

RISK OF LOSS/DAMAGE TO PROPERTY

CONSUMER VERSION

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.”**

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 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 EMD, 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.



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.

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.