



DUE DILIGENCE PERIOD BROKER VERSION

What is the Due Diligence Period?

It is an **agreed-upon period of time** during which the buyer can investigate the property and the transaction contemplated by the contract, **terminate the contract for any reason or no reason**, and receive a refund of any earnest money deposit.

How long should the Due Diligence Period be?

The length of the Due Diligence Period is **entirely negotiable** between the buyer and seller. There is no “standard” Due Diligence Period.

The Due Diligence Period should be of sufficient length to permit buyer:

- to conduct any desired **inspections/investigations** of the property.
- to complete any negotiations for **repairs/improvements** in which the seller may be willing to engage.
- to pursue qualification for **any loan the buyer may obtain**, taking in to account the time needed for an appraisal to be completed and for the lender to provide sufficient information for the buyer to decide whether to proceed with or terminate the contract.

- to be reasonably satisfied that closing on any other property the buyer needs to sell in order to qualify for a new loan or to otherwise complete the purchase of the seller’s property will take place **prior to the Settlement Date of the Contract** with the seller.

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

What does it mean if the Due Diligence Period end date in paragraph 1(j) of Form 2-T is left blank or “N/A” is inserted in the blank?

It is unclear what it means. It could be interpreted to mean that the due diligence period is open-ended, or that there is no due diligence period at all, or that no contract has been formed because there has not been a “meeting of the minds” on an essential term.

Under no circumstances should the Due Diligence Period end date be left blank or “N/A” inserted. A specific date should be inserted in this blank or, possibly, a formula where the due diligence period would end within a specified number of days following a specific event that is certain to take place; for example, “the date that is x days after the Effective Date.” If the intent of the parties is to eliminate the due diligence period altogether, proper modification of Form 2-T should be drafted by an attorney.

Is there still a Due Diligence Period if the Due Diligence Fee is zero or there is an “N/A” inserted in the blank?

Yes. There is nothing in Form 2-T that makes the buyer’s right to conduct Due Diligence dependent on the payment of a Due Diligence Fee

Paragraph 1(i) of the contract contains a **waiver by the seller** of any right to deny the buyer’s right to conduct Due Diligence based on the fact that the buyer hasn’t agreed to pay a Due Diligence Fee.

What sort of investigation should the buyer do during the Due Diligence Period?

Paragraph 4(b) of Form 2-T lists examples of things the **buyer should consider investigating during the Due Diligence Period.**

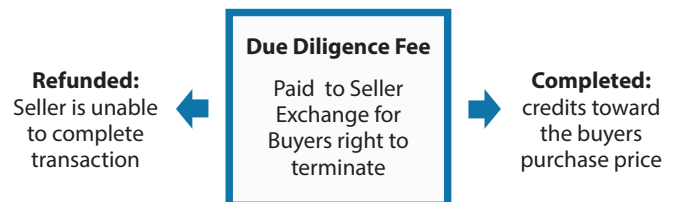
The NC REALTORS® *North Carolina Buyer Advisory* [link or directions to *Advisory*] is designed to assist home buyers in meeting their obligation to satisfy themselves as to the condition and desirability of property they are interested in purchasing. It summarizes many common issues in real property transactions that home buyers often decide to investigate.

The Professional Services Disclosure and Election (Form 760) may be used as a tool by an agent working with a buyer to discuss professional services that typically are performed in connection with the purchase and sale of real estate and to select the services that the buyer chooses to have performed. *Guidelines* for completing the [Form are available.](#)

Who is responsible for the costs of investigating the property?

The **buyer is responsible for all costs** associated with pursuing qualification for any loan and the costs of any desired tests, appraisals, investigations, examinations, and inspections that the buyer deems appropriate, including costs of inspecting any repairs/improvements that the seller may agree to make.

Responsibility for any costs associated with putting a pool/spa in operable condition so that it may be properly inspected, and any costs associated with any necessary re-winterizing of the pool/spa following any inspection(s), may be agreed on by the parties. See POOL/SPA INSPECTION/PREPARATION provision in form 2A11-T.

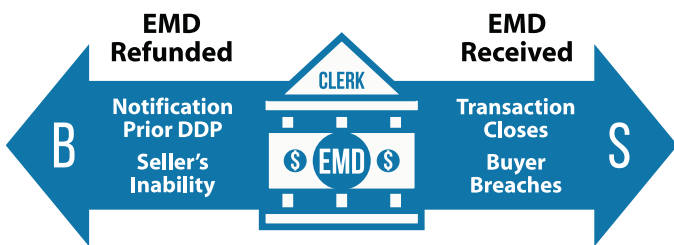


If the buyer decides to have a survey done, does it have to be completed during the Due Diligence Period?

Not necessarily. The **seller is obligated** under paragraph 8(g) of Form 2-T to **deliver “good title”** to the property. According to the NOTE at the end of paragraph 8(g), the buyer’s failure to conduct a survey or examine title of the property prior to the expiration of the Due Diligence Period does not relieve the seller of the obligation to deliver good title.

However, a buyer likely would not have the right to terminate the contract and receive a refund of the Earnest Money Deposit following the end of the Due Diligence Period if a survey performed after the expiration of the Due Diligence Period reveals that the property simply may not be suitable for the buyer's intended use.

For example, suppose the buyer would like to add a pool in the backyard but a survey completed after the end of the Due Diligence Period reveals that a utility easement running along the property line would prohibit the installation of the pool. The utility easement isn't a title issue under paragraph 8(g), so there would be no basis for terminating the contract after the Due Diligence Period ends.



May the buyer ask the seller to make any repairs/improvements?

Yes. According to paragraph 4(d) of Form 2-T, the buyer may **request that the seller make repairs or improvements**. The seller may be willing to **negotiate repairs** or improvements, but is not required to do so.

Can the seller limit the buyer's investigation of the property?

Generally, no. Paragraph 8(c) of Form 2-T states that the **seller must provide reasonable access to the property through Closing.**

The buyer's access rights include allowing the buyer and the buyer's agents or representatives the following opportunities: to conduct Due Diligence

- to verify the satisfactory completion of negotiated repairs/improvements
- to conduct a final walk-through

The seller's duty to provide **reasonable access includes providing existing utilities operating at seller's expense.**

Some inspection activities might be considered unreasonably invasive (removing flooring or sheet-rock walls, digging large holes, etc.) and should be conducted only with the seller's consent.

Although the buyer has a reasonable right of access to the property through closing, following the end of the Due Diligence Period the buyer's right to terminate the contract as a result of the buyer's investigation of the property is limited. **See the NOTE at the end of paragraph 8(c) of Form 2-T.**

The **seller** must provide **reasonable access** to the property **through Closing.**

What if the buyer is not satisfied with the results of their investigation?

If the buyer is not satisfied with the results of the buyer's Due Diligence or the progress of repair/improvement negotiations, the buyer is strongly advised, **before the end of the Due Diligence Period**, to enter into a written agreement with the seller to extend the Due Diligence Period or terminate the contract.

Form 4-T may be used to extend the Due Diligence Period. Form 350-T (or 351-T for vacant land) may be used to terminate the contract.

The seller is under no obligation to extend the Due Diligence Period.

Time is "of the essence" regarding the expiration of the Due Diligence Period. If the buyer elects to terminate the contract, it is very important that written notice of termination be delivered to the seller/listing agent before 5 PM on the last day of the Due Diligence Period.