



Handling Offers Properly Today

Student Workbook

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North Carolina Real Estate Commission

CONTINUING EDUCATION STUDENT INFORMATION SHEET

READ IMMEDIATELY UPON CHECKING IN

Basic CE Requirement (21 NCAC 58A.1702)

To maintain a license on active status every licensee must complete **eight (8) hours of continuing education each license year** consisting of the four (4) hour ***Real Estate Update*** course (mandatory for all licensees) and a four (4) hour elective. [If you are designated as a BIC/BIC eligible, you must take the ***BICAR*** course as your elective course each year beginning the first full license year after the license year in which the broker declared himself/herself a broker-in-charge.] The content of the ***Update*** course (and the ***BICAR*** course) changes each year.

Important Points to Note

- Newly licensed licensees do NOT need to take any CE courses *prior* to their **first license renewal**, but must satisfy the CE requirement *prior* to their **second license renewal** and each year thereafter.
- A course may not be taken for CE credit twice in the same license period. Make sure you have not already taken the course during the current license year. Remember, the license year runs from July 1 to June 30 and all CE must be complete by June 10 of each year.
- If your license is **inactive**, you should check with the Commission to ascertain the amount of CE you need to activate your license.
- **The deadline for completing CE – live courses or online courses – is ALWAYS June 10th each year!**

Attendance Requirement (21 NCAC 58E.0510)

*A student must always attend a **minimum** of 90% of the scheduled class session in order to receive a course completion certificate and CE credit.*

Students shall not be admitted to a class session after 10% of the scheduled classroom hours have been conducted. The 10% absence allowance is generally permitted for any reason at any time during the course; however **sponsors and instructors shall not permit students to use the 10% absence allowance to avoid the last 10% of the course or to leave the course early** unless the absence is for circumstances beyond the student's control that could not have been reasonably foreseen by the student and is approved by the instructor.

No exceptions to the 90% attendance requirement are permitted for any reason.

Student Participation Requirement (21 NCAC 58E.0511)

In order to assure that the mandatory continuing education program will be one of high quality, the Commission requires that students comply with the following student participation standards:

A student shall direct his undivided attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class.

Examples of Prohibited Conduct include *but are not limited to*:

Sleeping; rattling or shifting papers; performing office work; making or receiving a call on a cellular phone; receiving page on a pager that makes a noise; or repeatedly interrupting and/or challenging the instructor in a manner that disrupts the teaching of the course. In addition, unless requested by the instructor as a part of the class instruction, students should not read a newspaper or book (other than the course text) during class, carry on a conversation with another student, send or read text messages, or operate a tablet, laptop computer, or other electronic device.

Sponsors and instructors are required to enforce the student participation standards. Sponsors have been directed to NOT issue a course completion certificate to a licensee who violates the standards and sponsors must report improper behavior to the Commission.

Course Completion Reporting

Sponsors are responsible for reporting course completion information to the Commission via the Internet within **7 days of course completion**, but *no later than June 15th*. Licensees are responsible for assuring that the real estate license number that they provide to the course sponsor is **correct**. Licensees may address comments/complaints about courses, instructors, and/or sponsor to:

Continuing Education Officer
North Carolina Real Estate Commission
PO Box 17100
Raleigh, NC 27619-7100

Certificates of Course Completion

Course sponsors will provide each licensee who satisfactorily completes an approved CE course a Certificate of Completion on a form prescribed by the Commission within 15 calendar days following a course. The certificate should be retained as the licensee's personal record of course completion. **It should not be submitted to the Commission unless the Commission specifically requests it.**

Please avoid calling the Commission office to verify the crediting of continuing education credit hours to your licensee record unless you believe that an error has been made. *It is each licensee's responsibility to check his/her CE record to insure that s/he has actually received credit for all CE taken.* Please use the Commission's website (www.ncrec.gov) to verify that your credit hours have been reported. Your cooperation in this regard will be especially needed during the May 15 - June 30 period each year.

Introduction

Handling Offers Properly course is a four (4) hour elective course offered to real estate licensees to meet the elective requirements for continuing education. This course was developed by Bill Gallagher, (CCDS, DREI, GRI, ITI Certified) and meets the elective continuing education course requirements of the North Carolina Real Estate Commission.

The *Student Manual* is provided to assist licensees in providing an outline for the course and to provide a reference source for your use if you should encounter questions regarding Handling Offers Properly.

This four (4) hour elective course will include three hours and twenty minutes (200 minutes) of classroom instruction, thirty (30 minutes) of breaks, and ten (10 minutes) for general instructions and other administrative matters.

Questions or Comments

Comments and complaints about the course, the sponsor, or the instructor may be directed in writing to:

NC Real Estate Commission
Continuing Education Department
P.O. Box 17100
Raleigh, NC 27619

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Section One:

Basic Contract Principles

Learning Objectives:

- ✓ Understand the basic definition and concept of an **offer**.
- ✓ Define **counteroffer** and realize various ways to handle a **counteroffer**.
- ✓ Explain the NCAR **Response To Buyer's Offer** form.
- ✓ Know the various ways an offer can be terminated.
- ✓ Understand the basic definition of **contract** and explain the various types of contracts.
- ✓ Realize the four essential elements of contracts.
- ✓ Describe the various methods of communicating acceptance.
- ✓ Explain the NC rescission period for new timeshares, new condominiums, and for non-delivery of the NC Residential Property Disclosure Statement.

Offer

1. An offer is a **proposal** from a buyer. In commercial real estate, an offer is sometimes referred to as a **letter of intent**.
2. A person making an offer to enter into a contract is known as the **offeror**.
3. A person to whom the offer is made is known as the **offeree**.
4. When an offer is presented, there is no agreement between seller(s) and buyer(s) because there has not been a meeting of the minds between the parties.

5. Agents should be aware and careful that agents sometimes use the term **offer** and **contract** interchangeable which is totally unacceptable.
6. Beware of the following comments from agents:
 - a. “I’m bringing you a contract.” (*The agent should say “offer”.*)
 - b. “I’m working on a contract for you”. (*The agent should say “offer”.*)

Situational Example in Handling Offers



A buyer makes a written offer on a property on Thursday evening at 7PM. The offer is delivered to the listing agent on Thursday evening at 9PM at her home. The listing agent says that she hopes to present the offer to the seller on Friday morning and will do her best to get back an answer since the seller is in town. The selling agent calls the buyer Thursday evening to discuss what the listing agent mentioned. There is no response on Friday or Saturday. The buyer calls the selling agent on Sunday asking why there has been no response. The selling agent calls the listing agent and leaves a voice mail message. It’s now Sunday evening and the buyer is very upset because of no response. The buyer says, “I’m withdrawing my offer. I’m not going to be jerked around by these people.”

1. If you were the selling agent, how would you handle the situation?
2. Do you think the selling agent should have contacted the listing agent when no response was given as the listing agent described initially when the offer was delivered?
3. In your opinion, what would be the most appropriate way for the listing agent to handle this situation?
4. How does NC Real Estate Law address this issue?

Key Points In Handling Offers

Terms to Use:

acceptance	email	offeror
addenda	expiration	rejects
agent	three	revocable
binding	Insanity	revoke
communicated	limit	Statute
delivered	offer	Terminates
electronic	offeree's agent	withdraw

1. An _____ must be definite and certain in its terms.
2. An offer must have all applicable _____ attached and itemized.
3. To have legal effect, an offer must be communicated to the offeree or _____.
4. An offeror can _____ or _____ his or her offer at any time prior to acceptance by the offeree. An offer is not considered legally revoked until notice of revocation is given to the offeree or _____.
5. The _____ can specify in the offer a deadline for acceptance and the method of acceptance. Where the offer is silent on this point, an offer terminates after the passage of a reasonable period of time.
6. Death or _____ of the offeror prior to acceptance of the offer terminates the offer.
7. A counteroffer _____ the original offer.
8. All offers are to be delivered immediately, but in no event later than _____ calendar days.
9. All offers and counteroffers are to be in writing under the _____ of Frauds.
10. Oral contracts are legal but not _____ in a court of law.
11. Offers, until accepted, are _____ and the prospective buyer can withdraw such offer to purchase at any time before acceptance by the seller in the designated manner or within the designated time period.

