

STUDENT ADVENTURE GUIDE NOTEBOOK

Welcome to Superior School's Post 302 – Graduate Program



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Postlicensing 302: Contracts & Closing

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North Carolina Postlicensing Course Syllabus Post 302: Contracts & Closing (Student Version)

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Introduction

Course Description: The *Post 302 – Contracts and Closing* course is one of the three 30-instructional hour courses in the North Carolina mandatory Postlicensing education program. At least one course must be completed annually by North Carolina provisional brokers within three (3) years after initial licensure to remain eligible for active license status. The primary objective of the course is to provide instruction at a level beyond that provided in Prelicensing courses on topics deemed to be of special importance. Topics addressed in this course include:

- selected basic contract law concepts,
- real estate sales contract preparation,
- sales contract procedures,
- buyer's due diligence,
- closing procedures,
- Real Estate Settlement Procedures Act,
- closing disclosure preparation,
- contracts for deed, options, and
- selected real estate license status and education issues.

Requirements for Teaching the Course: This course may be taught only by schools and instructors approved by the North Carolina Real Estate Commission to teach Prelicensing and Postlicensing courses. Rules governing the conduct of the course, including scheduling, course completion standards, course delivery, course completion reporting and other related matters may be obtained from the Commission. The *Post 302 – Contracts and Closing* course must be taught as prescribed by this syllabus.

Prerequisite: Per Rule 58H .0209, a school shall not enroll an individual in a Postlicensing course if:

- the first day of the Postlicensing course occurs while the individual is enrolled in a Prelicensing course;
- that individual has not passed the license examination; or
- the first day of the Postlicensing course occurs while the individual is taking another Postlicensing course at the same school or a different school if such enrollment results in the individual being in class more than 30 instructional hours in any given seven day period.

Textbooks: The current edition of the *North Carolina Real Estate Manual*. Page references throughout the syllabus are for the 2017 edition of the *Manual*.

Course Final Examinations and Completion Standards: Schools and instructors are required to utilize end-of-course examinations provided by the Commission in accordance with Commission rules. Schools and instructors shall safeguard and protect at all times the confidentiality of examinations provided by the Commission. The examination minimum passing standard is 75%. Students must be required to pass the end-of-course examination and to satisfactorily complete any required activities and homework exercises. (Class time should include introduction of the assignment and review upon completion.) Schools and instructors may, in their discretion, also require completion of in-class or out-of-class graded assignments that may count for up to 25% of a student's final grade for the course.

Commission Rule 21 NCAC 58A .0304: Instructor Conduct and Performance

- (a) All instructors shall ensure that class sessions are conducted at the scheduled time and for the full amount of time that is scheduled or required. Instructors shall conduct courses in accordance with the Commission's rules, and any applicable course syllabi, instructor guide, or course plan. Instructors shall conduct classes demonstrating the ability to:
 - (1) state student learning objectives at the beginning of the course and present accurate and relevant information;
 - (2) communicate correct grammar and vocabulary;
 - (3) utilize a variety of instructional techniques that require students to analyze and apply course content, including teacher-centered approaches, such as lecture and demonstration, and student-centered approaches, such as lecture discussion, reading, group problem solving, case studies, and scenarios;
 - (4) utilize instructional aids, such as:
 - (A) whiteboards;
 - (B) sample forms and contracts;
 - (C) pictures;
 - (D) charts; and
 - (E) videos;
 - (5) utilize assessment tools, such as:
 - (A) in-class or homework assignments, and
 - (B) quizzes and midterm examinations for Prelicensing and Postlicensing courses;
 - (6) avoid criticism of any other person, agency, or organization;
 - (7) identify key concepts and correct student misconceptions; and
 - (8) maintain control of the class.
- (b) Instructors teaching Prelicensing, Postlicensing, or Update courses shall interact with students either in person in a classroom setting or through an interactive telecommunication system, or comparable system, that permits continuous mutual audio and visual communication between the instructor and students. The school shall provide monitoring and technical support for the instructors or students.

Introduction (CONTINUED)

- (c) Instructors teaching Prelicensing or Postlicensing courses shall:
 - (1) safeguard and protect the security of course examinations;
 - (2) not allow students to review or retain copies of end-of-course examinations and any materials used during the examination; and
 - (3) only use guest lecturers that have been approved by the school director pursuant to Rule .0204(d) of this Section.
- (d) Instructors shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

Syllabus Copies: The Commission provides this Syllabus for use by school officials and instructors. Schools are authorized to reproduce all or part of this Syllabus for student use at their own expense, and may charge students for the cost of reproduction.

Order of Subject Area Presentation: The order in which subject areas are presented in the Syllabus is the recommended order. Instructors and schools may make reasonable adjustments in the order of presentation, but should retain a logical order of presentation.

Recommended Major Subject Area Emphasis: Recommended emphasis by major subject area (i.e., preceded by a Roman numeral) has been provided in this Syllabus in the form of recommended number of instructional hours to be devoted to each major subject area.

Competency and Instructional Levels: Each major topic (i.e., preceded by a letter) in this Syllabus has been assigned a competency and instructional level of 1-3 to indicate the appropriate level of emphasis and instruction. In some instances where a subtopic should be afforded significantly greater or lesser emphasis than the major topic under which it is listed, the subtopic has been assigned a different level that applies to that subtopic only.

Competency and instructional levels have been assigned based on the relative importance of the topic and the degree of knowledge or skill needed by real estate brokers with regard to the topic. Schools and instructors are **REQUIRED** to comply with the assigned competency and instructional levels (and special notes to instructors) when teaching this course.

Shown on the next page are the three (3) competency and instructional levels used in the Course Syllabus and the meaning of each. The term *competency* refers to the cognitive level expected of students with regard to a particular topic, while the term *instruction* refers to the depth of instruction and the instructional methods that should be utilized. Level 1 is the lowest level and Level 3 is the highest level. **The majority of Postlicensing topics should be taught at a Level 3; therefore, assume the topic is a Level 3 topic if no level is noted.**

Competency and Instructional Levels

Level 1 – Recall

Competency: Student should possess a basic level of knowledge of the topic that is sufficient to recall, recognize, identify, list, describe, etc. definitions of common terms, basic facts/concepts/principles, and basic procedures/methods.

Instruction: Instructor should review and discuss the appropriate basic definitions, facts, concepts, procedures, etc. No in-depth instruction required.

Level 2 – Application

Competency: Student should possess a moderately comprehensive level of knowledge and understanding of the topic that is sufficient to explain, discuss, interpret, restate, summarize, apply, etc. facts, principles, procedures, etc. and how they relate to real estate brokerage practice.

Instruction: Instructor should review and discuss the topic in moderate depth sufficient to reasonably assure substantial comprehension, using examples (as appropriate) to illustrate and enhance understanding of facts, principles, procedures, etc. and their relevance to real estate brokerage practice.

Level 3 – Analysis

Competency: Student should possess a substantial working knowledge and understanding of the topic that is sufficient to compare/contrast, analyze, etc. relevant facts, principles, procedures, etc. in a variety of common fact situations likely be encountered in real estate brokerage practice.

Instruction: Instructor should review and discuss the topic in substantial depth, using examples (as appropriate) to reinforce understanding of ideas, principles and practices, and requiring students to complete practical work assignments (as appropriate) to demonstrate both their understanding of the topic and their ability to apply their knowledge to common fact situations that will be encountered in real estate brokerage practice.

Post 302: Contracts & Closing Postlicensing Course

RECOMMENDED TOPIC EMPHASIS

Section Title	Hours
Section 1: Basic Selected Contract Law Concepts	1.5
Section 2: Real Estate Sales Contract Preparation.....	12
Section 3: Sales Contract Procedures	2
Section 4: Closing Preparations and Procedures	2
Section 5: Real Estate Settlement Procedures Act (RESPA) and TILA-RESPA Integrated Disclosure Rule (TRID)	2
Section 6: The Settlement Statement	6.75
Section 7: Other Topics (Alternate Conveyance Contracts; License Status and Education Issues)	0.75
Subtotal	27
Final Examination (including a complete settlement problem)	3
TOTAL HOURS	30

Section 1: Basic Selected Contract Law Concepts (1 hour, 30 minutes)

(*Manual*, Chapter 10, pp. 275-300)

I. Basic Contract Terms

- A. Definition of a Contract: A deliberate agreement between two or more competent parties supported by legal consideration to perform or abstain from performing some act
- B. Express and Implied Contracts
- C. Unilateral and Bilateral Contracts
- D. Executed and Executory Contracts
- E. Valid, Voidable, and Void Contracts
- F. Addenda and Amendments

II. Essential Elements of a Contract

- A. Mutual Assent / Offer and Acceptance (*Manual*, pp. 339-346)

Required Activity: Thoroughly review offer and acceptance by using varied fact situations, including situations that involve electronic communication of offer and acceptance and communication to agents. Active student involvement is critically important to assure understanding of these crucial basic concepts.

1. Offer

- a. Definition: a promise (that is definite in terms) by an offeror calling for a promise or an action by an offeree
- b. Must be presented to offeree immediately but in no case later than 3 days from receipt by broker [Rule A .0106(a)]

2. Acceptance

- a. Communication of offer & acceptance
 - i. Oral communication
 - ii. Personal delivery
 - iii. Mail (traditional or special mail, such as UPS, FedEx, etc.)
 - iv. Electronic methods of communication

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

- b. Mailbox Rule
- c. Communication to Agent
- 3. Termination of Offers
 - a. Counteroffer (partial or conditional acceptance)
 - b. Rejection by offeree
 - c. Revocation by offeror
 - d. Destruction of the property
 - e. Death or insanity of the offeror
 - f. Use of NCAR Response to Buyer's Offer (340-T)

Required Activity: Provide a detailed review of Form 340-T and encourage discussion about the pros and cons of the seller using this form, especially in a multiple offer scenario.

- i. Rejects offer
 - ii. Is NOT a counteroffer
 - iii. Lists Seller's preferences for offer terms
 - iv. Can be used with one or multiple offers
- B. Consideration: Anything that is bargained for and given in exchange for a promise
- C. Legal Capacity of the Parties
 - 1. Obtain legal advice if unsure of legal capacity of a party
 - 2. No legal capacity
 - a. Minors (under the age of 18) - voidable
 - b. Persons declared mental incompetent by court of law - void
 - c. Persons mentally incompetent in fact - voidable
 - d. Persons intoxicated or under drug influence - voidable
- D. Lawful Objective

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

III. Impediments to Mutual Consent

A. Mistake

1. Mistake of Fact
 - a. Involves a material term or aspect;
 - b. Is mutual; and
 - c. Is not the result of fraud or negligence
2. Mistake of Law does not excuse obligation of a party

B. Fraud and Misrepresentation

1. Fraud
 - a. Elements of Fraud
 - i. False misrepresentation or omission of a past or existing material fact;
 - ii. Made with knowledge of falsity or in reckless disregard of its truth;
 - iii. With the intent that it will be acted upon by the other party; and
 - iv. That is acted on by that party to his/her injury.
 - b. Voidable by the deceived party; not automatic
2. Innocent Misrepresentation
 - a. Definition: an untrue representation by a party believing it to be true
 - b. May be basis for contract rescission

C. Unfair or Deceptive Practices Act [G.S.75-1.1]

1. Includes:
 - a. Providing a misleading opinion or false inducement
 - b. Failing to disclose a material fact
 - c. Misleading advertising
 - d. Misrepresenting the nature or extent of a guarantee or warranty
2. Subject to Treble Damages

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

3. Application

- a. Does NOT apply to For Sale By Owner that does not generally engage in real estate trade
- b. Applies to
 - i. Real Estate Brokers
 - ii. Owners who regularly sell real estate

D. Duress

1. Overcoming the will of a person by violence or threat of violence
2. Voidable by injured party through legal action within a reasonable time after duress is removed

E. Undue Influence

1. One person takes unfair advantage of another person due to a close, confidential, or fiduciary relationship (e.g., parent / child, broker / client, attorney / client)
2. Voidable if contract was induced by undue weight being given to the counsel of the fiduciary party

IV. Other Contract Law Issues

A. Statute of Frauds [G.S. 22-2]

1. Must be in writing to be enforceable
 - a. All contracts to convey interest in land
 - b. A lease that exceeds 3 years from the “making”/signing of the lease agreement
 - c. Contract modifications
 - d. Verbal negotiations and agreements are NOT enforceable (See *Parol Evidence Rule* below)
2. Necessary Elements for Compliance with Act
 - a. Names of the parties to the contract
 - b. Subject matter of the contract
 - c. Material terms and conditions
 - d. Signature of party to be charged with the contract or an authorized agent

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Postlicensing Course Syllabus (CONTINUED)

B. Electronic Transactions

1. Uniform Electronic Transactions Act (UETA)
 - a. North Carolina version [G.S. Article 40, Chapter 66]
 - b. If parties consent to use electronic means, they cannot later deny the validity of those transactions
 - c. Electronic signature: a sound, symbol or process attached to, or logically associated with, a record, executed or adopted by a person with the intent to sign the record
 - d. Required Notice in Consumer Transactions [G.S. 66-327]
2. Electronic Signatures in Global & National Commerce Act (eSign)

C. Discharge of Contracts

Note: Termination of a contract is different from termination of an offer.
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1. Full Performance
2. Agreement of the Parties
 - a. Release: a contract to destroy an earlier contract
 - b. Novation: a new contract substituted for a previous one
 - c. Subsequent Modifying Agreement
 - d. Accord and Satisfaction: mutually agreed upon compromise
 - e. Cancellation
3. Material Breach of Contract
4. Impossibility of Performance
 - a. Generally refers to impossibility of the thing to be done, not the inability of the promisor to do it
 - b. If a party dies after contract formation, but prior to closing, the contract is binding upon heirs and/or estate of contract parties
5. Operation of Law (e.g., bankruptcy of a party; statutes of limitation; government action may override contract)

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Postlicensing Course Syllabus (CONTINUED)

D. Assignment of Contracts

E. Rules for Interpretation of Contracts

1. Parol Evidence Rule: all previous negotiations/informal agreements are superseded by final written contract terms and cannot be used to alter the written contract terms
2. A contract is to be interpreted as a whole; not parts interpreted out of context
3. Ordinary words will be interpreted in their ordinary, popular sense unless circumstances show that the parties clearly intended a different use
4. Written provisions will override pre-printed contract language
5. Writer of ambiguous language will be held liable for confusion

F. Contract Remedies

1. Money Damages
 - a. Compensatory Damages
 - b. Consequential Damages
 - c. Liquidated Damages (e.g., earnest money deposit or tenant security deposit)
2. Specific Performance: rarely granted to sellers
3. Rescission: declares the contract invalid and returns the parties to the position they were in prior to entering the contract

G. Auction Sales Level 1

1. With reserve vs. without reserve
2. Regulation of Auctions & Auctioneers

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Postlicensing Course Syllabus (CONTINUED)

Section 2: Real Estate Sales Contract Preparation (12 hours)

(*Manual*, Chapter 11, pp. 301-378)

I. Introductory Concepts

A. Expectation of Broker Competence

1. Competent & accurate completion of pre-printed standard sales contract forms
2. Understanding of all standard provisions in pre-printed forms
3. Ensuring that all points of agreement are included in the final written contract
4. Incompetence is a violation of fiduciary duties under the Law of Agency and License Law

B. Prohibition against Drafting Contract Language for Others

1. Constitutes *unauthorized practice of law*
2. Brokers are legally permitted to *fill in the blanks* of preprinted forms

C. Sources of Standardized Sales Contract Forms

Note: NCREC does not create the standardized sales contract forms used by the majority of NC licensees. The only standardized forms authored by the Commission are (1) *Working With Real Estate Agents* brochure; (2) *Residential Property & Owners' Association Disclosure Statement (RPOADS)*; and (3) *Mineral and Oil and Gas Mandatory Disclosure Statement (MOG)*.

D. Requirements for Broker-Provided Preprinted Sales Contract Forms [Rule A .0112]

1. Must include 19 separately named issues to be agreed to by the buyer and seller
2. The NCAR/NCBA jointly approved contract forms are Rule-compliant
3. Prohibited Provisions
 - a. Brokerage Compensation
 - b. Liability Disclaimer for Broker's Transactional Representations
 - c. Cannot be added even at instruction of the parties or their attorneys

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Postlicensing Course Syllabus (CONTINUED)

4. Parties to the Contract
 - a. May alter, amend, or delete any provision in a standardized contract
 - b. May draft their own offer/contract
 - c. May have an attorney draft an offer/contract
- E Use of Appropriate Standard Contract Forms and Addenda
 1. Give uniformity to transactions & reduce brokers' temptation to draft
 2. Specialized standard sales contracts (e.g., residential, lot, commercial)
 - a. *Offer to Purchase & Contract*, Standard Form 2-T (with 2G Guidelines)
 - i. Primarily intended for sale of existing single-family residences
 - ii. Use standard addenda to tailor to needs of the parties
 - iii. Do NOT use for lease-option agreement, lease-purchase agreement, or installment land contract
 - b. *Offer to Purchase & Contract – Vacant Lot/Land*, Standard Form 12-T (with 12G Guidelines) vacant land or lot for personal use
 - i. Intended for sale of unimproved land or lot being bought for personal use; not for subdivision and resale
 - ii. NOT intended for sale of a large tract of land
 - c. *Offer to Purchase & Contract (New Construction)*, Standard Form 800-T (with 800G Guidelines)
 - i. Intended for sale of new residential construction to be built prior to closing
 - ii. If sale involves completion of new construction that is well under way, use Standard Form 2-T with 2A3-T, *New Construction Addendum*
 - d. *Agreement for Purchase & Sale of Real Property*, Standard Form 580-T; commercial sales transactions
 3. Thirteen (13) NCAR/NCBA jointly approved standard addenda for use with residential contracts
 4. Guidelines are provided for many forms

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Postlicensing Course Syllabus (CONTINUED)

F. Persistent Problems in Contract Completion

1. Use of the phrase “owner of record”
2. Failure to clearly list fixtures that will not convey
3. Failure to clearly specify Seller’s personal property that will convey
4. Failure to clearly define all critical dates
5. Failure to timely present offers and executed contracts
6. Confusion about negotiating repair issues vs. completion of repair work

II. Detailed Review and Completion of the Standard Sales Contract Forms Jointly Approved by the NC REALTORS® (NCAR) and the North Carolina Bar Association (NCBA)

Required Activity: Engage students in a detailed review of each paragraph in each of the standard forms listed below. Be sure to discuss the meaning and purpose of each paragraph, the intended use of each form, and common issues in filling various blanks. Improper completion of sales contract forms by brokers continues to be one of the greatest problems in real estate brokerage practice. Every broker completing this course should be able to accurately complete the appropriate offer to purchase and contract form (plus any needed addenda or related contract forms) for a wide variety of situations they will commonly encounter.

Begin the review of sales contract forms with Standard Form 2-T which should be a line-by-line review guided by the discussion in Section III. Consider covering the 13 standard addenda as they are referenced in the 2-T so that students can see the relevance of the addenda to the contract terms. Any remaining addenda can be covered as a group later.

A. Forms to be Reviewed:

1. Form 2-T *Offer to Purchase and Contract* and Form 2-G *Guidelines for Completing the Offer to Purchase and Contract*
2. Form 12-T *Offer to Purchase and Contract Vacant Lot/Land* and Form 12-G *Guidelines for proper completion*
3. Forms 2A1-T through 2A14-T -- All standard addenda forms for use in conjunction with the various standard residential Offer to Purchase and Contract forms (Note: there is no active #10 addendum.)
4. Form 580-T *Agreement for Purchase & Sale of Real Property* (commercial)

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Postlicensing Course Syllabus (CONTINUED)

B. General Guidelines for Contract Completion

1. Type or print legibly
2. Fill in ALL the blanks; enter “N/A” or “none” as appropriate
3. Be precise; avoid abbreviations, acronyms, or unclear terminology
4. Both Buyer & Seller should initial and date every change, addition, or deletion
5. Rewrite offer if there are numerous changes
6. Review ALL contract provisions with the parties & recommend they obtain legal advice to answer questions

III. Major Paragraphs of Standard Form 2-T

Note: Be sure to read all the Notes and Warnings in the form. This information is very important to successful completion of the offer on terms that are agreeable to the parties.

Paragraph #1: Terms and Definitions

Note: Whenever a term appears in the body of a contract and begins with a capital letter that would not normally be capitalized, it indicates that the word or phrase is a *defined term* that can be found somewhere earlier in that contract. Most of the *defined terms* in Form 2-T are defined in Paragraph #1. Words that appear in parenthesis such as (Additional) Earnest Money Deposit in 1(d) are optional words to be used or ignored as appropriate.

1-a & b. Names of Seller and Buyer.

- o Must use individual legal names (e.g., no *Mr. & Mrs.*) for all parties
- o Never use *owner of record*
- o Use full legal name of any entity party; not the trade name
- o Undisclosed Buyer-Principal (not allowed by dual agent)

1-c. Property Description

- o Must include a legal description that clearly identifies the subject property
- o Reference to only a tax map or number is seldom adequate
- o Pay close attention to the Notes
- o Attach Additional Provisions Addendum (2A11-T) if a manufactured home is part of the Property

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Postlicensing Course Syllabus (CONTINUED)

1-d. Purchase Price

- o Entry for “Balance” line should be equal to Purchase Price on 1st line minus all entries in the 2nd through 7th line (funds that will be applied to the purchase price on the buyer’s behalf)
- o Referenced financing addenda
 - *Loan Assumption Addendum* (2A6-T)
 - *Seller Financing Addendum* (2A5-T)
- o Time Being of The Essence
- o Seller’s right to demand good funds within 1 banking day of notice

1-e. Earnest Money Deposit (EMD) [Rule A .0116]

Required Activity: Use various scenarios to explore how EMD should be handled and when it should be delivered to the Escrow Agent at various points during the transaction. Pay particular attention to application of Rule A .0116(b)(3-4) regarding following the buyer’s instructions for delivery to and the timing of deposit by the Escrow Agent.

