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, any contract selling real property is enforceable against a party unless it is in writing and signed by that party or on their behalf by a 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."

The Effective Date is defined in Form 2-T. Two things must happen to form a binding contract : (i) all parties must have signed the offer (or initialed a counteroffer) and (ii) the party to whom the offer/counteroffer was made communicates to the other party that they have signed the offer (or initialed the counteroffer).



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

Yes. For example, if a seller signed an offer from a buyer on Tuesday evening, 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. Form 2-T does not specify how acceptance must be communicated, so acceptance can be communicated by any way sufficient to indicate acceptance, including but not limited to, personal delivery of the signed offer, oral communication, and communication by fax, email or text.

However, it's wise to communicate acceptance in some written form, or confirm oral acceptance in some written form, to avoid possible disputes about whether there's a binding contract.

Electronic notice of acceptance is considered complete under Form 2-T when the sender sent it.

Can 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 after the execution of the contract.

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.

May an offer or counteroffer be withdrawn?

Yes, as long as the withdrawal happens before the party receiving the offer/counteroffer has been made signs or initials it and communicates their acceptance.

If the offer has been made to multiple parties acting together as buyers, the offer can be withdrawn at any time before all the parties have accepted it.

A withdrawal can be communicated in any way sufficient to indicate the withdrawal; however, the withdrawal, or confirmation of the withdrawal, should be in writing to avoid possible disputes.

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

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

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 required, it's recommended that all parties to a contract initial each page to avoid potential disputes.

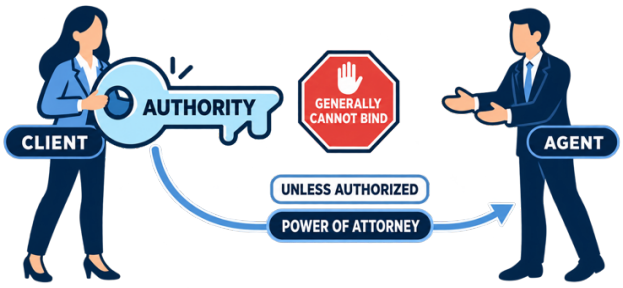
Must the Initial Earnest Money Deposit and/or Due Diligence Fee be delivered before the contract is binding?

No. Form 2-T specifically states that the contract is binding regardless of the buyer's payment of any Earnest Money Deposit or Due Diligence Fee.



Can a real estate agent bind a client to a contract?

Generally, a real estate agent does *not* have the power to bind their 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.



Does the acceptance of an offer need to be on the exact same terms as the offer?

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

Material made to an offer would, in most cases, be considered a rejection of the offer and would create a counter offer.

However, non-substantive changes that don't affect an offer's terms might not be considered a rejection of the offer.

Can a contract be binding if a change hasn't been initialed by a party?

Possibly, depending on the specific facts.

Generally, a party's initials are necessary to indicate 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 changed offer, so their initials of the change would not be required as the change was fully added to the offer before signing.

Regardless, all changes to an offer should be initialed and dated by both the buyer and the seller to avoid fact disputes about when a change was made to an offer compared to the date that a party 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. Whether a binding contract has been created between two parties can depend on the exact timing of events or the existence/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 their client to seek legal counsel *and* should confirm that advice in writing to demonstrate that the broker gave them the advice.