12. Buyers are not bound to keep an offer open even for the designated time period or until the end of the time_____.
13. The inclusion of an_____date or time limit indicates that the offer will expire automatically at the termination of the named period if the seller does not accept before the end of the time limit. Sellers do not have to respond, if they choose not to respond. This rule also applies to an offer to sell made by a seller, and to any counteroffer made by a seller or buyer.
14. It's important that an_____who procures an offer of purchase from a prospective purchaser should exercise the utmost promptness in notifying the owner-seller of any offer.
15. It's important that the agent make sure that the owner-seller's signed acceptance is_____and_____to the buyer as soon as possible in the manner prescribed, if any, in the offer to purchase.
16. Until the owner-seller's acceptance has been_____to the buyer, the buyer may still_____the offer.
17. Counteroffers and revocations of offers and other communications related to the formation or termination of a contract can also be sent as _____ messages or attachments to e-mail messages.
18. It's always prudent to follow-up_____communications with verbal confirmations and to promptly deliver original signed documents.
19. An exchange of email messages between prospective seller and buyers could result in a_____contract to convey real estate.
20. _____messages themselves can under proper circumstances constitute all or part of a binding sales contract between seller and buyer.

Counteroffer

It's very common for a seller to insist on changes to and substitutions for some of the terms proposed by a prospective buyer in an offer to purchase.

When a seller receives an offer to purchase property, makes changes to the offer, initials the changes, signs the offer, and returns it to the prospective buyer, the seller has made a counteroffer under the law of contracts. A counteroffer is a rejection of the offer to purchase which terminates the original offer.

A seller may want to inquire as to a prospective buyer's willingness to accept changes to a submitted offer without making a formal counteroffer. For example, a seller might reply to a prospective purchaser that the offer to purchase is being reviewed by the seller. At the same time, the seller might inquire orally or in writing whether the prospective purchaser would consider certain changes to the offer. The seller essentially is attempting to keep the buyer's offer on the table, while simultaneously seeking to determine whether the buyer will make a more favorable offer. While this is possible in theory, in order to avoid misunderstanding, it is important for any written memorandum or oral communication to the prospective buyer to carefully indicate that it is not an acceptance or counteroffer.



RESPONSE TO BUYER'S OFFER

TO: _____

RE: OFFER TO PURCHASE _____

Property Address

OFFER DATE: _____

[check only ONE box]

☒ Thank you for your offer to purchase the above property (the "Property"). I/we cannot accept the offer as written and hereby reject it. However, while THIS IS NOT A COUNTER OFFER, I/we would favorably consider the following changes:

If the above changes are acceptable to you, please submit another offer with the noted changes. PLEASE UNDERSTAND THAT UNTIL AN OFFER HAS BEEN ACCEPTED, I/WE ARE FREE TO CONSIDER AND MAY AT ANY TIME ACCEPT ANY OTHER OFFERS TO PURCHASE PRESENTED THAT CONTAIN TERMS AND CONDITIONS SATISFACTORY TO ME/US IN MY/OUR SOLE DISCRETION.

☐ Thank you for your offer to purchase the above property (the "Property"). Please be advised that I/we intend to consider all offers on the Property received by *(insert date and time)* _____. Should you choose to submit another offer, I/we encourage you to submit your best offer as soon as possible and in no event later than the date and time set forth in the preceding sentence. If you neither submit another offer nor withdraw your current offer, we will consider your current offer along with any other offers. HOWEVER, PLEASE UNDERSTAND THAT I/WE MAY, IN MY/OUR SOLE DISCRETION, CHOOSE TO ACCEPT ANY OFFER, INCLUDING YOURS, PRIOR TO THE DATE AND TIME SET FORTH ABOVE, OR WE MAY CHOOSE NOT TO ACCEPT ANY OFFERS SUBMITTED BY THE DATE AND TIME SET FORTH ABOVE.

☐ Thank you for your offer to purchase the above property (the "Property"). I/we cannot accept the offer as written and hereby reject it.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

Seller _____ Date _____ Time _____

Seller _____ Date _____ Time _____

Entity Seller: _____
(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____ Date: _____ Time: _____

Name: _____ Title: _____
Print Name



Response to Buyer's Offer



	ADVANTAGES	DISADVANTAGES
Buyer		
Seller		
Agent		

Key Points In Handling Counteroffers

Key Terms:

binding	rejection
buyer	Response to Buyer's Offer
date	three
deliver	principal
five	series
initial	writing
immediately	

1. When preparing a counteroffer, the party making the counteroffer should _____ each change made to the original offer and _____ the changes. If the seller is making the counteroffer to an original written offer, the seller should sign and date the offer to purchase and contract form in the spaces provided at the end of the form. If the counteroffer is a second counteroffer, each change should be dated as well as initialed.
2. When a counteroffer is made, it's very important that it be communicated _____ to the other party. The agent should check to make sure the parties have correctly initialed and dated the changes as well as signed at the end of the form.
3. If a _____ of negotiations result in going back and forth from buyer to seller and seller to buyer, the agent is advised to take a blank form and complete new paperwork based upon the latest understanding of the parties.
4. It's important for agents to obtain all counteroffers in _____ as soon as possible.
5. Remember, the " _____ " form is a _____ of the offer.
6. "Delivery of Instruments" Rule says that offers and counteroffers are to be delivered immediately but in no event later than _____ calendar days. (NC Commission Rule 21 NCAC 58A.0106)

7. When a _____ signs an offer to purchase the broker or provisional broker must provide that buyer with an exact and complete copy of what he or she has signed.
8. When the seller accepts the buyer's offer to purchase, that seller also must be provided with an exact copy of what he or she has signed, and the broker must promptly _____ a copy to the buyer showing that the contract is complete and _____.
9. All rejected offers and counteroffers are to be retained for _____ years as required by NCREC rule.
10. NC Commission Rule 21 NCAC 58A.0106 states that:

"Agency law imposes a duty on an agent to promptly present all offers to his/her _____ and to keep the _____ informed of any facts that might influence a seller's decision."

Termination of Offer

An offer is terminated if the offeree rejects the offer or fails to accept within the prescribed period of time stipulated in the offer, or, if none is so stipulated, within a reasonable period of time.



The offeror, at any time prior to acceptance by the offeree, may terminate the offer by revoking it.

Revocation, however, will not terminate the offer until notice of the revocation is communicated to the offeree, although the death or insanity of the offeror will effect an immediate termination of an offer without notice to the offeree.

When advertising property for sale, an advertisement amounts to an invitation to readers to consider the property and submit an offer. No power "to accept" the advertisement of the property exists. Also, if a seller receives a full price offer as stated in the "MLS", the seller is under no obligation to sell the property if the terms cannot be agreed upon between buyers and sellers.

Time limit and expiration of offer provisions are used. Buyers and sellers should understand these provisions.

Contract

Definition

A deliberate agreement between two or more competent parties supported by legal consideration to perform or abstain from performing some act.

Types

- **Express** – is one which is stated in words, either orally or in writing. However, certain specified contracts must be in writing under the **Statute of Frauds**.
- **Implied** – is one which is suggested from the conduct of the parties showing the intent of the parties to be bound.
- **Executory** – is one where a provision(s) have not been fully performed.
- **Executed** – is one which has been fully performed. All obligations under the contract have been fulfilled by all parties.