- o Addresses how EMD will be held and handled if:
 - Offer is not accepted
 - Contract condition is not met
 - Buyer terminates during Due Diligence Period
 - Seller breaches contract
- o Not the Consideration required for a valid contract
- o Established as sole remedy for breach by Buyer
- o Disputed EMD [G.S. 93A-12]
 - 90-day written notification to all parties claiming ownership of the monies of intent to deposit monies with clerk of court
 - Deposited with clerk of court in county where contract property is located
 - Parties have 1 year to file special proceedings with clerk of court or funds will escheat to the state
 - Does not apply to disputed tenant security deposits
 - Funds are not subject to law until contract formation

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Postlicensing Course Syllabus (CONTINUED)

1-f. Escrow Agent

- o Should be the name of a firm or closing attorney; not an individual agent unless he/she is a sole proprietor
- o Do not sign acknowledging receipt of monies unless actually received
- o Both brokers and attorneys serving as escrow agents may use the disputed funds rule
- o Permission given for an interest-bearing trust account

1-g. Effective Date

- o When last party has signed or initialed and has communicated this fact to the other party
- o Initials of the parties at the bottom of each contract page do not affect contract formation
- o Oral agreements are meaningless per Statute of Frauds

1-h, i, j. Due Diligence

- o Buyer's opportunity to investigate the Property to determine whether to proceed with or terminate contract
- o Due Diligence Fee (DDF)
 - Negotiated amount paid by Buyer for right to terminate for any or no reason during Due Diligence Period
 - Paid directly to Seller
 - Non-refundable unless Seller breaches or Property is materially damaged or destroyed
 - Buyer credit if transaction closes
 - No DDF is required to create a binding contract
- o Due Diligence Period
 - Time Being of the Essence as to expiration
 - Buyer's right to terminate addressed in Para. 4(g)

1-k & l. Settlement

- o Delivery to settlement agent of all executed documents and funds necessary to complete the transaction
- o Settlement Date
 - Time and place selected by Buyer
 - Delay of Settlement is addressed in Para. 13

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Postlicensing Course Syllabus (CONTINUED)

Note: Brokers are strongly cautioned against suggesting inclusion of a time is of the essence provision regarding the settlement date unless it is imperative to one of the parties that the transaction close by a specific date.

1-m. Closing

- o Completion of the legal process to transfer title
- o Recordation of the deed and deed of trust required prior to disbursement of funds held by settlement agent

1-n. Special Assessments

- o Proposed: Identified in Para. 7(c); payment addressed in Para. 6(a)
- o Confirmed: Identified in Para. 7(c); payment addressed in Para. 8(k)

Paragraph #2: Fixtures and Exclusions

- o Specified items in Subpara. (a) shall convey with related equipment and remotes free of liens unless excluded in Subpara. (b) or (d)
- o Items leased or not owned by the Seller should be listed
- o Items that will NOT convey should be clearly identified to avoid later dispute
- o Seller must repair any damage caused by removal of excluded items

Paragraph #3: Personal Property

- o Any personal property of the Seller that should convey with the property must be clearly specified here
- o Verbal agreement and notice in MLS are not enforceable
- o Item description should be accurate and precise to avoid later dispute

Note: Buyers should be advised to consult with their lender in regard to the possible effect of any personal property listed in the contract.

Paragraph #4: Buyer's Due Diligence Process (*Manual*, pp. 443-451)

Required Activity: Discuss possible issues arising during the DDP (e.g., loan issues, broken appliances, house systems that need repair, insurability issues, mechanic's liens, use restrictions, etc.) and how to handle negotiations from both the Seller and Buyer viewpoints.

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

Note: Buyers should be strongly advised to perform due diligence activities as quickly as possible to allow negotiation for any discovered issues to be resolved prior to the end of the DDP. The Buyer is not limited to the investigative items listed in this Paragraph. Seller is not obligated to extend the Due Diligence Period (DDP). If the Buyer does not terminate the contract prior to the end of the DDP, the Buyer may continue to investigate the Property after the DDP but has waived his/her right to terminate without penalty unless there is a Seller breach.

4-a. Loan

Note: There are no financing or appraisal contingencies in this contract. Buyer should be strongly encouraged to meet with a mortgage lender prior to starting a property search. DDP should be long enough for Buyer to receive the appraisal and to feel confident in his/her ability to obtain loan approval.

4-b. Property Investigation

- o Inspections
 - Physical Inspection by Buyer and/or by Qualified Professional(s)
 - Property condition
 - Moisture & drainage
 - Environmental (e.g., asbestos, radon, lead, etc.)
 - Wood-destroying insects
 - Well & sewage disposal systems
- o Review of documents
 - *Residential Property & Owners' Association Disclosure Statement*
 - *Mineral and Gas and Oil Rights Mandatory Disclosure Statement*
 - Restrictive covenants
 - Owner association documents
 - Receive & disburse closing funds
- o Insurance
- o Appraisals
- o Survey
 - Reveals boundaries & setback lines
 - Identifies encroachments & easements

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

- Locates mandatory septic repair field, if applicable
 - Required for title insurance policy coverage for homeowner
 - o Zoning & government regulations
 - o Flood hazard
 - o Utilities & access
 - o Street/roads
 - o Fuel tank
- 4-c. Repair/Improvement Negotiations and /or Agreement
- o Property being sold in its current condition (as is) unless other agreements are specified in the contract
 - o Repair negotiation agreements should be resolved in writing as part of the contract before the end of the DDP; agreed upon repairs must be complete prior to Settlement [see Para. 8(m)]
 - *Due Diligence Request & Agreement* (Standard Form 310-T) with Guidelines
 - *Agreement to Amend Contract* (Standard Form 4-T)
- 4-d. Buyer's Obligation to Repair Damage
- 4-e. Indemnity
- 4-f. Buyer's Right to Terminate
- o For any reason or no reason
 - o Written notification by 5 p.m. of stated date--TIME BEING OF THE ESSENCE
 - o EMD shall be refunded to the Buyer
- 4-g. Closing shall constitute acceptance

Paragraph #5: Buyer Representations

Note: Buyer is liable for the accuracy of all representations made and Seller is entitled to rely on the information. The representations are informational only and do not rise to the level of a contract condition or contingency absent relevant attached addenda.

- 5-a. Loan
- o Information for Seller to use in response to offer
 - o Specified financing terms agreeable to Buyer

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

- o Seller is advised to obtain documentation of Buyer's ability to close if no financing is needed

5-b. Other Property

- o Information for Seller to use in response to offer
- o Material fact if Buyer must sell or lease other property in order to close this transaction
- o Contingent Sales Addendum (2A2-T) needed to make disposition of Other Property a contract condition

5-c. Performance of Buyer's Financial Obligations

5-d. & e. Property Disclosures [G.S. 42E-2]

- o *Residential Property and Owners' Association Disclosure Statement*
 - Status of Buyer's receipt of required Statement
 - If exempt, indicate under what scenario
- o *Mineral and Gas and Oil Rights Mandatory Disclosure Statement*
 - Status of Buyer's receipt of required Statement
 - If exempt, indicate under what scenario

Paragraph #6: Buyer Obligations

- o Proposed Special Assessments
- o Responsibility for certain costs
 - Loan costs
 - Owner association fees
 - Appraisal
 - Title search
 - Title insurance
 - Closing attorney fees
 - Recording of deed & loan documents
- o Authorization to disclose information

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

Paragraph #7: Seller Representations

Note: Seller is liable for the accuracy of all representations made and Buyer is entitled to rely on the information. The representations are informational only and do not rise to the level of a contract condition or contingency absent relevant attached addenda.

7-a. Length of property ownership

7-b. Lead-Based Paint

- o Applicable for residential property built prior to 1978
- o Attach Lead-Based Paint or *Lead-Based Paint Hazard Addendum* (2A9-T)

7-c. Assessments

7-d. Owners' Association(s) & Dues

Paragraph #8: Seller Obligations

Note: If Seller fails to comply with the numerous obligations imposed by the Contract, Buyer may terminate the Contract & receive a refund of any Earnest Money Deposit and Due Diligence Fee paid. In a Seller breach, Buyer can also obtain reimbursement from Seller for reasonable costs incurred conducting the Due Diligence without affecting any other remedies available to Buyer.

8-a. Evidence of Title, Payoff Statement(s) and Non-Foreign Status

8-b. Authority to Disclose Information

8-c. Access to Property

- o *Reasonable access* through time of Closing or Buyer Possession
- o Including working, existing utilities

8-d. Removal of Seller's Property

- o All Seller's personal property that is not part of the sale
- o Including garbage & debris

8-e. Affidavit & Indemnification Agreement (against Mechanics Liens) [G.S. 44A-8]

8-f. Designation of Lien Agent, Payment & Satisfaction of Liens [if required by G.S. 44A-11.1]

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

8-g. Good Title, Legal Access

- o Seller to provide General Warranty Deed
- o Fee simple marketable title free of all liens, encumbrances or defects except for:
 - Ad valorem taxes for current year
 - Utility easements
 - Unviolated covenants
 - Other encumbrances assumed or approved by Buyer
- o Legal access to public right of way

8-h. Deed, Taxes & Fees

- o Seller pays for deed preparation, excise tax & any conveyance fees
- o Identify exact legal names of Buyer for new deed
- o Optional indication of Buyer's relationship status can be helpful to Settlement Agent (e.g., spouses, siblings, unmarried single person, etc.)

8-i. Agreement to Pay Buyer Expenses

- o A stated dollar amount credited towards Buyer expenses, if applicable
- o Subject to approval of Buyer's lender

8-j. Owners' Association Fees/Charges

8-k. Payment of Confirmed Special Assessments

8-l. Late Listing Penalties

8-m. Negotiated Repairs/Improvements

- o Completed in good & workmanlike manner
- o Buyer has right to verify prior to Settlement

Post 302: Contracts & Closings

Postlicensing Course Syllabus (CONTINUED)

8-n. Seller's Failure to Comply or Breach

- o Buyer may terminate the Contract and:
 - Receive refund of any EMD and Due Diligence Fee paid
 - Can obtain reimbursement from Seller for reasonable costs incurred conducting the Due Diligence Process
- o Other remedies may be available to Buyer

Paragraph #9: Prorations and Adjustments

- o Taxes on Real Property (calculated on calendar year basis)
- o Taxes on Personal Property
- o Rents
- o Dues

Paragraph #10: Home Warranty

Paragraph #11: Condition of Property at Closing

Paragraph #12: Risk of Loss

- o Buyer rights if material damage occurs prior to Closing
 - May terminate contract & receive refund of any Earnest Money Deposit and Due Diligence Fee paid
 - May close on Property & receive Seller's property insurance proceeds on Property claim
- o Property Insurance [G.S. 39-39]
 - Seller should maintain policy until Closing
 - Buyer should obtain policy effective for entire day of Closing
 - Possession other than Closing can be problematic

Paragraph #13: Delay in Settlement/Closing

- o *Delaying Party* acting in good faith should give as much notice as possible
- o Automatic 14-day grace period to close after Settlement Date
- o If not closed by end of 14-day period, Non-Delaying Party may terminate contract
- o Written extension of Settlement Date will also have 14-day grace period option

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

Paragraph #14: Possession

- o Assumed to be at Closing (after deed recordation)
- o No means of access (e.g., keys, garage door openers, etc.) to be granted to Buyer between Settlement and Closing
- o Use appropriate addendum if possession at a time other than Closing

Required Activity: Discuss the advantages and disadvantages of allowing possession at a time other than Closing.

Paragraph #15: Addenda

Note: A NC real estate broker is not permitted to suggest or draft any contract language or addenda for others (unless he/she is an actively licensed NC attorney).

- o Check appropriate boxes and attach all standard addenda that are to be part of the contract
- o All drafted addenda must be properly identified and attached to become part of the contract

Paragraph #s 16-23: Miscellaneous Paragraphs

- o #16. Assignments
- o #17. Tax-Deferred Exchange
- o #18. Parties
- o #19. Survival
- o #20. Entire Agreement
- o #21. Conduct of Transaction
 - Electronic communication and actions are endorsed
 - All written notices & communications may be sent to any address authorized in Notice Information section

Note: Entry of any Buyer or Seller contact information authorizes communication directly to a Party rather than the standard practice of communicating through the agents.

Post 302: Contracts & Closings

Postlicensing Course Syllabus (CONTINUED)

- *Notice Information* and *Acknowledgement of Receipt of Monies* sections are not material parts of the contract; can be altered without creating a rejection or counteroffer
- o #22. Execution
- o #23. Computation of Days
 - *Days* means calendar days including weekends and all holidays
 - Day count begins the day after act or notice required by contract
 - Date & time are for North Carolina

Page 11: Signature and Dates

- o Must be signed by all Buyers and Sellers
- o To transfer clear title, Seller spouse must sign even if not named on the deed
- o Verify correct signators for entities or trusts
- o Date all signatures to clearly establish Effective Date; although contract is valid without dates

Page 12: Notice Information

- o At least one notice address must be entered for each party or agent
- o Enter names of individual listing and selling brokers, their license numbers, firm names and license numbers, and check appropriate agency representation boxes [Rule A .0104(f)]

Page 13: Acknowledgment of Receipt of Monies

- o Listing Agent Acknowledgment of Receipt of DDF
- o Seller Acknowledgment of Receipt of DDF
- o Escrow Agent Acknowledgment of Receipt of Initial EMD
- o Escrow Agent Acknowledgment of Receipt of (Additional) EMD

IV. All Standard NCAR Residential Addenda

Note: In an event of a conflict between information in an addendum and the contract, the addendum will control, unless the conflict involves the description of the Property or the identity of the Buyer or the Seller in which case the contract will control.

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

A. 2A1-T: *Back-up Contract Addendum* (Manual, pp. 338-339)

Required Activity: Detailed review of this addendum and how to complete and use it.

1. Seller is not required to take the Property off the market once under contract
2. Addendum addresses dates for DDP and Settlement Date
3. Contract remains in secondary position until primary contract is performed or terminated
4. Back-up Buyer may terminate with automatic termination date or any time prior to notification that his/her contract is in primary position

B. 2A2-T: *Contingent Sale Addendum* (Manual, pp. 336-338)

Required Activity: Detailed review of this addendum and how to complete and use it.

1. Buyer's need to sell a property becomes a condition of the contract
2. Copy of Contract for Buyer's Property
3. Closing on Contract for Buyer's Property
4. Termination of Contract for Buyer's Property
5. Listing of Buyer's Property

C. 2A3-T: *New Construction Addendum*

D. 2A4-T: *FHA/VA Financing Addendum*

E. 2A5-T: *Seller Financing Addendum*

F. 2A6-T: *Loan Assumption Addendum*

G. 2A7-T: *Buyer Possession Before Closing Addendum*

H. 2A8-T: *Seller Possession After Closing Addendum*

I. 2A9-T: *Lead-Based Paint or Lead-Based Paint Hazard Addendum*

J. 2A11-T: *Additional Provisions Addendum*

1. Expiration of offer
2. Septic System Installation/Modification

Post 302: Contracts & Closings

Postlicensing Course Syllabus (CONTINUED)

3. Rental/Income/Investment Property
4. Agreed-Upon Repairs and/or Improvements (for items identified before contract formation)
5. Manufactured (Mobile) Home

K. 2A12-T: *Owners' Association Disclosure and Condominium Resale Statement Addendum*

L. 2A13-T: *Vacation Rental Addendum*

M. 2A14-T: *Short Sale Addendum*

1. Definition of Short Sale and associated risks
2. Contingent on written approval of all Seller's lienholders
3. Rights to Terminate
4. Dates established for DDP and Settlement
5. Other Offers
6. Issues with Foreclosure/Bankruptcy/Tax Consequences

Required Activity: Have students prepare an offer for a residential property that will require use of at least three standard addenda. This may be performed as a class, group, or individual exercise. Allow class time to review the exercise.

V. *Offer to Purchase and Contract – Vacant Lot/Land* (Form 12-T) and Guidelines for Completing (Form 12-G)

VI. *Agreement for Purchase & Sale of Real Property* Form 580-T (commercial)

Section 3: Sales Contract Procedures (2 hours) (*Manual*, pp. 346-351)

I. Submitting Offers to Sellers [G.S. 93A-6(a)(13); Rule 58A .0106]

A. Delivery to parties of offers, contracts, and other transactional documents

1. No later than 3 days from receipt by broker of executed document
2. Applies to all brokers in the transaction regardless of whom they represent or how they will be compensated

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

3. Listing broker has no authority to accept or reject an offer on behalf of Seller
4. Only 1 contract signed by all parties required to be binding; copies to all contract parties required by Rule A .0106

B. Multiple Offers

1. All offers must be presented immediately even if Property already under contract
2. Concurrent offers must be presented at the same time
3. Disclosure of Offer and/or Terms
 - i. Existence of other offers not a material fact
 - ii. Broker prohibited from sharing material terms without express permission of offeror [Rule A .0115]
 - iii. Broker needs Seller's authority to share existence of other offers and/or terms that might be acceptable to the Seller

II. Offer Modification and Counteroffers

1. Any change to an offer rejects the original offer
2. A counteroffer is usually created if offeree makes changes, initials those changes, and signs the offer before returning it to the original offeror
3. Possible use of NCAR Standard Form #340-T Response to Buyer's Offer
4. Numerous term changes should prompt use of a new blank offer form

Section 4: Closing Preparations and Procedures (2 hours)

(*Manual*, Chapter 14, pp 441-457)

Note: Real estate brokers should possess a thorough understanding of closing practices and procedures, as well as the competence to properly assist buyers, sellers, and settlement agents with the closing process.

I. General Pre-Closing Procedures

A. Respective responsibilities of the parties

B. Select the Settlement Agent

1. Buyer should identify the Settlement Agent of his/her choice immediately after contract formation, if not before
2. Settlement Agent usually represents Buyer, Buyer's lender, and may provide some services to the Seller

Post 302: Contracts & Closings

Postlicensing Course Syllabus (CONTINUED)

C. Provide Information to the Settlement Agent

1. All available information that will assist in preparing for closing such as:
 - i. Copies of the contract
 - ii. Seller's deed
 - iii. Seller's title insurance policy
 - iv. Information on the seller's loan payoff or lender
 - v. Any invoices or services that are to be paid at closing
2. Both parties should provide information to Settlement Agent as soon as available to expedite Closing

D. Settlement Date and Delays

Note: Settlement date delays are commonplace due to lots of variables frequently beyond the control of either party. Buyer & Seller should be well advised about their individual obligations, the need for timeliness, and the repercussions for non-performance. Review the paragraphs in Standard Form 2-T regarding this matter.

II. Buyer's Due Diligence Process

A. General Responsibility of Broker working with a Buyer

B. Inspections and Investigations including those recommended under Paragraph 4 of Standard Form 2-T

C. Resolution of Inspection/Repair Issues

1. Buyer strongly encouraged to resolve any issues prior to the end of DDP
2. Seller is under no obligation to make repairs or improvements to the Property
3. Standard forms to use in negotiation of repair issues
 - i. *Additional Provisions Addendum* (Form 2A11-T)
 - ii. *Due Diligence Request & Agreement* (Form 310-T)
 - iii. *Agreement to Amend Contract* (Form 4-T)

Required Activity: Provide current forms and lead a detailed review of how to complete & use them during repair negotiations. Explore various scenarios including items to be repaired and adjustment in sales price in lieu of repairs, etc. Be sure to advocate for Buyer requesting, as part of original offer, repairs or improvements that the Buyer knows about before contract formation; this is done through the use of Additional Provisions Addendum. This does not affect Buyer's right to investigate and request further concessions during the DDP.

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

III. Other Pre-Closing Matters

- A. Title Search
- B. Clearing of any Title Defects by Seller
- C. Prepare Assignment of any Outstanding Leases
- D. Final Pre-Closing Procedures
 - 1. Transfer Earnest Money from Escrow Agent to the Settlement Agent
[Rule A .0116(e)]
 - 2. Review Draft of Closing Disclosure by listing and selling broker for accuracy as soon as available
 - i. TRID requires lender to provide *Borrower's Closing Disclosure* (BCD) at least 3 business days prior to Settlement
 - ii. 3 changes require new BCD and a new 3 business day waiting period
 - An increase in APR
 - A change in loan product
 - Addition of a prepayment penalty
 - iii. No delivery deadline prior to Settlement for *Seller's Closing Disclosure*
 - 3. Notify Buyer of Personal Funds Needed to Close
 - 4. Attorney orders Title Insurance Policy for Lender and Owner

IV. Closing Methods

- A. Escrow Closing Method
 - 1. Escrow agreement instructions accomplished virtually by escrow agent; parties do not attend
 - 2. Escrow agent is generally a title company or escrow division of lender
 - 3. *Relation Back Doctrine*: deed is considered delivered once Seller has given it to Escrow Agent
- B. Settlement Meeting Method
 - 1. Most common closing method in NC
 - 2. Residential closings in NC are generally coordinated by 1 attorney; separate attorneys may be used in complex or commercial transactions

Post 302: Contracts & Closings

Postlicensing Course Syllabus (CONTINUED)

3. Role of Nonlawyers in Closing
 - i. Present & identify documents necessary to complete NC closing
 - ii. Direct parties where to sign documents
 - iii. Ensure parties have properly executed the documents
 - iv. Receive & disburse closing funds
4. Settlement Meeting Procedures
 - i. Location and parties attending
 - ii. Review of documents
 - iii. Post-settlement meeting tasks: title update, recording, disbursing funds, tax reporting requirements, etc.

Section 5: Real Estate Settlement Procedures Act (RESPA) and TILA-RESPA Integrated Disclosure Rule (TRID) (2 hours)

(*Manual*, pp. 457-470)

- I. Applicability of RESPA
 - A. Federally related residential mortgage loan to purchase 1-4 family dwelling that is or will be situated within 2 years of purchase
 - B. *Regulation X* administered by Consumer Financial Protection Bureau (CFPB) under the Dodd-Frank Act
 - C. Does not apply to loans for commercial, business or agricultural purposes
- II. RESPA Requirements/Consumer Protections
 - A. Disclosure & Borrower Credit for Yield Spread Premiums
 - B. Loan Servicing Disclosure Requirements
 1. Whether loan servicing can be sold, transferred or assigned
 2. Borrower notification required prior to transfer of servicing
 - C. Escrow Account Restrictions
 1. Maximum amount collected monthly by the lender is 1/12 of annual tax & insurance disbursement
 2. Lender may escrow a cushion amount not to exceed 1/6 of annual tax & insurance disbursement

Post 302: Contracts & Closing

Postlicensing Course Syllabus (CONTINUED)

D. Prohibited Kickbacks or Referral Fees

1. Applies to all service providers including real estate brokers for payment or receipt of payment for referral of business to or from another service provider
2. Referral fees between real estate brokers for brokerage activities are expressly permitted
3. Any *thing* of value
4. Disclosure of Affiliated Business Arrangements

E. Special Information Booklet for Homebuyer/Borrowers

F. Written Estimate of Settlement Charges (formerly the *Good Faith Estimate* - now the *Loan Estimate*) within 3 business days of loan application

1. Definition of *Loan Application*
2. Intended to encourage borrowers to shop for loans

G. Settlement Statement

H. Penalties for Violating RESPA

1. Criminal fines up to \$10,000 per violation
2. Imprisonment for up to 1 year
3. Injunctions against illegal activity & orders to compensate victims for illegal profits
4. Also a violation of License Law 93A-6(a)(10)

III. TILA-RESPA Integrated Disclosure (TRID) Rule

A. The Loan Estimate (LE)

1. Permissible Variations/Tolerance Limits
2. Brokers' Responsibility for LE

B. The Closing Disclosures

1. Delivery of Borrowers' Closing Disclosure
2. Corrected/Revised Closing Disclosure
3. Brokers' Responsibility [93A-6(a)(14)]
 - i. Confirm accuracy of entries about which he/she has direct knowledge
 - ii. Notify all parties to the transaction of any errors
 - iii. May rely on lawful settlement agent for delivery to parties

Post 302: Contracts & Closings

Postlicensing Course Syllabus (CONTINUED)

Section 6: The Settlement Statement (6 hours, 45 minutes)

(*Manual*, pp. 470-484)

- I. Basic Terminology
- II. Prorations
 - A. Real Estate Taxes (various situations)
 - B. Rents
 - C. Homeowner's Dues
- III. Buyer's Closing Disclosure

Required Activity: After reviewing the basics, students must complete at least one closing disclosure problem. This may be completed either individually or in groups. Allow class time to fully review the problem with the entire class. The end-of-course examination includes a complete closing scenario problem.

