
Squatters â?? Buyers be Wary

Description

The standard REIN contract requires the seller to convey title â??free of all tenancies.â?• This means that the Seller is obligated to convey possession of the property free of any occupants or leases that would give rise to a third partyâ??s claim of possession. But what happens when a Buyer purchases a property with a tenant or occupant in place? This could occur either because of Buyerâ??s failure to exercise due diligence, or when the Parties execute a contract which does not obligate the Seller to deliver the property free of tenants or occupants. In short, what rights does a Buyer have when they show up to their new house, keys in hand, only to discover someone already living there? The answer, in true lawyer fashion, is â??It depends.â?• Specifically, the primary question is always â??Is there a lease?â?•

If the occupant has executed a lease with the previous owner, the new Buyer will most likely have to honor the lease. The mere fact that the property has been sold does NOT invalidate the lease. Instead, the Buyer simply steps into the shoes of the previous owner and takes over the role as landlord. So, in this scenario, if the Buyer was planning on moving in, time to change plans! The Buyer will have to honor the terms of the lease, and tenant must begin paying rent to the Buyer. The only exception to this general rule is in the context of a foreclosure.

There is some hope for our Buyer if the property is purchased at foreclosure. If a property is bought at foreclosure and a tenant is in place, the Buyer can terminate the lease by giving 90 days written notice ONLY if the Buyer purchases the property for the purpose of using it as his primary residence. However, if the Buyer buys the property for investment or any other purpose, the lease must be honored.

Things become more complicated if there is no written lease. Pursuant to a recent statute, if a landlord fails to offer a tenant a written lease, by operation of law, a 12-month lease exists, which then renews on a month-to-month basis following the initial 12-month term. So, if a landlord/tenant relationship exists between the Seller and the occupant, the occupant at a minimum has a month-to-month tenancy, and possibly a 12-month lease, depending on how long the occupant has been residing in the property. In either case, the Buyer should immediately provide notice to the occupant that the current lease, in whatever form, will not be renewed. And, of course, if the Buyer finds themselves in the position of inheriting a lease, either written or created by operation of law, the tenant is obligated to pay Buyer rent. If tenant fails to pay rent, the Buyer has the right to seek possession of the property due to tenantâ??s failure to pay rent via an unlawful detainer filing.

Finally, we come to the true squatter -someone who is occupying the property without a lease, without paying rent, and without any claim to title or any other legal claim whatsoever to the property. In theory, these occupants are NOT subject to the Virginia Residential Landlord Tenant Act and could be removed via â??self-helpâ?• so long as the peace is not breached. However, because of the potential legal liability in attempting a self-help eviction, not to mention the potential risk to oneâ??s health in the form of an angry occupant, a self-help eviction should never be attempted. Instead, in all cases, squatters should be evicted via the filing of an unlawful detainer in general district court.

In sum, buying a house with an occupant in place can get tricky very quickly, particularly if the intention of the Buyer is to occupy the property in the short term. In this attorney's experience, true squatters are very rare, and most people occupying property have some kind of claim (however farfetched) to having a legal right to the property. This means that removing an occupant can take longer than one might expect. In some cases, the Buyer will have to honor a lease, and in others, Buyer will have to give 30 days' notice to terminate a month-to-month tenancy. Either way, purchasing a home with an occupant in place can absolutely cause additional delays and expenses. Buyers should be wary, exercise due diligence, and require that the Seller remove any occupants prior to closing.



Michael Hips

Michael has been practicing law in the Hampton Roads area of Virginia since 2010. Prior to joining the Caplan Law Group, PC, Michael worked as an associate at Williams Mullen and the Domozick Law Firm. He focuses his practice in the areas of estate planning, business law, and civil litigation. Michael graduated magna cum laude from the University of Richmond School of Law in 2009 where he was a member of the Trial Advocacy Board. He received his undergraduate degree from Dartmouth College in 2005. While at Dartmouth, he was captain of the swim team and set multiple school records. He lives in Norfolk, and in his free time he coaches swimming for a local swim team, Tidewater Aquatic Club.

Category

1. Uncategorized

Date Created

2022/09/15

Author

vltaexaminer

VLTA Examiner