Essential Elements

- **Legal Objective** – the purpose of the contract is to be for a lawful purpose.
- **Mutual Assent** – the parties must have a *meeting of the minds*.
- **Legally Competent Parties** – the parties must be 18 or older, sane, and sober.
- **Consideration** – *something of value* to be exchanged. Consideration is a sales contract is the sale price. Consideration is not the earnest money deposit. Earnest money deposit is not an essential element of a contract.

Methods of Communicating Acceptance

1. **Oral Communication of the Acceptance.**

The offeree may personally or by telephone advise the offeror that the offer has been accepted.



2. **Personal Delivery of the Written Acceptance** (or signed offer). The offeree may personally deliver the written acceptance to the offeror (or may have the acceptance delivered personally to the offeror by another person.)



3. **Mail (Traditional or Special Mail).** The offeree may place the written acceptance in the mail to the offeror. Once the acceptance has been mailed (placed in the control of the mail service and out of control of the offeree), the offer is considered to be accepted as of the date and time of the mailing, even though the acceptance is not actually received by the offeror until several days later. The offeror cannot withdraw or revoke his offer after an acceptance has been mailed. Similarly, the offeree cannot withdraw or revoke his acceptance after it has been mailed. This rule of law is known as the “mailbox rule”.



4. **Facsimile (FAX) Machine or Electronic Mail (e-mail).**

The use of electronic methods of communication, such as e-mail or fax, is now widespread. Communication of an acceptance in this manner is perfectly legal unless the terms of the offer expressly provide otherwise. **AN ACCEPTANCE OF AN OFFER COMMUNICATED BY FAX OR E-MAIL IS EFFECTIVE UPON RECEIPT BY THE OFFEROR’S COMMUNICATION EQUIPMENT OR COMPUTER.**



5. **Communication to an Agent.** Communication of an offer or acceptance to the agent of a principal is the same as communication directly to the principal.

6. **Voice Mail** is an acceptable method in communicating acceptance or withdrawal from one party to the other party of other party’s agent. Voice mail is **not acceptable** from a party to their own agent. Voice mail must be communicated to the **other** party or **other agent** on the other side of the transaction.



NCAR OFFER TO PURCHASE AND CONTRACT (1/2011)

PROVISION #20

ENTIRE AGREEMENT. This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

PROVISION #21

NOTICE. Any notice or communication to be given to a party herein may be given to the party or to such party's agent. Any written notice or communication in connection with the transaction contemplated by this Contract may be given to a party or a party's agent by sending or transmitting it to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Seller and Buyer agree that the "Notice Information" and "Escrow Acknowledgment" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

PROVISION #22

EXECUTION. This contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument, and the parties adopt as their seals the word "SEAL" beside their signatures below.

Rescission

1. **New Timeshares** – no later than 5 calendar days after contract execution.
2. **New Condominiums** – no later than 7 calendar days after contract execution.
3. **Residential Property Disclosure Statement Not Delivered** – no later than 3 calendar days after contract execution.
4. **Resale Single Family With Delivery of Residential Property Disclosure Statement By Time Of Offer** – *no* rescission period.

Section One - Quiz

True or False

1. T or F An offer is revocable at any time prior to acceptance.
2. T or F If a buyer states a time limit for the seller to respond, the seller must respond within this time period.
3. T or F All offers and counteroffers are to be delivered to all parties immediately but in no event later than 3 business days.
4. T or F All rejected offers are to be kept for 5 years as per NC Real Estate Commission Rule.
5. T or F If an agent is working with a buyer and is in possession of a signed offer to purchase and contract, the agent must deliver the offer to the seller, usually through the listing agent, even if there is no agreement with the listing firm to cooperate and share the listing firm's commission.
6. T or F If a "Response To Buyer's Offer" form is used, this communication is a rejection and an invitation for the other party to respond.
7. T or F Any changes made to an offer constitutes a rejection of the offer, which includes a party deleting a provision.
8. T or F Delivery of acceptance to the buyer's agent is deemed delivery to the buyer if no initials or signatures are required.
9. T or F If a listing agent receives a signed contract on their fax machine, receipt by the fax machine is an acceptable method of communicating acceptance.
10. T or F REALTORS®, using the NCAR Offer To Purchase and Contract, may stipulate the amount of commission and bonus, if any, their firm is to be paid in the Offer To Purchase and Contract.

11. T or F If a listing agent stated in the MLS datablock the seller would leave a refrigerator, and the buyer's agent did not indicate the refrigerator in the Offer To Purchase and Contract, the seller is still legally obligated to leave the refrigerator since it was stated in the MLS datablock.
12. T or F If a limited service firm tells a buyer's agent to go directly to their seller to present the offer, the buyer's agent can go directly to the seller and present.
13. T or F The buyer may legally rescind a new condominium contract in NC no later than 5 days from contract execution.
14. T or F A listing agent may "write-in" the NCAR Offer To Purchase and Contract a provision that the heated square footage is supplied to the best knowledge and belief of the seller and the listing agent is not liable for the accuracy.
15. T or F The due diligence fee, if any, is to be made payable to the seller.
16. T or F The due diligence fee is not credited to the buyer on the HUD1 Settlement Statement.
17. T or F The due diligence fee, if any, is given to the seller after the contract is accepted by all parties.
18. T or F Buyer can terminate the NCAR Offer To Purchase and Contract for any reason, or no reason prior to the due diligence date; moreover, the buyer is refunded the earnest money deposit and the due diligence fee, if any.
19. T or F If buyer decides to proceed past the due diligence date, and then the day prior to settlement date cannot purchase the property because their loan is declined, the seller keeps the due diligence fee and the earnest money is refunded to seller.
20. T or F "Time is of the essence" in regards to the due diligence date with a specific time deadline of 5PM.

Section 2:

Contract Law Issues

Learning Objectives:

- ✓ Understand the Statute of Frauds and how this law relates to sales contracts.
- ✓ Know that NC laws validate electronic contracts and signatures.
- ✓ Realize three types of electronic signatures exist.
- ✓ Know the various ways an offer can be terminated.

Statute of Frauds

While certain categories of contracts are valid and enforceable though oral, many contracts in the real estate are required to be in writing. General Statute 22-2 provides, in part, that “all contracts to sell or convey and lands...shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith...” Although the statute uses the term **void**, in practice the courts consider such oral contracts to be **voidable**. (Thus, such contracts are legally **unenforceable** but are not automatically void.)

There are 4 (four) necessary elements to comply with the Statute of Frauds:

- 1) the names of the parties to the contract
- 2) the subject matter of the contract
- 3) all material terms and conditions
- 4) the signature of the party to be charged with the contract, or his authorized agent

NC Laws Validate Electronic Contracts and Signatures

It is important for the licensee to know that NC laws validate electronic contracts and signatures at this time. Electronic transmission of documents and signatures is perfectly acceptable. The Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act (SAFE Act) are the statutory provisions guiding the acceptance of e-signatures.

Three Types of Electronic Signatures

There are three types of electronic signatures used with e-mail in business transactions today:

- 🕒 **Common Electronic Signatures** (*or Unsecured Electronic Signatures*)
- 🕒 **Secure Electronic Signatures**
- 🕒 **Digital Signatures**

Let's discuss these three types of electronic signatures.

1. Common or Unsecured Electronic Signatures

This type of electronic signature uses little, or no, specific technology to verify the identity of the sender. People create a common electronic signature by typing their name at the bottom of an e-mail message. Another way to create a common, or unsecured, electronic signature is to take advantage of the automatic signature feature offered in most e-mail programs. The automatic signature features pose a problem for legal recognition of e-mail signatures, especially with respect to the ceremonial justification for signatures.