Section 7: Other Topics (45 minutes) *Level 2*

- I. Alternate Conveyance Contracts (*Manual*, pp. 351-360)
 - A. Installment Land Contract (Contract for Deed)
 - 1. Definition
 - 2. No standard contract; consult an attorney
 - 3. Seller must record within 5 business days of execution
 - 4. Buyer is allowed up to 30 days to cure a default
 - 5. Advantages and Disadvantages
 - B. Option to Purchase
 - 1. Rights of parties
 - 2. Must be in writing & recorded
 - 3. Advantages and Disadvantages
 - C. Preemptive Rights Level 1
 - 1. Right of First Refusal
 - 2. Right of First Opportunity to Purchase

Post 302: Contracts & Closing Postlicensing Course Syllabus (CONTINUED)

- II. License Status and Education Issues [G.S. 93A-4; Rules A .0503, A .0504, A .0505, and A .0506]
 - A. License Status: Meaning of provisional broker, active, inactive, expired, suspended, revoked, and canceled status.
 - B. Postlicensing Education Requirement (and consequences of failure to satisfy) [Rule A .1902]
 - C. Continuing Education Requirement (and consequences of failure to satisfy) [Rules A .0504(b); A .1702]
 - D. Requirements and procedures to activate an Inactive license [Rules A .0504(c) & (d); A .1703]
 - E. Requirements and procedures to reinstate an Expired license
 - 1. License expired for not more than 6 months [Rules A .0505(c) & (h)]
 - 2. License expired between 6 months and 2 years [Rules A .0505(d) & (h)]
 - 3. License expired for more than 2 years [Rules A .0505(e) (f) & (h)]

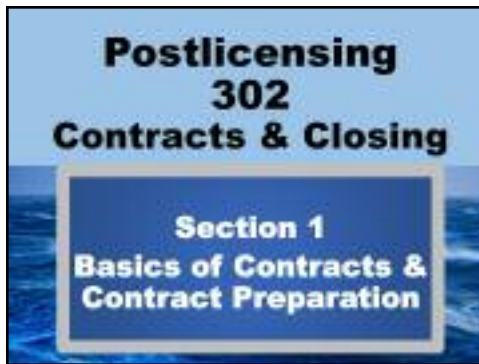
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**MODULE 1: BASICS OF CONTRACTS &
CONTRACT PREPARATION**

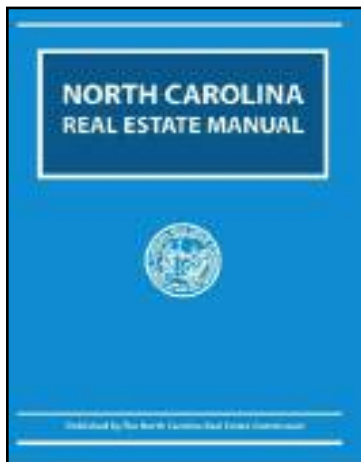
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**MODULE 1: BASICS OF CONTRACTS &
CONTRACT PREPARATION**

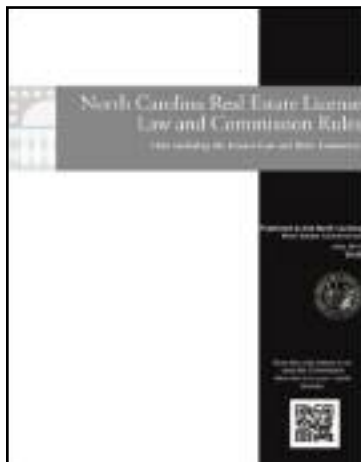


Section 1: Basics of Contracts & Contract Preparation

Critical Reading Information



- Chapter 10 – Contract Law
Pages 275–300
- Chapter 11 – Sales Contracts & Practices
Pages 301–378



- NC Statute of Frauds
- Rule 58A.0106 – Delivery of Instruments
- Rule 58A.0108 – Retention of Records
- Rule 58A.0112 – Requirements for Contracts
- NAR Code of Ethics Standard of Practice 1–7
- Unfair & Deceptive Trade Practices Act
- Parol Evidence Rule

Contract Case Studies

For each of the following scenarios, determine whether or not a contract exists and if not, provide the reason and the best practice that would have avoided the contract issue.



1. Kalil, a seller's agent, received an offer from a buyer that the seller signed, initialed, and accepted. The seller's acceptance was communicated to the buyer's representative. One week later when Kalil insisted that the buyer deliver the \$500 due diligence fee to the seller, Kalil was informed that the buyer had changed their mind. The buyer and buyer's representative claimed that since no due diligence fee or earnest money had been tendered, there was no consideration and that a contract had not been formed between the parties.

2. Cassandra and Shelly, two buyers, had entered into a contract to purchase a home owned by Devon. During the due diligence period, numerous discussions occurred between the parties. Devon agreed to make several repairs, but the parties did not put the repair agreements in writing. On the day before closing, Cassandra and Shelly noticed during their walk-through that the agreed-upon repairs had not been made and are refusing to close due to the seller's non-performance. What advice and guidance should be given to the parties?

Contract Case Studies (CONTINUED)

3. Kelly and Sam are interested in buying a home in a residential neighborhood where Cassie lives. Cassie is a licensed real estate professional. Cassie knows that one of her neighbors is interested in selling and has a lengthy conversation with her neighbor about what they owe on their home and the sales price they are seeking. She relays this information to Kelly and Sam and helps them put an offer together. Cassie doesn't have a listing agreement with her neighbor and has no signed buyer's broker agreement with the buyers because she did not intend to charge either of them anything. Is Cassie in an agency relationship with the parties?

4. Jessica receives a phone call from her friend Pat, whose mother has died. Pat explains to Jessica that Pat will be acting as the executor of her mother's estate and wants to get the home listed. Jessica has Pat sign a listing agreement, and the home is placed on the market. After Pat has entered into an Offer to Purchase and Contract with a buyer, the closing attorney informs all parties that Pat does not have the legal authority to sell the home. Does a contract exist with the buyer, and what are the ramifications for Jessica?

Discussion of Contract Scenarios



Kalil and the Indecisive Buyer

In order to form a contract in North Carolina, an offer is accepted by signing and initialing the contract and communicating that fact to the other party and/or their agent. Although a contract requires consideration, the consideration offered by the buyer was the purchase price. Neither earnest money, nor the due diligence fee, is required to form a contract. The buyer has a right to cancel, but the seller is entitled to the due diligence fee. The listing agent should inform the buyer there is a contract and demand payment of the \$500 due diligence fee and a cancellation notice from the buyer. If the \$500 is not paid within one day, the seller may terminate the contract and be advised to seek the advice of an attorney in collecting the \$500 from the buyer.

Devon & The Unfinished Repairs

The statute of frauds requires contracts to be in writing in order to be enforceable. This includes later changes and addendums to the agreement. Because the repair agreement was not put in writing, Cassandra and Shelly must attend settlement or risk being in breach. Because licensees are not permitted to make misrepresentations, if either of the licensees made statements to the buyers indicating that the repairs would be made, the licensees may face disciplinary action for a misrepresentation. The licensees may also face disciplinary action for breaching the standard of care in not getting the repair agreement in writing. In any event, there is no contract for the repairs and Cassandra and Shelly will have no claim against the seller.

Discussion of Contract Scenarios (CONTINUED)

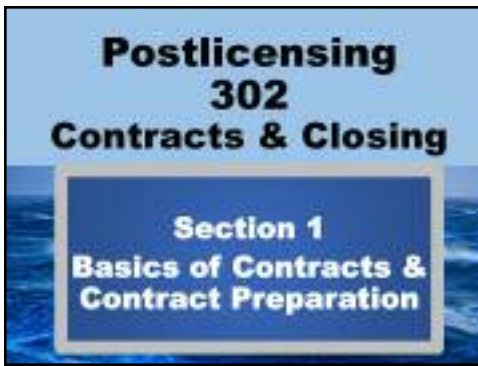
Working with the Neighbor Next Door

This is a good example of licensees creating implied agency. It is possible to create an implied agency in North Carolina, it is just almost always a bad idea. Cassie has violated a number of North Carolina rules and statutes. She would have had to have used the WWREA brochure before she reached first substantial contact with her neighbor or the buyers. She is assisting the buyers without a written brokerage agreement, and she may be in the situation of being labeled an undisclosed dual agent who acted on behalf of both parties without agreement and consent.

Pat's Alleged Authority

The case study indicates that Pat is not the authorized executor of the estate. This is not a mistake of fact, this is a failure to recognize the operation of law. There is a valid contract here, but Pat is going to be in breach because the property cannot be legally conveyed. When working with estates, guardianships, and the like, the agents should insist on legal documentation that the party on whose behalf they are acting has legal authority. Questions about such documents and legal authority should always be deferred to an attorney.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



Basics of Contracts & Contract Preparation

The definition of a contract is:

1. _____

There are four essential elements to every contract.
They are:

2. _____



Consideration is a mutual exchange of anything of 3. _____.

The consideration offered by a buyer in a real estate transaction is

4. _____

NOT the 5. _____ or the 6. _____.

When an agreement is entered into by a person who lacks competence the contract is

7. _____ by the person who 8. _____.

Void means: 9. _____

Voidable means 10. _____

People who have been declared incompetent in a court of law make the contract

11. _____. There was never a contract formed.

If a real estate professional has any doubts about a person's legal capacity, they should

12. _____

Basics of Contracts & Contract Preparation (CONTINUED)

Define each of the following as terms relating to contracts:

Express: 13. _____

Implied: 14. _____

Bilateral: 15. _____

Unilateral: 16. _____

Executed: 17. _____

Executory: 18. _____

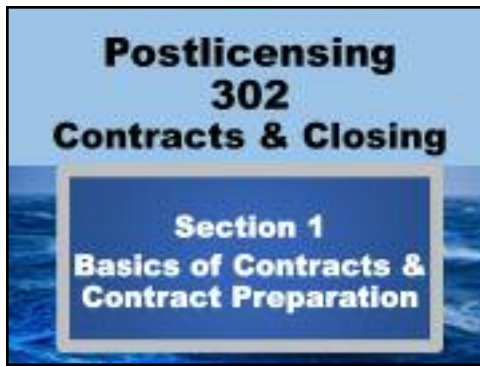
Oral contracts exist in many instances. Only certain types of contracts need to be in

19. _____ in order to be enforceable. This requirement is established by the Statute of Frauds.

NC requires all of the following to be in writing in order to be enforceable:

20. _____

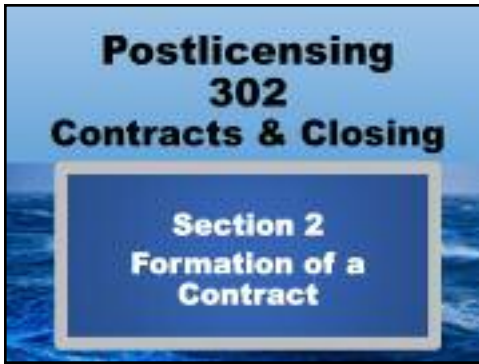




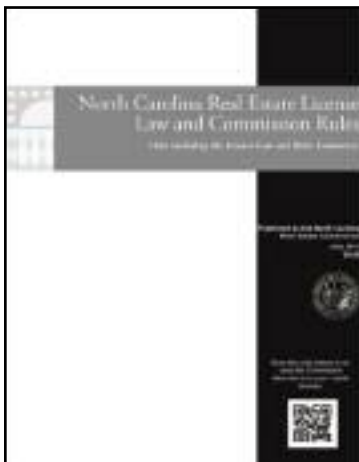
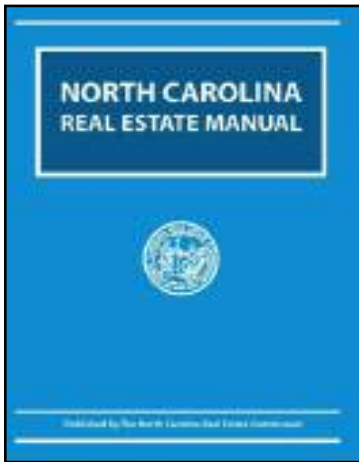
Section 1: Basics of Contracts & Contract Preparation Notebook Guide

1. A deliberate agreement between two or more competent parties supported by legal consideration to perform or abstain from performing some act
2. Consideration
 - Legal act
 - Agree mutually
 - Parties competent
3. Anything of value
4. Purchase price the buyer is offering
5. Earnest money deposit
6. Due diligence fee
7. Voidable
8. By the party that lacked competency
9. A contract that lacks an essential element and never existed
10. One of the parties has the ability to make the contract void
11. Void
12. Consult an attorney
13. A contract where the intentions are expressed either orally or in writing
14. A contract that gets inferred from conduct or actions
15. A contract where both parties are obligated and bound
16. A contract where only one party is obligated or bound
17. A contract where tasks remain to be performed
18. A contract where all tasks have been completed
19. Writing
20. Deeds, Restrictive Covenants, Easements, Assignments, Mortgages Options, Installment Land Contracts, Leases Longer than 3 Years, Sales Contracts

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



Section 2: Formation of a Contract



Basics of Offer & Acceptance



All offers must be communicated IMMEDIATELY, but never later than 1. _____ days.

A copy of every transaction document (including offers) must be provided to the firm or the sole proprietorship within 2. _____ days of the 3. _____.

Both of these are 4. _____ days.

An offer can be withdrawn anytime prior to 5. _____ even if the buyer stated they would hold it open for a longer period of time. The withdraw must be communicated to 6. _____.



Basics of Offer & Acceptance (CONTINUED)

An offer is terminated by any of the following events or actions:

7. _____
- _____
- _____
- _____
- _____
- _____
- _____

Effective January 1, 2019, the NAR has amended Standard of Practice 1-7 in the REALTOR® Code of Ethics regarding the handling of presentation and rejection of offers.

A listing broker or agent is required to respond 8. _____ that an offer was submitted to the seller if the cooperating broker who submitted the offer so requests. The listing broker or agent must respond in the affirmative unless the seller has provided written notification waiving the obligation to have the offer presented.

Any change, no matter how small, creates a counteroffer that must be

9. _____ by the seller and communicated back to the 10. _____ before a binding contract is created.

RESPONSE TO BUYER'S OFFER

TO: _____

RE: OFFER TO PURCHASE _____

Property Address

Dated: _____

[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.

It is further understood that until an offer has been accepted, I/we are free to consider and may 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"). 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: _____

Page 1 of 1



North Carolina Association of REALTORS®, Inc.



STANDARD FORM 340-T
Revised 7/2017
© 7/2017



Forming a Contract in North Carolina

In North Carolina a contract is formed when the last offer or counteroffer is:

11. _____ and

12. _____ and

that fact is communicated back to the

13. _____ in any manner.

When a dual agent has been informed that a seller has accepted an offer that information is communicated back to the buyer 14. _____.

All of the following are valid methods of communicating the acceptance:

15. _____

The Mailbox Rule

In North Carolina, we measure delivery at the time the communication was

16. _____, not when it was

17. _____.

Analysis of *Manecke vs. Kurtz*

Court of Appeals of North Carolina.

**Christopher B. MANECKE, Plaintiff, v. Jerrold M. KURTZ and Deborah A. Kurtz,
Defendants.**

No. COA11-1447.

Decided: August 21, 2012

John F. Hanzel, P.A., by John F. Hanzel, for plaintiff-appellant. Womble Carlyle Sandridge & Rice, LLP, by Mark P. Henriques and Brandie N. Smith, for defendant-appellees.

Appeal by plaintiff from order entered 11 August 2011 by Judge F. Lane Williamson in Mecklenburg County Superior Court. Heard in the Court of Appeals 3 April 2012.

Where the record fails to disclose the existence of genuine issues of material fact as to whether defendants entered into a contract to purchase plaintiff's real property, the trial court did not err by granting defendants' motion for summary judgment.

In 2010, Christopher B. Manecke ("plaintiff"), a resident of Mecklenburg County, North Carolina sought to sell his residence located at 21104 Blakely Shores Drive, Cornelius, North Carolina. Plaintiff engaged the services of real estate broker Linda Schafer ("Schafer") to list the property for sale. Jerrold M. Kurtz and Deborah A. Kurtz ("defendants"), residents of the state of New Jersey, sought to purchase real property in North Carolina. Defendants engaged the services of Real Estate Broker Thomas Wells ("Wells") and entered into a standard buyer agency agreement as issued by the North Carolina Realtors Association to negotiate a contract for the purchase of real property.

On 22 August 2010, Wells sent an email to Schafer that he had an offer to purchase plaintiff's property. Attached to the email was a standard "Offer to Purchase and Contract" form signed by defendants offering to purchase plaintiff's property for \$785,000. In response, Schafer emailed Wells a counteroffer to sell plaintiff's residence for \$845,000 with an \$8,000 repair contingency. In reply, Wells emailed Schafer the following message: "[defendants] are really excited about their new home and agree to > [sic] the counter offer [sic][.]"¹ On 23 August 2010, Wells emailed Schafer a copy of an earnest money deposit check in the amount of \$20,000. In the email, Wells informed Schafer that defendant Jerrold Kurtz would be overnighting the earnest money deposit check and that "[Wells] should also have the initialed changes to the contract tomorrow."

On 25 August 2010, in response to an email from Schafer inquiring as to the deposit, Wells emailed Schafer informing her that he had received defendants' deposit and that he would deliver it to Schafer's office on the morning of 26 August 2010. Wells also stated that he would have the initialed changes to the contract at that time, that he would ask defendants to select an attorney for the closing and arrange for the home inspection. At the request of defendants, Wells asked that the closing date be postponed from 30 September 2010 to 15 October 2010. On 26 August 2010, defendants informed Wells that they were not going to sign the counteroffer, and instructed Wells to tear up their earnest money deposit check. Wells informed Schafer via telephone that defendants were no longer interested in purchasing plaintiff's property.

On 17 November 2010, plaintiff filed suit against defendants in Mecklenburg County Superior Court seeking specific performance and, in the alternative, recovery for breach of contract. On 15 June 2011, defendants filed a motion for summary judgment. The trial court heard defendants' motion for summary judgment on 11 August 2011 and that same day, entered an order granting defendants' motion for summary judgment. Plaintiff appeals.

On appeal, plaintiff argues that the trial court erred in granting defendants' motion for summary judgment finding that there were no genuine issues of material fact. After setting out (A) the standard of review, plaintiff argues that there are genuine issues of material fact as to whether (B) Wells acted with actual or apparent authority, (C) there is a valid contract, and (D) the writings are sufficient to satisfy the statute of frauds.

"Summary judgment is proper when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *Crocker v. Roethling*, 363 N.C. 140, 142, 675 S.E.2d 625, 628 (2009) (quoting N.C. Gen.Stat. § 1A-1, Rule 56(c) (2007)). When considering a motion for summary judgment, "[t]he trial court must consider the evidence in the light most favorable to the non-moving party." *Id.* (citations omitted). "[A]n issue is genuine if it is supported by substantial evidence, and [a]n issue is material if the facts alleged . would affect the result of the action[.]" *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 681, 565 S.E.2d 140, 146 (2002) (internal citations and quotation marks omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla or a permissible inference[.]" *Id.* (internal citations and quotation marks omitted).

Where a summary judgment motion has been granted the two critical questions of law on appeal are whether, on the basis of the materials presented to the trial court, (1) there is a genuine issue of material fact and, (2) whether the movant is entitled to judgment as a matter of law.

Analysis of *Manecke vs. Kurtz* (CONTINUED)

North River Ins. Co. v. Young, 117 N.C.App. 663, 667, 453 S.E.2d 205, 208 (1995). “Review of summary judgment on appeal is necessarily limited to whether the trial court’s conclusions as to these questions of law were correct ones.” Id. (citing *Ellis v. Williams*, 319 N.C. 413, 355 S.E.2d 479 (1987)). “On appeal, this Court reviews an order granting summary judgment de novo.” *Esposito v. Talbert & Bright, Inc.*, 181 N.C.App. 742, 745, 641 S.E.2d 695, 697 (2007) (citing *McCutchen v. McCutchen*, 360 N.C. 280, 285, 624 S.E.2d 620, 625 (2006)).

Plaintiff argues that there exists a genuine issue of material fact as to whether defendants’ real estate broker Wells acted with actual or apparent authority to bind defendants by contract to purchase plaintiff’s property. We disagree.

A principal is liable upon a contract made by its agent with a third party in three instances: when the agent acts within the scope of his or her actual authority; when a contract, although unauthorized, has been ratified; or when the agent acts within the scope of his or her apparent authority.

Bell Atl. Tricon Leasing Corp. v. DRR, Inc., 114 N.C.App. 771, 774, 443 S.E.2d 374, 376 (1994).

“Actual authority is that authority which the agent reasonably thinks he possesses, conferred either intentionally or by want of ordinary care by the principal.’ Actual authority may be implied from the words and conduct of the parties and the facts and circumstances attending the transaction in question.” *Leiber v. Arboretum Joint Venture, LLC*, —N.C.App. —, —, 702 S.E.2d 805, 812 (2010) (quoting *Harris v. Ray Johnson Constr. Co.*, 139 N.C.App. 827, 830, 534 S.E.2d 653, 655 (2000)).

Plaintiff argues there was a valid binding contract created by the actions of the parties as well as their “agents,” including Wells. However, plaintiff fails to offer facts to establish that defendants granted Wells the authority necessary to bind them to a real estate contract. A real estate agent in North Carolina, absent special authority, does not have the power to bind his principal in a contract to convey real property. *Forbis v. Honeycutt*, 301 N.C. 699, 703, 273 S.E.2d 240, 242 (1981).

In an affidavit filed with the trial court, defendant Jerrold Kurtz states that he and his wife entered into a Buyer Agent Agreement with Wells “for the purpose of acquiring property in North Carolina.” Defendant further avers that Wells was authorized to negotiate a contract for the purchase of real property but defendant denies vesting Wells with “any special authority . to enter into a binding contract.”

Analysis of *Manecke vs. Kurtz* (CONTINUED)

In his deposition, Wells testified as follows:

Q. And, at that point in time, do I understand correctly that [defendants] wanted to put in an offer. And then you explained to them, as part of that putting in an offer process, they needed to sign an agreement with you?

