



DUE DILIGENCE FEE BROKER VERSION

What is the Due Diligence Fee?

It is an amount paid to the seller in exchange for the buyer's right to terminate the contract for any reason or no reason during the Due Diligence Period.

How is a Due Diligence Fee different from an Earnest Money Deposit?

The Due Diligence Fee isn't held in escrow by the Escrow Agent; it is payable to the seller.

The Due Diligence Fee becomes the property of the seller on the Effective Date of the contract.

The Due Diligence Fee is non-refundable, with limited exceptions.

Is the Due Diligence Fee applied to the Purchase Price?

Yes. Like the Earnest Money Deposit, the Due Diligence Fee is credited to the Purchase Price if the sale closes.

Is a Due Diligence Fee required to form a binding contract?

No. If the parties agree that no Due Diligence fee will be paid, a zero should be put in the Due Diligence Fee blank. Do not insert "N/A"

If no Due Diligence Fee is paid, does the buyer still have the right to conduct Due Diligence?

Yes. The contract contains a waiver by the seller of any right to deny the buyer's right to conduct Due Diligence, regardless of whether the buyer hasn't agreed to pay a Due Diligence Fee.

What amount of Due Diligence Fee should be paid?

The amount of any Due Diligence Fee is negotiable between the buyer and the seller, and is influenced by market forces such as availability of housing inventory, the property's desirability, the seller's motivation to sell the property, and the buyer's motivation to buy it.

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The amount of the Due Diligence Fee is also influenced by the length of the Due Diligence Period.

Is any particular form of payment required for the Due Diligence Fee?

No. The parties may agree to pay the DDF by cash, personal check, official bank check, wire transfer, or electronic transfer.

If the parties agree that the buyer will pay the Due Diligence Fee by wire or electronic transfer, the seller must cooperate in the transfer, including establishing necessary account and/or providing any necessary information to the buyer. The buyer is responsible for any costs associated with the transfer.

When is the Due Diligence Fee due?

The Due Diligence Fee is payable by the Effective Date of the Contract. It must be delivered to Seller no later than the next banking day following the Effective Date.

If the Due Diligence Fee is not paid by the Effective Date, is there a binding contract?

Yes. By signing 2-T, the parties acknowledge in the "Effective Date" paragraph that the contract is binding and doesn't depend on any Due Diligence Fee or Earnest Money Deposit.

However, seller has the right to terminate the contract when there's a delay in payment of the Due Diligence Fee if the seller gives the buyer written notice and the buyer fails to pay the Due Diligence Fee in cash, official bank check, wire transfer, or

electronic transfer within one banking day. Generally, Notice to Buyer to Deliver Cash or Immediately Available Funds (Form 355-T) is used to give the buyer written notice and request the payment.

May the Due Diligence Fee be delivered to either the listing firm or the seller?

Yes. Any fee, deposit or other payment may be given to the party or the party's agent.

If the buyer agent or listing agent is holding the Due Diligence Fee, and the buyer demands that it be returned it to the buyer, must the buyer agent or listing agent comply with that demand?

Yes. The License Law states that while the Due Diligence Fee is in the possession of a broker, the broker must deliver it to the seller or return it to the buyer according to the *buyer's* instructions.

However, this does not affect the buyer's obligation to pay it to the seller if the contract has become effective.

If the buyer terminates the contract prior to delivering the Due Diligence Fee, does the buyer still owe it?

Yes. The Due Diligence Fee is due on the Effective Date. The buyer's termination of the contract does not relieve the buyer from an obligation that arose prior to the termination.

The seller should be advised to seek legal counsel for advice on whether they should seek recover of the Due Diligence Fee if the buyer fails to pay it.

Under what circumstances may a Due Diligence Fee be refundable?

A material breach of the contract by the seller, including but not limited to the seller's failure to comply with any of the seller's obligations.

A buyer's termination of a contract for the sale of a new condominium during a seven-calendar day period following the execution of the contract.

A buyer's timely termination of a contract as a result of the seller's failure to deliver any required Residential Property and Owner's Association Disclosure Statement or Mandatory Mineral Oil and Gas Rights Disclosure Statement.

Does the buyer have a right to a refund of the Due Diligence Fee if he or she is unhappy with the results of the buyer's Due Diligence?

As a general rule, no.

However, if the seller or listing agent misrepresented the property in any material way, or has failed to disclose a fact about the property that is legally required to be disclosed, the buyer may be entitled to recover the Due Diligence Fee if the buyer reasonably relied on the misrepresentation or omission.

The buyer should be advised to seek legal counsel for advice on whether the buyer has any right to recover the Due Diligence Fee.