



# EFFECTIVE DATE OF CONTRACT BROKER VERSION

## Is an oral contract to sell real property legally enforceable?

**No.** Although many types of oral contracts are legally enforceable, according to the Statute of Frauds, any contract to sell real property is unenforceable against a party unless it is writing and signed by that party or on his or her behalf by some other lawfully-authorized person.

## When does a contract using the Offer to Purchase and Contract (Form 2-T) become legally binding?

An offer made using Form 2-T becomes a binding contract on the "Effective Date." See unnumbered paragraph immediately above the signature lines in Form 2-T.

The Effective Date is defined in paragraph 1(g) of Form 2-T. Two things must take place to form a binding contract according to paragraph 1(g): (i) all parties must have signed the offer (or initialed a counteroffer) and (ii) the party to whom the offer/counteroffer was made communicates that they have signed the offer (or initialed the counteroffer) to the party [who made the offer/counteroffer](#).

**All parties must have  
signed & communicated**

## Could the Effective Date be a date other than the date(s) appearing next to the buyer's and seller's signatures?

**Yes, it is possible.** For example, if a seller signed an offer from a buyer late in the day on a Tuesday but the buyer or buyer agent wasn't notified until the next day that the seller had signed the offer, the Effective Date of the contract would be Wednesday, the date that the seller's signing was communicated to the buyer or buyer's agent.

## Does acceptance have to be communicated in writing?

**No,** not unless the offer requires acceptance to be communicated in writing. Form 2-T does not specify a particular method by which acceptance must be communicated, so acceptance can be communicated by any means sufficient to manifest acceptance, including but not limited to, personal delivery of the signed offer, oral communication, and [communication by fax, email, or text](#).

It is wise to communicate acceptance in some written form, or confirm oral acceptance in some written form, to avoid a possible dispute about whether there is a binding contract.

Electronic notice of acceptance is considered complete under Form 2-T when the sender has sent it in accordance with paragraph 20 of Form 2-T.

## May a party back out of a contract for a limited period of time after it has become binding?

**Generally, no.** However, there are some exceptions.

The NC Condominium Act gives a buyer the absolute right to cancel the contract to purchase for a period of seven calendar days following the execution of the contract. See NC General Statutes Section 47C-4-108.

The Residential Property Disclosure Act gives a buyer the right to cancel a real estate contract if the Residential Property and Owners Association Disclosure Statement or the mandatory Mineral and Oil and Gas Rights Disclosure Statement is not timely delivered. See NC General Statutes Section 47E-5.

## May an offer or counteroffer be withdrawn?

**Yes,** so long as the withdrawal happens before the party to whom the offer or counteroffer has been made signs or initials it and communicates their acceptance.

If the offer has been made to multiple parties (for example, a wife and husband), the offer can be withdrawn at any time before all the [parties have accepted it](#).

A withdrawal may be communicated by any means sufficient to manifest the withdrawal; however, the withdrawal, or confirmation of the withdrawal, should be in written form to avoid a possible dispute.

## Must the initial blanks at the bottom of each page of Form 2-T be initialed by all parties to form a binding contract?

**No.** Initials are not mandatory. They are evidence that the initialing party has reviewed, or had the opportunity to review, the page.

Paragraph 1(g) of Form 2-T specifically states that “the complete execution of [the] initial lines shall not be a condition of the effectiveness of this Agreement.”

Although initials are not mandatory, it is preferable that all parties to a contract initial each page to avoid a potential dispute.

## Must the Initial Earnest Money Deposit and/or Due Diligence Fee be delivered before the contract is binding?

**No.** However, according to paragraph 1(d), the seller has the right to terminate the contract when there is a delay in payment of the Earnest Money Deposit or Due Diligence Fee if the seller gives the buyer written notice and the buyer fails to pay it in cash, official bank check, wire transfer, or electronic transfer [within one banking day](#).

## May a real estate agent bind a client to a contract?

As a general rule, a real estate agent does not have the power to bind his or her client to a contract to sell real estate unless the agent has been given the authority to do so, such as a power of attorney from the client.

For example, assume a listing agent indicates in an email to a buyer agent that the seller will accept the buyer's offer if the purchase price is increased by \$5,000.00. The buyer agent replies to the listing agent's email after conferring with her buyer client, indicating that the buyer accepts the seller's counter offer. No binding contract has been created as a result of the exchange between the two agents. The listing agent did not have authority to make a counter offer on the seller's behalf, and the buyer agent did not have the authority to accept a counter offer on her client's behalf, even if the listing agent's email had constituted a counter offer.

### **Must the acceptance of an offer be on the exact same terms as the offer?**

As a general rule, yes. According to the "mirror image rule," the acceptance must be according to the exact terms of the offer to ensure that there is a "meeting of the minds" between the buyer and seller as to the subject matter of the contract.

As a general rule, changes made to an offer would be considered a rejection of the offer and would constitute a counter offer.

However, the mirror image rule has its limits. Non-substantive changes that do not vary an offer's terms might not be considered a rejection of the offer.

Thus, under certain circumstances, a binding contract could be created even though the acceptance is not an exact "mirror image" of the offer.



### **Is it possible for a contract to be binding if a change hasn't been initialed by a party?**

**Yes**, it is possible, depending on the specific facts.

As a general rule, a party's initials are necessary to signify the party's acceptance of a change made to an offer.

However, if a change is made to an offer before the party has signed it, that party's signature on the offer would likely constitute acceptance of the offer as it had been changed, so their initials of the change would not be required.

For example, assume a buyer submits an offer. Based on a telephone conversation between the listing agent and buyer agent, the buyer agent strikes through the amount of the Due Diligence Fee, inserts a different amount, the buyer initials and dates the change, and the offer is resubmitted to the listing agent. The seller signs and dates the offer but does not initial the change in the amount of the Due Diligence Fee. Following the listing agent's communication to the buyer agent that the seller has accepted the amended offer, the property is under contract even though the seller didn't initial and date the change to the amount of the Due Diligence Fee.

However, all changes to an offer should be initialed and dated by both the buyer and the seller in order to avoid a fact dispute about when a change is made to an offer relative to the date that [a party has signed it](#).

**Should a real estate agent always advise their client to seek legal advice if there is any question about whether a binding contract has been created?**

**YES.** The answer to whether or not a binding contract has been created between two parties can depend on the exact timing of events or the existence or absence of a single fact. If a broker or their client has questions about whether a binding contract has been created, the broker should advise the client to seek legal counsel and should confirm that advice in writing to be able to demonstrate that they gave them that advice.