A. Correct.

Q. Did they sign the agreement with you before signing the offer?

A. Correct.

Q. Was the agreement that they signed with you the standard—

A. Buyer agency—I'm sorry.

Q. —buyer agency agreement—

A. Correct.

Q. —that's issued by the North Carolina Realtors Association?

A. Correct.

Q. Any changes to it?

A. No.

Q. [Defendants] never provided you with a power of attorney form to let—that would let you execute documents on their behalf?

A. Correct.

Q. You understand that, as a licensed real estate broker, your responsibility is to negotiate—assist your clients in negotiating the terms of a contract but that you don't have authority to enter into any binding contract on their behalf; is that right?

[Plaintiff's attorney]: Objection

A. Correct.

Analysis of *Manecke vs. Kurtz* (CONTINUED)

Q. So was it your understanding that there would only be a binding contract once the counteroffer submitted by [plaintiff] was, in fact, initialed by [defendants]?

A. Correct.

Q. And without initials, there was not any enforceable contract pursuant to the offer that was submitted; correct?

[Plaintiff's attorney]: Objection

A. Correct.

The evidence of record here is that Wells acknowledged that he did not possess actual authority to bind defendants by contract to purchase plaintiff's property. Therefore, plaintiff has failed to establish a genuine issue of material fact as to whether Wells acted with actual authority.

Apparent authority "is that authority which the principal has held the agent out as possessing or which he has permitted the agent to represent that he possesses." *Branch v. High Rock Realty, Inc.*, 151 N.C.App. 244, 250, 565 S.E.2d 248, 252 (2002) (citations and quotations marks omitted). "Pursuant to the doctrine of apparent authority, the principal's liability is to be determined by what authority a person in the exercise of reasonable care was justified in believing the principal conferred upon his agent." *Branch*, 151 N.C.App. at 250, 565 S.E.2d at 253 (citations omitted).

Plaintiff contends that Wells' email to Schafer, plaintiff's real estate broker, stating that defendants "agree to > [sic] [plaintiff's] counteroffer" to purchase plaintiff's property, as well as, Wells' faxed copy of the earnest money deposit check sent to Schafer and Wells' email that he expected to receive the initialed copy of the contract indicated that Wells acted with apparent authority if not actual authority to bind defendants to the contract to purchase plaintiff's property.

But plaintiff's contentions do not support the theory that Wells acted with apparent authority. Plaintiff's contentions cite no more than notifications from Wells that defendants agreed to the terms of plaintiff's counteroffer, that Wells had received a facsimile of a \$20,000.00 check intended to serve as an earnest money deposit, and that Wells expected to receive the initialed copy of plaintiff's counteroffer. The record provides no evidence that defendants held Wells out as possessing authority to bind them in contract or permitted Wells to represent himself as having such authority. See *High Rock Realty, Inc.*, 151 N.C.App. at 250, 565 S.E.2d at 252. In fact, Wells acknowledged that his responsibility as defendants' real estate broker was to assist defendants in negotiating the terms of a contract, not to enter into a contract that would bind them. Therefore, plaintiff has failed to establish a genuine issue of material fact as to whether Wells acted with apparent authority. Accordingly, we overrule plaintiff's arguments.

Analysis of *Manecke vs. Kurtz* (CONTINUED)

Plaintiff next argues that there exists a genuine issue of material fact as to whether a valid contract exists between plaintiff and defendants. Plaintiff provides two arguments to support the existence of a contract between the parties. First, plaintiff contends that defendants ratified Wells' actions by sending the faxed copy of the \$20,000.00 check. Second, plaintiff argues that the terms of the "Offer to Purchase and Contract," setting out the modes of communication by which the offer would become binding, in conjunction with the written email notifications provided to plaintiff, support the existence of a valid contract. We disagree.

"[W]hen one, with no authority whatever, or in excess of the limited authority given him, makes a contract as agent for another, or purporting to do so as such agent, the supposed principal, upon discovery of the facts, may ratify the contract." *Patterson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 266 N.C. 489, 492, 146 S.E.2d 390, 393 (1966) (emphasis added) (citations omitted).

The act of a principal will establish ratification of an unauthorized transaction of an agent where "(1) . at the time of the act relied upon, the principal had full knowledge of all material facts relative to the unauthorized transaction, and (2) . the principal had signified his assent or his intent to ratify by word or by conduct which was inconsistent with an intent not to ratify." *Carolina Equip. & Parts Co. v. Anders*, 265 N.C. 393, 400–01, 144 S.E.2d 252, 258 (1965).

Barbee v. Johnson, 190 N.C.App. 349, 356, 665 S.E.2d 92, 98 (2008).

Plaintiff contends that by agreeing to the terms of plaintiff's counteroffer, Wells acted to bind defendants to the contract to purchase plaintiff's property, and defendants ratified that contract by sending the facsimile of the \$20,000.00 check intended to notify plaintiff that defendants were sending an earnest money deposit. As discussed in part B, *supra*, and as we further discuss herein, Wells' communications to plaintiff did not bind defendants in contract. Thus, plaintiff cannot maintain the argument that defendants ratified the contract to which Wells allegedly bound them.

Second, plaintiff also argues the terms of the Offer to Purchase and Contract support the contention that the contract was entered into and, thus, binding. The contract states: This offer shall become a binding contract on the date that: (i) the last one of the Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (ii) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be.

Following in paragraph 27, the contract reads:

Any notice or communication to a party herein may be given to the party or to each 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 Address" section below. Plaintiff contends defendants accepted the offer made by plaintiff in Wells' email sent to

Analysis of *Manecke vs. Kurtz* (CONTINUED)

Schafer stating that “[defendants] are really excited about their new home and agree to > [sic] the counter offer [sic][.]” Plaintiff also references Wells’ email to plaintiffs’ agent, Schafer, stating “[Defendant Jerrold Kurtz] is overnighting the [earnest money deposit] check tomorrow. We will get it on Wednesday. I should also have the initialed changes to the contract tomorrow.” Plaintiff asserts that these communications constitute defendants’ acceptance in a manner recognized under the terms of the contract and bind defendants accordingly. We disagree.

All contracts to sell or convey any lands . or any interest in or concerning them . 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, or by some other person by him thereto lawfully authorized.

N.C. Gen.Stat. § 22–2 (2011).

Here, the contract states that it shall become binding when it has been signed or initialed by both parties. Wells’ email that defendants “agree to > [sic] the counter offer [sic]” does not indicate that the contract reflecting the counteroffer had been signed. Moreover, Wells’ email that he “should also have the initialed changes to the contract tomorrow” is not an indication that the contract had been initialed or signed. To the contrary, it indicates only when Wells expected to receive the signed or initialed contract.

Plaintiff has failed to establish a genuine issue of material fact as to whether defendants ratified a contract entered into by Wells or were bound by the terms of the counteroffer based on the email communications updating plaintiff about the status of the documents expected to be delivered. Accordingly, plaintiff’s argument is overruled.

Lastly, plaintiff argues that there is a genuine issue of material fact as to whether the writings exchanged between the parties are sufficient to satisfy the statute of frauds. Plaintiff contends that there are numerous writings when read together establish a contract sufficient to satisfy the statute of frauds. We need not reach this issue.

As plaintiff has failed to establish that defendants have entered into a contract binding them to the purchase of plaintiff’s real property, we need not consider whether the writings provided were sufficient to satisfy the statute of frauds, a defense to the formation of a contract. For the foregoing reasons, the trial court’s decision is affirmed.

Affirmed.
BRYANT, Judge.

Chief Judge MARTIN and Judge McCULLOUGH concur.

See more at <http://caselaw.findlaw.com/nc-court-of-appeals/1609816.html#sthash.zThaibSM.dpuf>



Helm Simulator

The Timing Game

Can you properly analyze the formation of a contract in the following scenario?

Jerry, a buyer's representative, wrote an offer on behalf of his buyer Jack on October 1. The offer was submitted to the listing agent who represented Jill, the seller, on October 2. Jill immediately told her agent that she liked and agreed to the terms of the offer. On October 3, the listing agent called Jerry and indicated that the seller had signed and initialed the offer. On October 4, Jerry communicated the seller's acceptance to Jack. On October 5, the signed contract was delivered to Jerry by the listing agent and the final signed agreement was delivered to Jack on October 6.

1. When was a valid and binding contract formed between the parties? Why?

2. What if after the communication of the seller's acceptance, Jerry discovered an email from Jack that the buyer wanted to withdraw the offer and the email was dated prior to the acceptance by the seller?

3. If Jerry never communicated the acceptance of the offer to Jack, does a valid and binding contract still exist?

4. What would be the results of formation of the contract if either the seller or the buyer died during the process of offer and acceptance?

Impediments to Mutual Consent & Contract Breaches

Mutual mistakes regarding a

18. _____ may
allow a buyer to rescind the contract and be refunded

19. _____.

Such results do not apply to

20. _____.



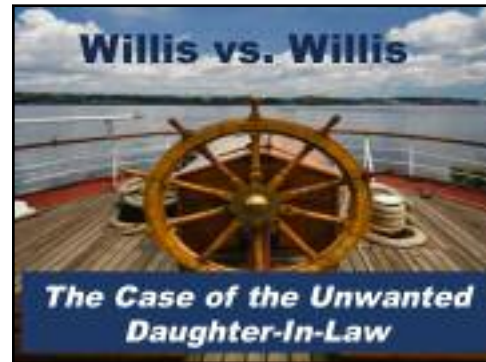
The North Carolina Case Study of *Willis vs. Willis*

Janice Willis transferred to her son Eddie a fee simple estate and reserved for herself a life estate in the real property. Shortly thereafter, her son Eddie died. When Janice Willis learned that her property at the time of her death (the end of her life estate) would pass to her daughter-in-law, she attempted to rescind the

transaction based on a mistake of material fact. The

court held that although a mistake of material fact could result in rescission of a contract,

Janice Willis encountered an unintentional result due to her misunderstanding of applicable law and that she was bound by the transfer.



When fraud occurs either through a willful 21. _____ or

22. _____ of a material fact, the contract is voidable by

23. _____.

Contracts also become voidable when the contract is entered into due to:

24. _____.



The Unfair & Deceptive Trade Practices Act

The federal and state Unfair & Deceptive Trade Practices Act applies when someone provides:

25. _____ or

26. _____ or

27. _____ or

28. _____

The law applies to 29. _____ and does not apply to 30. _____.

In a lawsuit under the Unfair & Deceptive Trade Practices Act, the damages are:

31. _____.

The Assignment of Contracts

Contracts may be 32. _____ so long as the contract does not contain language that prohibits or limits the assignment.

In an assignment, the assignee becomes 33. _____ and the assignor is 34. _____.

The NC Offer to Purchase and contract requires 35. _____ in order to assign rights under the contract.

Generally when a contract is breached, parties can be entitled to any of the following remedies:

36. _____

37. _____

38. _____

39. _____

40. _____

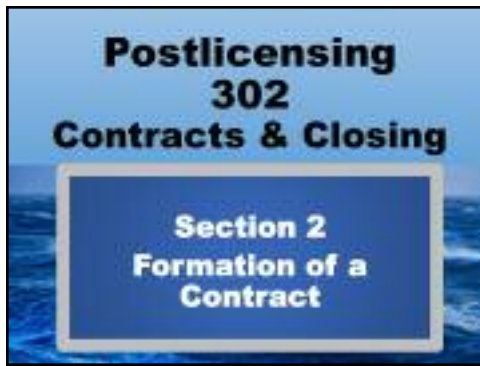
Helm Simulator

Identify the remedies for breach of the
Offer to Contract & Purchase, Standard Form 2T



What are the seller's remedies if the buyer breaches?

What are the buyer's remedies if the seller breaches?



Section 2: Formation of a Contract Notebook Guide

1. 3 days
2. 3 days
3. Broker's receipt
4. Calendar
5. Acceptance
6. Other party and/or their agent
7. Counteroffer
 - Rejection by offeree
 - Revocation by offeror
 - Destruction of the property
 - Death or insanity of the offeror prior to acceptance
8. Writing
9. Counteroffer
10. Communicated to the other party
11. Signed
12. Initialed
13. Communicated to the other party and/or their agent
14. Immediate
15. Oral communication
 - Personal delivery
 - Mail
 - Electronic methods
16. Sent
17. Received
18. Material fact
19. All monies
20. Mistakes of law
21. Misrepresentation
22. Omission

Section 2: Formation of a Contract

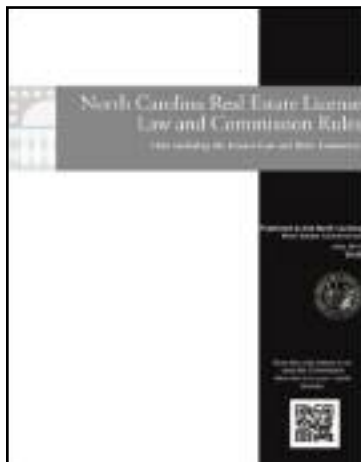
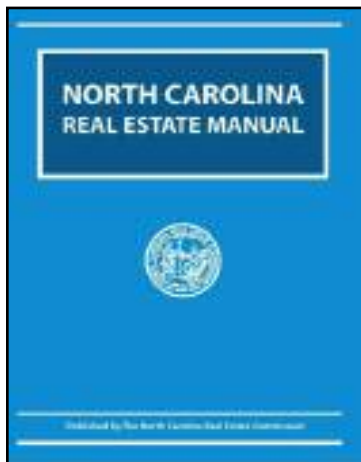
Notebook Guide (CONTINUED)

23. Voidable by the person deceived
24. Duress & undue influence
25. Misleading opinion or false inducement
26. Fails to disclose a material fact
27. Creates misleading advertising
28. Misrepresents the nature of any guarantee or warranty
29. Real estate brokers and owners who regularly sell
30. Owners who do not regularly engage in the business
31. Treble damages
32. Generally assignable
33. Primarily liable
34. Secondarily liable
35. Consent prior to assignment
36. Compensatory
37. Consequential
38. Liquidated
39. Specific performance
40. Rescission



Section 3: Review of the NC Offer to Purchase & Contract

Standard Form 2T



The Basic Rules

Real estate professionals are prohibited from 1. _____
as it is considered the 2. _____.
The role of a licensee is to 3. _____.

The prohibition is against 4. _____ for 5. _____.
It does not prohibit changes made by a 6. _____.

However, if a client wants to change the language in the forms, they should be advised by a licensee to 7. _____.

Forms in North Carolina come from a 8. _____ created
between 9. _____
and 10. _____.

The North Carolina Real Estate Commission
does NOT:

- 11. _____
- 12. _____
- 13. _____



The Commission does have 14. _____ about what the
contracts may and may not contain. There are 19 separate provisions required.



The Basic Rules (CONTINUED)

The NCREC Requirements of Offer &
Sales Contracts

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____

The Basic Rules for the Interpretation of Contracts

The 15. _____ provides that all previous negotiations and informal agreements are superseded by the final written contract and cannot be used to alter the written contract terms.

A contract is interpreted 16. _____ not parts interpreted out of context.

Words are interpreted in their 17. _____ sense unless the parties clearly indicated a different use.

18. _____ provisions outweigh and take priority over preprinted form language

When the language is unclear or ambiguous, 19. _____ is liable for the confusion.



A Dozen Common Questions Answered by the NC Offer to Purchase & Contract

For each of the following questions, find the specific reference to these items in Form 2-T, the Offer to Purchase & Contract, and answer the question based on the contract's language.

1. When is the buyer required to pay and deliver the due diligence fee to the seller?

2. How long does the buyer have to pay and deliver to the escrow agent the earnest money deposit?

3. As a listing agent, what should I recommend that my seller do if they don't receive the due diligence fee as required by the contract?

4. What happens to the interest that may be earned on the escrow account?

5. What if the lender cannot get the lending documents to the closing attorney by the settlement date?

A Dozen Common Questions Answered by the NC Offer to Purchase & Contract (CONTINUED)

6. Does the buyer still have the right to continue to investigate and inspect the property after the due diligence date?

7. With whom should a buyer consult regarding the length of the due diligence period?

8. What if the buyer has not received the RPOADS or MOG disclosures at the time of making an offer?

9. What should the parties do if disclosures indicate that the mineral, oil, or gas rights to the property have been severed?

10. Does the seller have to use licensed contractors in order to make agreed-upon repairs?

11. What happens to the contract if the property is damaged by a storm or fire prior to closing?

12. On what date will the buyer be given possession and allowed to move into the property?

GUIDELINES FOR COMPLETING THE OFFER TO PURCHASE AND CONTRACT
(Form No. 2G)

INTRODUCTION: These guidelines are provided to assist Brokers and attorneys who are completing the Offer to Purchase and Contract form on behalf of Buyers and Sellers. The Offer to Purchase and Contract is the most important document in any real estate sale and it is imperative that it accurately reflects the entire agreement of Buyer and Seller. An improper contract may have substantial adverse effects on the rights and interests of the parties. These guidelines include general comments about contract completion as well as suggestions and explanations regarding selected contract provisions with which Brokers often have difficulty. However, situations will frequently arise that are not covered by these Guidelines. **All Paragraph numbers and Subparagraph numbers and letters used in these Guidelines correspond to the paragraph numbers and subparagraph numbers and letters used in the Offer to Purchase and Contract.** Brokers should always remember that a North Carolina real estate attorney should be consulted any time there is uncertainty regarding the proper completion of this important form.

USE OF FORM: The Offer to Purchase and Contract form is jointly approved by the NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. and the NORTH CAROLINA BAR ASSOCIATION, as Form No. 2-T. The version of this form with the REALTOR® logo is produced by NCAR for use by its members, only as printed. The version of this form without the REALTOR® logo is produced for the NORTH CAROLINA BAR ASSOCIATION and may be used, only as printed, by attorneys and Brokers.

This form may be used in a variety of real estate sales transactions, but it was developed primarily for use in the sale of existing single-family residential properties. Do not use this form as a substitute for a lease-option agreement, lease-purchase agreement or installment land contract. Also, if the sale involves the construction (or completion of construction) of a new single-family dwelling, use the current standard New Construction Addendum (NCAR/NCBA Form 2A3-T) or consult a NC real estate attorney for an appropriate form.

GENERAL INSTRUCTIONS:

1. Type this form if possible; otherwise print or write legibly in ink.
2. Fill in all blank spaces. If any space is not used, enter "N/A" or "None" as appropriate.
3. Be precise. Avoid the use of abbreviations, acronyms, jargon, and other terminology that may not be clearly understood.
4. Every change, addition or deletion to an offer or contract must be initialed and should be dated by both Buyer and Seller.
5. If numerous changes are made or if the same item (such as the purchase price) is changed more than once, complete a new contract form to avoid possible confusion or disputes between the parties. If, *after the parties have entered into a valid contract*, you prepare a new form for the parties to sign because the existing contract contains so many changes that it is difficult to read, then do not discard the existing contract. Keep it with the new form.
6. Review with the parties all contract provisions. Advise the parties to consult their respective attorneys if they have any questions about the legal consequences of the contract or any particular provision.

1. TERMS AND DEFINITIONS:

- (a) **NAME(S) OF SELLER AND BUYER:** Fill in the complete name of each Seller. If husband and wife, show the names of both (John A. Doe and wife, Mary B. Doe). Do not use "Mr. and Mrs. John A. Doe," "Owner of Record," or last name only. In the majority of the situations, immediately upon death of the owner, the heirs or devisees under the will become the owner of the interest in the Property belonging to the deceased. All such heirs or devisees and their spouses should be named as Seller along with the executor or administrator (personal representative). **BEFORE INSERTING THE SELLER'S NAME, YOU SHOULD OBTAIN COMPETENT LEGAL ADVICE FROM AN NC ATTORNEY.**
- (b) **NAME(S) OF BUYER:** Fill in the complete name of each Buyer. Do not use "Mr. and Mrs. John A. Doe." If husband and wife, show the names of both (John A. Doe and wife, Mary B. Doe).
- (c) **PROPERTY/LEGAL DESCRIPTION:** Fill in street address of the Property if there is one (**NOT** the mailing address, which may be different from the street address). In addition to a street address, include a legal description sufficient to identify and distinguish the Property from all other property. Fill in all applicable blanks as completely as possible.
- (1) **Plat reference:** If the Property is a lot in a subdivision or a condominium unit, include the lot number or condominium unit number, the block or section number of the subdivision or condominium, the name of subdivision or condominium, and recording reference for the plat as recorded in the Register of Deeds office.
- (2) **PIN/PID or other identification number:** **CAUTION:** Although helpful, reference to a PIN/PID alone is generally not an adequate legal description.

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This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.



STANDARD FORM 2G
Revised 7/2017
© 7/2018

- (3) **Other description:** A survey attached as an Exhibit or an abbreviated description such as 10+/- acres at the northeasterly quadrant of the intersection of Route 41 and Jackson Boulevard may be helpful. A copy of Seller's deed may be attached as an Exhibit. Do not attempt to complete a metes and bound description as an Exhibit. A North Carolina real estate attorney should be consulted if a metes and bounds description is necessary or if the information available is inadequate to clearly describe the Property.
- (4) **Reference to a recorded deed:** If known, insert the book number and page number of Seller's deed as recorded in the office of the Register of Deeds office.