2. Secure Electronic Signatures

This type of electronic signature incorporates some kind of unique information that identifies the signature as belonging to a particular person. Use of *biometric* methods such as incorporating a fingerprint, voice print, or retinal scan would create a secure electronic signature. Also, a graphical image of someone's handwritten signature could be considered a secure electronic signature.

Cryptography, also known as symmetric cryptography, provides a higher level of security than a common or unsecured electronic signature. There is a secret key for the sender and the recipient to use. If someone engages in numerous transactions, a large database of keys must be maintained.

The following companies can provide more information and assistance with secure electronic signatures:

Alpha Trust	www.alphatrust.com
Yozons Technology	www.yozons.com
DocuSign	www.docusign.com

DocuSign is the official and exclusive provider of the National Association of REALTORS® and partner in the REALTORSTM benefit program. They have a DocuSign version that is specifically designed for REALTORS® and offer a free, no obligation trial to all REALTORS®. DocuSign integrates with NCAR forms providers including zipForms, Real Fast, and Formulator, allowing the agent to send documents for e-signature directly from within their forms application.

Who is DocuSign? DocuSign pioneered e-signature technology in 2003 following the enactment of the federal E-SIGN legislation that established electronic records and signatures as legally binding. E-SIGN paved the way for widespread adoption of online transactions. The company set out to make e-signatures the preferred method of closing business by creating fast, easy and secure e-signature solutions to save companies substantial amounts of time and money. In the few years since its inception, DocuSign has emerged as the clear industry leader with more than 78% of the market for SaaS e-signatures in 2011.

What is an Electronic Signature? An electronic signature is any paperless and legally recognized means of entering into a contract, including electronic symbols, sounds, or processes logically

associated with a contract. They can include agreements made by email, facsimile or entering your personal identification number into an ATM. The legal definition for an "electronic signature" can vary depending on location. For example, the US federal ESIGN Act of 2000 defines an e-signature as "an electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." The European Union's Electronic Signature Directive of 1999 defines it as "data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication."

DocuSign Features & Benefits:

- **Integrated with most real estate forms providers (like zipForms, Real Fast, and Formulator)** – sign into DocuSign from your forms account and send documents for signature.
- **Expedite contract & agreement execution** – get contracts signed in minutes without leaving the office.
- **Increase client satisfaction** – signers need only an internet connection with a web browser, or they can simply sign on their smart phone.
- **Sell more** – on average, using DocuSign will return 8-10 hours/week that were previously spent managing paper agreements.
- **Save money** – on expensive gas, courier/mailing fees, printing supplies.
- **Ensure compliance** – DocuSign is the only e-signature company that warrants compliance with the Federal ESIGN Act with a comprehensive, digital audit trail.
- **Reliable** – DocuSign is the only e-signature company that provides a 99.8% Service Level Agreement (SLA), meaning the service is available on-demand, when you need it.

3. Digital Signatures

Digital signatures are a highly secure form of an electronic signature and employ specific type of technology. There are two important features:

- 🕒 it allows an e-mail recipient to verify the sender's identity.

⌚ if encrypted, a digital signature deals with the message itself by ensuring that the message has not been read or changed by anyone while it was in transit

Digitally signing a message allows a recipient to verify the identity of the sender. Encrypting a message notifies the recipient if other people have read or tampered with the message while it was in transit.

A digital signature involves two different but mathematically related keys called the **private key** and the **public key**. Together, the two keys are called the **key pair**.

A private key is the part of a key pair that is used by a person to sign an electronic document. The public key infrastructure is maintained on a certificate issued by a **certification authority**.

A low level certificate is easy to obtain and requires almost no verification of identity. High level certificates require a personal appearance at the office of the certification authority.

Below is list of several **certification authorities**:

Symantec Corp.	www.verisign.com
Thawte, Inc.	www.thawte.com
DigiCert, Inc.	www.digicert.com
GeoTrust, Inc.	www.geotrust.com



Section 3:

UETA: "Uniform Electronic Transactions Act"

Learning Objectives:

- ✓ Understand the main purpose of the UETA.
- ✓ Identify and explain the four basic principles of UETA.
- ✓ Describe how UETA handles required disclosures in real estate.

Purpose

The Uniform Electronic Transmissions Act is a model law drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). UETA has not effect unless it is enacted by a state. The General Assembly enacted North Carolinas's version in 2000. The major purpose of the UETA is to allow electronic transmissions of signatures and documents to constitute a legal means of delivery to a party.

Four Fundamental Principles of UETA

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
2. A contract cannot be denied legal effect or enforceability solely because no electronic record was used in its formation.
3. If a law requires a record to be in writing, an electronic record satisfies that law.
4. If a law requires a signature, an electronic signature satisfies that law.

Required Disclosures in Real Estate

If a law requires a person **to provide, send, or deliver information in writing to another person**, that requirement can be met with an electronic record if certain conditions are met. The information in a real estate transaction that would be subject to this section can be placed in two categories:

- ⌚ This information that the law requires a real estate agent to give to his or her clients or customers. This would include agency disclosures.
- ⌚ Required disclosures and information such as Lead Based Paint and Residential Property Disclosure forms can be sent electronically.

Section 4:

Handling Situations Properly

Learning Objectives:

- ✓ Learn how to handle multiple offers properly.
- ✓ Understand the difference of *calling in all offers* compared to *shopping a contract*.
- ✓ Explain the basic provisions of the **Back-Up Addendum**.
- ✓ Explain the basic provisions of the **Contingent Sale Addendum**.
- ✓ Understand when to use Provision #5 on the Additional Provisions Addendum pertaining to the contract is contingent upon the closing of a property.

Multiple Offers

Definition

When there is more than one offer on a property at the same time, the listing agent **must** present all offers to the seller.



"Calling In All Offers"

A listing agent may call other agents who have shown their listing to determine if there is any interest from those potential buyers. The listing agent may call these agents regardless if it's the request of the seller or if the listing agent decides to call to work in their client's best interest. The listing agent does **not** disclose any prices, terms, or conditions of other offers; moreover, the listing agent is determining if there is a potential or possibility of other offers.



NC Commission Rule 21 NCAC 58A.0115: Disclosure of Offers Prohibited

Rule 58A.0115 is brand new and became effective July 1, 2008. It is very concise, stating:

A broker shall not disclose the price or other material terms contained in a party's offer to purchase, sell, lease, rent, or to option real property to a competing party without express authority of the offering party.

NCAR Exclusive Right to Sell Listing Agreement (Form 101) - Provision #9

FIRM'S DUTIES. Firm agrees to provide Seller the benefit of Firm's knowledge, experience and advice in the marketing and sale of the Property. Seller understands that Firm makes no representation or guarantee as to the sale of the Property, but Firm agrees to use its best efforts in good faith to find a buyer who is ready, willing and able to purchase the property. In accordance with the REALTORS® Code of Ethics, Firm shall, with Seller's approval, in response to inquiries from buyers or Cooperating Real Estate Firms, disclose the existence of offers on the Property. Where Seller authorizes disclosure, Firm shall also disclose whether offers were obtained by the individual agent who signs this Agreement, another agent of the Firm, or by a Cooperating Real Estate Firm. Seller acknowledges that real estate brokers are prohibited by N.C. Real Estate Commission rule from disclosing the price or other material terms contained in a party's offer to purchase, sell, lease, rent or option real property to a competing party without the express authority of the party making the offer.

