



CONDUCT OF TRANSACTION/DELIVERY & RECEIPT OF FUNDS: **BROKER VERSION**

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 allowing transactions to be conducted by electronic means. In accordance with UETA, Form 2-T specifically states that any action can be conducted electronically, including signing the contract and any notice/communication given in connection with the contract.



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

Form 2-T states that "[a]ny written notice or communication may be transmitted to any mailing address, email address or fax number set forth in the 'Notice Information' section." According to the Notice Information section, at least one address and/or electronic delivery address should be given 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 practice for agents not to provide email addresses or other contact information for the buyer and seller because the agents don't want their clients being contacted directly by the other agent or party. If the parties' contact information isn't provided, it's important that contact information for both agents be put in the contract. According to Form 2-T, any notice given to a party can be given to the party or their agent.

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

When is notice given electronically considered to be complete?

Form 2-T explains that delivery of notice via electronic means is considered complete when the person sending the notice completes the final necessary step to send the notice in a form capable of being processed by the recipients system. Additionally, 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 Termination of Contract By Notice to Seller from Buyer (Form 350-T) to the listing agent at 5:00 pm according to the buyer agent's email data. According to the listing agent's email data, 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 a rejection of the offer?

No. Form 2-T states that the Notice Information and Acknowledgment of Receipt of Monies sections are not material parts of the contract, and that information in either section isn't a rejection of an offer.

DELIVERY/ACKNOWLEDGMENT OF RECEIPT OF FUNDS

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

Yes. Form 2-T specifically states that any fee, deposit, or other payment that must be delivered to a party can be given to the party or their primary agent.

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

Delivery of the Due Diligence Fee to the seller or Earnest Money Deposit to the escrow agent is considered complete when the DDF or EMD has been placed into the actual possession or control of the seller or listing agent (for DDF) or the escrow agent (for EMD).

Putting a DDF check in the US Mail or other courier service isn't considered delivery. The "mailbox rule" applies only to 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.

The DDF can be delivered to, and the acknowledgment signed by a representative of the listing agent's firm or the listing agent.

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

Yes. Real Estate Commission Rule 58A.0116(b)(4) prohibits a broker (whether acting as a buyer agent or a listing agent) from keeping a DDF check for more than three business days after the property goes under contract.

Additionally, during the time that the DDF check is in the buyer agent or listing agent's custody, the same Real Estate Commission Rule requires the agent to return the DDF check if the buyer instructs it.

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 shouldn't be completed since the Due Diligence Fee was never received by the listing agent.

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's a good practice to get the seller's written acknowledgment if 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 isn't a party to the contract, the escrow agent's signature in the Escrow Agent Acknowledgment section is the escrow agent's agreement to hold and disburse the EMD according to the contract's terms.

The EMD can be delivered to, and the acknowledgment signed by a representative of the escrow agent's firm or the escrow agent.

If the escrow agent refuses to sign the Acknowledgment, another escrow agent should probably be chosen. In such a case, the contract should be amended to name the new escrow agent. The Agreement to Amend Contract (Form 4-T) can be used for this purpose.