(d) PURCHASE PRICE:

- (1) **Purchase Price:** Insert the total amount of the purchase price in dollars on the first line.
- (2) **Due Diligence Fee:** If Buyer is paying Seller a Due Diligence fee, as defined in Paragraph 1(i), for the right to conduct Due Diligence during the Due Diligence Period as defined in Paragraph 1(j), insert the amount of the Due Diligence Fee on the second line.
- (3) **Initial Earnest Money Deposit:** Insert the amount of the Initial Earnest Money Deposit, if any, in dollars on the third line and check the appropriate box for method of payment. NOTE: Any Initial Earnest Money Deposit should be paid to the Escrow Agent designated in Paragraph 1(f) and delivered with the Contract.
- (4) **Additional Earnest Money Deposit:** If an Additional Earnest Money deposit is to be given at a later date, insert the amount of that deposit in dollars and the due date on the fourth line. Any Additional Earnest Money Deposit should be paid by one of the methods specified in paragraph 1(d) to the Escrow Agent designated in Paragraph 1(f) and delivered by the due date specified. **NOTE: A personal check is not a specified method for payment of an Additional Earnest Money Deposit and may be rejected by the Seller. NOTE: Time is "of the essence" with respect to the payment of any additional earnest money deposit.**
- (5) **Assumption of existing loan:** Insert the approximate principal amount of Seller's existing loan on the Property as of Settlement on the fifth line, and complete and attach the current standard Loan Assumption Addendum (NCBA/NCAR Form 2A6-T).
- (6) **Seller Financing:** Insert the dollar amount of the financing from Seller on the sixth line, and complete and attach the current standard Seller Financing Addendum (NCAR/NCBA Form 2A5-T).
- (7) **Building Deposit:** If Buyer is paying Seller a building deposit in connection with improvements to be constructed on the Property by Seller, insert the amount of the Building Deposit on the seventh line, and complete and attach the New Construction Addendum (Form 2A3-T).
- (8) **Balance of Purchase Price:** Insert the dollar amount of the balance due from Buyer on the eighth line. **NOTE: This amount should equal the purchase price minus any dollar amounts inserted in second through seventh lines. In the case of a counteroffer, which alters any figure in subparagraph (d), all altered figures must be initialed and should be dated by all parties. Care should be taken to be certain that the figures in the second through the eighth lines, when added, always equal the purchase price set forth in the first line.**
- (f) **Escrow Agent:** Insert the name of the Escrow Agent designated to hold the Initial Earnest Money Deposit and/or the Additional Earnest Money Deposit, not the name of an individual Broker (unless it is to be held by a Broker who is a sole practitioner). Note that the name indicated here should also be indicated on the "Firm" line at the bottom of the form under the acknowledgment of receipt of the earnest money. **NOTE: Any earnest money check should be made payable to the designated Escrow Agent.**
- (j) **Due Diligence Period:** Insert the date Buyer's rights to conduct Due Diligence, as defined in Paragraph 1(h), expires.
- (k) **Settlement Date:** Insert the date upon which Settlement, as defined in Paragraph 1(k), is to occur. **NOTE: Closing, as defined in Paragraph 1(m), may or may not be completed on the same day Settlement occurs.**
- (m) **Closing:** The residential real estate closing is a process typically including review and interpretation of the contract of sale, abstracting and certification of title and application for appropriate title insurance, preparation, review and interpretation of financial accountings and various legal documents, assuring compliance with mortgage lender loan instructions and recordation and cancellation of documents in accordance with law. According to the NC State Bar Rules of Professional Responsibility Authorized Practice Advisory Opinion (2002-1), a person who is not licensed to practice law in North Carolina and is not working under the direct supervision of an active member of the State Bar may not perform functions or services that constitute the practice of law. Under the express language of N.C. Gen. Stat. §§84-2.1 and 84-4, a non-lawyer who is not working under the direct supervision of an active member of the State Bar would be engaged in the unauthorized practice of law if he or she performs any of the following functions for one or more of the parties to a residential real estate transaction:
- (i) preparing or aiding in preparation of deeds, deeds of trust, lien waivers or affidavits, or other legal documents;
 - (ii) abstracting or passing upon titles; or
 - (iii) advising or giving an opinion upon the legal rights or obligations of any person, firm, or corporation.

Under the express language of N.C. Gen. Stat. § 84-4, it is unlawful for any person other than an active member of the State Bar to hold himself or herself out as competent or qualified to give legal advice or counsel or as furnishing any services that constitute the practice of law. Additionally, under N.C. Gen. Stat. § 84-5, a business entity, including a corporation or limited liability company,

may not provide or offer to provide legal services or the services of attorneys to its customers even if the services are performed by licensed attorneys employed by the entity.

Nonlawyers who undertake such responsibilities, and those who retain their services, should also be aware that (1) the North Carolina State Bar retains oversight authority concerning complaints about activities that constitute the unauthorized practice of law; (2) the North Carolina criminal justice system may prosecute instances of the unauthorized practice of law; and (3) that N.C. Gen. Stat. §84-10 provides a private cause of action to recover damages and attorneys' fees to any person who is damaged by the unauthorized practice of law against both the person who engages in unauthorized practice and anyone who knowingly aids and abets such person.

So long as a nonlawyer does not engage in any of the activities referenced above, or in other activities that likewise constitute the practice of law, a nonlawyer may:

- (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; or
- (2) receive and disburse the closing funds.

Although these limited duties may be performed by nonlawyers, this does not mean that the nonlawyer is handling the closing. Additionally, nonlawyers may not advertise or represent to lenders, buyers/borrowers, or others in any manner that suggests that the nonlawyer will:

- (i) handle the "closing;"
 - (ii) provide the legal services associated with a closing, such as providing title searches, title opinions, document preparation, or the services of a lawyer for the closing; or
 - (iii) "represent" any party to the closing. The lawyer must be selected by the party for whom the legal services will be provided.
- (n) **Special Assessments:** Paragraph 1(n) excludes from the definition of "Special Assessments" ad valorem taxes on real property and recurring governmental service fees (such as annual solid waste, storm water management and similar fees) levied in connection with ad valorem taxes on real property.

2. FIXTURES:

- (a) **Specified Items:** Any item on the list in subparagraph (b) that is presently on the Property—including any related equipment and remote control devices—is considered a fixture and will be included in the sale unless the item is identified in subparagraphs (a) and/or (d). It is not necessary to cross out items that are listed in subparagraph (b) but are not on the Property.
- (b) **Items Leased or Not Owned:** Insert in the blank space in subparagraph (a) any item presently on the Property which may be considered a fixture but which is leased or not owned by Seller.
- (d) Insert in the blank space in subparagraph (d) any item on the Property which may be considered a fixture but which will not be included in the sale. If in doubt as to whether an item that the parties agree will be excluded from the sale is or is not a fixture, it is advisable to list the item to avoid a later dispute.

3. PERSONAL PROPERTY: List all items of personal property that are to be included in the sale. (EXAMPLES: Curtains, draperies, etc.; free standing appliances such as a refrigerator or a microwave oven; fireplace tools; window air conditioner; etc.) It is advisable to list any item included in the sale about which some dispute may arise. **NOTE: Care should be taken to ascertain that any personal property included in the sale is owned by Seller and is not merely rented or leased.**

4. BUYER'S DUE DILIGENCE PROCESS: The right of Buyer to conduct Due Diligence (defined in Paragraph 1(h)) is one of the most important elements of the Contract. Buyer is given the opportunity to investigate and examine all aspects of the Property and the transaction in order to decide whether to proceed with or terminate the transaction. If Buyer terminates the Contract prior to the expiration of the Due Diligence Period (defined in Paragraph 1(j)), Buyer may obtain a refund of the Earnest Money Deposit and any Additional Earnest Money Deposit paid prior to the expiration of the Due Diligence Period, but not any Due Diligence Fee. Buyer and Buyer's Broker should give careful consideration as to what types of Due Diligence should be performed during the Due Diligence Period and should heed the WARNING at the beginning of paragraph 4.

- (a) **Loan:** Buyer's Due Diligence should include investigating the availability of any desired or required financing. Buyer should understand that depending on the length of time Buyer and Seller agree that the Due Diligence Period will last, it is possible or even likely Buyer will not know with certainty that the loan will be approved prior to the end of the Due Diligence Period. In such case, Buyer should make a decision based on the information Buyer has from Buyer's lender at that time whether to **terminate or proceed with the transaction. If Buyer terminates the contract, Buyer receives the Earnest Money Deposit back. If Buyer proceeds with the transaction and the lender does not ultimately approve the loan, Buyer would lose the Earnest Money Deposit if Buyer were unable to close without the loan.** By making the loan qualification process a part of Buyer's Due Diligence, Buyer and Seller have the ability to fairly balance the risk that the Contract may not close due to Buyer's loan not

being approved by shifting that risk to Buyer at a mutually agreeable date. The date that the risk shifts to Buyer is the date that the Due Diligence Period expires.

(b) Property Investigation:

(ii) Review of Documents: Purchasers take title to property subject to the restrictive covenants and are bound to follow them, even if they did not actually know the property was subject to restrictive covenants. Once restrictions are properly imposed upon a property, they "run with the land" and are binding on the owner and all subsequent purchasers. No owner or purchaser can use the property for any purpose that violates the restrictions. During the Due Diligence Period, Buyer should review any document that may limit the use of the Property or govern the Property owner or obligate the Property owner to a financial payment other than the purchase price, taxes, and governmental assessments. If such documents are not available from either the listing Broker or Seller, then an attorney should be consulted by Buyer during the Due Diligence Period.

(iv) Appraisals: The Property being appraised at or equal to the Purchase Price is not a condition to Buyer's performance under the Contract except in transactions involving FHA/VA financing. If the appraised value of the Property is an important factor in determining whether a Buyer wishes to proceed with the purchase or whether necessary or desired financing is obtainable, Buyer should obtain and review an appraisal of the Property prior to the expiration of the Due Diligence Period.

(v) Survey: A survey of the Property can reveal important information about the Property, including setback lines and possible violations thereof, encroachments on to the Property or from the Property onto adjacent property, boundaries, the existence of utility, storm drainage and other easements which may prohibit construction of improvements within their areas, and many other important details about the physical nature of the Property. Lenders often tell buyers that they do not need a survey in order to close. That is because lenders are able to obtain title insurance coverage on their lenders' policies insuring against title defects which would be revealed by a survey. No such coverage is available to a buyer or borrower under an owners' policy of title insurance. In order to obtain title insurance coverage against defects which would be revealed by a current survey of the Property, Buyer should be encouraged to go to the expense of obtaining a new survey. Brokers should encourage a recalcitrant Buyer to consult with a North Carolina real estate attorney to understand the advantages of obtaining a new survey.

(vii) Flood Hazard: Buyer should determine whether the Property and/or any permanent improvements on the Property are wholly or partially located in a Special Flood Hazard Area and whether it is advisable for Buyer, or whether Buyer's lender may require Buyer, to obtain flood hazard insurance. A definition of the term "Special Flood Hazard Area" can be obtained from the website of the Federal Emergency Management Agency at www.fema.gov. Information about the state of North Carolina's Floodplain Mapping Program is available online at <http://www.ncfloodmaps.com>.

(e) Buyer's Obligation to Repair Damage: Buyer's obligation to repair damage under this Paragraph is not necessarily limited to circumstances where the damage is caused by the negligent or willful acts or omissions of Buyer or Buyer's agents and contractors. For example, assume that during an inspection of the exterior siding of a house located on the Property, Buyer's home inspector falls from his ladder, resulting in gouge marks in the siding. Assume further that the fall was caused by an unforeseen failure in the ladder rather than the inspector's negligence. Buyer should still be obligated to repair the damaged siding. On the other hand, Buyer should not be responsible for repairing pre-existing damage discovered during the inspection/investigation of the Property by Buyer and Buyer's agents and contractors. Using the example set forth above, if during his inspection, the inspector probes the siding with a screwdriver and discovers underlying wood rot on a portion of the siding, Buyer should not be obligated to repair the affected siding.

5. BUYER REPRESENTATIONS: Buyer Representations are statements of current facts that Seller may reasonably rely upon in deciding whether to enter into the Contract. Representations made "to the best of Buyer's knowledge" include only facts known to Buyer at the time the representation is made.

(a) Loan: Check the applicable box disclosing whether Buyer intends to obtain a loan in order to purchase the Property. If a Broker working with Buyer knows or reasonably should know under the circumstances that Buyer must obtain a loan in order to purchase the Property, it is a material fact under the real estate licensing law that must be disclosed by the Broker because it is a fact relating directly to the ability of Buyer to complete the transaction with Seller. If Buyer does in fact need a loan, check the boxes that best describe the type of loan; insert the desired or required interest rate, the principal amount of the loan, the term of the loan and the maximum interest rate acceptable to Buyer. **(NOTE: Buyer's obligations under the Contract are not conditioned upon Buyer being able to obtain the desired financing. Buyer should determine whether acceptable or necessary financing is available to Buyer prior to expiration of the Due Diligence Period. See Paragraph 4 above.)**

- (b) **Other Property:** Check the box indicating whether Buyer does or does not have to sell or lease other real property in order to qualify for a new loan or to complete the purchase. If a Broker working with Buyer knows or reasonably should know under the circumstances that Buyer must sell other property in order to purchase the Property, it is a material fact under the real estate licensing law that must be disclosed by the Broker because it is a fact relating directly to the ability of Buyer to complete the transaction with Seller. If Buyer does need to sell in order to qualify for a new loan or to complete the purchase, consideration should be given to including and making a part of the Contract Contingent Sale Addendum (Form 2A2-T).
- (d) **Property Disclosure:** Indicate the status of Buyer's receipt of the required N.C. Residential Property Disclosure Statement by checking the appropriate box. If the transaction is exempt from the N. C. Residential Property Disclosure Act, then enter one of the following: (1) Court Ordered Transfer; (2) Borrower to Lender Transfer; (3) Fiduciary Transfer; (4) Co-owner to Co-owner Transfer; (5) Within Family Transfer; (6) Spouse to Spouse Divorce Decree Transfer; (7) Tax Sale; (8) Governmental Transfer; (9) First Sale of Dwelling Never Inhabited; (10) Lease with Option to Purchase (where lessee occupies or intends to occupy the dwelling) (**Caution: See warning under "Use of Form"**); (11) Buyer and Seller Agreement; or (12) Property to be transferred consists of less than 1 or more than 4 residential units. *See North Carolina General Statutes Section 47E-2 for a complete description of exemptions.*
- (e) **Mineral and Oil and Gas Rights Mandatory Disclosure:** Indicate the status of Buyer's receipt of the required N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement by checking the appropriate box. If the transaction is exempt from the N. C. Residential Property Disclosure Act, then enter one of the following: (1) Court Ordered Transfer; (2) Borrower to Lender Transfer; (3) Fiduciary Transfer; (4) Co-owner to Co-owner Transfer; (5) Within Family Transfer; (6) Spouse to Spouse Divorce Decree Transfer; (7) Tax Sale; (8) Governmental Transfer; or (9) Property to be transferred consists of less than 1 or more than 4 residential units. *See North Carolina General Statutes Section 47E-2 for a complete description of exemptions.*

7. SELLER REPRESENTATIONS: Seller Representations are statements of current facts that Buyer may reasonably rely upon in deciding whether to enter into the Contract. Representations made "to the best of Seller's knowledge" include only facts known to Seller at the time the representation is made.

- (a) **Ownership:** Check the applicable box disclosing how long Seller has owned the Property or whether Seller owns the Property at the time Seller executes the Contract. Seller's term of ownership may affect Buyer's ability to obtain mortgage financing. Some mortgage lenders require proof that the property is not being *flipped* from one purchaser at a lower price to another purchaser at a higher price within a short period of time. Any lender issues concerning Seller's term of ownership should be resolved during the Due Diligence Period.
- (b) **Lead-Based Paint:** If the Property is residential property built prior to 1978, the current standard Lead-Based Paint or Lead-Based Paint Hazard Addendum (NCAR/NCBA Form 2A9-T) must be attached
- (c) **Assessments:** Prior to accepting the Contract or making a counteroffer to Buyer, Seller should disclose any Proposed Special Assessments under consideration for the Property by any owners' association or municipal authority with the power to levy assessments, if any, of which Seller is aware. If Seller is unaware of any Proposed Special Assessments which are under such consideration and which may affect the Property, or if Seller is unable to obtain any information regarding same from any owners' association (or its managing agent) or municipal authority with the power to levy assessments, insert none. Pursuant to Paragraph 6(a) of the Contract, Buyer shall take title to the Property subject to any Proposed Special Assessments disclosed by Seller. Seller's representations in Paragraph 7(c) about *Confirmed Special Assessments* contain a warranty that the facts represented are accurate and may be relied on as such. A warranty may give rise to a claim by Buyer against Seller for breach of warranty in the event the facts warranted turn out to be untrue at the time they were made. Therefore, prior to accepting the Contract or making a counteroffer to Buyer, Seller should determine if there are any Confirmed Special Assessments, and to enter the amount of such Confirmed Special Assessment(s) If there are no Confirmed Special Assessments affecting the Property, enter "None". (**NOTE: Buyer should determine whether there are any Proposed or Confirmed Special Assessments prior to the expiration of the Due Diligence Period.**)
- (d) **Owners' Association(s) and Dues:** If the Property is subject to regulation by one or more owners' associations, the name, address and telephone number of the president of the association or the association manager and the association's web site address should be inserted in the blank spaces provided. The amount of the association's regular assessments (dues) should also be inserted in the blank space provided.

8. SELLER OBLIGATIONS: The Contract imposes numerous obligations upon Seller with respect to the transaction. If Seller fails to materially comply with such obligations or materially breaches the Contract, Buyer may terminate the Contract and receive a refund of any Earnest Money Deposit and Due Diligence Fee paid, obtain reimbursement from Seller for its reasonable costs incurred in conducting Due Diligence without affecting any other remedies available to Buyer.

- (e) **Affidavit and Indemnification Agreements (against Mechanics Liens):** For Property for which a building or other permit has been issued on or after April 1, 2013, the Seller is required to have appointed a Lien Agent subject to the following two (2) exceptions: No lien Agent need be appointed when (1) the anticipated cost of the project permitted is expected to be under \$30,000.00; or (2) if the improvements were made to a single family residence which is occupied by the Seller. The Designation of Lien Agent is made on the website LiensNC.com, where potential lien claimants may file a Notice to Lien Agent that they

are providing labor, services, material or rental equipment to the Property for which a lien may be claimed if they are not paid. A Closing Attorney will search the website for notices and will require lien waivers from each potential lien claimant who has filed such a Notice. Therefore to prevent delays in Closing, a Seller and Seller's Agent should promptly furnish to Buyer, the Buyer's Agent and the Buyer's Closing Attorney a copy of any Appointment of Lien Agent made by or on behalf of Seller (which may be printed off the LiensNC.com website). If a Seller fails to comply with the statutory requirement to designate a Lien Agent, it may not be possible to obtain title insurance on the Property and complete Closing in accordance with the Contract.

- (h) **Deed, Taxes and Fees:** Insert the exact, legal name(s) of Buyer(s) as will appear in the deed. Buyer and Seller should note that using phrases such as "*as directed by Buyer*" or "*Buyer(s), or assigns*" may conflict with the restrictions on assignment of the Contract set forth in Paragraph 16. If the parties wish to permit assignment of the Contract, consultation with a North Carolina real estate attorney is recommended.
- (i) **Agreement to Pay Buyer Expenses:** Insert the **fixed** dollar amount Seller will pay. This amount may also be expressed as a percentage of the purchase price. **Include in this amount any FHA/VA lender and inspection costs (seller mandated fees) that cannot be paid by Buyer.** Examples of Buyer's expenses associated with the purchase of the property may include, but are not limited to, discount points, loan origination fees, appraisal fees, attorney's fees, inspection fees and loan "pre-pays" (taxes, insurance, etc.). If Seller will not pay any such expenses, insert "0" in the blank. Note that Seller's payment of any such amount is subject to approval by Buyer's lender.

9. **TAXES ON REAL PROPERTY:** Paragraph 9(a) provides that ad valorem taxes on real property together with recurring governmental service fees levied with such taxes (such as annual solid waste, storm water management and similar fees) shall be prorated as of the date of Settlement on a calendar year basis.

10. **HOME WARRANTY:** If a home warranty is to be paid for by Seller, check one of the two boxes, insert maximum cost to be paid and identify warranty company if applicable. Note that the amount inserted includes the amount of any sales tax.

12. **RISK OF LOSS:** Since the risk of loss does not pass to Buyer until Closing occurs, Seller should consult with an attorney and Seller's insurance carrier before agreeing to allow Buyer to take possession at Settlement or any other time prior to the recordation of the deed. In the event of a casualty loss prior to the time the deed is recorded, the Buyer may be able to terminate the contract and obtain a refund of the Earnest Money Deposit and any Due Diligence Fee. Therefore Seller should be careful not to cancel Seller's existing hazard insurance policy until such time as the deed has been recorded and the net closing proceeds are available to Seller. A Buyer allowing Seller to remain in possession after Closing should also consult with Buyer's attorney and insurance carrier to determine that Buyer has adequate coverage in the event of a loss during the period of Seller's possession after Closing. Buyer should obtain hazard insurance coverage for the Property effective 12:01a.m. as of the date of Settlement.

13. **DELAY IN SETTLEMENT/CLOSING:** If either party anticipates a delay in Settlement and Closing, that party should try to negotiate a written extension from the other party prior to the expiration of the Due Diligence Period.

14. **POSSESSION:** The contract assumes possession will be delivered at Closing. "Closing" is defined in Paragraph 1(m) and requires that Settlement and all steps included in the process of Closing, including recording of the deed, be completed. Closing will not occur at the same time, and may not even occur on the same date as Settlement. In selecting the place and time of Settlement, Buyer should consider that completion of Closing, including recording, is necessary before possession may be delivered unless the parties otherwise agree. If possession by a certain date is critical, Settlement should be scheduled on a date and at a time that will allow sufficient time for Closing to be completed on or before that date. If the parties agree to transfer possession to Buyer prior to recording of the deed, then check the applicable box and attach a Buyer Possession Before Closing Agreement (NCAR/NCBA Form 2A7-T) or consult a NC real estate attorney for an appropriate agreement. If the parties agree to permit Seller to remain in possession after recording of the deed, then check the applicable box and attach a Seller Possession After Closing Agreement (NCAR/NBCA Form 2A8-T) or consult a NC real estate attorney for an appropriate agreement. Also consider Paragraph 12 of these guidelines, entitled "Risk of Loss." If the Property is being sold subject to an existing lease, check the applicable box and consider adding the Rental/Income/Investment Property provision in the Additional Provisions Addendum (form 2A11-T) or the Vacation Rental Addendum (form 2A13-T) to the Contract, as the case may be.

15. **OTHER PROVISIONS AND CONDITIONS:** Check any standard addenda that may be attached to the contract, and indicate by name any attorney or party drafted addenda to be attached. Any addenda referred to here should be properly identified, signed by the parties, and attached to each original of the contract. Any copy of the contract must always have all addenda attached. **CAUTION: UNDER NORTH CAROLINA LAW, REAL ESTATE BROKERS ARE NOT PERMITTED TO DRAFT ADDENDA TO THIS CONTRACT.**

17. TAX DEFERRED EXCHANGE: If either or both of the parties may be considering entering into a tax free exchange of like kind property in connection with the transaction, consultation with qualified attorneys or tax advisors is recommended.

20. ENTIRE AGREEMENT: The parties should make sure that all essential elements of the contemplated Contract are embodied in the Contract and all addenda attached thereto and made a part thereof.

22. EXECUTION: It is recommended that multiple originals or counterparts be executed and that each party receive an original or counterpart with original signatures. A fully executed copy of the complete contract and all addenda should be delivered to Buyer's prospective lender(s).

SIGNATURES AND DATES: All parties with an ownership interest (see Paragraph 1(a) where owner is deceased) must sign as Seller and all parties named as Buyer must sign as Buyer. *If Seller(s) is married, both the husband and wife always must sign the contract.* This is true even if the Property is owned by only one spouse. The non-owner spouse holds a potential "marital life estate" and a "right to dissent from the will" under North Carolina law and must sign the deed in order for the other spouse to convey clear title. The signature of the non-owner spouse on the contract will obligate that spouse to join in signing the deed. If the married Sellers have executed and recorded a pre-nuptial agreement, post-nuptial agreement, or a free trader agreement consult a North Carolina real estate attorney to determine who must sign. If a party (Buyer or Seller) is a corporation, limited liability company, partnership, limited partnership or other legal entity, a duly authorized officer, manager, general partner or other legal representative of such entity should sign on behalf of such party. If a party is a trust, the duly authorized trustee(s) of such trust should sign on behalf of such trust.

