



## **How should buyer agents handle seller representations when completing an Offer to Purchase and Contract?**

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**QUESTION:** The new version of the Offer to Purchase and Contract (Standard Form 2-T) has a revised version of paragraph 7(c). Like the old version, sellers must represent, to the best of their knowledge, whether there are any Proposed Special Assessments, and warrant whether there are any Confirmed Special Assessments. And like the old version, sellers must identify all such assessments. However, the revised form has some new check boxes that will make clear what is being represented and warranted. That seems like a great idea but, as a buyer's agent, how do I know which boxes to check, and what information to fill in, when I prepare an offer for one of my buyer-clients? Sellers may choose not to list assessments in the Residential Property Disclosure Statement, and our MLS does not include a field for assessments to be listed. If we don't have any information about assessments, should we just leave all of the check boxes unchecked and let the seller fill in the appropriate ones?

**ANSWER:** While leaving the check boxes unchecked is a permissible option, we believe the better option is for buyer agents to request the required information from the listing agent, and then check the appropriate boxes before submitting the offer.

As noted above, the inclusion of a seller representation and warranty about assessments is not new and neither are the other seller representations in paragraph 7. Often, those representations relate to matters that neither the buyer nor the buyer's agent know. That fact should not stop buyer agents from completing paragraph 7 to the best of their knowledge.

If the seller has completed a Residential Property and Owners' Association Disclosure Statement, that document may include information regarding assessments. Paragraph 28 asks about proposed assessments and paragraph 35 asks about approved special assessments that are payable to an association. However, if seller has checked the "No Representation" boxes in response to both inquiries, that form will not be of assistance.

Another source of information is the listing agent. The Exclusive Right to Sell Listing Agreement (Standard Form 101) includes a "Seller Representations" section (paragraph 12) that asks about the existence of Proposed or Confirmed Special Assessments. If the listing agent used that form, and required the seller to complete it properly, the listing agent will have information regarding assessments. Buyer agents are encouraged to contact listing agents about assessments before completing paragraph 7(c).

Where communication with the listing agent is not possible prior to submitting an offer, the next best option is to assume that there are no assessments and check the two "are not" boxes. In the old version of Form 2-T, there was a presumption that there were no Proposed or Confirmed Special Assessments unless listed in the blank spaces; checking the "are not" boxes in the new version isn't really any different. If a buyer agent chooses this alternative, the agent should confirm whether those representations are subsequently modified by the seller. If so, that would be considered a counter-offer. The buyer would then have to initial any such modifications in order to create an enforceable contract.

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