



## **Leaseback Lunacy? Leaseback at Your Own Risk!**

*May 21, 2021*

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**The Question into the Legal Information Line often goes like this: *The listing agent on behalf of the seller asked if my client, the buyer, would consider a leaseback (a.k.a. post-possession lease) because the seller needed more breathing room (more time to move, close on another house, etc.). What should I do?***

Leasebacks prior to the pandemic were already risky, but doing so during the pandemic made the possibility of being stuck with a seller beyond the leaseback terms very real.

### ***Justice is Anything but Swift!***

It's extremely important the buyer is aware the process of regaining possession (eviction) takes money, effort and time. The buyer must understand how potential delays as a result of a holdover seller implicates their bottom line, such as, if the buyer's offer is financed, their loan may have owner-occupant timeframes which may be blown.

### ***Leaseback Agreements are Complex - "Winging it" is Reckless!***

It's not recommended that the agent, especially an agent who doesn't have experience with such types of leases, take on drafting the leaseback agreement. And fine, I know there are those that will argue with this and say: agents are permitted to prepare the lease but not the actual physical, financial and administrative management of the property. While this is true, the real question is - but should you. ***Remember! You are supposed to tell the client to obtain advice from experts for stuff that's beyond your expertise. Further, you always have to demonstrate reasonable care and skill.*** (NRS 645.254(6) and NRS 645.252(2), respectively). So what should you do if the buyer wants to throw caution to the wind and proceed?

### ***Best Practices - How to Handle if the Buyer Insists!***

- 1) **Loop your broker in.** Does your broker have a property management permit and/or experience in filling in leaseback agreements? If so, reach out for help! That's what they are there for.



- 2) **Get help from an agent with experience.** Does your brokerage have a property manager who can help? Or can you reach out to an experienced agent to handle the leaseback portion? You may have to compensate for the assistance, but it can go a long way to protecting your license which requires of you to exercise the reasonable care and skill expected of a real estate licensee (NRS 645.252(2)).
- 3) **Tell the buyer to get an attorney!** Let the buyer's attorney shoulder the legal liability and draft the terms of the leaseback - not you.

Resources:

- (1) National Association REALTORS® article on Leasebacks: [Nearly 20 Percent of Sellers Move Out After Leaseback Period \(nar.realtor\)](http://nar.realtor)
- (2) Nevada Real Estate Division's Informational Bulletin #012 on Property Management: [IB12PropertyManagement.pdf \(nv.gov\)](http://nv.gov)
- (3) Free Lawyer Referral Service through the Nevada State Review: [Lawyer Referral Service – State Bar of Nevada \(nvbar.org\)](http://nvbar.org)

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