Seller acknowledges that Firm is required by law to disclose to potential purchasers of the Property all material facts pertaining to the Property about which the Firm knows or reasonably should know, and that REALTORS® have an

ethical responsibility to treat all parties to the transaction honestly. Seller further acknowledges that Firm is being retained solely as a real estate professional, and understands that other professional service providers are available to render advice or services to Seller, including but not limited to an attorney, insurance agent, tax advisor, surveyor, structural engineer, home inspector, environmental consultant, architect, or contractor. Although Firm may provide Seller the names of providers who claim to perform such services, Seller understands that Firm cannot guarantee the quality of service or level of expertise of any such provider. Seller agrees to pay the full amount due for all services directly to the service provider whether or not the transaction closes. Seller also agrees to indemnify and hold Firm harmless from and against any and all liability, claim, loss, damage, suit, or expense that Firm may incur either as a result of Seller's selection and use of any such provider or Seller's election not to have one or more of such services performed.

THE AGENT (FIRM) SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT.

The listing agent is to present all offers in an objective manner to the seller(s). The seller has the following ways to respond:

- Reject all offers.
- Accept an offer and reject the other offer.
- Use a **Response To Buyer's Offer** form to respond to both parties without legally committing to the agreement.
- Wait to see if another offer is presented on their property.
- Think about both offers.

IMPORTANT REMINDERS

1. If a seller has already received another offer and is presently negotiating another offer, a listing agent must promptly present to the seller any other offers.
2. If two offers are received by a listing agent at the same time, both offers must be presented at the same time.
3. A counteroffer may be revoked at anytime prior to acceptance.

SITUATIONAL EXAMPLES

Example #1

If one offer has been presented to the seller, can the seller ask the listing agent to call agents who showed their property for the past two days to see if those buyers are interested in making an offer?

Example #2

If one offer is in the hands of the seller, and another offer is supposed to be “coming in by noon tomorrow”, how should the listing agent advise the seller?

Example #3

Sue is sitting at her desk one morning at 10AM and just received a telephone call from Peggy. Peggy is a buyer’s agent and is bringing Sue an offer on her listing on Carmel Road. Sue tells Peggy to bring the offer to her office and they agree to meet at noon at Sue’s office. About 10 minutes later, Amanda calls Sue and says that she is going to write an offer on Sue’s listing on Carmel Road and would be bringing it to her around 2PM this afternoon. Should Sue inform both agents at this time of the possibility of multiple offers? Why or why not?

Example #4

Let’s consider the same situation as before. Let’s say that Peggy’s offer was presented two days earlier and the buyer and seller have been negotiating back and forth but have not reached a “meeting of the minds.” What should Sue do in this situation?

Example #5

Can both agents, at different times, request to accompany Sue on the presentation of their client's offer to the seller? Can the listing agent deny this request without asking the seller? Could the seller deny their request?

Example #6

Is it advisable for Sue to counter the offer verbally to both parties and not to put anything in writing until the parties have agreed?

Example #7

How should Peggy handle this situation with the buyer? What advice should Peggy give the buyer?

Example #8

Let's say that before Sue knew of Amanda's buyer's offer, Sue has told Peggy that, "It's a done deal". The seller's have verbally accepted the price and terms on the telephone and will be in town over the weekend to sign the papers. Amanda calls Sue after she made this statement to Peggy stating that she has an offer to present on Carmel Road. What should Sue do at this time?

Example #9

Let's say that Sue, Peggy, and Amanda are working in the same real estate office. How should the offers be handled? What should Sue do in this situation?

Example #10

Can the seller tell Sue not to disclose to the agents that the seller has multiple offers on the property? Can the seller tell Sue to disclose to the agents that the seller has multiple offers on the property? What NC laws pertain to this situation?

BACK-UP CONTRACT ADDENDUM

NOTE: This Addendum should NOT be used in a short sale transaction. Use ONLY the Short Sale Addendum (form 2A14-T)

Property: _____

Seller: _____

Buyer: _____

This Addendum is attached to and made a part of the Offer to Purchase and Contract ("Back-Up Contract") between Seller and Buyer for the Property.

Buyer and Seller acknowledge that Seller has previously entered into an Offer to Purchase and Contract or an Offer To Purchase and Contract - Vacant Lot/Land (the "Primary Contract") with _____ [insert last name only] (the "Primary Buyer" under the Primary Contract), that the Primary Contract is currently pending, and that this Back-up Contract is accepted in a secondary or back-up position to the Primary Contract under the following terms and conditions:

1. **Condition.** It is a condition of this Back-up Contract that the Primary Contract is terminated as described below before Buyer and Seller shall be obligated to perform under this Back-up Contract.
2. **Termination of Primary Contract.** Termination of the Primary Contract shall be evidenced by:
 - (a) written release signed by all parties thereto; or
 - (b) written notice of termination from Seller to Primary Buyer that Seller is exercising a right to terminate the Primary Contract; or
 - (c) written notice of termination from Primary Buyer to Seller that Primary Buyer is exercising a right to terminate the Primary Contract; or
 - (d) final judgment of a court of competent jurisdiction that the Primary Contract is invalid, illegal, unenforceable, or is otherwise terminated.

NOTE: For example, NCAR Forms 350-T, 351-T, 352-T, 353-T, 390-T or 391-T may be used to evidence the release or notices called for in this paragraph.

3. **Indemnification/Hold Harmless.** Seller shall indemnify Buyer and hold Buyer harmless from any and all claims, damages and costs, including reasonable attorneys' fees, incurred by Buyer as a result of Buyer's reliance upon any wrongful or ineffective termination of the Primary Contract by Seller.

4. **Modification of Primary Contract.** Modification of the terms or conditions of the Primary Contract, including extensions of time, shall not constitute a termination of the Primary Contract and shall not cause this Back-up Contract to move into a primary position.

5. **Access to Primary Contract.** Buyer and Seller agree that Buyer may not examine or otherwise have access to the Primary Contract without written permission from Seller and Primary Buyer. Seller represents that the Primary Contract calls for a settlement date of _____ (date).

6. **Initial Earnest Money Deposit.** Buyer and Seller agree that any Initial Earnest Money Deposit shall be deposited within three (3) banking days following the Effective Date of this Back-up Contract even while this Back-up Contract is in secondary position.

7. **Closing on Primary Contract.** In the event the Primary Contract closes, then this Back-up Contract shall become null and void, and any Earnest Money Deposit shall be refunded to Buyer.

8. **Notification of Termination of Primary Contract.** In the event the Primary Contract is terminated, Seller shall promptly provide Buyer:

- (a) written notice stating that this Back-up Contract has become primary ("Notice of Primary Status"); and
- (b) written evidence that the Primary Contract has been terminated as provided in paragraph 2 above.

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North Carolina Association of REALTORS®, Inc.



STANDARD FORM 2A1-T
Revised 7/2019
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Buyer initials _____ Seller initials _____

9. Due Diligence/Settlement Dates.

- (a) Due Diligence Fee. Any Due Diligence Fee provided for in this Contract shall be due and payable within five (5) days after delivery to Buyer of Notice of Primary Status.
- (b) Due Diligence Period. The Due Diligence Period of this Contract shall extend through 5:00 p.m. on the last day of a _____ day period following Seller's delivery to Buyer of Notice of Primary Status.
- (c) Settlement Date. The Settlement Date of this Contract shall be on a date that is _____ days following Seller's delivery to Buyer of Notice of Primary Status.

NOTE: Instead of inserting dates in the "Due Diligence Period" and "Settlement Date" blanks in the Contract, insert "See attached Back-Up Contract Addendum"

10. Buyer's Right to Terminate. Buyer may terminate this Back-up Contract without liability by giving written notice of termination to Seller at any time prior to receipt by Buyer of Notice of Primary Status and any Earnest Money Deposit shall be refunded to Buyer.