Indicate the dates that the parties actually sign the Offer to Purchase and Contract.

NOTICE INFORMATION: Insert the notice addresses for Buyer and Seller, including current mailing and e-mail addresses and fax numbers. Note that in accordance with Paragraph 21, the parties agree that any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the contract which they select. Thus, it is very important that correct contact information be inserted. *At least one notice address for each party or their agent must be inserted.* If a party does not have an e-mail address or fax machine, or if a party does not desire written notice or communication to be transmitted to the party's e-mail address and/or fax machine, insert "N/A" or "None" in the relevant blank. REALTORS® representing a party to a transaction are reminded that if the other party to the transaction is exclusively represented, REALTORS® generally must conduct all dealings concerning the transaction with the other party's Broker and not the other party (see Standard of Practice 16-13 of the REALTOR® Code of Ethics).

Enter the names of the individual selling and listing Brokers, their respective individual license numbers and firm names and firm license numbers, and check the appropriate agency representation box for each. Note that this procedure is *confirmation* of a prior disclosure of the agency relationship and in no way should be considered as an initial disclosure of agency relationship. Signatures are not necessary. Also enter the notice addresses for the selling and listing Brokers, including current mailing and e-mail addresses and fax numbers.

ACKNOWLEDGMENT OF RECEIPT OF MONIES

LISTING AGENT ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE: This section should be completed if the Offer to Purchase and Contract provides for payment of an Due Diligence Fee. If any Due Diligence Fee is delivered to the listing agent by whatever means, this section should be completed and signed by the individual listing agent or by some other authorized representative of the listing agent's Firm. If the Due Diligence Fee is delivered directly to the Seller rather than the listing agent, this section should not be completed.

SELLER ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE: This section should be completed if the Offer to Purchase and Contract provides for payment of a Due Diligence Fee even if the listing agent has already acknowledged receipt of the Due Diligence Fee. When any Due Diligence Fee is delivered by whatever means to Seller, whether by the listing agent, selling agent, buyer or otherwise, this section should be completed and signed by Seller if possible.

ESCROW ACKNOWLEDGMENT OF INITIAL EARNEST MONEY DEPOSIT: This section should be completed if the Offer to Purchase and Contract provides for payment of an Initial Earnest Money Deposit. The "Firm" should be the same as the firm indicated as Escrow Agent in Paragraph 1(f). The individual signing for the firm serving as Escrow Agent on the "By:" line must be associated with that firm. The "Firm" may be a real estate brokerage firm, a law firm, or another entity. If the listing agent's firm will hold the Earnest Money Deposit, this usually will be the individual listing Broker. Although the contract states that the Earnest Money Acknowledgment section is not a material part of the Offer to Purchase and Contract, if the Escrow Agent named in Paragraph 1(f) of the contract is unable or unwilling to serve in such capacity, the Escrow Agent's name should be replaced with the name of a substitute Escrow Agent agreeable to Buyer and Seller, and the change initialed and dated by both parties.

ESCROW ACKNOWLEDGMENT OF (ADDITIONAL) EARNEST MONEY DEPOSIT: This section should be completed if the Offer to Purchase and Contract provides for payment of an Additional Earnest Money Deposit. The "Firm" should be the same as the firm indicated as Escrow Agent in Paragraph 1(f). The individual signing for the firm serving as Escrow Agent on the "By:" line must

be associated with that firm. The “Firm” may be a real estate brokerage firm, a law firm, or another entity. If the listing agent’s firm will hold the Earnest Money Deposit, ~~Usually,~~ this usually will be the individual listing Broker. Although the contract states that the Earnest Money Acknowledgment section is not a material part of the Offer to Purchase and Contract, if the Escrow Agent named in Paragraph 1(f) of the contract is unable or unwilling to serve in such capacity, the Escrow Agent’s name should be replaced with the name of a substitute Escrow Agent agreeable to Buyer and Seller, and the change initialed and dated by both parties.

SAMPLE

OFFER TO PURCHASE AND CONTRACT
[Consult "Guidelines" (Form 2G) for guidance in completing this form]

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract and any addendum or modification made in accordance with its terms (together the "Contract").

1. **TERMS AND DEFINITIONS:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Seller":** _____

(b) **"Buyer":** _____

(c) **"Property":** The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon and the fixtures and personal property listed in Paragraphs 2 and 3 below.

NOTE: If the Property will include a manufactured (mobile) home(s), Buyer and Seller should consider including the Manufactured (Mobile) Home provision in the Additional Provisions Addendum (Standard Form 2A11-T) with this offer.

Street Address: _____
City: _____ Zip: _____
County: _____, North Carolina

NOTE: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown.

Legal Description: (Complete ALL applicable)
Plat Reference: Lot/Unit _____, Block/Section _____, Subdivision/Condominium _____
_____, as shown on Plat Book/Slide _____ at Page(s) _____

The PIN/PID or other identification number of the Property is : _____

Other description: _____

Some or all of the Property may be described in Deed Book _____ at Page _____

(d) **"Purchase Price":**

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

paid in U.S. Dollars upon the following terms:

BY DUE DILIGENCE FEE made payable and delivered to Seller by the Effective Date

BY INITIAL EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by ☐ cash ☐ personal check ☐ official bank check ☐ wire transfer, ☐ electronic transfer, EITHER ☐ with this offer OR ☐ within five (5) days of the Effective Date of this Contract.

BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by cash, official bank check, wire transfer or electronic transfer no later than 5 p.m. on _____.

TIME BEING OF THE ESSENCE.

BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the attached Loan Assumption Addendum (Standard Form 2A6-T).

BY SELLER FINANCING in accordance with the attached Seller Financing Addendum (Standard Form 2A5-T).

BY BUILDING DEPOSIT in accordance with the attached New Construction Addendum (Standard Form 2A3-T).

BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)

Should Buyer fail to deliver either the Due Diligence Fee or any Initial Earnest Money Deposit by their due dates, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall

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This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.



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Buyer's initials _____ Seller's initials _____

have one (1) banking day after written notice to deliver cash, official bank check, wire transfer or electronic transfer to the payee. In the event Buyer does not timely deliver the required funds, Seller shall have the right to terminate this Contract upon written notice to Buyer.

(e) **“Earnest Money Deposit”**: The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid or required to be paid in connection with this transaction, collectively the “Earnest Money Deposit”, shall be deposited and held in escrow by Escrow Agent until Closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. In the event of breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer’s request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Contract by Buyer, the Earnest Money Deposit shall be paid to Seller as liquidated damages and as Seller’s sole and exclusive remedy for such breach, but without limiting Seller’s rights under Paragraphs 4(d) and 4(e) for damage to the Property or Seller’s right to retain the Due Diligence Fee. It is acknowledged by the parties that payment of the Earnest Money Deposit to Seller in the event of a breach of this Contract by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money Deposit to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller’s anticipated loss, both parties acknowledging the difficulty determining Seller’s actual damages for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

(f) **“Escrow Agent”** (insert name): _____

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in escrow, a licensed real estate broker (“Broker”) is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain the Earnest Money Deposit in the Escrow Agent’s trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker or an attorney licensed to practice law in North Carolina (“Attorney”) is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE EARNEST MONEY DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

(g) **“Effective Date”**: The date that: (1) the last one of Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (2) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be. The parties acknowledge and agree that the initials lines at the bottom of each page of this Contract are merely evidence of their having reviewed the terms of each page, and that the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement.

(h) **“Due Diligence”**: Buyer’s opportunity to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 4 below, to decide whether Buyer, in Buyer’s sole discretion, will proceed with or terminate the transaction.

(i) **“Due Diligence Fee”**: A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer’s right to terminate the Contract for any reason or no reason during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 8(n) or Paragraph 12, or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee.

(j) **“Due Diligence Period”**: The period beginning on the Effective Date and extending through 5:00 p.m. on _____
TIME BEING OF THE ESSENCE.

(k) **“Settlement”**: The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and the closing attorney’s receipt of all funds necessary to complete such transaction.

(l) **“Settlement Date”**: The parties agree that Settlement will take place on _____

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_____ (the "Settlement Date"),
unless otherwise agreed in writing, at a time and place designated by Buyer.

(m) **"Closing"**: The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph 13 (Delay in Settlement/Closing).

WARNING: The North Carolina State Bar has determined that the performance of most acts and services required for a closing constitutes the practice of law and must be performed only by an attorney licensed to practice law in North Carolina. State law prohibits unlicensed individuals or firms from rendering legal services or advice. Although non-attorney settlement agents may perform limited services in connection with a closing, they may not perform all the acts and services required to complete a closing. A closing involves significant legal issues that should be handled by an attorney. Accordingly it is the position of the North Carolina Bar Association and the North Carolina Association of REALTORS® that all buyers should hire an attorney licensed in North Carolina to perform a closing.

(n) **"Special Assessments"**: A charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property. A Special Assessment may be either proposed or confirmed.

"Proposed Special Assessment": A Special Assessment that is under formal consideration but which has not been approved prior to Settlement.

"Confirmed Special Assessment": A Special Assessment that has been approved prior to Settlement whether payable in a lump sum or future installments.

NOTE: Any Proposed and Confirmed Special Assessments must be identified by Seller in paragraph 7(c), and Buyer's and Seller's respective responsibilities for Proposed and Confirmed Special Assessments are addressed in paragraphs 6(a) and 8(k).

2. FIXTURES AND EXCLUSIONS:

(a) **Specified Items:** Unless identified in subparagraph (d) below, the following items, including all related equipment and remote control devices, if any, are deemed fixtures and shall convey, included in the Purchase Price free of liens:

- Alarm and security systems (attached) for security, fire, smoke, carbon monoxide or other toxins with all related access codes, sensors, cameras, dedicated monitors, hard drives, video recorders, power supplies and cables; doorbells/chimes
- All stoves/ranges/ovens; built-in appliances; attached microwave oven; vent hood
- Antennas; satellite dishes and receivers
- Basketball goals and play equipment (permanently attached or in-ground)
- Ceiling and wall-attached fans; light fixtures (including existing bulbs)
- Fireplace insert; gas logs or starters; attached fireplace screens; wood or coal stoves
- Floor coverings (attached)
- Fuel tank(s) whether attached or buried and including any contents that have not been used, removed or resold to the fuel provider as of Settlement. **NOTE:** Seller's use, removal or resale of fuel in any fuel tank is subject to Seller's obligation under Paragraph 8(c) to provide working, existing utilities through the earlier of Closing or possession by Buyer.
- Garage door openers with all controls
- Generators that are permanently wired
- Invisible fencing with power supply, controls and receivers
- Landscape and outdoor trees and plants (except in moveable containers); raised garden; landscape and foundation lighting; outdoor sound systems; permanent irrigation systems and controls; rain barrels; landscape water features; address markers
- Mailboxes; mounted package and newspaper receptacles
- Mirrors attached to walls, ceilings, cabinets or doors; all bathroom wall mirrors
- Storage shed; utility building
- Swimming pool (excluding inflatable); spa; hot tub
- Solar electric and solar water heating systems
- Sump-pumps, radon fans and crawlspace ventilators; de-humidifiers that are permanently wired
- Surface-mounting brackets for television and speakers; recess-mounted speakers; mounted intercom system
- Water supply equipment, including filters, conditioning and softener systems; re-circulating pumps; well pumps and tanks
- Window/Door blinds and shades, curtain and drapery rods and brackets, door and window screens and combination doors, awnings and storm windows

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(b) **Items Leased or Not Owned:** Any item which is leased or not owned by Seller, such as fuel tanks, antennas, satellite dishes and receivers, appliances, and alarm and security systems must be identified here and shall not convey:

(c) **Other Fixtures/Unspecified items:** Unless identified in subparagraph (d) below, any other item legally considered a fixture is included in the Purchase Price free of liens.

(d) **Other Items That Do Not Convey:** The following items shall not convey (*identify those items to be excluded under subparagraphs (a) and (c)*):

Seller shall repair any damage caused by removal of any items excluded above.

3. **PERSONAL PROPERTY:** The following personal property shall be transferred to Buyer at no value at closing:

NOTE: Buyer is advised to consult with Buyer's lender to assure that the Personal Property items listed above can be included in this Contract.

4. **BUYER'S DUE DILIGENCE PROCESS:**

WARNING: BUYER IS STRONGLY ENCOURAGED TO CONDUCT DUE DILIGENCE DURING THE DUE DILIGENCE PERIOD. If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, PRIOR TO THE EXPIRATION OF THE DUE DILIGENCE PERIOD, unless Buyer can obtain a written extension from Seller. SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION. Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period will constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under Paragraph 8 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

(a) **Loan:** Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

NOTE: Buyer's obligation to purchase the Property is not contingent on obtaining a Loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Due Diligence Period allows sufficient time for the appraisal to be completed and for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.

(b) **Property Investigation:** Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate, including but NOT limited to the following:

(i) **Inspections:** Inspections to determine the condition of any improvements on the Property, the presence of unusual drainage conditions or evidence of excessive moisture adversely affecting any improvements on the Property, the presence of asbestos or existing environmental contamination, evidence of wood-destroying insects or damage therefrom, and the presence and level of radon gas on the Property.

(ii) **Review of Documents:** Review of the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of any applicable owners' association and/or subdivision. If the Property is subject to regulation by an owners' association, it is recommended that Buyer review the completed Residential Property and Owners' Association Disclosure Statement provided by Seller prior to signing this offer. It is also recommended that the Buyer determine if the owners' association or its management company charges fees for providing information required by Buyer's lender or confirming restrictive covenant compliance.

(iii) **Insurance:** Investigation of the availability and cost of insurance for the Property.

(iv) **Appraisals:** An appraisal of the Property.

(v) **Survey:** A survey to determine whether the property is suitable for Buyer's intended use and the location of easements, setbacks, property boundaries and other issues which may or may not constitute title defects.

(vi) **Zoning and Governmental Regulation:** Investigation of current or proposed zoning or other governmental regulation that may affect Buyer's intended use of the Property, adjacent land uses, planned or proposed road construction, and school attendance zones.

(vii) **Flood Hazard:** Investigation of potential flood hazards on the Property, and/or any requirement to purchase flood insurance

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in order to obtain the Loan.(viii) **Utilities and Access:** Availability, quality, and obligations for maintenance of utilities including water, sewer, electric, gas, communication services, stormwater management, and means of access to the Property and amenities. (ix) **Streets/Roads:** Investigation of the status of the street/road upon which the Property fronts as well as any other street/road used to access the Property, including: (1) whether any street(s)/road(s) are public or private, (2) whether any street(s)/road(s) designated as public are accepted for maintenance by the State of NC or any municipality, or (3) if private or not accepted for public maintenance, the consequences and responsibility for maintenance and the existence, terms and funding of any maintenance agreements.

(x) **Fuel Tank:** Inspections to determine the existence, type and ownership of any fuel tank located on the Property.

NOTE: Buyer is advised to consult with the owner of any leased fuel tank regarding the terms under which Buyer may lease the tank and obtain fuel.

(c) **Repair/Improvement Negotiations/Agreement:** Buyer acknowledges and understands that unless the parties agree otherwise, **THE PROPERTY IS BEING SOLD IN ITS CURRENT CONDITION.** Buyer and Seller acknowledge and understand that they may, but are not required to, engage in negotiations for repairs/improvements to the Property. Buyer is advised to make any repair/improvement requests in sufficient time to allow repair/improvement negotiations to be concluded prior to the expiration of the Due Diligence Period. Any agreement that the parties may reach with respect to repairs/improvements shall be considered an obligation of the parties and is an addition to this Contract and as such, must be in writing and signed by the parties in accordance with Paragraph 20.

NOTE: See Paragraph 8(c), Access to Property and Paragraph 8(m), Negotiated Repairs/Improvements.

(d) **Buyer's Obligation to Repair Damage:** Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors, but Buyer shall not be responsible for any damage caused by accepted practices either approved by the N.C. Home Inspector Licensure Board or applicable to any other N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

(e) **Indemnity:** Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This indemnity shall survive this Contract and any termination hereof.

(f) **Buyer's Right to Terminate:** Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), **TIME BEING OF THE ESSENCE.** If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.

(g) **CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.**

5. BUYER REPRESENTATIONS:

(a) **Loan:** Buyer ☐ does ☐ does not intend to obtain a new loan in order to purchase the Property. If Buyer is obtaining a new loan, Buyer intends to obtain a loan as follows: ☐ FHA ☐ VA (attach FHA/VA Financing Addendum) ☐ Conventional ☐ Other: _____ loan at a ☐ Fixed Rate ☐ Adjustable Rate in the principal amount of _____ plus any financed VA Funding Fee or FHA MIP for a term of _____ year(s), at an initial interest rate not to exceed _____ % per annum (the "Loan").

NOTE: Buyer's obligations under this Contract are not conditioned upon obtaining or closing any loan.

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.

NOTE: This Contract is not conditioned upon the sale of Buyer's property unless a contingent sale addendum such as Standard Form 2A2-T is made a part of 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.

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(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:
- (i) any loan obtained by Buyer, including charges by an owners association and/or management company as agent of an owners' association for providing information required by Buyer's lender;
 - (ii) charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, such as "move-in fees";
 - (iii) determining restrictive covenant compliance;
 - (iv) appraisal;
 - (v) title search;
 - (vi) title insurance;
 - (vii) any fees charged by the closing attorney for the preparation of the Closing Disclosure, Seller Disclosure and any other settlement statement;
 - (viii) recording the deed; and
 - (ix) preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.
- (c) **Authorization to Disclose Information:** Buyer authorizes the Buyer's lender(s), the parties' real estate agent(s) and closing attorney: (1) to provide this Contract to any appraiser employed by Buyer or by Buyer's lender(s); and (2) to release and disclose any buyer's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

7. SELLER REPRESENTATIONS:

- (a) **Ownership:** Seller represents that Seller:
- ☐ has owned the Property for at least one year.
 - ☐ has owned the Property for less than one year.
 - ☐ does not yet own the Property.
- (b) **Lead-Based Paint** (*check if applicable*):
- ☐ The Property is residential and was built prior to 1978 (Attach Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum {Standard Form 2A9-T}).
- (c) **Assessments:** To the best of Seller's knowledge there ☐ are ☐ are not any Proposed Special Assessments. If any Proposed Special Assessments, identify: _____

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Buyer's Initials _____ Seller's Initials _____

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Seller warrants that there ☐ are ☐ are not any Confirmed Special Assessments. If any Confirmed Special Assessments, identify:

NOTE: Buyer's and Seller's respective responsibilities for Proposed and Confirmed Special Assessments are addressed in paragraphs 6(a) and 8(k).

(d) **Owners' Association(s) and Dues:** Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the following items affecting the Property, including any amendments:

- Seller's statement of account
- master insurance policy showing the coverage provided and the deductible amount
- Declaration and Restrictive Covenants
- Rules and Regulations
- Articles of Incorporation
- Bylaws of the owners' association
- current financial statement and budget of the owners' association
- parking restrictions and information
- architectural guidelines

☐ (specify name of association): _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager is: _____

Owners' association website address, if any: _____

☐ (specify name of association): _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager is: _____

Owners' association website address, if any: _____

8. SELLER OBLIGATIONS:

(a) Evidence of Title, Payoff Statement(s) and Non Foreign Status:

- (i) Seller agrees to use best efforts to provide to the closing attorney as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust, leases, and easements relating to the Property.
- (ii) Seller shall provide to the closing attorney all information needed to obtain a written payoff statement from any lender(s) regarding any security interest in the Property as soon as reasonably possible after the Effective Date, and Seller designates the closing attorney as Seller's agent with express authority to request and obtain on Seller's behalf payoff statements and/or short-pay statements from any such lender(s).
- (iii) If Seller is not a foreign person as defined by the Foreign Investment in Real Property Tax Act, Seller shall also provide to the closing attorney a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act). In the event Seller shall not provide a non-foreign status affidavit, Seller acknowledges that there may be withholding as provided by the Internal Revenue Code.

(b) **Authorization to Disclose Information:** Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys and (3) the closing attorney to release and disclose any seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

(c) **Access to Property:** Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing Buyer and/or Buyer's agents or representatives, an opportunity to (i) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated repairs/improvements, and (iii) conduct a final walk-through inspection of the Property.

Buyer's Initials _____ Seller's Initials _____

NOTE: See WARNING in paragraph 4 above for limitation on Buyer's right to terminate this Contract as a result of Buyer's continued investigation of the Property following the expiration of the Due Diligence Period.

(d) **Removal of Seller's Property:** Seller shall remove, by the date possession is made available to Buyer, all personal property which is not a part of the purchase and all garbage and debris from the Property.

(e) **Affidavit and Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

(f) **Designation of Lien Agent, Payment and Satisfaction of Liens:** If required by N.C.G.S. §44A-11.1, Seller shall have designated a Lien Agent, and Seller shall deliver to Buyer as soon as reasonably possible a copy of the appointment of Lien Agent. All deeds of trust, deferred ad valorem taxes, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Settlement such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.

(g) **Good Title, Legal Access:** Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, except: ad valorem taxes for the current year (prorated through the date of Settlement); utility easements and unviolated covenants, conditions or restrictions that do not materially affect the value of the Property; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing. The Property must have legal access to a public right of way.

NOTE: Buyer's failure to conduct a survey or examine title of the Property, prior to the expiration of the Due Diligence Period does not relieve the Seller of their obligation to deliver good title under this paragraph.

NOTE: If any sale of the Property may be a "short sale," consideration should be given to attaching a Short Sale Addendum (Standard Form 2A14-T) as an addendum to this Contract.

(h) **Deed, Taxes and Fees:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes, and any deferred, discounted or rollback taxes, and local conveyance fees required by law. The deed is to be made to: _____

(i) **Agreement to Pay Buyer Expenses:** Seller shall pay at Settlement \$ _____ toward any of Buyer's expenses associated with the purchase of the Property, at the discretion of Buyer and/or lender, if any, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay.

NOTE: Parties should review the FHA/VA Addendum prior to entering an amount in Paragraph 8(i). Certain FHA/VA lender and inspection costs CANNOT be paid by Buyer at Settlement and the amount of these should be included in the blank above.

(j) **Owners' Association Fees/Charges:** Seller shall pay: (i) any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; (ii) any fees imposed by an owners' association and/or a management company as agent of the owners' association in connection with the transaction contemplated by this Contract other than those fees required to be paid by Buyer under paragraph 6(b) above; and (iii) fees incurred by Seller in completing the Residential Property and Owners' Association Disclosure Statement, and resale or other certificates related to a proposed sale of the Property.

(k) **Payment of Confirmed Special Assessments:** Seller shall pay, in full at Settlement, all Confirmed Special Assessments, whether payable in a lump sum or future installments, provided that the amount thereof can be reasonably determined or estimated. The payment of such estimated amount shall be the final payment between the Parties.

