

BUYER REPRESENTATIONS & OBLIGATIONS: BROKER VERSION

What is the purpose of the “Buyer Representations” paragraph in Form 2-T?

The first three representations required in paragraph 5 are statements regarding current facts that the seller may reasonably rely upon in deciding whether to enter into a contract with the buyer. If, before settlement, the **seller determines that any of those representations were not true, that fact could provide the seller with a legal basis to terminate the contract.**

Why is the buyer required to represent the buyer’s intentions regarding obtaining a loan to purchase the property?

A buyer’s intentions regarding obtaining a loan, and the type of that loan, are factors that a seller will likely consider in deciding whether to enter into a contract with the buyer. If there are competing offers, the expressed intentions of the competing buyers are factors that the seller will likely consider.

If a buyer discloses an intent to obtain a loan, the buyer must also disclose both the type of loan the buyer intends to obtain (choices include conventional loans, FHA loans, VA loans and others), whether the loan will be a fixed or adjustable rate loan, and the term and maximum initial interest rate of the loan.

If the buyer must obtain a loan in order to purchase the property, is that a material fact that must be disclosed?

If the buyer’s agent knows, or reasonably should know, that the buyer must obtain a loan in order to complete the purchase, **that is a material fact that must be disclosed** to the seller because it relates directly to the buyer’s ability to complete the transaction.



If a buyer represents that there is no intention to obtain a loan, can the buyer later decide to seek financing?

Yes. The representation made in paragraph 5(a) is merely a statement of the buyer’s intent at the time the representation is made.

If the buyer is acting in good faith when the representation is made, it would not be a breach of contract for the buyer to seek financing after the parties are under contract. However, if a buyer misrepresents their intent to pay cash, that is arguably a breach of contract and could potentially lead to the loss of the buyer’s [earnest money deposit](#).

If the buyer represents an intention to obtain one type of loan, can the buyer seek different financing?

Yes. A representation made in paragraph 5(a) regarding the type of loan the buyer intends to obtain is merely a statement of the buyer's intent at the time the representation is made.

If the buyer later decides to seek a different form of financing, that would not be a breach of contract unless the buyer was not acting in good faith when the initial [representation was made](#).

If the buyer represents that there is no intention to obtain a loan, should the seller take any action to verify buyer's ability to pay?

Yes. The note at the end of paragraph 5(a) advises that if the buyer does not intend to obtain a new loan, the seller should, prior to signing the buyer's offer, obtain documentation from the buyer which demonstrates that the buyer will be able to close on the purchase without the necessity of obtaining a new loan.

Why is the buyer required to represent whether the buyer has to sell or lease other property in order to complete the purchase?

A buyer's need to sell or lease other real property in order to complete the purchase, and the current status of the needed sale or lease, are additional factors that a seller will likely consider in deciding whether to enter into a contract with the buyer.

If the buyer discloses that other real property must be sold or leased, paragraph 5(b) obligates the buyer to identify that other property, to disclose whether that other property is already under contract and, if not, whether that other property is currently listed for sale or lease with a licensed real estate broker.

If the buyer must sell or lease other property in order to complete the purchase, is that a material fact that must be disclosed?

If the buyer's agent knows, or reasonably should know, that the buyer must sell or lease other property in order to complete the purchase, **that is a material fact that must be disclosed** to the seller because it relates directly to the buyer's ability to complete the transaction.

Why does paragraph 5(c) require the buyer to make an additional representation regarding the buyer's financial ability to complete the purchase?

Before entering into a contract, a seller is entitled to know if there are any circumstances or conditions that the buyer is aware of that would prohibit the buyer from performing buyer's financial obligations set forth in the contract. For example, the buyer may not have access to the funds necessary to pay the due diligence fee and/or the initial earnest money deposit. Seller is entitled to rely on the buyer's representation in paragraph 5(c) that no such circumstances or conditions exist.

The representation in paragraph 5(c) is made to the best of buyer's knowledge. This means it includes only facts known to the buyer at the time the representation is made.

Why is the buyer required to make two additional representations regarding the buyer's receipt of the mandatory disclosure statements?

Paragraphs 5(d) and 5(e) require buyers to represent whether they have received a Residential Property and Owners' Association Disclosure Statement (the "RPOADS") and a Mineral and Oil and Gas Rights Mandatory Disclosure Statement (the "MOG") prior to signing their offer.

The RPOADS and the MOG are disclosure forms created by the North Carolina Real Estate Commission pursuant to North Carolina's Residential Property Disclosure Act (the "Act"). With some exceptions, the Act requires owners of "residential real property" (defined in the Act to include single-family homes, individual condominiums and town-homes, and buildings with up to four dwelling units) to furnish buyers with two disclosure statements no later than the time the buyer makes an offer. The RPOADS and the MOG are the only forms approved for this purpose.

The RPOADS and the MOG provide sellers with the ability to make certain disclosures regarding the property being sold. However, the forms also permit sellers to check "no representation" boxes in response to the questions posed in those forms.

If the RPOADS and the MOG are not delivered to the buyer prior to or at the time the offer is made, the buyer may cancel the contract. However, the buyer's right to cancel the contract expires if it is not exercised within the time frames set forth in paragraphs 5(d) and 5(e).

The Act exempts certain transfers from the obligation to provide the RPOADS and the MOG. Those exemptions are listed in the Guidelines for Completing the Offer to Purchase and Contract (Standard Form 2-G). The exempted transfers apply to both disclosure statements except three that only apply to the RPOADS: transfers involving the first sale of a dwelling never inhabited, lease with option to purchase contracts where the lessee occupies or intends to occupy the property, and transfers where the parties have agreed not to complete the RPOADS.

Is a seller of vacant land required to provide the RPOADS and MOG disclosures?

No. The obligation to provide both disclosure statements is set forth in the Act. As its name implies, the Act only applies to transfers of residential property. Owners of unimproved property are not required to [provide either disclosure](#).

What is the purpose of the "Buyer Obligations" paragraph in Form 2-T?

Paragraph 6 of Form 2-T sets forth the financial obligations that a buyer will have, in addition to the obligation to pay the Purchase Price, if the parties enter into a contract.

Paragraph 6(a) states that the buyer will be obligated to pay any Proposed Special Assessments.

Paragraph 6(b) lists a number of additional costs that will be the buyer's responsibility.

What are Proposed Special Assessments?

Special Assessments and Proposed Special Assessments are both defined in paragraph 1(n) of Form 2-T. Proposed Special Assessments are those Special Assessments that are under formal consideration but which have not yet been approved prior to Settlement.

An article discussing the difference between Proposed Special Assessments and Confirmed Special Assessments is available [here](#).

What are the additional costs that the buyer will be responsible for paying?

Paragraph 6(b) lists nine categories of costs that will be the buyer's responsibility once a contract is signed. They include the costs associated with any loan the buyer obtains in connection with the transaction, including any charges that an owners' association or its management company might assess for providing information required by the lender.

The buyer will also be responsible for any charges required by an owners' association declaration to be paid by a buyer for the buyer's future use and enjoyment of the property. Examples include membership fees, and charges for the buyer's use of common elements such as a swimming pool.

Paragraph 6(b) makes the buyer responsible for costs of any appraisal, title search and title insurance obtained by the buyer, any fees for recording the deed, and any attorney fees charged by a closing attorney to prepare the Closing Disclosure, the Seller Disclosure and any other [settlement statement](#).