



## What should a seller do if the buyer delays in delivering the Due Diligence Fee?

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**QUESTION:** I've recently had a couple of instances where my listing has gone under contract, there has been a delay in the delivery of the Due Diligence Fee ("DDF"), and the buyer backs out and refuses to pay the DDF. Can I hold on to the signed contract until the DDF is paid to prevent this situation from happening?

**ANSWER:** We don't recommend that you "trade" a signed contract for the buyer's DDF. The Offer to Purchase and Contract (Form 2-T) provides that the offer becomes effective when it is signed and the signing is communicated to the offering party. Assuming that you've communicated to the buyer's agent the fact that your seller has signed the offer, it would be incorrect to think that holding on to the signed contract until the DDF has been delivered has any effect on the validity of the contract. And even if you believe that holding on to it might give the seller some practical leverage, a case can be made that intentionally delaying the delivery of a signed contract is a violation of the license law, which provides that a broker can be disciplined for "[f]ailing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller." See [N.C. General Statute Section 93A-6\(a\)\(13\)](#).

Paragraph 1(d) of the Contract allows a seller to terminate a contract if the DDF isn't timely delivered following one banking day's written notice. We recommend that listing agents utilize this mechanism aggressively if there is any delay at all in the delivery of the DDF, which is due on the Effective Date. Form 355-T can be used to put the buyer on notice of the seller's intent to terminate, and if the DDF isn't delivered within one banking day, Form 352-T (or 353-T if the property is vacant land) can be used to terminate the contract. The seller still might not get the DDF, but at least you can minimize the time that the seller's property is off the market.

Also note that a buyer's refusal to deliver a DDF gives the seller a claim to the Earnest Money Deposit and the payment of any attorney's fees incurred by the seller. For more information, see our Q&A entitled [What are Seller's Remedies if Buyer Refuses to Deliver the Due Diligence Fee?](#)

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