



Who pays for de-winterizing and re-winterizing the pool?

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QUESTION: I will be taking a listing on a property next month that has a swimming pool. The owner plans on having it winterized soon, which involves a fair amount of work, including lowering the water level, draining all the pipes and filling them with pool antifreeze, removing ladders and other non-permanent items, and putting on the pool cover. My question is, if we get the property under contract and the buyer wants to have the pool inspected, who is responsible for the cost of de-winterizing and re-winterizing the pool?

ANSWER: If the Offer to Purchase and Contract (Form 2-T) is used to put the property under contract, it's clear enough that the buyer will be responsible for the cost of any inspections of the pool. However, what is perhaps not so clear is whether the buyer's responsibility to pay for the costs of inspections includes the costs of de-winterizing and re-winterizing the pool, or whether such costs are part of the seller's obligation to provide reasonable access to the property to allow the buyer to conduct inspections. Although the seller's obligation to provide existing, working utilities operating at seller's cost includes "any connections and de-winterizing," as noted above, de-winterizing a pool includes more than simply restoring utility service to the pool. Thus, we don't believe the wording in paragraph 8(c) makes the seller responsible for all costs of de-winterizing and re-winterizing a pool.

Because Form 2-T doesn't clearly address the parties' responsibilities regarding the costs of de-winterizing a pool, a new "Pool/Spa Inspection/Preparation" provision was added to the Additional Provisions Addendum (Form 2A11-T) effective July 1, 2020. In addition to reiterating the buyer's responsibility for the cost of any inspections the buyer may choose to conduct, the new provision enables the parties to negotiate which of them will be responsible for any costs associated with both putting the pool in operable condition so that it may be properly inspected, and re-winterizing it following any inspections. It should be noted that if the provision is selected but neither the "Seller" nor "Buyer" box is checked, the buyer will be responsible by default for any de-winterizing and re-winterizing costs.

It is recommended that this provision be included as a part of any contract involving the sale of a property that includes a pool or spa that has been winterized should the buyer decide to have it inspected.

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