees.
13. *Additional terms:* **Check** the box if addendums to the agreement are attached.
- Signatures:**
- Obtain** the buyer's and seller's signatures.
Enter the date each signed.