



How long can the buyer delay closing under Form 580-T?

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QUESTION: In July, one of my commercial listings went under contract and we used Form 580-T. Closing was set for September 15th, and shortly before that date, the buyer's lender informed us that the loan would not be ready. The buyer's agent has affirmed that the buyer still wants to close, but it won't be for another two weeks from today. My seller is very frustrated. How long can the buyer delay Closing without being in breach of contract?

ANSWER: Absent a time-is-of-the-essence clause, North Carolina law generally allows contracting parties to a real estate purchase agreement a reasonable time after the date set for closing to complete performance. When time is not of the essence, the date selected for closing can be viewed as an approximation of what the parties regard as a reasonable time under the circumstances.

Form 580-T does not have a time-is-of-the-essence-clause with regard to Closing. This means that the Closing date specified is a target date, not a date certain for performance. What constitutes a "reasonable time" for a delay will vary from one transaction to the next. For example, in [*Fletcher v. Jones*](#), the North Carolina Supreme Court held that a five-month delay was reasonable. Certainly, five months will not be reasonable in every case; however, the *Fletcher* case does support the contention that the five-week delay in your transaction may well be considered reasonable by a court.

It is worth noting that Form 800-T (Offer to Purchase and Contract-New Construction) also does not have a time-is-of-the-essence-clause with regard to Settlement/Closing, and the same analysis would apply. This means that a delay in Settlement/Closing by either party using that contract would not trigger the breach of contract remedies in paragraph 24 until a reasonable time for performance has expired. Form 2-T differs from both Form 580-T and Form 800-T by outlining a specified delay period, beyond which the non-delaying party has a right to terminate the contract.

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