



Is the Due Diligence Contract fair to buyers?

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QUESTION: I am representing a first-time home buyer who has just lost out on the third property she has tried to put under contract. She and I are frustrated, to say the least! In this market, buyers are being pressured to make offers above the list price and pay large Due Diligence Fees to be competitive, and if the properties don't appraise, the sellers are refusing to reduce the purchase price to the appraised value. My client simply can't afford to risk losing a large Due Diligence Fee if the property doesn't appraise and she can't make up the difference between the appraised value and the purchase price. Has the NC REALTORS® Forms Committee given any thought to changing the Offer to Purchase and Contract so that it's not so lopsided in the seller's favor?

ANSWER: NC REALTORS® is very aware of and sympathetic to the challenges that many buyers, particularly those of relatively modest means, are facing in today's high-demand, low-inventory market. However, NC REALTORS® believes that the "Due Diligence Contract" simply reflects today's challenges and is not the cause of them, and that the long-term health of the real estate marketplace depends on allowing market forces to influence contract terms and spur or curtail growth in housing supply to meet demand. The Due Diligence Contract was introduced in January 2011, when the economy was still very much feeling the effects of the 2008 recession. At that time, many sellers were agreeing to take their properties off the market for lengthy Due Diligence Periods in exchange for nominal or nonexistent Due Diligence Fees, and many complaints were voiced that the Contract was extremely unfair to sellers. Today's market is of course very different. This contrast illustrates the fact that the Due Diligence Contract is a market-sensitive form that has been in place during both strong buyers' and sellers' markets.

A task force of REALTORS® representing both large and small markets across the State recently affirmed its support of the Due Diligence Contract as a balanced form that does not impose artificial restraints on buyers or sellers. Instead, it provides flexibility for the parties to negotiate based on both individual needs and current market conditions. A *Statement on the Due Diligence Contract* recently developed by NC REALTORS® is available by clicking [here](#).

It should also be noted that even if the Contract was changed in an attempt to assist some buyers, any changes would not deter a determined buyer with resources from finding a way to set their offer apart from less affluent buyers. For example, if the Due Diligence Fee was eliminated from the Contract, a buyer could offer a large Earnest Money Deposit and shorten the Due Diligence Period to a single day, effectively turning the Earnest Money Deposit into a Due Diligence Fee.

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