



## **New COVID-19 Addendum Released**

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**QUESTION:** Has the NC REALTORS® considered developing a form to address the effect that the COVID-pandemic is having or may have on real estate sales transactions?

**ANSWER:** Yes. A new COVID-19 Addendum (Form 790) has just been released. A pdf version is available by logging into [ncrealtors.org](http://ncrealtors.org) and clicking [here](#). The form has also been provided to zipForms for inclusion in the NCR forms software program. The form may be used with a new contract or added to an existing contract. The Form is designed for use with NCR Forms 2-T and 12-T.

Here are the highlights of how the form will work:

- If circumstances related to the COVID-19 pandemic make it unduly burdensome or impossible for either or both parties to exercise a right or perform an obligation under the contract, there will be a one-time extension of contract deadlines by a number of days agreed to by the parties
- A party whose performance is affected by a COVID-19 issue must notify the other party in writing to trigger the extensions. Notice may take place in the same way it is typically handled under the “Delay in Settlement/Closing” paragraph in the Contract, so long as it is in writing. An email from one agent to the other describing the circumstances should suffice.
- The extension of deadlines will apply to any contract deadline that has not already expired, including the Due Diligence Period and the Settlement Date
- The parties agree to make a good faith effort to use alternative methods that may be reasonably available to enable them to perform their rights and obligations under the contract
- If the parties are unable to close prior to the expiration of the extended period of time and they haven’t agreed to another extension, the contract will become null and void
- If the contract becomes null and void, the seller will retain the Due Diligence Fee and the Earnest Money Deposit will be returned to the buyer, regardless of the reason for the delay
- If the buyer is unable to get a loan due to loss of income related to the COVID-19 pandemic (for example, loss of employment), either party may terminate the contract, in which case the seller will retain the Due Diligence Fee and the Earnest Money Deposit will be returned to the buyer

For example, assume a transaction has been scheduled for closing, but the local Register of Deeds office closes on short notice and is not set up to accept electronic filings. The Due Diligence Period has expired. Since both parties are affected by this event, written notice from either party to the other confirming the closure would automatically extend the Settlement Date by the number of days agreed to by the parties. If the Settlement Date is March 30 and the parties have agreed to a 30-day extension, the Settlement Date would be extended until

April 30. If, during the month of April the Register of Deeds office reopens, the Addendum provides that the parties will make a good faith effort to close as soon as reasonably possible. On the other hand, if at the end of April the Register of Deeds office has not reopened, the contract will be null and void if the buyer and seller don't agree in writing to a further extension, and the seller will keep the Due Diligence Fee and the Earnest Money Deposit will be returned to the buyer.

The buyer's and seller's rights under the Addendum are triggered by a "COVID-19-Related Restriction." Examples of such restrictions are listed in the introductory paragraph, but the list is not all-inclusive. Thus, any event related to the pandemic that makes a party's performance unduly burdensome or impossible can cause the provisions of the Addendum to become applicable. This open-ended definition anticipates that circumstances unforeseen at the present time could arise that will affect the ability of buyers and sellers to complete real estate transactions.

We recognize that a broad definition increases the potential for misunderstanding as to whether a particular circumstance is related to the pandemic or whether such a circumstance makes it unduly burdensome or impossible for a party to perform. We hope and believe that buyers, sellers and their agents will exercise the utmost good faith in dealing with each other during this very difficult time. However, it is important for all parties to understand the ways in which the Addendum will affect their rights and obligations in considering whether to make it a part of their contract. Careful consideration should be given to the length of the time that contract deadlines will be extended. The parties may agree to a further extension if, as the deadline approaches, they are both still willing and able to complete the sale and further time is needed.

The parties and their agents should also understand that use of this Addendum is not mandatory. Buyers and sellers may choose to use the negotiable terms of the contract (amount of Due Diligence Fee or Earnest Money Deposit, length of Due Diligence Period, etc.) to protect their respective interests without making the COVID-19 Addendum a part of their contract, and delays arising as a result of the pandemic may be addressed through the use of the Agreement to Amend Contract (Form 4-T).

Questions about the Form should be addressed to the Legal Hotline at [legalhotline@ncrealtors.org](mailto:legalhotline@ncrealtors.org).

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