

Frequently Asked Questions (Buyers - Due Diligence and Contract Termination)

Disclaimer: The answers below are not legal advice nor are they a substitute for legal advice. They are presented strictly as a courtesy and are based on the general real estate contract currently in use rather than your particular contract. If you do not understand the contract, you should consult with a licensed South Carolina attorney before signing and, if legal situations arise after the contract is signed, you should again consult with a licensed South Carolina attorney.

1. What am I able to do during the due diligence period?

Answer: The due diligence period is most commonly used to have the home inspected, but you should use the time to consider other matters relevant to your decision to purchase (e.g. review of documents governing the community such as the Master Deed or Covenants and Restrictions, determine whether you can have a fence, etc.)

2. Am I able to require that the seller provide me with documents during the due diligence period?

Answer: While the contract does not specifically require the seller provide you with documents during the due diligence period, you may present a “document stipulation” at the time you present your offer in which you name any particular document(s) you would like to review. Be sure the “document stipulation” requires the items be provided to you within the due diligence period.

3. If I find things wrong with the property during the due diligence period, what should I do?

Answer: You should have a discussion with your agent and decide whether to present the seller with a demand for repairs and/or a credit.

4. If I make a demand for repairs or a credit, is the seller required to respond during the due diligence period?

Answer: No, the seller is not required to respond.

5. Do I need to have a reason to terminate the contract if I do so during the due diligence period?

Answer: No, you may terminate for any reason or no reason so long as you do so properly and before the due diligence period expires.

6. If due diligence is about to expire and the seller hasn't responded to my repair/credit request, what are my options?

Answer: If the seller does not respond or does not respond to your satisfaction and the due diligence period has not expired, you may seek to extend the due diligence period to allow for continued negotiations, decide to purchase the property in as-is condition or terminate the contract before the due diligence period expires.

7. If I terminate during the due diligence period, how do I pay the Termination Fee?

Answer: If your contract calls for a Termination Fee, it should be paid with certified funds (i.e. cashier's check) made payable to the seller(s). The Termination Fee must be delivered to the "delivery address" found in the contract before the due diligence period expires.

8. What happens if the due diligence period expires without a repair/credit agreement between the parties and I haven't terminated?

Answer: As stated in paragraph 8 of the contract, the contract converts to an as-is purchase. This means you are obligated to purchase the property in as-is condition.

9. Once the due diligence period has expired, what happens to the contract contingencies?

Answer: Except in unusual situations, the contract contingencies survive the due diligence period. For example, if you have a financing contingency and are turned down for your loan, you will still be able to terminate the contract even though the due diligence period has expired. In most situations, this will be true for other contingencies, as well.

10. If I get turned down for financing, will I have to pay a Termination Fee?

Answer: The general contract does not require you pay a Termination Fee where there is a failure of a contingency such as this.

11. If I decide to terminate the contract during the due diligence period, how do I do it?

Answer: Let your agent know of your decision. The contract requires a Notice of Termination be delivered to the Seller before the due diligence period expires. Depending upon the terms of your specific contract, you may also be required to pay a Termination Fee to the seller.

12. What if the due diligence period has expired and there's an issue with the property title?

Answer: Even after the due diligence period has expired, the seller is required to tender "marketable title" to the property. If the seller cannot tender marketable title, you are not required to purchase the property.

13. If the due diligence period is extended, should I also extend the closing date at the same time?

Answer: It is possible you will need to request an extension of the closing date. This should be discussed with your agent when you discuss extending the due diligence period.

14. Does an extension of the due diligence period have to be in writing?

Answer: An extension of the due diligence period should be in writing and signed by both parties before the due diligence period expires.

15. What if I decide to terminate the contract and I am not available to get the Termination Fee to my agent for delivery?

Answer: It is up to you to be available at the time you decide to terminate. If you have any reason to believe you will not be available, you should make arrangements in advance (e.g. send the Termination Fee to your agent to hold unless and until it is needed, leave the Termination Fee with a family member or trusted friend unless and until it is needed, etc.).

16. What if I decide to terminate the contract, but my Notice of Termination and/or Termination Fee are not delivered on time?

Answer: Paragraph 1-f of the contract states that “time is of the essence” with regard to all matters stipulating time, deadline or performance periods. This means the seller is not required to accept late delivery of a Notice of Termination and/or Termination Fee.

17. What if the due diligence period has expired and I later decide not to purchase the property?

Answer: You should consult with an attorney before making this decision because you may be exposed to liability for breach of contract.

18. Once the due diligence period expires and the contract hasn't been terminated, what are the seller's obligations?

Answer: In general, the seller is required to maintain the property in its current condition (contract paragraph 3), make any agreed-upon repairs and tender marketable title at closing. The contract requires the property be vacant at the time of closing, unless you have agreed to accept any existing tenants and/or reserved guests.

19. Can I instruct that the Termination Fee be paid from the earnest money?

Answer: The general contract does not allow you to instruct this. You and the seller can agree to this at the time the contract is signed -- this would be appropriately done in an addendum to the contract. Absent a signed written agreement (i.e. addendum) with the seller, the Termination Fee cannot be paid from the earnest money.

20. If I terminate the contract during the due diligence period, how do I get my earnest money back?

Answer: Paragraph 5 of the general contract requires the escrow agent only disburse the earnest money once the escrow agent has received either a Release signed by both parties or a court order. In most situations, you and the seller will sign a Release and the earnest money will then be refunded to you.