



# SETTLEMENT AND CLOSING

## BROKER VERSION

### What is the Settlement?

If the buyer does not elect to terminate the contract during the Due Diligence Period, a “Settlement” will be scheduled. Settlement is the signing and delivery to the closing attorney of all documents necessary to complete the transaction (deed, settlement statement, loan documents, etc.) and the closing attorney’s receipt of all funds necessary to complete the transaction.

### What is the Closing?

“Closing” is the completion of the legal process which results in the transfer of the property from the seller to the buyer.

Settlement is the first step in the Closing process. Other steps include: (i) the closing attorney’s completion of a satisfactory update of the title to the property, (ii) the receipt by the closing attorney of authorization to disburse all necessary funds, and (iii) recording of the deed and any deed of trust in the Register of Deeds Office.

Form 2-T allocates responsibility between the buyer and seller for the payment of costs and fees associated with closing the transaction, including but not limited to real estate taxes, attorneys’ fees, loan-related costs, dues and fees charged by any owners’ association or owners association management company, and any Special Assessments.

Closing is commonly, but not always, completed on the same day as the Settlement. If Closing is not completed for one or more days after the Settlement, prorations of taxes and any rents or association dues do not need to be revised since they are calculated through the [date of Settlement](#).

Unless the parties agree otherwise, the buyer is entitled to possession upon Closing. See paragraph 13 of Form 2-T.

### When and where does Settlement take place?

Settlement takes place on a date agreed to in Form 2-T, called the “Settlement Date,” at a time and place designated by the buyer. Typically, Settlement takes place at the closing attorney’s office, although alternative arrangements can sometimes be made for the execution of documents.

**“Closing”** is the *completion of the legal process* which results in the **transfer of the property** from the seller to the buyer. **Settlement** is the *first step in the process*.

*Closing can be the same day as Settlement and usually entitles the buyer to possession.*

## How much time should the parties allow in deciding on a Settlement Date?

The Settlement Date is negotiable between the parties. In considering a Settlement Date, the parties should take into account the following:

- the time needed for the buyer to conduct Due Diligence
- the time needed for the seller to complete any agreed-upon repairs and for the buyer to inspect the repairs
- the time needed by any lender to complete the loan process for any loan the buyer may seek to obtain
- the time needed by the buyer to close on any existing property the buyer may need to sell in order to complete the transaction with the seller
- the time needed by the closing attorney to examine the title to the property, obtain title insurance, and prepare and/or supervise the execution of all closing documents.

### In considering a Settlement Date, take into account:

Due Diligence

Close On Existing Property

Loan Process

Agreed-Upon Repairs

*The closing attorney will need to examine the title, obtain insurance, and prepare closing documents.*

## Is an attorney required for a real estate closing?

The North Carolina State Bar has determined that the performance of most acts and services required for a closing constitutes the practice of law and must be performed only by an attorney licensed to practice law in North Carolina.

It is the position of the North Carolina Bar Association and the NC REALTORS® that all buyers should hire an attorney licensed in North Carolina to perform a closing.

The buyer selects and is responsible for paying the closing attorney for his or her services in handling the closing, except for charges the seller is responsible for.

The closing attorney may prepare the deed and other seller documents for the seller, or the seller may retain their own attorney to prepare them. In either case, the seller is responsible for paying for preparation of the seller's documents.

## Is it a breach of contract if a party is unable to complete Settlement and Closing on the Settlement Date?

In most cases, no. Since time is not "of the essence" regarding the Settlement Date, it should be viewed as a target date rather than an exact date on which the Settlement must take place.

Paragraph 12 of Form 2-T permits a party who is unable to complete Settlement on the Settlement Date (called the "Delaying Party") up to fourteen calendar days to complete Settlement and Closing, provided they intend to complete the transac-

tion, are acting in good faith and with reasonable diligence to proceed to Settlement, and give the other party (called the “Non-Delaying Party”) and the closing attorney as much notice as possible of the delay.

Common reasons for delay include a delay by the buyer’s lender in completing the loan process or the discovery by the closing attorney of a defect in the title to the property that requires corrective action by the seller.

### Is it necessary to amend the contract if there is a delay in Settlement?

No, not if the Delaying Party expects to complete Settlement and Closing within the 14-day delay period, since the parties have already agreed that a delay of up to fourteen days is permissible. However, a lender may require a formal amendment.

If the delay will be for more than fourteen days, the Delaying Party may seek to amend the contract to change the Settlement Date, which the Non-Delaying Party may or may not agree to. The Agreement to Amend Contract (Form 4-T) may be used to establish a new Settlement Date.

According to paragraph 12 of Form 2-T, a new Settlement Date includes another 14-day permitted delay. There is an option in Form 4-T for the parties to agree to a 4-day permitted delay period following the new Settlement Date. If the parties agree to some other arrangement (for example, making time “of the essence” regarding the new Settlement Date), an appropriate amendment should be drafted by an attorney.

Following the expiration of the agreed-upon delay period, the Delaying Party will be in breach of contract and the Non-Delaying Party may terminate the contract. The contract is not void following the expiration of the delay period, but it is *voidable* by the Non-Delaying Party at their option.

### Is it necessary to amend the contract if the parties agree to an early Settlement?

If the parties agree that Settlement will take place a few days prior to the agreed-upon Settlement Date, a formal amendment of the contract should not be necessary. However, a lender may insist on a formal amendment.

If the proposed new Settlement Date is more than a few days prior to the existing Settlement Date, the parties should consider a formal amendment of the contract since the 14-day permitted delay period is tied to the Settlement Date rather than the date Settlement [actually takes place](#).

#### Settlement can be delayed by up to 14 days

1	2	3	4	5	6	7
8	9	10	11	12	13	14

Closing/Possession will not occur until after Settlement

**Possession Before Closing Agreement (Form 2A7-T)**  
allows possession of the property on specific date.

## May a party seek to enforce a right they have under the contract after Closing?

Probably *not*. Paragraph 4(g) of Form 2-T states that “Closing constitutes acceptance of the Property in its then existing condition, unless provision is otherwise made in writing.”

In addition, paragraph 18 of Form 2-T states that provisions which must be “observed, kept or performed” after the Closing survive the Closing and remain binding on the parties. However, since most contract obligations may be performed prior to Closing, this also means that most obligations do **not** survive Closing unless the parties agree otherwise.

For this reason, it is very important for a buyer to conduct a final walk-through to confirm that the property is in substantially the same condition as on the date of the buyer’s offer, that all of the seller’s property not included as a part of the transaction has been removed, and that all property that is a part of the [transaction is still there](#).

If any provision or other agreement between the parties will survive Closing (such as an arrangement where specified repairs will be made after Closing and paid for with funds held in escrow by the closing attorney), it is very important that their understanding be described in a written document drafted by an attorney that sets forth the consideration required to make the agreement legally enforceable.