



SELLER REPRESENTATIONS BROKER VERSION

What is the purpose of the seller representations paragraph in Form 2-T?

The seller's representations in paragraph 7 are statements of current facts by the seller that the buyer may consider to be important in deciding whether to enter into a contract. Although the buyer may be entitled to rely on the seller's representations for purposes of making an offer, if the property goes under contract, it is recommended that the buyer independently verify the accuracy of the seller's representations during the Due Diligence Period. This is because the buyer would not necessarily have a legal claim against the seller for damages or rescission of the transaction if, after closing, the buyer discovers that a seller representation was inaccurate.

Why must the seller represent in paragraph 7(a) that the seller has owned the property for less than or more than one year?

The period of time the seller has owned the property may affect a buyer's ability to obtain mortgage financing. Some **lenders require proof that the property is not being "flipped"** from one purchaser at a lower price to another purchaser at a higher price within a specified period of time.

Any lender issues concerning the seller's term of ownership should be resolved by buyer with the lender during the Due Diligence Period.

Why is there a check-box in paragraph 7(a) for seller to represent that the seller doesn't yet own the property?

A seller can enter into a binding contract to sell property the seller doesn't yet own. For example, the seller may have acquired an option to purchase the property or may have it under contract.

The fact that the seller doesn't yet own the property is a material fact that must be disclosed by a real estate broker because the ability of the seller to complete a transaction with the buyer is obviously affected by the seller's ability to acquire title to the property.

The consequences of the seller's inability to complete the transaction with the buyer due to the seller's inability to first obtain title should be addressed in an attorney-drafted contingency that is made a part of any contract with a buyer.

Statements of current facts by the seller that the buyer may consider to be important in deciding whether to enter into a contract

The buyer should independently verify the accuracy of the seller's representations during the Due Diligence Period, including, seller's term of ownership.

The period of time the seller has owned the property. The seller may not yet own the property.

When is housing considered to have been “built” for purposes of having to provide the Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum (Form 2A9-T)?

According to HUD and EPA’s *Guidance on the Lead-Based Paint Disclosure Rule* (Part I, August 21, 1996), housing built before 1978 (called “Target Housing”) means housing for which a construction permit was obtained before January 1, 1978, or if no permit was obtained, housing in which construction was started before January 1, 1978.

Thus, although construction may have been completed after January 1, 1978, if a construction permit was obtained for the house *before* January 1, 1978 or if construction commenced *before* January 1, 1978, the lead-based paint disclosure rule would apply and the seller should complete the Addendum.

If the **permit is no longer available, it is recommended that the seller complete the Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum** to [be on the safe side](#).

Lead-Based Paint Disclosure Rule

if the construction permit was obtained for the house or if construction commenced before
January 1, 1978

Are there any exemptions to the lead-based paint disclosure requirements?

Yes, but they are much more limited than the exemptions in the NC Residential Property Disclosure Act (which apply to the Residential Property and Owners Association Disclosure Statement and Mineral and Oil and Gas Rights Mandatory Disclosure Statement). There are **several exemptions in the HUD/EPA Lead-Based Paint Disclosure Rule pertaining to lease transactions**, but the only exemption that applies to a sales transaction is the sale of Target Housing at foreclosure.

“**Housing sold at foreclosure**” arguably only includes the sale of the property by the trustee handling the foreclosure sale to the high bidder at the sale, not a subsequent sale by the high bidder to another buyer. Thus, it is recommended that the purchaser at a foreclosure sale (typically, the bank that instituted the foreclosure proceeding) should complete the Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum (Form 2A9-T) when the [property is later sold](#).

Why must the seller make separate representations in paragraph 7(c) regarding proposed and confirmed Special Assessments?

Because there is a difference in *degree* between the representations the seller is required to make regarding **proposed vs. confirmed special assessments**. The seller is required to disclose, *to the best of the seller’s knowledge*, whether there are any *Proposed* Special Assessments, and, if there are any, to identify them. On the other hand, the seller is required to *warrant* whether there are any *Confirmed* Special Assessments, and, if there are any, to identify them.

A warranty is a type of promise that the facts represented are accurate and may be relied on as such. If the facts warranted turn out to be untrue, it could give rise to a breach of contract claim by the buyer. Therefore, the seller should make a reasonable effort to determine if there are any Confirmed Special Assessments prior to accepting an offer or making a counteroffer to a buyer.

See article on Proposed and Confirmed Special Assessments for more information on the seller's duties to disclose Special Assessments and the parties' obligations regarding the payment of Special Assessments.

Since owners' association regular dues are addressed in the Residential Property and Owners' Association Disclosure Statement, why must they be disclosed in paragraph 7(d)?

In some transactions, sellers are exempt from the requirement to provide a Residential Property and Owners' Association Disclosure Statement, and even if the seller is required to provide it, the seller may opt to check the "No Representation" box.

In addition, if the **property being sold is** a condominium, the Condominium Act requires that the seller provide the buyer "a statement setting forth the monthly common expense assessment and any other fees payable by unit owners." The seller of a condo who is not required to complete a Residential Property and Owners' Association Disclosure Statement, or who checks "No Representation" in question #33 of the Disclosure Statement, would satisfy this requirement by completing paragraph 7(d). Note, however, that if there are other fees payable by unit owners, the seller must provide a statement setting forth those other fees.

The Residential Property and Owners' Association Disclosure Statement or the Owners' Association Disclosure and Condominium Resale Statement Addendum (Form 2A12-T) may be used for this purpose.

If a buyer agent who is assisting a buyer in completing an offer doesn't have sufficient information to complete each part of paragraph 7, should the agent leave boxes unchecked and/or blank spaces empty?

Leaving check boxes unchecked and blank spaces empty is a permissible option; however, if the buyer submits an offer in which one or more representations in paragraph 7 are incomplete, the seller's completion of those representations would constitute a rejection of the buyer's offer and the making of a counteroffer by the seller, which could delay the formation of a contract. In addition, if the seller signs the offer but neglects to complete paragraph 7, there could be a question about whether a binding contract has been formed or whether there is a binding contract that doesn't include any uncompleted representations.

Thus, it is preferable for **buyer agents to attempt to complete the seller representations section before making an offer.** This may be done by obtaining required information from the MLS listing, if available. For example, if the property includes a dwelling built before 1978, a completed Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum signed by the seller may be available through MLS for the buyer agent to attach to an offer. If some information is not available through MLS, the buyer agent should consider requesting the information [from the listing agent](#).