



BUYER POSSESSION BEFORE CLOSING BROKER VERSION

What's the Purpose of the Buyer Possession Before Closing Agreement (Form 2A7-T)?

The Agreement is used when the parties to an Offer to Purchase and Contract (the "Contract") agree that possession of the seller's property will be given to the buyer before Closing. It is a short-term lease agreement.

When is the buyer entitled to possession when the parties sign the Agreement?

In the "Term of Possession" paragraph, the parties agree on the terms of the buyer's possession by specifying the date the buyer can take possession (the "Commencement Date"). The paragraph states that the term of possession will end at either Closing or termination of the Contract, whichever comes first.

Is the buyer required to pay rent to the seller and, if so, when?

In the "Rent" paragraph of the Agreement, the parties agree on the rent that the buyer must pay the seller for the right to possess the property before Closing. Any agreed-upon rent must be paid to the seller before the Commencement Date. In the paragraph, the parties also agree on the amount of any additional rent that the buyer must pay if the buyer is the Delaying Party under the Contract.

Are there limits on how long the buyer's term of possession may be when using the Agreement?

No, but the Agreement should not be used for long-term occupancy.

There is no commonly accepted definition of what counts as "long-term occupancy," but a good rule of thumb is any occupancy longer than 90 days.

Because of the many risks with buyer possession before Closing, the occupancy period shouldn't be longer than necessary.



Does the buyer have to pay rent if the Contract is terminated before the Commencement Date?

No. The Agreement states that the Buyer Possession Before Closing Agreement will end at Closing or the termination of the Contract, whichever comes first.

If the Contract is terminated before the Commencement Date, the buyer's right to possess the property is extinguished alongside the buyer's obligation to pay rent.

Ware the risks to the seller with buyer possession before Closing?

A major risk is that the seller's property can be damaged during the buyer's possession.

The Agreement and Contract both state that the risk of loss or damage to the property by fire or other casualty doesn't pass to the buyer until Closing. For this reason, even though the buyer is responsible for costs caused by themselves or their agents as outlined in the "Indemnity" paragraph of the Contract, the seller must maintain effective property insurance until the date of Closing.

The Agreement advises both buyers and sellers that they should confirm their property insurance coverage with an insurance professional before using the addendum. Sellers need to confirm that their existing coverage will remain in effect if their property is no longer owner-occupied.

CONFIRM INSURANCE COVERAGE

- Buyers & sellers: check with an insurance professional.
- Sellers: verify coverage continues when no longer owner-occupied.

The Agreement doesn't require the buyer to pay a security deposit. Thus, if a buyer damages the seller's property, and consequently refuses to close, it may be difficult for the seller to recover any damages beyond the buyer's Earnest Money Deposit.

The Agreement places obligations on the buyer during the term of buyer's possession including registering all utilities in the buyer's name, maintaining the lawn, and arrange for trash removal. If the buyer fails to fulfill any of these obligations, the seller's available remedies may not be practical because of the time and legal costs involved in pursuing those remedies.

It's possible that the buyer will refuse to complete the purchase while also refusing to vacate the property. This would force the seller to pursue a legal action to retake legal possession of the property. The fact that the parties are in a buyer-seller relationship, and not a purely landlord-tenant relationship, may deprive the seller of the expedited remedy of summary ejectment in small claims court and force the seller to pursue a far slower and more expensive eviction action in district court.

Listing agents should advise seller clients of the risks, recommend that their seller clients seek legal advice before proceeding with a buyer possession before closing agreement, and then confirm that recommendation in writing.

Are there any risks to the buyer with taking possession before Closing?

The "Buyer's Waiver and Acceptance of Property Condition" paragraph in the Agreement explains that by taking possession before Closing, the buyer waives certain rights granted in the Contract. This includes waiving any further Due Diligence rights granted in the Contract relating to the condition of the Property at Closing, and all rights if the property is not in governmental compliance.

By taking possession before Closing, the buyer agrees to maintain the "Property" in the same condition as on the Commencement Date. "Property" is a defined term in the Contract. Unless excluded by the parties' agreement, "Property" includes stoves, built-in appliances, and many other items.

The "Insurance on Buyer's Property" paragraph requires buyers to purchase and maintain a tenant's insurance policy throughout the buyer's term of possession. The policy must provide coverage for damage or loss to the buyer's personal property, and liability coverage for any bodily injury or property damage that the buyer may be liable for. A warning at the top of the form advises buyers to consult an insurance professional to confirm the terms of their coverage.

Are buyers allowed to make any changes to the Property before Closing?

Not without the seller's consent. The "Buyer's Obligation to Maintain Property" paragraph states: "Prior to Closing, Buyer shall not alter, modify or damage the Property... and shall make no changes in the Property, decorating or otherwise, without the written consent of Seller."



NO CHANGES

to the property before Closing

**UNLESS THE SELLER GIVES
WRITTEN CONSENT**



Does the seller keep the right to access the property if the seller agrees to buyer possession before Closing?

In North Carolina, landlords are only allowed to enter property they have leased to others if the lease agreement provides for a landlord's "right of entry." The Agreement doesn't include a "right of entry" provision. Even with a right of entry provision, seller access isn't guaranteed.

While sellers who sign a Buyer Possession Before Closing Agreement give up the right to access their own property, the "Action by Seller" and "Buyer's Obligation to Maintain Property" sections of the Agreement provide some limited exceptions. Those paragraphs mention that a seller will be able to access the property to complete any agreed-upon repairs or improvements, and to comply with any obligations imposed on the seller by law.