11. Automatic Termination. In any event, Buyer must receive Notice of Primary Status from Seller no later than 5 p.m. on _____, **TIME BEING OF THE ESSENCE**, or this Back-up Contract shall become null and void and any Earnest Money Deposit shall be refunded to Buyer.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE BACK-UP CONTRACT THIS ADDENDUM SHALL CONTROL, EXCEPT THAT IN THE CASE OF SUCH A CONFLICT AS TO THE DESCRIPTION OF THE PROPERTY OR THE IDENTITY OF THE BUYER OR SELLER, THE BACK-UP CONTRACT SHALL CONTROL.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Date: _____

Date: _____

Buyer: _____

Seller: _____

Date: _____

Date: _____

Buyer: _____

Seller: _____

Entity Buyer:

Entity Seller:

(Name of LLC/Corporation/Partnership/Trust/etc.)

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____

By: _____

Name: _____
Print Name

Name: _____
Print Name

Title: _____

Title: _____

Date: _____

Date: _____

NOTE: The following is a suggested notice that may be copied for the purpose of complying with the notice provision contained in paragraph 8 of the Back-Up Contract Addendum. DO NOT DETACH THE ORIGINAL OF THIS FORM FROM THE BACK-UP CONTRACT.

NOTICE TO BUYER THAT BACK-UP CONTRACT IS NOW IN EFFECT

NOTICE is hereby given to _____ (insert name of Buyer) from Seller under the Back-up Contract between them dated _____ that Seller has terminated the Primary Contract with _____ (Primary Buyer), as evidenced by the ATTACHED (initial any one of the following):

- (a) _____ written release signed by all parties thereto; or
- (b) _____ written notice of termination from Seller to Primary Buyer that Seller is exercising a right to terminate the Primary Contract; or
- (c) _____ written notice of termination from Primary Buyer to Seller that Primary Buyer is exercising a right to terminate the Primary Contract; or
- (d) _____ final judgment of a court of competent jurisdiction that the Primary Contract is invalid, illegal, unenforceable, or is otherwise terminated.

and that the Back-up Contract entered into between Seller and Buyer has become primary and its terms and conditions are now in effect.

Seller: _____ Date: _____

Seller: _____ Date: _____

Seller: _____ Date: _____

Back-Up Contract Addendum

Definition

After a seller has accepted a contract on their property, other offers must be presented until the time of closing. A seller may choose to accept a **back-up offer** on their property conditional upon a first contract failing. The first contract is primary. If the first contract fails, then the **back-up offer** becomes a primary contract.

Questions

1. What constitutes a first contract failing?
2. Does a **back-up offer** have a time limit?
3. How long should the time limit last in the opinion of the buyer?
4. Is the back-up contract **voidable** if the buyer finds other suitable housing?
5. Is the earnest money deposit returned to the buyer, if the buyer finds other suitable housing?
6. What happens if the seller tells the firm not to return the buyer's earnest money even though the buyer has found other suitable housing?
7. When will the earnest money be deposited with a **back-up offer**?

NOTE: If Buyer does not intend to obtain a new loan, Seller is advised, prior to signing this offer, to obtain documentation from Buyer which demonstrates that Buyer will be able to close on the Property without the necessity of obtaining a new loan.

(b) **Other Property:** Buyer ☐ DOES ☐ DOES NOT have to sell or lease other real property in order to qualify for a new loan or to complete the purchase. *(Complete the following only if Buyer DOES have to sell or lease other real property:)*

Other Property Address: _____

☐ *(Check if applicable)* Buyer's other property IS under contract as of the date of this offer, and a copy of the contract has either been previously provided to Seller or accompanies this offer. *(Buyer may mark out any confidential information, such as the purchase price and the buyer's identity, prior to providing a copy of the contract to Seller.)* Failure to provide a copy of the contract shall not prevent this offer from becoming a binding contract; however, SELLER IS STRONGLY ENCOURAGED TO OBTAIN AND REVIEW THE CONTRACT ON BUYER'S PROPERTY PRIOR TO ACCEPTING THIS OFFER.

☐ *(Check if applicable)* Buyer's other property IS NOT under contract as of the date of this offer. Buyer's property *(check only ONE of the following options):*

- ☐ is listed with and actively marketed by a licensed real estate broker.
- ☐ will be listed with and actively marketed by a licensed real estate broker.
- ☐ Buyer is attempting to sell/lease the Buyer's Property without the assistance of a licensed real estate broker.

NOTE: This Contract is NOT conditioned upon the sale/lease or closing of Buyer's other property. If the parties agree to make this Contract conditioned on a sale/lease or closing of Buyer's other property, an appropriate contingency addendum should be drafted by a North Carolina real estate attorney and added to this Contract.

(c) **Performance of Buyer's Financial Obligations:** To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.

(d) **Residential Property and Owners' Association Disclosure Statement** *(check only one):*

- ☐ Buyer has received a signed copy of the N.C. Residential Property and Owners' Association Disclosure Statement prior to the signing of this offer.
- ☐ Buyer has NOT received a signed copy of the N.C. Residential Property and Owners' Association Disclosure Statement prior to the signing of this offer and shall have the right to terminate or withdraw this Contract without penalty (including a refund of any Due Diligence Fee) prior to WHICHEVER OF THE FOLLOWING EVENTS OCCURS FIRST: (1) the end of the third calendar day following receipt of the Disclosure Statement; (2) the end of the third calendar day following the Effective Date; or (3) Settlement or occupancy by Buyer in the case of a sale or exchange.
- ☐ Exempt from N.C. Residential Property and Owners' Association Disclosure Statement because (SEE GUIDELINES): _____

(e) **Mineral and Oil and Gas Rights Mandatory Disclosure Statement** *(check only one):*

- ☐ Buyer has received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to the signing of this offer.
- ☐ Buyer has NOT received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to the signing of this offer and shall have the right to terminate or withdraw this Contract without penalty (including a refund of any Due Diligence Fee) prior to WHICHEVER OF THE FOLLOWING EVENTS OCCURS FIRST: (1) the end of the third calendar day following receipt of the Disclosure Statement; (2) the end of the third calendar day following the Effective Date; or (3) Settlement or occupancy by Buyer in the case of a sale or exchange.
- ☐ Exempt from N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement because (SEE GUIDELINES): _____

Buyer's receipt of a Mineral and Oil and Gas Rights Mandatory Disclosure Statement does not modify or limit the obligations of Seller under Paragraph 8(g) of this Contract and shall not constitute the assumption or approval by Buyer of any severance of mineral and/or oil and gas rights, except as may be assumed or specifically approved by Buyer in writing.

NOTE: The parties are advised to consult with a NC attorney prior to signing this Contract if severance of mineral and/or oil and gas rights has occurred or is intended.

6. BUYER OBLIGATIONS:

(a) **Responsibility for Proposed Special Assessments:** Buyer shall take title subject to all Proposed Special Assessments.

(b) **Responsibility for Certain Costs:** Buyer shall be responsible for all costs with respect to:

SHORT SALE ADDENDUM

NOTE: The Back-Up Contract Addendum (form 2A1-T) should NOT be used in conjunction with this form when more than one contract of sale is being signed by Seller, as this form manages multiple contracts when necessary

Property: _____

Seller: _____

Buyer: _____

This Addendum is attached to and made a part of the Offer to Purchase and Contract ("Contract") between Seller and Buyer for the Property.

