



# SPECIAL ASSESSMENTS

## CONSUMER 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.

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**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.

## What is the seller required to disclose about the existence of Proposed and 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. 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.

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, and likely would be in breach of contract if they failed to do so, even if they were unaware of its existence.

### 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).

## 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.