



SPECIAL ASSESSMENTS

BROKER VERSION

What is a Special Assessment?

A **“Special Assessment”** is a charge against real estate by (i) a governmental authority other than real estate taxes and recurring governmental services fees (such as fees for water and sewer service), or (ii) an owners’ association in addition to regular dues. See paragraph 1(n) of Form 2-T.

What is the difference between a Proposed Special Assessment and a Confirmed Special Assessment?

A **“Confirmed Special Assessment”** is one that has been approved any time prior to Settlement, whether it is payable in a lump sum or future installments.

A **“Proposed Special Assessment”** is one that is under formal consideration but which has not been approved prior to Settlement.

The term **“formal consideration”** is not specifically defined and is open to interpretation. However, as a general proposition, a special assessment would be under formal consideration if the governing body of the governmental authority (town council, county commissioners) or owners’ association (board of directors) has discussed the imposition of the assessment at a duly-called meeting of the body, but has not yet voted on the assessment.

Who is responsible for paying Special Assessments?

The buyer takes title to the property subject to all Proposed Special Assessments. See paragraph 6(a) of Form 2-T. This means the buyer will be responsible for paying the cost of any Special Assessment that may be approved after the buyer becomes the owner of the property.

The seller is responsible for paying the cost of all Confirmed Special Assessments in full at Settlement, so long as the amount can be reasonably determined or estimated. See paragraph 8(k) of Form 2-T.

A “Confirmed Special Assessment” is one that has been approved any time prior to Settlement, whether it is payable in a lump sum or future installments.

The seller is responsible for paying the cost of all Confirmed Special Assessments in full at Settlement

A “Proposed Special Assessment” is one that is under formal consideration but which has not been approved prior to Settlement.

The buyer takes title to the property subject to all Proposed Special Assessments.

How does a governmental authority go about considering and approving a Special Assessment?

Although the process can vary to some extent, in general, when a county or city decides to finance a project by special assessment, a public hearing is held. If the governing body formally approves the special assessment, a preliminary assessment resolution is adopted and a preliminary assessment roll is prepared. The roll includes the expected amount of the assessment and a list of the parcels to be affected. At this point, even though the assessment amounts are subject to amendment, the special assessment is considered approved.

Once all of the costs of the project are known, another public hearing is held and the final assessment roll is given to the tax collector for collection. However, the special assessment is considered “confirmed” under the terms of Form 2-T even if the hearing has not yet been held, and the seller is responsible for paying it if the amount of the assessment can be reasonably [determined or estimated](#).

What is the seller required to disclose about the existence of Proposed 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. See paragraph 7(c) of Form 2-T. This means that the seller must disclose the existence of any Special Assessments that are under formal consideration by a governmental authority or owners’ association of which the seller is actually aware.

Thus, if the seller is aware that the board of directors of the owners’ association that regulates the property has recently discussed the possible imposition of an assessment to pay for the cost of making repairs to the association’s swimming pool, but has not yet voted to do so, the seller should check the box indicating that there is a Proposed Special Assessment and identify the Assessment.

On the other hand, if the seller is unaware that the board of directors is considering the assessment, the seller’s failure to disclose the existence of the Proposed Special Assessment would not be a breach of contract.

Proposed Special Assessments that are under **formal consideration** by a **governmental authority or owners’ association** should be **disclosed**.

What is the seller required to disclose about the existence of Confirmed Special Assessments?

The **seller is required to warrant whether there are any Confirmed Special Assessments**, and, if there are any, to identify them. See paragraph 7(c) of Form 2-T. A warranty is a type of promise or guarantee. This means that the seller is required to disclose the existence of Special Assessments that have been approved by a governmental authority or owners’ association at the time of contract. Thus, if the association’s board of directors has approved a Special Assessment to cover the cost of repairs to the association’s pool, the seller likely would be in breach of contract if the seller fails to indicate the existence of the Special Assessment and identify it in paragraph 7(c), even if the seller was unaware of its existence.

Is it acceptable to fill in the two blanks in paragraph 7(c) regarding Proposed and Confirmed Special Assessments with “None known, if any seller to pay at closing”?

No. The purpose of paragraph 7(b) is simply to identify any Pending or Confirmed Special Assessments. If the seller is unaware of any Pending or Confirmed Special Assessments, the word “None” be inserted. The extra wording “if any seller to pay at closing” is redundant regarding the seller’s obligation to pay any Confirmed Special Assessments and conflicts with the buyer’s obligation to pay any Pending Special Assessments.

Although the parties could possibly modify the pre-printed wording of Form 2-T to make the seller responsible for payment of any Pending Special Assessments, such a modification would be problematic. The seller can’t pay a Special Assessment at Settlement that hasn’t been approved yet, and it would be unclear whether the obligation survived Closing and if so, [for how long](#).

Disclosure Duties

The seller is required to disclose whether there are any Proposed Special Assessments

The seller is required to warrant and identify whether there are any Confirmed Special Assessments.

Is the seller responsible for paying the full amount of a Confirmed Special Assessment even if some or all of the amount of the assessment isn’t payable until after Settlement?

Yes, so long as the amount can be reasonably determined or estimated. A Confirmed Special Assessment is defined in paragraph 1(n) as “[a] Special Assessment that has been approved prior to Settlement *whether payable in a lump sum or future installments* (emphasis added),” and similar wording also appears in [paragraph 8\(k\)](#).

If a listing agent becomes aware of the existence of a Proposed or Confirmed Special Assessment after the property has gone under contract, must the listing agent disclose this information to the buyer or buyer agent?

Yes. The existence of a Proposed or Confirmed Special Assessment is a material fact about the property that must be promptly disclosed under both the license law and the REALTOR® Code of Ethics regardless whether the property is or is not already under contract.

Must paragraph 7(c) be amended if the parties become aware of the existence of a Proposed or Confirmed Special Assessment after the property has gone under contract?

No. However, if the seller made a misrepresentation in completing paragraph 7(c), that may give the buyer a basis for claiming that the seller is in breach of contract.

Should a buyer, as a part of the Due Diligence Process, seek to determine independently whether there are any Proposed or Confirmed Special Assessments affecting the property?

Yes. Special Assessments can be significant.

It is recommended that the buyer check with the county and any city in which the property is located, and with the president or manager of any association that regulates the property, to independently determine if any Special Assessments have been approved or are under consideration.

The buyer would not necessarily have a legal claim against the seller for damages or rescission of the transaction if the buyer, after closing, discovers the existence of a Proposed or Confirmed Special Assessment that was not disclosed, and even if the buyer does have a good claim, it may be time-consuming and expensive to pursue it. A buyer who discovers the existence of an undisclosed Special Assessment after closing should be strongly advised to consult with a North Carolina attorney.