

What happens if the buyer and seller enter into a contract using Form 2-T and the property is damaged or destroyed by a casualty such as a fire before the transaction is completed?

According to paragraph 11, the **risk of loss or damage by fire or other casualty remains on the seller until closing.**

If, as a result of the casualty, the property is not in substantially the same condition at closing as on the date of the offer, the buyer has a choice to make: (i) terminate the contract and receive a refund of the earnest money deposit, or (ii) complete the transaction and be paid the proceeds of any insurance claim filed by seller on account of the casualty.

Should the seller keep the property insured until the deed is recorded?

YES! Paragraph 11 specifically provides the following: **“Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.”** As noted above, the risk of loss is on the seller until Closing, and since Closing is not complete according to paragraph 1(m) until the recordation of the deed and any deed of trust, the seller would be responsible for any damage to the property on account of any casualty taking place any time up until the [deed is recorded](#).

Should the seller keep the property insured if the buyer takes possession prior to Closing?

YES! Paragraph 9 of the Buyer Possession Before Closing Agreement (Form 2A7-T) specifically requires the **seller to maintain insurance on the property, as well as on any of the seller’s personal property remaining there**, and reaffirms the fact that the risk of loss by fire or other casualty remains on the seller until Closing.

Paragraph 8 of Form 2A7-T also requires the **buyer to acquire and maintain renter’s insurance on the property during the period of pre-closing occupancy**; that policy must include adequate coverage for bodily injury and property damage for which Buyer may be liable.

According to the “Warning” in Form 2A7-T, the **buyer and seller are both advised to confirm with an insurance professional the terms of coverage under their property and casualty insurance policy** before entering into a possession before closing agreement.



What happens if, instead of a casualty loss, the buyer discovers during the final walk-through that something on the property has broken down, such as the HVAC system?

Paragraph 11 also applies to situations where the **condition of the property changes in a material way after the date of offer but before Closing due to something other than a casualty.** For example, if the seller is unwilling or unable to fix or replace the HVAC system prior to Closing, the buyer may (i) terminate the contract and receive a refund of the earnest money deposit, or (ii) complete the transaction and be paid the proceeds of any insurance claim filed by seller on account of the breakdown of the HVAC system or other material change in the condition of the property.

It is important to note that the **buyer's obligation to complete the transaction is contingent on the property being "in substantially the same or better condition at Closing as on the date of [the] offer, reasonable wear and tear excepted."** Thus, the buyers' performance of the contract will only be excused if the change in the condition of the property is material. For example, nail holes in the walls revealed by the seller's removal of pictures would not be considered a [substantial or material change](#).



If the buyer takes possession early, is the seller still responsible for a change in the condition of the property?

As noted above, the **risk of loss by fire or other casualty remains on the seller until Closing.** However, under paragraph 2 of Form 2A7-T, **by taking possession early, the buyer accepts the Property in its condition at the commencement date of the buyer's early occupancy and waives the right to terminate the contract if the condition of the Property changes prior to Closing as a result of something other than a fire or other casualty.**

For example, if the HVAC system breaks down after the buyer has taken possession, the buyer may not terminate the contract if the seller refuses to fix or replace it.

If the seller fails to do what's necessary to return the property to substantially the same condition as it was on the date of the offer, is that a breach of contract by the seller that would entitle the buyer to terminate the contract and recover damages?

No. The **buyer has the right to terminate the contract**, but the basis of the termination would be the nonfulfillment of a condition of the contract rather than a breach of contract by the seller. The buyer would be entitled to a refund of the Earnest Money Deposit, but would not be entitled to a refund of any Due Diligence Fee or any costs associated with the [buyer's Due Diligence](#).

Does the contingency in paragraph 11 apply to personal property that is included as a part of the sale?

Under paragraph 1(c) of Form 2-T, the term “Property” includes any personal property listed in paragraph 3. According to paragraph 11, the **buyer’s obligation to complete the transaction is contingent on the “Property” being in substantially the same condition at Closing as on the date of the offer.**

Thus, if it is discovered prior to Closing that an item of personal property included in the sale (such as a refrigerator) is not in substantially the same condition as it was when the offer was made, the buyer arguably is not obligated to complete the transaction if the [seller fails to fix or replace it.](#)

If something happens to the property that’s covered under paragraph 11, can the buyer elect to terminate the contract right away?

Not necessarily. The seller would have until **Closing to restore the property to substantially the same condition it was in on the date of the offer.** However, if there is very strong evidence that the seller will not or cannot restore the property to substantially the same condition within the timeframe established by the contract (including the right to delay Settlement and Closing by up to fourteen days), the buyer may have the right to terminate the contract without having to wait.

Is it important for the buyer to do a final walk-through to confirm that the Property is in the same condition it was in on the date of the offer?

Yes. Paragraph 4(g) of Form 2-T states that “Closing constitutes acceptance of the Property in its then existing condition, unless provision is otherwise made in writing.”

For this reason among others, it is very important for a buyer to conduct a final walk-through to confirm that the property is in substantially the same condition as on the [date of the buyer’s offer.](#)



What happens if the Property is damaged as a result of the buyer’s inspection of the Property?

Paragraph 4(e) of Form 2-T obligates the buyer, at buyer’s expense, to repair any damage to the Property resulting from the activities of the buyer or the buyer’s agents and contractors.

However, the buyer is not responsible for damage caused by accepted practices by any NC-licensed professional who is performing a reasonable appraisal, test, survey, examination or inspection of the Property.