



## Who owns personal property that seller fails to remove?

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**QUESTION:** Paragraph 8(d) of Standard Form 2-T states: “Seller shall remove, by the date possession is made available to Buyer, all personal property which is not a part of the purchase and all garbage and debris from the Property.” Paragraph 6(d) of the Vacant Land contract (Form 12-T) contains a similar provision. If a seller fails to comply with the obligation to remove all non-sold personal property, does any personal property that is left behind automatically become the property of the buyer?

**ANSWER:** Eventual transfer of ownership to the buyer is one possibility. However, the buyer has no automatic right to ownership. While the seller’s failure to remove personal property is clearly a breach of contract, that breach does not automatically transfer ownership of any personal property left behind, and does not guarantee that buyer will ever become the owner of that property.

We have heard of several examples of this situation. In one transaction involving vacant land, a seller left behind a large piece of earth-moving equipment. In a residential transaction, a seller mistakenly failed to remove some china from a kitchen cabinet. In both cases, the personal property had significant value and the buyers were hopeful that they had received a windfall.

Legally, the rights and obligations of a buyer in situations like this will depend on the facts. For example, what if a seller intentionally leaves personal property behind? Under North Carolina law, if personal property is abandoned, the former owner is “divested” of title to that property. To establish abandonment, the buyer must have evidence of the seller’s intent to relinquish the property. Only if the buyer has that evidence should he or she assume ownership. In contrast, if the seller mistakenly leaves personal property behind, the transfer of possession would most likely be considered an “involuntary bailment.” While there is no case law in North Carolina on that subject, legal treatises (and cases in other states) have held that a party who acquires possession of personal property in such a circumstance does not become the owner of that property, but instead must “keep (the property) safely and... deliver it to the owner.” Buyers in these circumstances who treat the seller’s personal property as their own run the risk of liability to the seller if they lose, damage, or destroy that property.

Because of the uncertainty and risks associated with unremoved personal property, agents and their clients should take any steps necessary, including delaying closing, to ensure that all of seller’s personal property is removed. If the situation cannot be avoided, parties should be encouraged to seek legal advice to determine their rights and their obligations.

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