

# SELLER OBLIGATIONS BROKER VERSION

## What is the purpose of the seller obligations paragraph in Form 2-T?

Paragraph 8 lists a number of important things that the **seller agrees to do in connection with the sale of the property**. The list is not exclusive; the seller has other contractual obligations not listed in paragraph 8.

- For example, the seller is obligated to convey any personal property described in paragraph 3 and to include all fixtures as a part of the sale unless excluded in paragraph 2.

## Important things the seller agrees to do in connection with the sale of the property in order to “materially” comply or breach

Paragraph 8(n) states that if the seller fails to materially comply with any of the obligations listed in paragraph 8, or materially breaches the contract, it gives the buyer certain rights. Whether or not a breach is “**material**” will depend on the circumstances. In general, a **breach of contract is “material” if it has influence or effect on the transaction that is not insubstantial**. For more information, see the article on Breach of Contract.

## In paragraph 8(c) what is considered “reasonable access” to the Property through Closing or possession by the buyer?

The seller must allow the buyer and the buyer’s agents or representatives the following opportunities: (i) to conduct Due Diligence, (ii) to verify the satisfactory completion of negotiated repairs/improvements, and (iii) to conduct a final walk-through.

Although the buyer has a reasonable right of access to the property through Closing, after the Due Diligence Period ends, the buyer’s right to terminate the contract as a result of the buyer’s investigation of the property is limited. **See the NOTE at the end of paragraph 8(c) of Form 2-T.**

Some inspection activities might be considered unreasonably invasive (removing flooring or sheetrock walls, digging large holes, etc.) and should be conducted only with the [seller’s consent](#).

The seller’s duty to provide reasonable access includes **providing existing utilities operating at [seller’s expense](#)**.

Responsibility for any costs associated with putting a pool/spa in operable condition so that it may be properly inspected, and any costs associated with any necessary re-winterizing of the pool/spa following any inspection(s), may be agreed upon by the parties using the [Pool/Spa Inspection/Preparation provision in form 2A11-T](#).

### In paragraph 8(f), under what circumstances must a seller designate a lien agent?

If a building or other permit has been issued for the property, the **Seller is required to have appointed a Lien Agent** unless the anticipated cost of the project permitted is expected to be under \$30,000.00, or if the improvements were made to a single-family residence which is occupied by the Seller. For more information, see **Guidelines for Completing the [Offer to Purchase and Contract, paragraph 8\(e\)](#)**.

A lien agent will most often be needed in transactions involving sales of new construction and sales by investors who purchase and make significant improvements to the property being sold. However, the laws permitting the filing of mechanics', laborers', and materialmen's liens still apply to the sale of an existing single-family residential dwelling unit used by the owner as a residence, and to projects under \$30,000.00. The **seller therefore is obligated** under paragraph 8(e) to verify that persons who have recently **furnished labor, services, materials, or rental equipment to the property have been paid**.



### In paragraph 8(g), the first Note states that the buyer's failure to conduct a survey prior to the end of the Due Diligence Period doesn't relieve the seller of the obligation to deliver good title. What does that mean?

if the **seller is unable to comply with the obligation to deliver "good title" at Settlement, the Buyer still has the right to terminate the contract** even if the problem with the seller's title would have been revealed by a survey performed during the Due Diligence Period.

There is no added risk to obtaining a survey during the due diligence period. If that survey reveals an encumbrance or defect, the buyer is not obligated to terminate the contract during the Due Diligence Period in order to receive a refund of their Earnest Money Deposit if the seller can't fix the problem. For an explanation of the reasons why a buyer should consider conducting a survey prior to the end of the Due Diligence Period, [see the article on Due Diligence Period](#).

### When may the buyer terminate a contract if there is a problem with the seller's title?

The **seller is obligated to deliver good title to the property no later than Settlement**. Thus, if it is possible that the seller can fix the title problem by the Settlement Date (or during the Delay in Settlement period), it likely would be premature for the buyer to terminate for breach of [contract prior to that time](#).

### **In paragraph 8(i), what are “Buyer’s expenses associated with the purchase of the Property” that the seller may pay?**

Examples of such expenses listed in the Guidelines for Completing the Offer to Purchase and Contract (Form 2G) are “discount points, loan origination fees, appraisal fees, attorney’s fees, inspection fees and loan “pre-paids” (taxes, insurance, etc.)” However, the wording is broad and could well include other expenses the buyer may incur in connection with purchasing the property.

The seller is not obligated to pay buyer expenses that the buyer’s lender will not permit. The amount inserted in the blank includes any FHA/VA lender and inspection costs the [buyer isn’t allowed to pay](#).

As stated in the Note in paragraph 8(i), it is important for a buyer who intends to obtain an FHA or VA loan to include in the blank in paragraph 8(i) the amount of any costs that cannot be paid by the buyer in order to avoid a possible problem with [obtaining the loan](#).

### **In paragraph 8(j), is the seller responsible for paying a “transfer fee” charged by an association management company?**

If the “transfer fee” is a fee for updating the association’s records to reflect the transfer of the property from the seller to the buyer, the fee is the seller’s responsibility.

It is important to understand the way in which Form 2-T allocates responsibility for the payment of the various fees imposed by an owner association or its management company. The buyer is only responsible

for the fees that are listed in paragraph 6(b). These include fees for providing information required by the buyer’s lender and fees charged for the buyer’s future use and enjoyment of the property. On the other hand, the seller’s responsibility for the payment of association fees includes any fee not allocated to the buyer in paragraph 6(b). A fee for updating the association’s records to reflect the change in ownership is not covered under paragraph 6(b) and therefore is the [responsibility of the seller](#).

### **In paragraph 8(k), is the seller responsible for a special assessment that is approved by an owners’ association after the property goes under contract but before Settlement?**

Yes, because the special assessment became a “Confirmed Special Assessment” when it was approved by the owners’ association, and the seller is responsible for paying all Confirmed Special Assessments. For more information on this subject, see the article on Special Assessments.

### **In paragraph 8(m), can a buyer terminate the contract if an inspection reveals that an agreed-upon repair has not been properly made?**

Ultimately, yes. However, if a seller in good faith has attempted to complete the repair, and is willing and able to complete it in a good and workmanlike manner prior to Settlement, the failure to do so on the first attempt would not give the [buyer a right to terminate](#). The buyer is responsible for the cost of all inspections, which would include any re-inspections needed to confirm that the agreed-upon repairs have [been property made](#).