

# NEW CONSTRUCTION ADDENDUM BROKER VERSION

## What is the purpose of the New Construction Addendum (Form 2A3-T)?

Form 2A3-T is designed for the sale of a newly-constructed “spec” dwelling built by the seller, or a contractor hired by the seller, on property owned or to be owned by the seller. Form 2A3-T should be used as an addendum to the Offer to Purchase and Contract (Form 2-T).

Form 2A3-T should NOT be used unless construction of the dwelling is completed or very nearly completed, or if the agreement between the buyer and seller includes the construction of significant additional improvements.

## If construction has been completed, what is the purpose of attaching Form 2A3-T to an offer?

Paragraph 6 of Form 2A3-T includes a one-year builder’s warranty. Although in certain circumstances, the law recognizes the existence of an implied warranty of workmanlike construction and no major structural defects, there is no one-year builder’s warranty required by law. The inclusion of an express builder’s warranty in the contract offers important [additional protection to the buyer](#). Another reason to include Form 2A3-T as a part of the offer is because paragraph 7 addresses insulation disclosure required by Federal Trade Commission [regulation for new home sellers](#).

## If the seller engaged a general contractor to construct the dwelling, should the general contractor sign form 2A3-T?

**Yes.** If the general contractor is someone other than the seller, the general contractor should sign in the place provided for the limited purpose of agreeing to be responsible for the warranty obligations set forth in paragraph 5.



## May Form 2A3-T be used if construction of the dwelling is completed, but the seller and buyer agree that the builder will make minor additional improvements; for example, finishing a bonus room with sheet rock, paint and carpet?



**Yes.** Additional Improvements should be described in detail in paragraph 2(a).

If significant additional construction will take place, whether it’s completion of the dwelling or the construction of additional improvements, the parties should use the Offer to Purchase and Contract—New Construction (Form 800-T) to put the property under contract, because Form 800-T contains more detailed provisions regarding the construction process than Form 2A3-T.

**Settlement can be delayed by up to 14 days**

1	2	3	4	5	6	7
8	9	10	11	12	13	14

Closing/Possession will not occur until after Settlement

**Possession Before Closing Agreement (Form 2A7-T)**  
allows possession of the property on specific date.

**If the parties agree that Additional Improvements will be made, what happens if there is a delay in Settlement/Closing caused by a delay in the completion of the Additional Improvements?**

As a general rule, if a party is unable to complete Settlement and Closing within 14 days after the Settlement Date, that party would be considered a “Delaying Party” and the other party could terminate the contract according to paragraph 12 of Form 2-T.

However, according to paragraph 3 of Form 2A3-T, if the seller/builder is delayed in the completion of any Additional Improvements for any one of the four reasons listed in paragraph 3, the Settlement Date is automatically extended by a reasonable time to account for the delay experienced.

Note that the seller/builder must notify the buyer in writing within five days of the commencement of the delay, or the right to an extension is waived.

**What is the purpose of the Building Deposit?**

According to paragraph 5(b) of Form 2A3-T, the purpose of the Building Deposit is for the seller to use in the construction of any Additional Improvements that will be made.

The Building Deposit is due and payable no later than the first business day following the end of the Due Diligence Period, and is refundable only in limited circumstances.

Even if the Building Deposit is refundable, actual recovery of the Deposit may be difficult, time-consuming and/or costly if the seller is unable or unwilling to voluntarily refund it. The buyer should take this into account in deciding whether and how much Building Deposit the buyer will agree to pay. See the warning at the end of paragraph 5 of Form 2A3-T

**Construction of the Dwelling**

**Form 800-T**

Contains details about construction process

**2A3-T/ 2-T**

NOT for significant additional construction