

CONDUCT OF TRANSACTION BY ELECTRONIC MEANS

Can the buyer and seller enter into a contract on Form 2-T using electronic means?

Yes. The NC Uniform Electronic Transactions Act (“UETA”) is the law permitting transactions to be conducted by electronic means. In accordance with UETA, paragraph 20 of Form 2-T specifically provides that any action may be conducted electronically, including signing of the contract and any notice or communication given in connection with the contract.



Must the “Notice Information” section in Form 2-T be completed?

Paragraph 20 of the Contract states that “[a]ny written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the ‘Notice Information’ section.” According to the Note in the Notice Information section, at least one address and/or electronic delivery address should be inserted for each party. If no contact information has been filled in for either of the parties, or their agents, it could raise a legal question as to whether a notice has been [effectively sent](#).

It is a common, permissible practice for agents not to provide email addresses or other contact information for the buyer and seller because the agents do not want their clients being contacted directly by the other agent or the other party. If the parties’ contact information is not provided, it is important that contact information for both agents be inserted in the contract. According to paragraph 20, any notice to be given to a party may be given to the party or their agent.

The names of the individual selling and listing agents, their respective individual license numbers and firm names and firm license numbers should be inserted, and the appropriate agency representation box selected. This confirms the prior disclosure of the agency relationship that is required by NC Real Estate Commission Rule 58A.0104, and is not a substitute for an initial disclosure of agency relationship.

When is notice given electronically considered to be complete?

Paragraph 20 provides that delivery of notice via electronic means is deemed complete when the person sending the notice performs the final act to send the notice in a form capable of being processed by the recipient's system, and the notice is sent to any electronic address for the party listed in the Notice Information section.

EXAMPLE: A buyer agent emails a copy of a signed Form 350-T to the listing agent at 5:00 PM according to the buyer agent's email program. According to the listing agent's email program, the buyer agent's email is received by the listing agent at 5:01 PM. The notice of termination would be deemed delivered at 5:00 PM.

Delivery of notice via electronic means is deemed complete when the person sending the notice performs the final act to send the notice in a form capable of being processed by the recipient's system.

The notice is sent to any electronic address for the party listed in the Notice Information section.

If information on the Notice Information page of Form 2-T is added or changed after a party makes an offer, is that considered to be a rejection of the offer?

No. Paragraph 20 states that the Notice Information and Acknowledgment of Receipt of Monies sections are not material parts of the contract, and that the addition or modification of any information in either section will not constitute a rejection of an offer.

DELIVERY/ACKNOWLEDGMENT OF RECEIPT OF FUNDS

Does delivery of the Due Diligence Fee to the listing agent constitute delivery to the seller?

Yes. Paragraph 20 of Form 2-T specifically states that any fee, deposit or other payment to be delivered to a party may be given to the party or the party's agent.

When is delivery of the Due Diligence Fee or Earnest Money Deposit considered to be complete?

Delivery of the Due Diligence Fee to the seller or Earnest Money Deposit to the Escrow Agent is considered to be complete when the DDF or EMD has been placed into the actual possession or control of the seller or listing agent in case of the DDF, or the Escrow Agent in the case of the EMD.

Putting a DDF check in the US Mail or other courier service would not constitute delivery. The "mailbox rule" operates only as a method of communicating [acceptance of an offer](#).

If the Due Diligence Fee is delivered to the listing agent, should the listing agent acknowledge receipt of the DDF?

Yes. The listing agent should sign and date the "Listing Agent Acknowledgment of Due Diligence Fee" section on the last page of Form 2-T.

The DDF may be delivered to, and the acknowledgment signed by, a representative of the listing agent's firm other than the listing agent himself or herself.

Is it important for the listing agent to promptly deliver the Due Diligence Fee to the seller?

Yes. Real Estate Commission Rule 58A.0116(b)(4) prohibits a broker from retaining a DDF check for more than three business days after the property goes under contract.

In addition, during the time that the DDF check is in the custody of the listing agent, the same Real Estate Commission Rule would require the listing agent to return the DDF check to the buyer/buyer agent if instructed to do so by the buyer.

If the Due Diligence Fee is delivered directly to the seller by the buyer or buyer agent, must the listing agent sign the Acknowledgment of Receipt?

No. If the Due Diligence Fee is delivered directly to the Seller rather than the listing agent, that section should not be completed.

If the listing agent has acknowledged receipt of the DDF, must the seller also acknowledge receipt of it?

The seller's failure or refusal to acknowledge receipt of the DDF in writing wouldn't affect the validity of a contract, but it is a good practice to obtain the seller's written [acknowledgment if at all possible](#).

Failure or refusal to acknowledge receipt of the DDF wouldn't affect the validity

Is it important for the escrow agent to acknowledge receipt of the Initial and/or Additional Earnest Money Deposit?

Yes. Although the escrow agent is not a party to the contract, the escrow agent has duties to both parties under the contract. The escrow agent's signature in the Escrow Agent Acknowledgment section on the last page of Form 2-T constitutes the escrow agent's agreement to hold and disburse the EMD in accordance with the contract's terms.

The EMD may be delivered to, and the acknowledgment signed by, a representative of the escrow agent's firm other than the escrow agent himself or herself.

If the Escrow Agent refuses to sign the Acknowledgment, consideration should be given to identifying another Escrow Agent. In such a case, the contract should be amended to name the new Escrow Agent. The Agreement to Amend Contract (Form 4-T) may be used for this purpose.

An escrow agent is not a party to the contract, the escrow agent has duties to both parties

SIGNATURES

Who must sign the contract?

All persons listed as a "Seller" or a "Buyer" in paragraph 1 of Form 2-T must sign the contract. See article on Identification of Parties/Property for more information on who must be identified in a contract as a seller or buyer and the proper form of signature for persons acting in a representative capacity.