



# SELLER REPRESENTATIONS CONSUMER 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 checkbox 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.*

## Lead-Based Paint Disclosure Rule

if the construction permit was obtained for the house or if construction commenced before

**January 1, 1978**



### 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.

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

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.