(l) **Late Listing Penalties:** All property tax late listing penalties, if any, shall be paid by Seller.

(m) **Negotiated Repairs/Improvements:** Negotiated repairs/improvements shall be made in a good and workmanlike manner and Buyer shall have the right to verify same prior to Settlement.

(n) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph

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Buyer's Initials _____ Seller's Initials _____

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8 or Seller materially breaches this Contract, and Buyer elects to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit and the Due Diligence Fee shall be refunded to Buyer and Seller shall reimburse to Buyer the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence without affecting any other remedies. If legal proceedings are brought by Buyer against Seller to recover the Earnest Money Deposit, the Due Diligence Fee and/or the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

9. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated through the date of Settlement and either adjusted between the parties or paid at Settlement:

- (a) **Taxes on Real Property:** Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;
- (b) **Taxes on Personal Property:** Ad valorem taxes on personal property for the entire year shall be paid by Seller unless the personal property is conveyed to Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis;
- (c) **Rents:** Rents, if any, for the Property;
- (d) **Dues:** Owners' association regular assessments (dues) and other like charges.

10. **HOME WARRANTY:** Select one of the following:

- ☐ No home warranty is to be provided by Seller.
- ☐ Buyer may obtain a one-year home warranty at a cost not to exceed \$ _____ which includes sales tax and Seller agrees to pay for it at Settlement.
- ☐ Seller has obtained and will provide a one-year home warranty from _____ at a cost of \$ _____ which includes sales tax and will pay for it at Settlement.

NOTE: Home warranties typically have limitations on and conditions to coverage. Refer specific questions to the home warranty company.

11. **CONDITION OF PROPERTY AT CLOSING:** Buyer's obligation to complete the transaction contemplated by this Contract shall be contingent upon the Property being in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted.

12. **RISK OF LOSS:** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this Contract by written notice delivered to Seller or Seller's agent and the Earnest Money Deposit and any Due Diligence Fee shall be refunded to Buyer. In the event Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, any of Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

13. **DELAY IN SETTLEMENT/CLOSING:** Absent agreement to the contrary in this Contract or any subsequent modification thereto, if a party is unable to complete Settlement by the Settlement Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Settlement ("Delaying Party"), and if the other party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and closing attorney and shall be entitled to a delay in Settlement. If the parties fail to complete Settlement and Closing within fourteen (14) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties) or to otherwise extend the Settlement Date by written agreement, then the Delaying Party shall be in breach and the Non-Delaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

14. **POSSESSION:** Possession, including all means of access to the Property (keys, codes including security codes, garage door openers, electronic devices, etc.), shall be delivered upon Closing as defined in Paragraph 1(m) unless otherwise provided below:

- ☐ A Buyer Possession Before Closing Agreement is attached (Standard Form 2A7-T)
- ☐ A Seller Possession After Closing Agreement is attached (Standard Form 2A8-T)
- ☐ Possession is subject to rights of tenant(s)

NOTE: Consider attaching Additional Provisions Addendum (Form 2A11-T) or Vacation Rental Addendum (Form 2A13-T)

15. **ADDENDA:** CHECK ALL STANDARD ADDENDA THAT MAY BE A PART OF THIS CONTRACT, IF ANY, AND ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONTRACT, IF ANY, AND ATTACH HERETO.

- | | |
|---|---|
| <input type="checkbox"/> Additional Provisions Addendum (Form 2A11-T) | <input type="checkbox"/> Loan Assumption Addendum (Form 2A6-T) |
| <input type="checkbox"/> Additional Signatures Addendum (Form 3-T) | <input type="checkbox"/> New Construction Addendum (Form 2A3-T) |
| <input type="checkbox"/> Back-Up Contract Addendum (Form 2A1-T) | <input type="checkbox"/> Owners' Association Disclosure And Condominium |

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- ☐ Contingent Sale Addendum (Form 2A2-T)
☐ FHA/VA Financing Addendum (Form 2A4-T)
☐ Lead-Based Paint Or Lead-Based Paint Hazard Addendum (Form 2A9-T)

- Resale Statement Addendum (Form 2A12-T)
☐ Seller Financing Addendum (Form 2A5-T)
☐ Short Sale Addendum (Form 2A14-T)
☐ Vacation Rental Addendum (Form 2A13-T)

☐ Identify other attorney or party drafted addenda: _____

NOTE: UNDER NORTH CAROLINA LAW, REAL ESTATE BROKERS ARE NOT PERMITTED TO DRAFT ADDENDA TO THIS CONTRACT.

16. ASSIGNMENTS: This Contract may not be assigned without the written consent of all parties except in connection with a tax-deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs and successors.

17. TAX-DEFERRED EXCHANGE: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Buyer and Seller shall execute such additional documents, including assignment of this Contract in connection therewith, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

18. PARTIES: This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

19. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

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.

21. CONDUCT OF TRANSACTION: The parties agree that any action between them relating to the transaction contemplated by this Contract may be conducted by electronic means, including the signing of this Contract by one or more of them and any notice or communication given in connection with this Contract. Any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Any notice or communication to be given to a party herein, and any fee, deposit or other payment to be delivered to a party herein, may be given to the party or to such party's agent. Seller and Buyer agree that the "Notice Information" and "Acknowledgment of Receipt of Monies" 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.

22. EXECUTION: This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument.

23. COMPUTATION OF DAYS/TIME OF DAY: Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made. Any reference to a date or time of day shall refer to the date and/or time of day in the State of North Carolina.

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Buyer's Initials _____ Seller's Initials _____

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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.

This offer shall become a binding contract on the Effective Date. Unless specifically provided otherwise, Buyer's failure to timely deliver any fee, deposit or other payment provided for herein shall not prevent this offer from becoming a binding contract, provided that any such failure shall give Seller certain rights to terminate the contract as described herein or as otherwise permitted by law.

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: _____

WIRE FRAUD WARNING

TO BUYERS: BEFORE SENDING ANY WIRE, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO VERIFY THE INSTRUCTIONS. IF YOU RECEIVE WIRING INSTRUCTIONS FOR A DIFFERENT BANK, BRANCH LOCATION, ACCOUNT NAME OR ACCOUNT NUMBER, THEY SHOULD BE PRESUMED FRAUDULENT. DO NOT SEND ANY FUNDS AND CONTACT THE CLOSING ATTORNEY'S OFFICE IMMEDIATELY.

TO SELLERS: IF YOUR PROCEEDS WILL BE WIRED, IT IS RECOMMENDED THAT YOU PROVIDE WIRING INSTRUCTIONS AT CLOSING IN WRITING IN THE PRESENCE OF THE ATTORNEY. IF YOU ARE UNABLE TO ATTEND CLOSING, YOU MAY BE REQUIRED TO SEND AN ORIGINAL NOTARIZED DIRECTIVE TO THE CLOSING ATTORNEY'S OFFICE CONTAINING THE WIRING INSTRUCTIONS. THIS MAY BE SENT WITH THE DEED, LIEN WAIVER AND TAX FORMS IF THOSE DOCUMENTS ARE BEING PREPARED FOR YOU BY THE CLOSING ATTORNEY. AT A MINIMUM, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO PROVIDE THE WIRE INSTRUCTIONS. THE WIRE INSTRUCTIONS SHOULD BE VERIFIED OVER THE TELEPHONE VIA A CALL TO YOU INITIATED BY THE CLOSING ATTORNEY'S OFFICE TO ENSURE THAT THEY ARE NOT FROM A FRAUDULENT SOURCE.

WHETHER YOU ARE A BUYER OR A SELLER, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE AT A NUMBER THAT IS INDEPENDENTLY OBTAINED. TO ENSURE THAT YOUR CONTACT IS LEGITIMATE, YOU SHOULD NOT RELY ON A PHONE NUMBER IN AN EMAIL FROM THE CLOSING ATTORNEY'S OFFICE, YOUR REAL ESTATE AGENT OR ANYONE ELSE.

NOTICE INFORMATION

NOTE: INSERT AT LEAST ONE ADDRESS AND/OR ELECTRONIC DELIVERY ADDRESS EACH PARTY AND AGENT APPROVES FOR THE RECEIPT OF ANY NOTICE CONTEMPLATED BY THIS CONTRACT. INSERT "N/A" FOR ANY WHICH ARE NOT APPROVED.

BUYER NOTICE ADDRESS:

Mailing Address: _____

Buyer Fax#: _____

Buyer E-mail: _____

SELLER NOTICE ADDRESS:

Mailing Address: _____

Seller Fax#: _____

Seller E-mail: _____

CONFIRMATION OF AGENCY/NOTICE ADDRESSES

Selling Firm Name: _____

Acting as ☐ Buyer's Agent ☐ Seller's (sub)Agent ☐ Dual Agent

Firm License #: _____

Mailing Address: _____

Listing Firm Name: _____

Acting as ☐ Seller's Agent ☐ Dual Agent

Firm License #: _____

Mailing Address: _____

Individual Selling Agent: _____

☐ Acting as a Designated Dual Agent (check only if applicable)

Selling Agent License #: _____

Selling Agent Phone #: _____

Selling Agent Fax #: _____

Selling Agent E-mail: _____

Individual Listing Agent: _____

☐ Acting as a Designated Dual Agent (check only if applicable)

Listing Agent License #: _____

Listing Agent Phone #: _____

Listing Agent Fax #: _____

Listing Agent E-mail: _____

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Buyer's Initials _____ Seller's Initials _____

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ACKNOWLEDGMENT OF RECEIPT OF MONIES

Seller: _____ (“Seller”)

Buyer: _____ (“Buyer”)

Property Address: _____ (“Property”)

☐ LISTING AGENT ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$ _____, receipt of which Listing Agent hereby acknowledges.

Date _____

Firm: _____

By: _____

(Signature)

(Print name)

☐ SELLER ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$ _____, receipt of which Seller hereby acknowledges.

Date _____

Seller: _____

(Signature)

Date _____

Seller: _____

(Signature)

☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF INITIAL EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an Initial Earnest Money Deposit in the amount of \$ _____. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the Initial Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date _____

Firm: _____

By: _____

(Signature)

(Print name)

☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF (ADDITIONAL) EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an (Additional) Earnest Money Deposit in the amount of \$ _____. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the (Additional) Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date: _____

Firm: _____

Time: _____ ☐ AM ☐ PM

By: _____

(Signature)

(Print name)

Analyzing the Offer to Purchase & Contract



Identity of the Parties

OFFER TO PURCHASE AND CONTRACT
[Consult "Guidelines" (Form 2G) for guidance in completing this form]

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract and any addendum or modification made in accordance with its terms (together the "Contract").

1. **TERMS AND DEFINITIONS:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Seller": _____

(b) "Buyer": _____

Identity of the Property

(c) "**Property**": The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon and the fixtures and personal property listed in Paragraphs 2 and 3 below.

NOTE: If the Property will include a manufactured (mobile) home(s), Buyer and Seller should consider including the Manufactured (Mobile) Home provision in the Additional Provisions Addendum (Standard Form 2A11-T) with this offer.

Street Address: _____
City: _____ Zip: _____
County: _____, North Carolina

NOTE: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown.

Legal Description: (Complete ALL applicable)
Plat Reference: Lot/Unit _____, Block/Section _____, Subdivision/Condominium _____
_____, as shown on Plat Book/Slide _____ at Page(s) _____
The PIN/PID or other identification number of the Property is : _____
Other description: _____
Some or all of the Property may be described in Deed Book _____ at Page _____

Purchase Price & Money

(d) "Purchase Price":

\$ _____
 \$ _____
 \$ _____
 \$ _____
 \$ _____
 \$ _____
 \$ _____
 \$ _____

paid in U.S. Dollars upon the following terms:
 BY DUE DILIGENCE FEE made payable and delivered to Seller by the Effective Date
 BY INITIAL EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by ☐ cash ☐ personal check ☐ official bank check ☐ wire transfer, ☐ electronic transfer, EITHER ☐ with this offer OR ☐ within five (5) days of the Effective Date of this Contract.
 BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by cash, official bank check, wire transfer or electronic transfer no later than 5 p.m. on _____, **TIME BEING OF THE ESSENCE.**
 BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the attached Loan Assumption Addendum (Standard Form 2A6-T).
 BY SELLER FINANCING in accordance with the attached Seller Financing Addendum (Standard Form 2A5-T).
 BY BUILDING DEPOSIT in accordance with the attached New Construction Addendum (Standard Form 2A3-T).
 BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)

Failure to Deliver Funds by Due Dates

Should Buyer fail to deliver either the Due Diligence Fee or any Initial Earnest Money Deposit by their due dates, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice to deliver cash, official bank check, wire transfer or electronic transfer to the payee. In the event Buyer does not timely deliver the required funds, Seller shall have the right to terminate this Contract upon written notice to Buyer.

The Earnest Money Deposit

(e) "Earnest Money Deposit": The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid or required to be paid in connection with this transaction, collectively the "Earnest Money Deposit", shall be deposited and held in escrow by Escrow Agent until Closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. In the event of breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Contract by Buyer, the Earnest Money Deposit shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Paragraphs 4(d) and 4(e) for damage to the Property or Seller's right to retain the Due Diligence Fee. It is acknowledged by the parties that payment of the Earnest Money Deposit to Seller in the event of a breach of this Contract by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money Deposit to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

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Effective Date of the Contract

Due Diligence Definition

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Due Diligence Fee

(j) **“Due Diligence Fee”**: A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer’s right to terminate the Contract for any reason or no reason during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 8(n) or Paragraph 12, or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee.

Due Diligence Period & Settlement

(j) **“Due Diligence Period”**: The period beginning on the Effective Date and extending through 5:00 p.m. on _____
TIME BEING OF THE ESSENCE.

(k) **“Settlement”**: The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and the closing attorney’s receipt of all funds necessary to complete such transaction.

(l) **“Settlement Date”**: The parties agree that Settlement will take place on _____
_____ (the “Settlement Date”),
unless otherwise agreed in writing, at a time and place designated by Buyer.

Definition of Closing

(m) **“Closing”**: The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney’s receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph 13 (Delay in Settlement/Closing).

Closing = Practice of Law

WARNING: The North Carolina State Bar has determined that the performance of most acts and services required for a closing constitutes the practice of law and must be performed only by an attorney licensed to practice law in North Carolina. State law prohibits unlicensed individuals or firms from rendering legal services or advice. Although non-attorney settlement agents may perform limited services in connection with a closing, they may not perform all the acts and services required to complete a closing. A closing involves significant legal issues that should be handled by an attorney. Accordingly it is the position of the North Carolina Bar Association and the North Carolina Association of REALTORS® that all buyers should hire an attorney licensed in North Carolina to perform a closing.

Special Assessments

(n) **"Special Assessments"**: A charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property. A Special Assessment may be either proposed or confirmed.

"Proposed Special Assessment": A Special Assessment that is under formal consideration but which has not been approved prior to Settlement.

"Confirmed Special Assessment": A Special Assessment that has been approved prior to Settlement whether payable in a lump sum or future installments.

NOTE: Any Proposed and Confirmed Special Assessments must be identified by Seller in paragraph 7(c), and Buyer's and Seller's respective responsibilities for Proposed and Confirmed Special Assessments are addressed in paragraphs 6(a) and 8(k).

Fixtures & Exclusions

2. FIXTURES AND EXCLUSIONS:

(a) **Specified Items:** Unless identified in subparagraph (d) below, the following items, including all related equipment and remote control devices, if any, are deemed fixtures and shall convey, included in the Purchase Price free of liens:

- Alarm and security systems (attached) for security, fire, smoke, carbon monoxide or other toxins with all related access codes, sensors, cameras, dedicated monitors, hard drives, video recorders, power supplies and cables; doorbells/chimes
- All stoves/ranges/ovens; built-in appliances; attached microwave oven; vent hood
- Antennas; satellite dishes and receivers
- Basketball goals and play equipment (permanently attached or in-ground)
- Ceiling and wall-attached fans; light fixtures (including existing bulbs)
- Fireplace insert; gas logs or starters; attached fireplace screens; wood or coal stoves
- Floor coverings (attached)
- Fuel tank(s) whether attached or buried and including any contents that have not been used, removed or resold to the fuel provider as of Settlement. **NOTE:** Seller's use, removal or resale of fuel in any fuel tank is subject to Seller's obligation under Paragraph 8(c) to provide working, existing utilities through the earlier of Closing or possession by Buyer.
- Garage door openers with all controls
- Generators that are permanently wired
- Invisible fencing with power supply, controls and receivers
- Landscape and outdoor trees and plants (except in moveable containers); raised garden; landscape and foundation lighting; outdoor sound systems; permanent irrigation systems and controls; rain barrels; landscape water features; address markers
- Mailboxes; mounted package and newspaper receptacles
- Mirrors attached to walls, ceilings, cabinets or doors; all bathroom wall mirrors
- Storage shed; utility building
- Swimming pool (excluding inflatable); spa; hot tub
- Solar electric and solar water heating systems
- Sump-pumps, radon fans and crawlspace ventilators; de-humidifiers that are permanently wired
- Surface-mounting brackets for television and speakers; recess-mounted speakers; mounted intercom system
- Water supply equipment, including filters, conditioning and softener systems; re-circulating pumps; well pumps and tanks
- Window/Door blinds and shades, curtain and drapery rods and brackets, door and window screens and combination doors, awnings and storm windows

Items Conveyed & Not Conveyed

(b) **Items Leased or Not Owned:** Any item which is leased or not owned by Seller, such as fuel tanks, antennas, satellite dishes and receivers, appliances, and alarm and security systems must be identified here and shall not convey:

(c) **Other Fixtures/Unspecified items:** Unless identified in subparagraph (d) below, any other item legally considered a fixture is included in the Purchase Price free of liens.

(d) **Other Items That Do Not Convey:** The following items shall not convey (*identify those items to be excluded under subparagraphs (a) and (c)*):

Seller shall repair any damage caused by removal of any items excluded above.

3. **PERSONAL PROPERTY:** The following personal property shall be transferred to Buyer at no value at closing:

NOTE: Buyer is advised to consult with Buyer's lender to assure that the Personal Property items listed above can be included in this Contract.

The Due Diligence Process

4. BUYER'S DUE DILIGENCE PROCESS:

WARNING: BUYER IS STRONGLY ENCOURAGED TO CONDUCT DUE DILIGENCE DURING THE DUE DILIGENCE PERIOD. If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, PRIOR TO THE EXPIRATION OF THE DUE DILIGENCE PERIOD, unless Buyer can obtain a written extension from Seller. SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION. Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period will constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under Paragraph 8 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

Provisions Regarding the Buyer's Loan

(a) **Loan:** Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

NOTE: Buyer's obligation to purchase the Property is not contingent on obtaining a Loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Due Diligence Period allows sufficient time for the appraisal to be completed and for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.

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- This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

(x) **Fuel Tank:** Inspections to determine the existence, type and ownership of any fuel tank located on the Property.

(c) **Repair/Improvement Negotiations/Agreement:** Buyer acknowledges and understands that unless the parties agree otherwise, **THE PROPERTY IS BEING SOLD IN ITS CURRENT CONDITION.** Buyer and Seller acknowledge and understand that they may, but are not required to, engage in negotiations for repairs/improvements to the Property. Buyer is advised to make any repair/improvement requests in sufficient time to allow repair/improvement negotiations to be concluded prior to the expiration of the Due Diligence Period. Any agreement that the parties may reach with respect to repairs/improvements shall be considered an obligation of the parties and is an addition to this Contract and as such, must be in writing and signed by the parties in accordance with Paragraph 20.

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Buyer's Obligation to Repair Damage

(d) **Buyer's Obligation to Repair Damage:** Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors, but Buyer shall not be responsible for any damage caused by accepted practices either approved by the N.C. Home Inspector Licensure Board or applicable to any other N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

Buyer's Right to Terminate

(e) **Indemnity:** Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This indemnity shall survive this Contract and any termination hereof.

(f) **Buyer's Right to Terminate:** Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), **TIME BEING OF THE ESSENCE**. If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.

Closing Constitutes Acceptance

(g) **CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.**

Buyer Representations Regarding Loan

5. BUYER REPRESENTATIONS:

(a) **Loan:** Buyer ☐ does ☐ does not intend to obtain a new loan in order to purchase the Property. If Buyer is obtaining a new loan, Buyer intends to obtain a loan as follows: ☐ FHA ☐ VA (attach FHA/VA Financing Addendum) ☐ Conventional ☐ Other: _____ loan at a ☐ Fixed Rate ☐ Adjustable Rate in the principal amount of _____ plus any financed VA Funding Fee or FHA MIP for a term of _____ year(s), at an initial interest rate not to exceed _____ % per annum (the "Loan").

NOTE: Buyer's obligations under this Contract are not conditioned upon obtaining or closing any loan.

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.

Buyer Representations Regarding Other Property

(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.

NOTE: This Contract is not conditioned upon the sale of Buyer's property unless a contingent sale addendum such as Standard Form 2A2-T is made a part of 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.

RPOADS Receipt

(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): _____

MOG Receipt

(c) 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.

Severance of Mineral, Oil & Gas Rights

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.

Buyer's Obligations

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:
- (i) any loan obtained by Buyer, including charges by an owners association and/or management company as agent of an owners' association for providing information required by Buyer's lender;
 - (ii) charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, such as "move-in fees";
 - (iii) determining restrictive covenant compliance;
 - (iv) appraisal;
 - (v) title search;
 - (vi) title insurance;
 - (vii) any fees charged by the closing attorney for the preparation of the Closing Disclosure, Seller Disclosure and any other settlement statement;
 - (viii) recording the deed; and
 - (ix) preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.
- (c) **Authorization to Disclose Information:** Buyer authorizes the Buyer's lender(s), the parties' real estate agent(s) and closing attorney: (1) to provide this Contract to any appraiser employed by Buyer or by Buyer's lender(s); and (2) to release and disclose any buyer's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

Seller's Representations

7. SELLER REPRESENTATIONS:

(a) **Ownership:** Seller represents that Seller:

- ☐ has owned the Property for at least one year.
- ☐ has owned the Property for less than one year.
- ☐ does not yet own the Property.

(b) **Lead-Based Paint** (check if applicable):

☐ The Property is residential and was built prior to 1978 (Attach Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum (Standard Form 2A9-T)).

(c) **Assessments:** To the best of Seller's knowledge there ☐ are ☐ are not any Proposed Special Assessments. If any Proposed Special Assessments, identify: _____

Seller warrants that there ☐ are ☐ are not any Confirmed Special Assessments. If any Confirmed Special Assessments, identify: _____

NOTE: Buyer's and Seller's respective responsibilities for Proposed and Confirmed Special Assessments are addressed in paragraphs 6(a) and 8(k).

