

## **Statement on the Due Diligence Contract**

July 2021

The “due diligence” form of the Offer to Purchase and Contract (Form 2-T), jointly approved by NC REALTORS® and the NC Bar Association, was introduced in January 2011. The primary purpose of adopting a due diligence form of contract was to reduce disputes between the parties by greatly simplifying the old contract through the elimination of many of the separate contract contingencies relating to repairs, financing, and insurance, among others. The complicated structure of the old form was replaced by a due diligence process that allows a buyer to investigate the property and the availability of any necessary financing for a negotiated Due Diligence Fee and to terminate the contract for any reason or no reason prior to the end of a negotiated Due Diligence Period. The result is a simplified form that puts focus on the business terms of the contract: the purchase price, the amounts of any Due Diligence Fee and Earnest Money Deposit, the length of the Due Diligence Period, and the Settlement/Closing Date. This contract provides flexibility for the parties to negotiate based on both individual needs and current market conditions.

The long-term health of the real estate marketplace depends on allowing market forces to influence contract terms and spur or curtail growth in housing supply to meet demand. Form 2-T contract is a balanced, market-sensitive form that does not impose artificial constraints on consumers. It affords a buyer a reasonable opportunity to conduct the investigations necessary for such a significant financial expenditure, investigations which are expected of a buyer under North Carolina law, and it compensates a seller for taking the property off market during the investigation period.

The due diligence contract is not a cause of today's challenges. Now in its eleventh year of use across North Carolina, the due diligence contract has been in place during both strong buyers' and sellers' markets, and it is performing the function for which it was intended. Shifts in market supply and demand are reflected in the contract terms that are negotiated by the parties according to their own requirements and tolerance for risk. This was recently affirmed by a task force of REALTORS® representing both large and small markets from across the State.

It is incumbent on REALTORS® to advise their clients on both sides of the transaction about the opportunities and limitations of the due diligence process, especially during times when the market is either over or under supplied or demand is high or low.