



## **Elimination of the loan contingency in Standard Form 580-T**

Release Date: 10/1/2020

Bill Gifford, Martin & Gifford, PLLC

**QUESTION:** I am writing an offer for my client to purchase a commercial property. My client will be financing his purchase. Much like paragraph 1(d) of the standard residential sales contract (Form 2-T), paragraph 1(b) of the standard agreement for the purchase of commercial property (Form 580-T) has a line to insert the total purchase price, and then several lines indicating how that price will be paid, i.e. for earnest money, delivery of a promissory note, cash at closing, etc. When completing the form, I noticed that there is no longer a line to insert “Proceeds of a new loan.” What happened to that line? And how I am I supposed to complete the form without showing my client’s loan amount?

**ANSWER:** Effective July 1, 2020, Standard Form 580-T was amended in several ways. One change was to eliminate paragraph 1(b)(ii) where buyers had always inserted the amount and terms of the loan they intended to obtain to finance their purchase. This change was made because of another change to Form 580-T: the elimination of the loan contingency.

For many years, Form 580-T has provided buyers with a period of time, known as the “Examination Period,” within which to investigate the subject property. Much like Form 2-T’s Due Diligence Period, the duration of the Examination Period is a negotiated term. Paragraph 6(d) of Form 580-T states that if the buyer chooses not to purchase the property, for any reason or no reason, and provides written notice to seller prior to the expiration of the Examination Period, then the agreement is terminated and the buyer is entitled to a return of their earnest money.

Despite the existence of this provision, Form 580-T historically included a loan contingency which made the buyer’s ability to obtain the loan described in paragraph 1(b)(ii) a condition of the contract. This meant that a buyer who could not obtain a loan could walk away from the transaction at any time before closing. Since a “failure of condition” is not the same thing as a breach of contract, the buyer could recover their earnest money deposit even if the buyer terminated at the last minute.

The Commercial Forms Committee decided to eliminate the loan contingency. Under the new form, a buyer can no longer walk away from a transaction at the last minute and recover their earnest money deposit. Instead, the buyer must determine, during the Examination Period, whether he or she will have the funds needed to close the transaction. If the buyer fails to terminate the contract during the Examination Period, a loan needed to finance the transaction falls through, and the buyer is unable to close, the buyer will be in breach of contract and seller will be entitled to the earnest money deposit.

Because of the elimination of the loan contingency, there was no longer a need to identify the source of buyer’s funds to be delivered at closing. Under the new version of Form 580-T, buyers now merely need to include that amount on the line in paragraph 1(b)(iv) entitled: “Cash, balance of Purchase Price, at Closing.”

*NC REALTORS® provides articles on legal topics as a member service. They are general statements of applicable legal and ethical principles for member education only. They do not constitute legal advice. The services of a private attorney should be sought for legal advice.*

**© Copyright 2020. North Carolina Association of REALTORS®, Inc. This article is intended solely for the benefit of NC REALTORS® members, who may reproduce and distribute it to other NC REALTORS® members and their clients, provided it is reproduced in its entirety without any change to its format or content, including disclaimer and copyright notice, and provided that any such reproduction is not intended for monetary gain. Any unauthorized reproduction, use or distribution is prohibited.**