



Understanding Closing vs Possession

BUYER & SELLER GUIDE

BY SARA KURZ

What is the difference?

You might notice that the Dates & Deadlines section of the purchase contract (section 3.1) has two separate lines for closing and possession. What is the difference? Why wouldn't they be the same?

Closing is the completion of the transaction and the fulfillment of the purchase contract. Closing is the date the new owner has legal ownership of the property. We brokers refer to "Closing" (with a capital "C") as both a date and as the official appointment at the title company in which the buyer or seller sign all of the final paperwork and funds are received. Closing these days can also be digital – in many cash transactions the buyer and/or sellers can e-sign documents or have wet signatures

notarized and then originals are mailed to the title company prior to the Closing date.

Possession, on the other hand, is the date (and time) that the new owner can physically occupy or move into the property. Possession typically only applies to homes, not to single family lots (although there are always exceptions). Possession is always either the date of closing or some date after closing; it is never prior to Closing.

When are they the same dates?

In many cases, closing and possession are the same date. Unless a specific possession time is identified in the Contract (like 5pm), possession is granted immediately upon full execution of all

the title company's documents by both parties and receipt of all of the closing funds. Keys are dispersed and the new buyers can head over to the house whenever they are ready.

When are they different?

Possession can also be some period after Closing – this can be days, weeks or even months after Closing. In that case, the seller has received the sale proceeds and has relinquished ownership of

the property, but the buyers/new owners don't take possession of the property until a later date.

Below are a few of those scenarios of when Possession is after Closing:

1.

The seller is moving into a new home and needs some time (usually a few days or a week or so) to pack up and physically move their belongings out and into the new property. This is a logistical move, as it is almost impossible to fully move an entire household from one house to the next in one day, without storing things somewhere else in the interim.

2.

Similarly, this also happens when the seller needs more time until they can move in their new property. The property they are purchasing may close sometime later due to the constraints of that transaction or conditions of that sale.

3.

Sometimes the seller may want more time in the property for personal reasons, such as to enjoy the rest of the ski season or to entertain visiting family one last time. This is common in resort homes, such as fractional units or condo complexes that are rented routinely.

4.

When there is a tenant renting the home and their lease ends some date after Closing. In that case the buyer/new owner assumes the lease (including security deposit, rent deposits, etc.) and then waits for the tenant to move out before taking possession.

What is a Post-Occupancy Agreement?

Depending on how long the possession period is, the seller usually leases back the home (usually if it is more than 2 or 3 days after Closing). Part of my job is to work with the broker on the other side of the transaction to negotiate lease-back terms (rental rate, utilities, security deposit, etc.). In this case, both parties execute a written “rent back” agreement, which is formally called a Post-Occupancy Agreement.

There is a box in section 17 of the purchase contract to denote whether a Post Occupancy Agreement is necessary and thereby attached to the contract. The state of Colorado has a pre-written form for this – it is a simple lease agreement that spells out what the possession date is, how much the seller will pay to “rent” the home during that period (if any), who pays what utilities, what the security deposit is (if any) and other specifics.

When writing purchase contracts (offers), I will put a deadline in which the agreement needs to be agreed to and executed by all parties to ensure that it is completed in a reasonable time frame.

It is important to note that the Colorado Post Occupancy Agreement is for less than 60

days. Any period longer than that should be addressed in a formal lease.

There are also limitations on post-closing occupancy when financing and lenders are involved.

Most lenders will only allow sellers a rent back period of up to 30 or 60 days, depending on what their rules are. It is important that you and your Realtor know what those rules are before agreeing to longer dates in an offer/purchase contract. For example, if you agreed to a 75 day post-occupancy period, but your lender can't allow it, the entire transaction could fall apart.

“Most lenders will only allow sellers a rent back period of up to 30 or 60 days, depending on what their rules are.”

