



This article below concerns the handling of the Owners' Association Disclosure and Addendum (form 2A-12-T) on bank owned properties. This article was obtained from the March 23 REALTOR® Report published by the North Carolina Association REALTORS®.

RISK WATCH LINE Q&A

QUESTION: I'm working as a buyer's agent with a buyer who is interested in a bank-owned foreclosure property. In MLS it indicates there is an owners' association, so I asked the listing agent for the Owners' Association Disclosure and Addendum (form 2A12-T). The listing agent told me that the bank won't provide one. The new version of the Offer to Purchase and Contract (form 2-T) requires the seller to provide a completed Owners' Association Disclosure and Addendum form to the buyer before the effective date of the contract and that the Addendum must be attached to the contract. My question is, do these requirements apply to bank-owned foreclosure properties?

ANSWER: We understand why a bank might be reluctant to make any representations about the owners' association or the development, but the contract doesn't make any exceptions for banks or other sellers who don't want to provide the Addendum.

There are several ways this situation can be handled. One would be for the seller to modify the contract to eliminate the requirement that the seller provide a completed Addendum to the buyer. This could be done in a couple of ways. One would be to modify the sections of the contract where the Addendum is referred to. Another would be to make it clear in an addendum to the contract that notwithstanding what the contract says, the seller will not provide a completed Owners' Association Disclosure and Addendum form to the buyer. Whichever way the modification is handled, it represents a significant change to the preprinted contract wording, so any such change should be made by or with the blessing of an attorney.

Another way to handle this situation would be for the bank to complete the Addendum and provide it to the buyer prior to contract. The Addendum makes it clear that any representations by the seller are to the best of seller's knowledge. If the seller has no knowledge about any of the items in the addendum, the seller can truthfully indicate "unknown" in each section.

However, please understand that even if the seller doesn't provide the buyer information about the owners' association or the development, that would not relieve the listing agent, or you as the buyer agent for that matter, from the obligation to disclose all material facts about the association or the development that the listing agent or you knows about or reasonably should know about.