

Post Possession Agreement Checklist

Pre-possession and Post Possession agreements are NOT recommended, carry inherent risks, and raise a variety of legal and practical issues. For that reason, Commissioner's Rule R4-28-1101(K) provides that "A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post possession of a property." **Due to the risk and liability involved with pre-possession and post possession, the best practice is for the parties to enter into a lease agreement rather than a pre or post possession agreement.**

1. **Purpose:** State whether the Buyer and Seller's relationship will create a landlord-tenant relationship and thereby be governed by the Arizona Residential Landlord Tenant Act.
2. **Possession date:** Provide the length of the term for Seller's possession of the premises. Include verbiage that the agreement is void if escrow fails to close.
3. **Occupancy:** State the reason for the occupancy (e.g., Seller will continue to occupy the premises or Seller is storing personal property on the premises) and who/how many occupants are allowed, including animals, if any.
4. **Compensation:** Determine the amount Seller will compensate Buyer to possess the premises (e.g., daily rate, flat rate, etc.), whether Seller will directly pay Buyer the compensation, and whether Seller will owe additional funds if Seller remains in possession of the premises following the agreed upon move-out date.
5. **Security deposit:** Consider whether Buyer will charge a security deposit and how much, whether Buyer will hold the security deposit, and how the security deposit will be used and/or returned to Seller.
6. **Use of premises:** Include how the premises are to be utilized (e.g., personal residence) and that Seller will comply with any and all applicable laws, ordinances, regulations, CC&Rs, etc. Additionally, address who is responsible if any fines or assessments are incurred during the post possession.
7. **Utilities/services:** Determine who will pay the utility bills and other services for the premises during the post possession.
8. **Insurance:** Address whether renter's insurance and/or additional insurance is needed.
9. **Risk of loss:** Determine who is responsible in the case of damage to the premises during the post possession.
10. **Maintenance:** Determine who is responsible for any repairs or maintenance of the premises during the post possession. Additionally, the parties may want to consider the amount Seller is responsible for paying for any maintenance or repair during Seller's post possession (e.g. Seller is responsible for home warranty deductible).
11. **Improvements:** State whether alterations, repairs, or improvements are allowed during the post possession and what happens if any alterations, repairs, or improvements are made.
12. **Assignment:** Consider whether the Seller is allowed to assign their post possession right to the premises.
13. **Entry to premises:** The parties should determine what type and how much notice Buyer should give Seller to enter the premises for completing repairs or conducting inspections.
14. **Indemnification:** REALTORS® should ensure the Buyer and Seller will hold harmless and indemnify their broker(s) in the transaction from any and all liability and responsibility related to the post possession.
15. **Other terms and conditions:** Include any other items of importance (e.g., no smoking in the property).

Note: Prior to any parties signing a post possession agreement, the Broker should review the agreement and the parties should be encouraged to seek appropriate counsel.