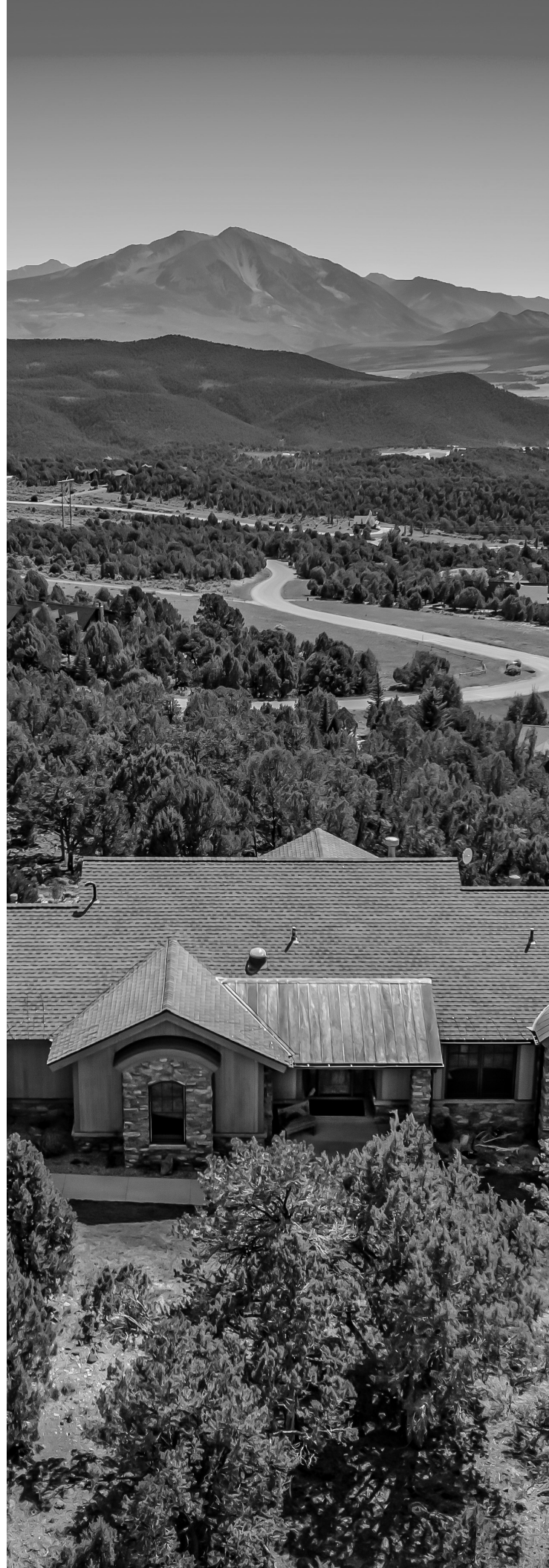


Strategic Thinking

Closing and possession dates are not just a technicality; they can be used as strategic negotiation tools in an offer. For example: if you are a buyer and need financing and have to close on the property within less than 60 in order to keep your interest rate locked, but the seller can't move out within 60 days, we could offer an additional post-occupancy period after closing for possession. That addresses both parties needs.

The Possession Penalty

Section 17 of the purchase contract has a blank spot for a dollar amount. This is the for the *possession penalty*, the daily rate the Seller agrees to pay if they fail to deliver Possession to the Buyer as agreed. Typically, this amount is set to be about double the local rate to stay in a hotel, although it varies and is negotiable.



Ultimately, moving from one property to another can be a logistical challenge for Buyer and Sellers, especially if the home is a primary residence. Accommodating a Buyer's loan needs or a Seller's unique timing may require some compromising. We will discuss what Closing and Possession dates work best for you first, then strategize whether offering something different is a helpful negotiation tactic. It is important to note that sometimes the opportunity or need for a Possession date different than Closing will come up during the transaction - that can happen if the buyer or seller has to purchase another property and the dates of their closing evolve or change. As my client we will, of course, discuss Closing versus Possession as they come up. Please feel free to reach out to me with any questions or concerns along the way!



SARA KURZ

Broker Associate

Aspen Snowmass Sotheby's International Realty
333 River Valley Ranch Drive, Carbondale CO 81623

970.379.2148

Sara.Kurz@SothebysRealty.com

www.SaraKurz.com

Aspen | Sotheby's
Snowmass | INTERNATIONAL REALTY

Original content by Sara Kurz, Longevity Designs LLC. All rights reserved.

Sotheby's International Realty® and the Sotheby's International Realty Logo are service marks licensed to Sotheby's International Realty Affiliates LLC and used with permission. Sotheby's International Realty Affiliates LLC fully supports the principles of the Fair Housing Act and the Equal Opportunity Act. Each office is independently owned and operated. Any services or products provided by independently owned and operated franchisees are not provided by, affiliated with or related to Sotheby's International Realty Affiliates LLC nor any of its affiliated companies. If your property is listed with a real estate broker, please disregard. It is not our intention to solicit the offerings of other real estate brokers.