

## GUIDELINES FOR COMPLETING SELLER POSSESSION AFTER CLOSING AGREEMENT (Standard Form 2A8-T)

The Seller Possession After Closing Agreement (Form 2A8-T) (the "Agreement") provides protections to Buyers and Sellers when a Seller retains possession of the Property after Closing. As the warnings at the top indicate, the Agreement should only be used for short-term occupancy by Seller, 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 reading.

1. **Term of Possession/Access by Buyer/Mean of Access.** As a rule of thumb only, if Seller will be maintaining possession for more than 90 days post-Closing, then the parties should strongly consider using the Residential Rental Contract (Form 410-T) or have an attorney draft a Seller 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 different in the Agreement compared to Form 410-T. For example, Form 410-T does not require a tenant to fix appliances as discussed in paragraph 2 below. 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 Buyer 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. Buyer agents should raise this issue with Buyer and ensure that the right of entry is appropriate for Buyer's needs.

2. **Seller Acknowledgement of Property Condition and Obligation to Maintain Property.** This paragraph explains that Seller, by signing the Agreement, is affirming that all systems and appliances are in good working order except those specifically excluded in the blanks. This paragraph further imposes several duties on Seller: (1) the duty to maintain the Property as it was on the date of Closing; (2) the duty to make no changes to the Property, decorating or otherwise, without written consent by Buyer; and (3) the duty to pay for any costs to restore the Property to its same condition as at Closing.

Though Seller has a duty to maintain the Property and a duty to restore it in some cases, certain maintenance will remain the duty of Buyer by law, such as making sure the Property is fit and habitable and providing operable smoke alarms. Agents should note that if fire or other casualty post-Closing damages the Property, then the Agreement shifts responsibility for the loss to Buyer, which is an exception to Seller's obligation to restore the Property should it be damaged post-Closing.

3. **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 blank reflect all the money Buyer expects for the Term.
4. **Termination of Possession.** Seller must vacate the Property and return all means of access to Buyer at the end of the Term. If Seller does not timely vacate, then Buyer will need to take action to evict Seller. 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 Seller will suffice. Once possession has been demanded, Buyer 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 maintenance 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 Buyer or their legal counsel to pursue.

Seller'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 Seller the right to remain in possession indefinitely so long as they pay the fee. The fee is to offset Buyer's estimated damages should Seller 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.

5. **Utilities; Lawn Maintenance; Trash.** This paragraph maintains Seller's responsibility to keep the utilities in Seller's name. When Seller vacates the Property, Seller's responsibility for utilities will end. See paragraph 2 of this guide for more general guidance on Seller's responsibility to maintain the Property, which are in addition to the lawn maintenance and trash removal outlined in this section.



6. **Removal of Seller's Property.** In addition to the routine removal of trash noted in paragraph 5 of the Agreement, Seller must remove any and all garbage on move out while also removing any personal property.
7. **Insurance on Seller's Property.** This paragraph explains Seller's duty to insure their personal property and maintain insurance for bodily injury and property damage for which Seller may be liable. As explained below in paragraph 9 of this guide, Seller's insurance must be sufficient to indemnify Buyer if a claim is brought against Buyer for which Seller should be liable. Generally speaking, "indemnify" means that Seller, or their insurer, must pay for any costs, fees, expenses, or damages incurred by Buyer if Buyer has to defend against a claim brought by a third party against Buyer that is the fault of Seller.
8. **Insurance on Buyer's Property.** This section reiterates that Buyer is responsible for the risk of loss to the Property due to fire or other casualty and must maintain insurance. However, not only must Buyer maintain insurance for risk of loss, but also Buyer must insure any of their personal property that may be on the Property.
9. **Seller's Indemnification.** This paragraph is perhaps best explained with an example. Suppose Seller remains in possession of the Property under the Agreement, and during the Term, a third party is injured on the Property. If the third party sues Buyer, then Seller will be obligated to reimburse Buyer'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.
10. **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.
11. **Association Dues and Charges.** Under this paragraph, responsibility for regular HOA dues and costs shifts to the Buyer at Closing. Agents should note that nothing in this paragraph alters Buyer's or Seller's obligations regarding Special Assessments.
12. **Pets.** If Buyer 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. Buyer agents should discuss this paragraph with Buyer with an eye toward summary ejectment, should it become necessary.
13. **Eviction.** This paragraph makes clear that if the Seller breaches the Agreement then Seller may face a summary ejectment action. Buyer must pursue summary ejectment in court if Buyer wishes obtain possession. Changing locks and other methods of self-help eviction are not permitted under North Carolina law.
14. **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.