



Is Form 2A12-T Required in All Sales of New Construction

Release Date: 07/29/2021

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QUESTION: If my client is selling a new construction home, is an Owners' Association Disclosure Addendum (Standard Form 2A12-T) required?

ANSWER: Not necessarily. Standard Form 2A12-T is only required in the sale of a new construction home if the buyer and seller agree by contract to make it a requirement.

The fact is that while completion of a Residential Property and Owners' Association Disclosure Statement (the "RPOADS") is required by statute in the sale of most residential property, there is an exemption in that statute (see NCGS § 47E-2(b)(1)) for "transfers involving the first sale of a dwelling never inhabited." Because of that exemption, when NC REALTORS® created its standard Offer to Purchase and Contract - New Construction (Standard Form 800-T), the decision was made to include a disclosure requirement in the contract. This requirement was designed to provide a buyer of a new construction home the same information about an owners' association that they would receive when buying a resale home.

Paragraph 9(c) of Form 800-T includes a representation by the seller regarding whether ownership of the property will subject the buyer to regulation by one or more owners' associations. Paragraph 9(c) concludes: "If there is an owners' association, then an Owners' Association Disclosure and Addendum... (Standard Form 2A12-T) shall be completed by Seller, at Seller's expense, and must be attached as an addendum to this Contract.

Note the words "shall" and "must" in the foregoing sentence. If a buyer and seller use Form 800-T, and don't delete that sentence, and if the property is subject to regulation by an owners' association, then Standard Form 2A12-T will indeed be required. However, if the parties use a different form of contract, for example a contract proposed by a builder, or if the parties use Form 800-T and strike out the last sentence of paragraph 9(c), then Standard Form 2A12-T will not be required.

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