

**GUIDELINES FOR COMPLETING BUYER POSSESSION BEFORE CLOSING AGREEMENT
(Standard Form 2A7-T)**

The Buyer Possession Before Closing Agreement (Form 2A7-T) (the “Agreement”) provides protections to Buyers and Sellers when a Buyer takes possession of the Property prior to Closing. As the warnings at the top indicate, the Agreement should only be used for short-term occupancy by Buyer, because the Agreement does not address many issues typically encountered in a landlord-tenant relationship. In this guide, paragraph numbering is identical to the Agreement for ease of reference.

1. **Term of Possession/Access by Seller/Mean of Access.** As a rule of thumb only, if Buyer will be taking possession more than 90 days prior to Closing, then the parties should strongly consider using the Residential Rental Contract (Form 410-T) or have an attorney draft a Buyer possession agreement. If Form 410-T is used instead of the Agreement, then brokers should encourage their clients to consult with a lawyer or have an addendum drafted to address issues that are outlined in the Agreement but not Form 410-T. For example, Form 410-T does not speak to Buyer’s waiver of further Due Diligence rights upon taking possession of the Property. Agents should note that 90 days is merely a suggestion and a guide. If the parties agree to a Term longer than 90 days then that longer term will be binding upon the parties and subject to the terms and conditions of the Agreement regardless of this guidance.

Under North Carolina law, a landlord may not enter a leased premises unless they have reserved a right of entry in the lease. This paragraph of the Agreement provides the Seller with a limited right to enter the Property during the Term. Other lease agreements, such as Form 410-T, have a more permissive right of entry. Listing agents should raise this issue with Seller and ensure that the right of entry is appropriate for Seller’s needs.

2. **Buyer’s Waiver and Acceptance of Property Condition.** This paragraph explains that the Buyer, by signing the Agreement, is: (1) forfeiting any Due Diligence rights under paragraph 4 of the Offer to Purchase and Contract (Form 2-T; the “Contract”); and (2) waiving the condition of the Property contingency in paragraph 11 of Form 2-T. The waiver of Due Diligence rights includes, but is not limited to, Buyer’s ability to conduct inspections and the option to terminate during the Due Diligence Period. The obligation to complete any repairs agreed to between the parties, however, remains binding on the Seller.
3. **Buyer’s Obligation to Maintain Property.** This paragraph imposes four duties on Buyer during the Term: (1) the duty not to modify, alter, or damage the Property; (2) the duty to maintain the Property as it was on the Commencement Date; (3) the duty to make no changes to the Property, decorating or otherwise, without written consent from the Seller; and (4) the duty to return the Property to Seller in the same condition as it was on the Commencement Date if Closing does not occur.

Though Buyer has a duty to maintain the Property, certain maintenance will remain the duty of the Seller by law (NCGS Chapter 42), such as making sure the Property is fit and habitable and providing operable smoke alarms. Agents should note that if fire or other casualty damages the Property during the Term, then the responsibility for the loss is on the Seller.

4. **Rent.** The amount of rent in the Agreement is a lump sum that is not payable in monthly or weekly installments. It is therefore very important that the lump sum in the first blank reflect all the money Seller expects for the entire Term. If Buyer is the reason Settlement or Closing is delayed, the second blank gives Seller the right for additional rent per day. This per-day additional rent is separate and above the fee stated in paragraph 5, discussed next.
5. **Termination of Possession.** If the Contract terminates, Buyer must vacate the Property immediately and return all means of access to Seller. If Buyer does not immediately vacate, then Seller will need to take action to evict Buyer. The first step is to demand possession of the Property, preferably in writing. No particular form of writing is necessary. Any ordinary means of written or electronic communication with the Buyer will suffice. Once possession has been demanded, Seller may take the second step and institute a summary ejectment action, which is the sole remedy to obtain possession under North Carolina law. Summary ejectment cases are typically brought in small claims court, which is a subdivision of North Carolina District Court and designed to be used by laypeople. Nevertheless, if there is any sort of complexity in the transaction related to the Agreement or the Contract, such as a repair dispute between Buyer and Seller causing the parties to become entrenched, then the services of an attorney should be consulted. Agents are advised that unless they have experience seeking summary ejectment as part of a property management practice, then summary ejectment should be left to Seller or their legal counsel to pursue.

Buyer’s holding over and not turning over possession will trigger the daily fee specified in the blank in this paragraph. Note that payment of the holdover fee in this paragraph does not give Buyer the right to remain in possession indefinitely so long as they pay the fee. The fee is to offset Seller’s estimated damages should Buyer refuse to vacate. It is therefore strongly recommended that this



blank be filled with a reasonable monetary amount reflecting these potential damages. Nominal fees are rarely appropriate, but will nevertheless be enforceable if put in the blank.

6. **Utilities.** Under the Contract, Seller is obligated to pay for utilities until Closing. This paragraph of the Agreement alters Seller's obligation in writing and shifts responsibility to Buyer. Once utilities are transferred to Buyer, Seller's responsibility for utilities on the Property ends.
7. **Lawn Maintenance; Trash.** See paragraph 3 of this guide for more general guidance on Buyer's responsibility to maintain the Property until Closing.
8. **Insurance on Buyer's Property.** This paragraph explains Buyer's duty to insure their personal property and maintain insurance for bodily injury and property damage for which Buyer may be liable. As explained below in paragraph 10 of this guide, Buyer's insurance must be sufficient to indemnify Seller if a claim is brought against Seller for which Buyer should be liable. Generally speaking, "indemnify" means that Buyer, or their insurer, must pay for any costs, fees, expenses, or damages incurred by Seller if Seller has to defend against a claim brought by a third party due to the fault of Buyer.
9. **Insurance on Seller's Property.** This section reiterates that Seller is responsible for the risk of loss to the Property due to fire or other casualty. However, not only must Seller maintain insurance for risk of loss, but also Seller must insure any of their personal property that may still be on the Property.
10. **Buyer's Indemnification.** This paragraph is perhaps best explained with an example. Suppose Buyer takes possession, and during the Term, a third party is injured on the Property. If the third party sues Seller, then Buyer will be obligated to reimburse Seller's costs for defending against the lawsuit under this paragraph. If this situation or something similar arises, agents should direct their clients to seek legal counsel in order to be advised of their rights.
11. **Subletting; Assignment.** Subleasing is defined as a tenant entering into a lease agreement with a subtenant for the same premises that tenant is renting. Under the Agreement, subleases and subleasing are not permitted and will constitute a breach.
12. **Association Dues and Charges.** Under this paragraph, Seller continues to be responsible for regular HOA dues and costs. Agents should note that nothing in this paragraph alters Buyer's or Seller's obligations regarding Special Assessments, and those provisions in Form 2-T will continue to be binding during the Term.
13. **Pets.** If Seller wants to put a limit on the number of pets, then this paragraph will need to be amended, either by handwritten amendment on the form itself or by an addendum. Listing agents should discuss this paragraph with Seller with an eye toward the respective positions the parties will be in if the Property does not Close.
14. **Eviction.** This paragraph makes clear that if either the Contract or the Agreement are breached, Buyer may face a summary ejectment action. Seller must pursue summary ejectment in court if Seller wishes regain possession. Changing locks and other methods of self-help eviction are not permitted under North Carolina law.
15. **Costs of Legal Proceedings.** Should either party bring legal action against the other, the prevailing party may petition the court for reimbursement of their legal costs. This mechanism may be an important tool in resolving disputes between Buyer and Seller, and the parties may need a reminder of the risks should they breach the Agreement and suffer a judgment against them in court.