1. **Short Sale Defined:** For purposes of this Contract, a "Short Sale" is a sale where:
 - (a) the Purchase Price is or may be insufficient to enable Seller to pay the costs of sale, which include but are not limited to the Seller's closing costs and payment in full of all loans or debts secured by deeds of trust on the Property due and owing to one or more lender(s) and/or other lienholders ("Lienholders");
 - (b) Seller does not or may not have sufficient liquid assets to pay the costs of sale; and,
 - (c) the Lienholders agree to release or discharge their liens upon payment of an amount less than the amount secured by their liens with or without the Seller being released from any further liability.
2. **Short Sale Approval Risks: Buyer and Seller understand and agree that:**
 - No Lienholder is required or obligated to approve a Short Sale
 - Lienholders may require some terms of the Contract be amended in exchange for approval of a Short Sale, including acceleration of the Due Diligence Period and Settlement Date
 - Buyer and Seller are not obligated to agree to any of Lienholders' proposed terms
 - Seller may not be financially able to make any repairs to the Property that Buyer may request. The Seller's inability to make repairs shall not affect any rights that Buyer may have to terminate the Contract.
 - The costs of Due Diligence and any Due Diligence Fee usually are not refundable to Buyer in the event the Short Sale is not approved.
 - Lienholders' approval may take several weeks or months to obtain, and neither the Seller nor any real estate agent representing Seller or Buyer can guarantee the timeliness of Lienholders' review, approval or rejection.
 - NEITHER THE BUYER, THE SELLER, THE CLOSING ATTORNEY NOR THE BROKERS IN THIS TRANSACTION HAVE ANY CONTROL OVER LIENHOLDERS' APPROVAL, OR ANY ACT, OMISSION OR DECISION BY ANY LIENHOLDERS IN THE SHORT SALE PROCESS.
3. **Contingency:** This Contract is contingent upon Seller obtaining written approval for a Short Sale from all Lienholders whose approval is necessary to enable Seller to close and convey title in accordance with the Contract, which approval shall be effective through Closing upon terms which are acceptable to Seller ("Short Sale Approval")
4. **Notice of Seller's Acceptance of Lienholders' Approval and Parties' Right to Terminate:** Upon obtaining written Short Sale Approval from all necessary Lienholders, Seller agrees to promptly provide Buyer with written notice of Seller's acceptance of Lienholders' approval ("Notice of Approval of Short Sale"). Until Notice of Approval of Short Sale, either party may terminate the Contract by written notice to the other party and the Earnest Money Deposit shall be refunded to Buyer.
5. **Due Diligence/Settlement Date:**
 - (a) Buyer and Seller agree that the Due Diligence Period of this Contract shall extend through 5:00 p.m. on the fifteenth (15th) day (or the _____ day, if this blank is completed) following Seller's delivery to Buyer of Notice of Approval of Short Sale, **TIME BEING OF THE ESSENCE**.
 - (b) Buyer acknowledges that it could be of substantial benefit to Buyer to conduct any and all Due Diligence soon after the Effective Date. Doing so enables Buyer to inform Seller of defects or other matters that may affect Lienholder approval,

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Buyer initials _____ Seller initials _____

allows Buyer to determine that the Property is suitable and that Buyer can obtain financing, and allows the parties to avoid unnecessary delays.

- (c) Buyer and Seller agree that the Settlement Date of this Contract shall be on the thirtieth (30th) day (or the _____ day, if this blank is completed) following Seller's delivery to Buyer of Notice of Approval of Short Sale.

NOTE: Instead of inserting dates in the "Due Diligence Period" and "Settlement Date" blanks in the Contract, insert "See attached Short Sale Addendum".

6. Other Offers/Additional Contracts:

- (a) Rules of the NC Real Estate Commission require offers from other buyers received by the Seller's Agent to be presented to the Seller. The NC Real Estate Commission also requires the Seller's Agent to inform Lienholders of all offers and contracts of sale on the Property received after a request for a Short Sale has been submitted by such Agent to any Lienholder.
- (b) Seller hereby represents to Buyer that there ☐ is ☐ is not an existing contract of sale on the Property ("Existing Sales Contract")
- (c) Offers from other buyers may be accepted by the Seller and become sales contracts ("Additional Sales Contract") Seller or Lienholders may, prior to the Notice of Approval of Short Sale, elect to substitute any Existing or Additional Sales Contract for approval by Lienholders and withdraw this Contract or any Existing or Additional Sales Contract from consideration by Lienholders.
- (d) Unless this Contract has been terminated, Seller shall promptly notify Buyer in writing of the occurrence of any of the following events:
- (i) Seller's acceptance of any Additional Sales Contract; or
 - (ii) Seller's or Lienholders' substitution of any Existing or Additional Sales Contract for this Contract for Lienholder approval; or
 - (iii) Short Sale Approval of any Additional Sales Contract; or
 - (iv) Seller's closing on any Existing or Additional Sales Contract.
- (e) If not sooner terminated by Buyer or Seller hereunder, this Contract shall become null and void upon the completion of closing of any Existing or Additional Sales Contract whether or not Seller notifies Buyer of any such closing, and any Earnest Money Deposit shall be refunded to Buyer.

7. Foreclosure: Seller represents that to the best of Seller's knowledge, a foreclosure proceeding ☐ has not ☐ has been filed with respect to the Property. Further, if during the Short Sale process a foreclosure proceeding is filed, the Seller shall disclose such foreclosure filing to the Buyer. Buyer and Seller understand that if Closing does not occur before the completion of a foreclosure of the Property, Seller will lose all rights and interest in the Property. In such event, the Contract shall be void, and the Earnest Money Deposit shall be refunded to Buyer.

8. Bankruptcy: Seller represents that Seller ☐ is ☐ is not under bankruptcy protection under United States law. If Seller files a bankruptcy proceeding, Seller shall promptly disclose such filing in writing to Buyer.

9. Tax Consequences and Advice: Seller is advised to seek advice from an attorney, a certified public accountant or other professional regarding the credit, legal and tax consequences of a Short Sale.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT, THIS ADDENDUM SHALL CONTROL, EXCEPT THAT IN THE CASE OF SUCH A CONFLICT AS TO THE DESCRIPTION OF THE PROPERTY OR THE IDENTITY OF THE BUYER OR SELLER, THE CONTRACT SHALL CONTROL.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Date: _____

Date: _____

Buyer _____

Seller _____

Date: _____

Date: _____

Buyer _____

Seller _____

Entity Buyer: _____

Entity Seller: _____

(Name of LLC/Corporation/Partnership/Trust/etc.)

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[THIS SPACE INTENTIONALLY LEFT BLANK]

NOTE: The following is a suggested notice that may be copied for the purpose of complying with the notice provision contained in paragraph 4 of the Short Sale Addendum. DO NOT DETACH THE ORIGINAL OF THIS FORM FROM THE CONTRACT.

NOTICE OF APPROVAL OF SHORT SALE

NOTICE is hereby given to _____ (insert name of Buyer) from Seller under the Contract between them dated _____ that Seller has obtained written approval for a Short Sale upon terms which are acceptable to Seller from all Lienholders whose approval is necessary to enable Seller to close and convey title in accordance with the Contract.

Seller: _____
Date

Seller: _____
Date

[THIS SPACE INTENTIONALLY LEFT BLANK]

Short Sale Addendum to the NCAR Offer To Purchase And Contract

Purpose

The sales contract is contingent upon the seller's lienholder(s) approval for the seller to transfer the title of the property even though the seller owes more money than the property is worth.

Discussion Questions

1. After the sales contract and the short sale addendum is signed by all parties, when is the initial earnest money to be deposited as per the NC Commission Rules and Trust Guidelines?
2. Does the lienholder sign the offer to purchase and/or short sale addendum? Why or why not?
3. Does the buyer have the right to terminate the contract with the short sale addendum attached?
4. What happens if the lienholders do not approve the short sale?
5. Will the lienholders make repairs to the property?
6. If additional contracts are accepted between buyer and seller, are these contracts submitted to the lienholder?

ADDITIONAL PROVISIONS ADDENDUM

Property: _____

Seller: _____

Buyer: _____

This Addendum is attached to and made a part of the Offer to Purchase and Contract ("Contract") between Seller and Buyer for the Property.

NOTE: All of the following provisions which are marked with an "X" shall apply to the attached Offer to Purchase and Contract or Offer to Purchase and Contract – Vacant Lot/Land ("Contract"). Those provisions marked "N/A" shall not apply.

1. _____ **EXPIRATION OF OFFER:** This offer shall expire unless unconditional acceptance is delivered to Buyer on or before _____ ☐ AM ☐ PM, on _____, **TIME BEING OF THE ESSENCE**, or until withdrawn by Buyer, whichever occurs first.

2. _____ (To be used with Offer to Purchase and Contract Form 2-T only) **SEPTIC SYSTEM INSTALLATION/MODIFICATION:** As a part of the Buyer's Due Diligence, Buyer intends to obtain an Improvement Permit or written evaluation from the County Health Department ("County") for a (check only ONE) ☐ conventional or ☐ other _____ ground absorption sewage system for a _____ bedroom home. Except for the costs for clearing the Property, all costs and expenses of obtaining such Permit or written evaluation shall be borne by Buyer unless otherwise agreed. Seller shall be responsible for clearing that portion of the Property required by the County to perform its tests and/or inspections by no later than _____.

NOTE: Insert a date that will allow testing to be completed prior to the end of the Due Diligence Period.

3. _____ **RENTAL/INCOME/INVESTMENT PROPERTY:** The Property shall be conveyed subject to existing leases and/or rights of tenants. Seller shall deliver to Buyer on or before _____, true and complete copies of all existing leases, rental agreements, outstanding tenant notices, written statements of all oral tenant agreements, statement of all tenant's deposits, uncured defaults by Seller or tenants, and claims made by or to tenants, if any.

NOTE: Insert a date that will allow review to be completed prior to the end of the Due Diligence Period).

Any security deposit held in connection with any lease(s) shall be transferred to Buyer at Settlement and otherwise in accordance with North Carolina Tenant Security Deposit Act (N.C.G.S. § 42-54) Seller ☐ will ☐ will not transfer to Buyer any pet fee/deposit at Settlement.

NOTE: DO NOT USE THIS PROVISION FOR PROPERTY SUBJECT TO THE NORTH CAROLINA VACATION RENTAL ACT. A VACATION RENTAL ADDENDUM SHOULD BE USED IN SUCH CASES.

4. _____ **AGREED-UPON REPAIRS AND/OR IMPROVEMENTS:** Seller agrees, prior to Settlement Date and at Seller's expense, to complete the following items: _____

Buyer shall have the right to verify, prior to Settlement, that the above items have been completed in a good and workmanlike manner.



5. _____ **MANUFACTURED (MOBILE) HOME:** The Property shall include the following manufactured (mobile) home(s) located on the Property: VIN(s): _____ or ☐ VIN(s) unknown Other description (*year, model, etc.*): _____

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT, THIS ADDENDUM SHALL CONTROL, EXCEPT THAT IN THE CASE OF SUCH A CONFLICT AS TO THE DESCRIPTION OF THE PROPERTY OR THE IDENTITY OF THE BUYER OR SELLER, THE CONTRACT SHALL CONTROL.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Date: _____

Date: _____

Buyer: _____

Seller: _____

Date: _____

Date: _____

Buyer: _____

Seller: _____

Entity Buyer:

Entity Seller:

(Name of LLC/Corporation/Partnership/Trust/etc.)

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____

By: _____

Name: _____
Print Name

Name: _____
Print Name

Title: _____

Title: _____

Date: _____

Date: _____

NCAR Additional Provisions Addendum Standard Form 2A11-T

Purpose

This addendum allows the buyer and seller to negotiate four provisions which are not part of the NCAR Offer To Purchase and Contract.

Discussion Questions

1. In provision #1, what is **unconditional acceptance**?

2. In provision #1, is the intention for the seller to respond to the buyer's offer or is the intention for the buyer and seller to agree to a contract prior to the expiration of offer?

3. Can the buyer withdraw their offer prior to the response from the seller, even during the expiration of offer time period?

4. Can a buyer withdraw an offer at anytime prior to communication from a seller without this addendum?

5. What is the purpose of provision #4?

AGREEMENT TO AMEND CONTRACT

WARNING: ALL PARTIES, INCLUDING ANY LENDER AND SETTLEMENT AGENT, MUST BE PROVIDED A COPY OF THIS AGREEMENT

_____, as Buyer, and
_____, as Seller,
have entered into a contract on the Offer to Purchase and Contract (form 2-T) or the Offer to Purchase and Contract – Vacant Lot/Land (form 12-T) (“Contract”) regarding the purchase and sale of the following property (insert property address): _____ (“Property”).

Buyer and Seller hereby agree to amend the Contract as set forth below [check applicable box(es)]:

- ☐ **Purchase Price.** The Purchase Price is hereby changed from: \$ _____ to: \$ _____.
- ☐ **(Additional) Earnest Money.** The (Additional) Earnest Money Deposit is hereby changed from: \$ _____ to: \$ _____.
- ☐ **(Additional) Earnest Money Deposit Date:** The date by which the (Additional) Earnest Money Deposit shall be paid to Escrow Agent is hereby changed to extend through 5:00 p.m. on: _____.
- ☐ **Building Deposit.** The Building Deposit is hereby changed from: \$ _____ to: \$ _____.
- ☐ **Due Diligence Fee.** The Due Diligence Fee paid to Seller is hereby changed from: \$ _____ to: \$ _____.
- ☐ **Due Diligence Period.** The expiration date of the Due Diligence Period is hereby changed to extend through 5:00 p.m. on _____, **TIME BEING OF THE ESSENCE.**
- ☐ **Escrow Agent.** The Escrow Agent is hereby changed to: _____.

NOTE: Use the ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF EARNEST MONEY DEPOSIT

- ☐ **Settlement Date.** The Settlement Date is hereby changed to: _____.
☐ (check only if the following also will apply) Notwithstanding anything to the contrary in the Delay in Settlement/Closing paragraph in the Contract, if a Delaying Party fails to complete Settlement and Closing within four (4) days following the Settlement Date above, the Delaying Party shall be in breach and the Non-Delaying Party may terminate the Contract in accordance with the Delay in Settlement/Closing paragraph.
- ☐ **Expenses.** The amount Seller shall pay at Settlement toward Buyer’s expenses associated with the purchase of the Property is hereby changed from: \$ _____ to: \$ _____.

All terms and conditions of the Contract not specifically amended herein shall remain in full force and effect.



THE NORTH CAROLINA ASSOCIATION OF REALTORS[®], INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

Buyer: _____ Date _____ Seller: _____ Date _____

Buyer: _____ Date _____ Seller: _____ Date _____

Entity Buyer

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____

Name: _____

Title: _____

Date: _____

Entity Seller:

(Name of LLC/Corporation/Partnership/Trust/etc.)

By: _____

Name: _____

Title: _____

Date: _____

NCAR Agreement to Amend Contract (Standard form 4-T)

Purpose

This **Agreement to Amend Contract** allows the buyer and seller to renegotiate provisions after the contract is accepted on one piece of paper rather than initialing and dating the changes directly on the Offer To Purchase and Contract.

Discussion

1. What is the purpose of the **Warning** at the top of this agreement?
2. Can a lienholder renegotiate the sales price after the sales contract and short sale addendum has been agreed in writing and delivered to all parties?
3. Can additional earnest money deposit be paid by personal check?
4. Is the settlement date "*time being of the essence*"?
5. If the seller agrees to pay buyer's closing expenses, does the lender need to give approval of the amount of seller concession?
6. If seller and buyer agree that the seller will pay buyer's closing expenses, why does the lender need to give approval?
7. If the buyer pays their credit report and appraisal fee at the time of loan application, and the seller is going to pay buyer's closing expenses, and the transaction does not close, does the seller reimburse the buyer's any closing expenses the buyer has paid?
8. What are the *advantages* and *disadvantages* in using this addendum?



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