Owners' Associations & Dues

(d) **Owners' Association(s) and Dues:** Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the following items affecting the Property, including any amendments:

- Seller's statement of account
- master insurance policy showing the coverage provided and the deductible amount
- Declaration and Restrictive Covenants
- Rules and Regulations
- Articles of Incorporation
- Bylaws of the owners' association
- current financial statement and budget of the owners' association
- parking restrictions and information
- architectural guidelines

Owners' Association Information

☐ (specify name of association): _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager is: _____

Owners' association website address, if any: _____

☐ (specify name of association): _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager is: _____

Owners' association website address, if any: _____

Seller's Obligations

8. SELLER OBLIGATIONS:

(a) Evidence of Title, Payoff Statement(s) and Non Foreign Status:

- (i) Seller agrees to use best efforts to provide to the closing attorney as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust, leases, and easements relating to the Property.
- (ii) Seller shall provide to the closing attorney all information needed to obtain a written payoff statement from any lender(s) regarding any security interest in the Property as soon as reasonably possible after the Effective Date, and Seller designates the closing attorney as Seller's agent with express authority to request and obtain on Seller's behalf payoff statements and/or short-pay statements from any such lender(s).
- (iii) If Seller is not a foreign person as defined by the Foreign Investment in Real Property Tax Act, Seller shall also provide to the closing attorney a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act). In the event Seller shall not provide a non-foreign status affidavit, Seller acknowledges that there may be withholding as provided by the Internal Revenue Code.

Authorization of Seller to Disclose 3rd Party Information

(b) **Authorization to Disclose Information:** Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys and (3) the closing attorney to release and disclose any seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

Access to Property

(c) **Access to Property:** Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing Buyer and/or Buyer's agents or representatives, an opportunity to (i) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated repairs/improvements, and (iii) conduct a final walk-through inspection of the Property.

NOTE: See WARNING in paragraph 4 above for limitation on Buyer's right to terminate this Contract as a result of Buyer's continued investigation of the Property following the expiration of the Due Diligence Period.

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(g) **Good Title, Legal Access:** Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, ~~except: ad valorem taxes for the current year (prorated through the date of Settlement); utility easements and unviolated covenants, conditions or restrictions that do not materially affect the value of the Property; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing. The Property must have legal access to a public right of way.~~

NOTE: Buyer's failure to conduct a survey or examine title of the Property, prior to the expiration of the Due Diligence Period does not relieve the Seller of their obligation to deliver good title under this paragraph.

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Seller Payment of Buyer Expenses & Prorations

(h) **Deed, Taxes and Fees:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes, and any deferred, discounted or rollback taxes, and local conveyance fees required by law. The deed is to be made to: _____

(i) **Agreement to Pay Buyer Expenses:** Seller shall pay at Settlement \$ _____ toward any of Buyer's expenses associated with the purchase of the Property, at the discretion of Buyer and/or lender, if any, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay.

NOTE: Parties should review the FHA/VA Addendum prior to entering an amount in Paragraph 8(i). Certain FHA/VA lender and inspection costs CANNOT be paid by Buyer at Settlement and the amount of these should be included in the blank above.

Seller Expenses Continued

(j) **Owners' Association Fees/Charges:** Seller shall pay: (i) any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; (ii) any fees imposed by an owners' association and/or a management company as agent of the owners' association in connection with the transaction contemplated by this Contract other than those fees required to be paid by Buyer under paragraph 6(b) above; and (iii) fees incurred by Seller in completing the Residential Property and Owners' Association Disclosure Statement, and resale or other certificates related to a proposed sale of the Property.

(k) **Payment of Confirmed Special Assessments:** Seller shall pay, in full at Settlement, all Confirmed Special Assessments, whether payable in a lump sum or future installments, provided that the amount thereof can be reasonably determined or estimated. The payment of such estimated amount shall be the final payment between the Parties.

(l) **Late Listing Penalties:** All property tax late listing penalties, if any, shall be paid by Seller.

Seller's Obligations on Negotiated Repairs

(m) **Negotiated Repairs/Improvements:** Negotiated repairs/improvements shall be made in a good and workmanlike manner and Buyer shall have the right to verify same prior to Settlement.

Seller's Breach Remedies to Buyer

(n) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph 8 or Seller materially breaches this Contract, and Buyer elects to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit and the Due Diligence Fee shall be refunded to Buyer and Seller shall reimburse to Buyer the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence without affecting any other remedies. If legal proceedings are brought by Buyer against Seller to recover the Earnest Money Deposit, the Due Diligence Fee and/or the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

Prorations & Adjustments

9. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated through the date of Settlement and either adjusted between the parties or paid at Settlement:

- (a) **Taxes on Real Property:** Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;
- (b) **Taxes on Personal Property:** Ad valorem taxes on personal property for the entire year shall be paid by Seller unless the personal property is conveyed to Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis;
- (c) **Rents:** Rents, if any, for the Property;
- (d) **Dues:** Owners' association regular assessments (dues) and other like charges.

Home Warranty

10. **HOME WARRANTY:** Select one of the following:

- ☐ No home warranty is to be provided by Seller.
- ☐ Buyer may obtain a one-year home warranty at a cost not to exceed \$ _____ which includes sales tax and Seller agrees to pay for it at Settlement.
- ☐ Seller has obtained and will provide a one-year home warranty from _____ at a cost of \$ _____ which includes sales tax and will pay for it at Settlement.

NOTE: Home warranties typically have limitations on and conditions to coverage. Refer specific questions to the home warranty company.

Condition of Property at Closing

11. **CONDITION OF PROPERTY AT CLOSING:** Buyer's obligation to complete the transaction contemplated by this Contract shall be contingent upon the Property being in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted.

Risk of Loss

12. **RISK OF LOSS:** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this Contract by written notice delivered to Seller or Seller's agent and the Earnest Money Deposit and any Due Diligence Fee shall be refunded to Buyer. In the event Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, any of Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

Delay in Settlement/ Closing

13. **DELAY IN SETTLEMENT/CLOSING:** Absent agreement to the contrary in this Contract or any subsequent modification thereto, if a party is unable to complete Settlement by the Settlement Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Settlement ("Delaying Party"), and if the other party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and closing attorney and shall be entitled to a delay in Settlement. If the parties fail to complete Settlement and Closing within fourteen (14) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties) or to otherwise extend the Settlement Date by written agreement, then the Delaying Party shall be in breach and the Non-Delaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

[illegible][illegible]

- NOTE:** Consider attaching Additional Provisions Addendum (Form 2A11-T) or Vacation Rental Addendum (Form 2A13-T)

[illegible]

<input type="checkbox"/> Additional Provisions Addendum (Form 2A11-T)	<input type="checkbox"/> Loan Assumption Addendum (Form 2A6-T)
<input type="checkbox"/> Additional Signatures Addendum (Form 3-T)	<input type="checkbox"/> New Construction Addendum (Form 2A3-T)
<input type="checkbox"/> Back-Up Contract Addendum (Form 2A1-T)	<input type="checkbox"/> Owners' Association Disclosure And Condominium Resale Statement Addendum (Form 2A12-T)
<input type="checkbox"/> Contingent Sale Addendum (Form 2A2-T)	<input type="checkbox"/> Seller Financing Addendum (Form 2A5-T)
<input type="checkbox"/> FHA/VA Financing Addendum (Form 2A4-T)	<input type="checkbox"/> Short Sale Addendum (Form 2A14-T)
<input type="checkbox"/> Lead-Based Paint Or Lead-Based Paint Hazard Addendum (Form 2A9-T)	<input type="checkbox"/> Vacation Rental Addendum (Form 2A13-T)

☐ Identify other attorney or party drafted addenda: _____

l parties exc
ignee and as

Tax-Deferred Exchange

17. **TAX-DEFERRED EXCHANGE:** In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Buyer and Seller shall execute such additional documents, including assignment of this Contract in connection therewith, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Binding Upon Successive Parties

18. **PARTIES:** This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

Survival Beyond Closing

19. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

[illegible][illegible][illegible]

Execution

116

Computation of Days & Times

23. COMPUTATION OF DAYS/TIME OF DAY: Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made. Any reference to a date or time of day shall refer to the date and/or time of day in the State of North Carolina.

Legal Disclaimer

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.

Signatures

This offer shall become a binding contract on the Effective Date. Unless specifically provided otherwise, Buyer's failure to timely deliver any fee, deposit or other payment provided for herein shall not prevent this offer from becoming a binding contract, provided that any such failure shall give Seller certain rights to terminate the contract as described herein or as otherwise permitted by law.

Date: _____

Date: _____

Buyer: _____

Seller: _____

Date: _____

Date: _____

Buyer: _____

Seller: _____

Entity Buyer:

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

Entity Seller:

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Wire Fraud Warning

TO BUYERS: BEFORE SENDING ANY WIRE, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO VERIFY THE INSTRUCTIONS. IF YOU RECEIVE WIRING INSTRUCTIONS FOR A DIFFERENT BANK, BRANCH LOCATION, ACCOUNT NAME OR ACCOUNT NUMBER, THEY SHOULD BE PRESUMED FRAUDULENT. DO NOT SEND ANY FUNDS AND CONTACT THE CLOSING ATTORNEY'S OFFICE IMMEDIATELY.

TO SELLERS: IF YOUR PROCEEDS WILL BE WIRED, IT IS RECOMMENDED THAT YOU PROVIDE WIRING INSTRUCTIONS AT CLOSING IN WRITING IN THE PRESENCE OF THE ATTORNEY. IF YOU ARE UNABLE TO ATTEND CLOSING, YOU MAY BE REQUIRED TO SEND AN ORIGINAL NOTARIZED DIRECTIVE TO THE CLOSING ATTORNEY'S OFFICE CONTAINING THE WIRING INSTRUCTIONS. THIS MAY BE SENT WITH THE DEED, LIEN WAIVER AND TAX FORMS IF THOSE DOCUMENTS ARE BEING PREPARED FOR YOU BY THE CLOSING ATTORNEY. AT A MINIMUM, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO PROVIDE THE WIRE INSTRUCTIONS. THE WIRE INSTRUCTIONS SHOULD BE VERIFIED OVER THE TELEPHONE VIA A CALL TO YOU INITIATED BY THE CLOSING ATTORNEY'S OFFICE TO ENSURE THAT THEY ARE NOT FROM A FRAUDULENT SOURCE.

WHETHER YOU ARE A BUYER OR A SELLER, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE AT A NUMBER THAT IS INDEPENDENTLY OBTAINED. TO ENSURE THAT YOUR CONTACT IS LEGITIMATE, YOU SHOULD NOT RELY ON A PHONE NUMBER IN AN EMAIL FROM THE CLOSING ATTORNEY'S OFFICE, YOUR REAL ESTATE AGENT OR ANYONE ELSE.

Agent Notice

NOTICE INFORMATION

NOTE: INSERT AT LEAST ONE ADDRESS AND/OR ELECTRONIC DELIVERY ADDRESS EACH PARTY AND AGENT APPROVES FOR THE RECEIPT OF ANY NOTICE CONTEMPLATED BY THIS CONTRACT. INSERT "N/A" FOR ANY WHICH ARE NOT APPROVED.

BUYER NOTICE ADDRESS:

Mailing Address: _____

Buyer Fax#: _____

Buyer E-mail: _____

SELLER NOTICE ADDRESS:

Mailing Address: _____

Seller Fax#: _____

Seller E-mail: _____

Confirmation of Agency

CONFIRMATION OF AGENCY/NOTICE ADDRESSES

Selling Firm Name: _____
Acting as ☐ Buyer's Agent ☐ Seller's (sub) Agent ☐ Dual Agent

Firm License #: _____

Mailing Address: _____

Individual Selling Agent: _____
☐ Acting as a Designated Dual Agent (check only if applicable)

Selling Agent License #: _____

Selling Agent Phone #: _____

Selling Agent Fax #: _____

Selling Agent E-mail: _____

Listing Firm Name: _____
Acting as ☐ Seller's Agent ☐ Dual Agent

Firm License #: _____

Mailing Address: _____

Individual Listing Agent: _____
☐ Acting as a Designated Dual Agent (check only if applicable)

Listing Agent License #: _____

Listing Agent Phone #: _____

Listing Agent Fax #: _____

Listing Agent E-mail: _____

Listing Agent Receipt of Due Diligence Fee

☐ LISTING AGENT ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$ _____, receipt of which Listing Agent hereby acknowledges.

Date _____ Firm: _____
By: _____
(Signature)

(Print name)

Seller Acknowledgment of Due Diligence Fee

☐ SELLER ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$ _____, receipt of which Seller hereby acknowledges.

Date _____ Seller: _____
(Signature)
Date _____ Seller: _____
(Signature)

Escrow Agent Acknowledgment of Earnest Money

☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF INITIAL EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an Initial Earnest Money Deposit in the amount of \$ _____. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the Initial Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date _____ Firm: _____
By: _____
(Signature)

(Print name)

[illegible]

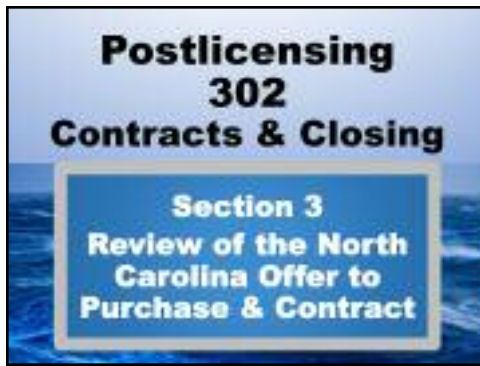
Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an (Additional) Earnest Money Deposit in the amount of \$ _____. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the (Additional) Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Firm: _____

By: _____

(Print name)

[illegible]



Section 3: Review of the NC Offer to Purchase & Contract Notebook Guide

1. Drafting of contracts
2. Unauthorized practice of law
3. Fill in or complete printed forms
4. Drafting contracts
5. For others
6. Buyer or seller
7. Consult an attorney
8. Joint Task Force
9. NC Association of REALTORS
10. North Carolina Bar Association
11. Create contracts
12. Provide the forms
13. Approve contracts
14. Rules
15. Parol Evidence Rule
16. As a whole
17. Ordinary
18. Handwritten
19. Drafter of the document

Revelations, Insights, Ideas & To Do List

What are the best and brightest ideas you got from this section of the material?



1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

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MODULE 2: CLOSING PREPARATIONS & PROCEDURES

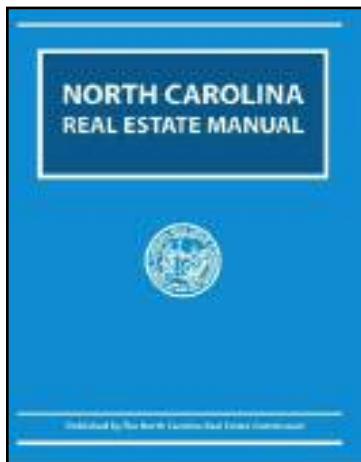
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MODULE 2: CLOSING PREPARATIONS & PROCEDURES

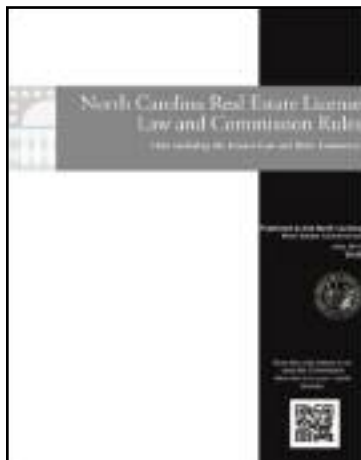


Section 4: Closing Preparations & Procedures

Critical Reading Information



- Chapter 14 – Closing Real Estate Transactions
Pages 441–484



- Rule 58A.0116 – Handling of Trust Money
- Real Estate Settlement & Procedures Act

Preclosing Procedures

North Carolina is an attorney state and closings are conducted by attorneys.

The attorney has the following roles in regard to the real estate closing:



1. _____
2. _____
3. _____
4. _____

The attorney is typically chosen and selected by 5. _____.

All of the following need to be provided to the closing attorney in order for them to prepare for closing:

6. _____
7. _____
8. _____
9. _____
10. _____

Either party to the contract can delay the day of settlement of up to 11. _____ days.



Helm Simulator

Together in pairs, create a due diligence checklist for the buyer.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

Title Insurance

In North Carolina, the closing attorney, based on their research of the property and the people involved in the transaction, issues an 12. _____.

Most transactions involve two policies of title insurance that are issued at closing. They are:

13. _____ and the 14. _____.

Both are typically paid by the 15. _____ as a

16. _____ paid 17. _____.

Funds for Closing & The Good Funds Act

It is illegal to transfer or disburse any settlement monies in North Carolina prior to

18. _____.

A closing attorney must verify all funds in excess of 19. _____.

A brokerage holding a buyer's earnest money deposit cannot transfer the deposit to the escrow or closing attorney until 20. _____.





Helm Simulator

Preparing Clients for Closing

What advice and preparation checklist should an agent provide to the seller and the buyer prior to attending a closing?

Advice & Information to Share with Sellers

1. _____

2. _____

3. _____

4. _____

Advice & Information to Share with Buyers

1. _____

2. _____

3. _____

4. _____

The Real Estate Settlement Procedures Act (RESPA)

The Real Estate Settlement & Procedures Act (RESPA) was enacted with two primary purposes in mind:



21. _____

22. _____

RESPA applies to the following:

23. _____

24. _____

RESPA does not apply to:

25. _____

26. _____

27. _____

28. _____



The Real Estate Settlement Procedures Act (RESPA) (CONTINUED)

In a RESPA transaction, a borrower gets an upfront disclosure of closing costs.

The Loan Estimate

The buyer must receive a loan estimate within 29. _____
of 30. _____.

The loan estimate is provided with two additional items:

31. _____ and

32. _____.

33. _____ are responsible for issuing the loan estimate
and brokers should have a general understanding of the loan estimate.

Prior to the issuance of a loan estimate, the 34. _____ charge that a lender
may make to a borrower is for obtainment of the 35. _____.

The loan estimate is required to be similar to the eventual closing disclosure that RESPA
also requires. There are only certain permissible variations that are allowed as shown in the
following table.

Permissible Variations Between Loan Estimate & Closing Disclosure

No Variation at all	10% Variation	Unlimited Variation
Lender Fees	Settlement Agent Fees	Prepaid Interest
Services Chosen by the Lender	Recording Fees	Property Insurance
		Escrows & Impounds
		3rd Party Services

Helm Simulator

What are the key elements of a loan estimate that a broker should review? What are some red flags that might appear in the loan estimate?

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
EST. PROP. VALUE

LOAN TERM

PURPOSE

PRODUCT

LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ _____

LOAN ID #

RATE LOCK ☐ NO ☐ YES, until

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms

Can this amount increase after closing?

Loan Amount

Interest Rate

Monthly Principal & Interest

See Projected Payments below for your
Estimated Total Monthly Payment

Does the loan have these features?

Prepayment Penalty

Balloon Payment

Projected Payments

Payment Calculation

Principal & Interest

Mortgage Insurance

Estimated Escrow
Amount can increase over time

Estimated Total
Monthly Payment

Estimated Taxes, Insurance
& Assessments
Amount can increase over time

This estimate includes

In escrow?

- ☐ Property Taxes
☐ Homeowner's Insurance
☐ Other:

See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.

Costs at Closing

Estimated Closing Costs

Includes _____ in Loan Costs + _____ in Other Costs –
in Lender Credits. See page 2 for details.

Estimated Cash to Close

Includes Closing Costs. See Calculating Cash to Close on page 2 for details.

Visit www.consumerfinance.gov/mortgage-estimate for general information and tools.

LOAN ESTIMATE

PAGE 1 OF 3 • LOAN ID #

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
EST. PROP. VALUE

LOAN TERM

PURPOSE

PRODUCT

LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ _____

LOAN ID #

RATE LOCK ☐ NO ☐ YES, until

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

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Principal & Interest

Mortgage Insurance

Estimated Escrow
Amount can increase over time

Estimated Total
Monthly Payment

Estimated Taxes, Insurance
& Assessments

Amount can increase over time

This estimate includes

- ☐ Property Taxes
☐ Homeowner's Insurance
☐ Other:

In escrow?

See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.

Costs at Closing

Estimated Closing Costs

Includes _____ in Loan Costs + _____ in Other Costs –
in Lender Credits. See page 2 for details.

Estimated Cash to Close

Includes Closing Costs. See Calculating Cash to Close on page 2 for details.

Visit www.consumerfinance.gov/mortgage-estimate for general information and tools.

LOAN ESTIMATE

PAGE 1 OF 3 • LOAN ID #

Additional Information About This Loan

LENDER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

Comparisons

Use these measures to compare this loan with other loans.

In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Assumption

If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan on the original terms.

Homeowner's Insurance

This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment

If your payment is more than ___ days late, we will charge a late fee of _____

Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing

We intend
☐ to service your loan. If so, you will make your payments to us.
☐ to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

LOAN ESTIMATE

PAGE 3 OF 3 • LOAN ID #

Additional Things You Should Know About RESPA

RESPA prohibits the payment of

36. _____

to 37. _____

incidental to the referral of business.



RESPA does not prohibit or affect in any way the following items:

38. _____

39. _____

40. _____

RESPA allows for the co-ownership of settlement service providers. These are called

41. _____ and they require:

42. _____

43. _____

44. _____

RESPA prohibits anyone in a real estate transaction from forcing the parties to use a particular

45. _____.

The government agency which enforces RESPA is

46. _____.



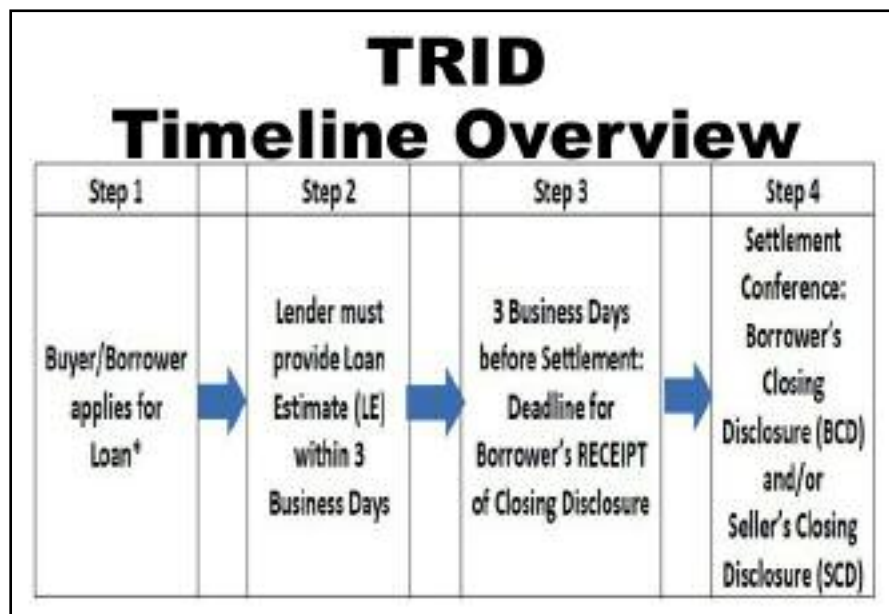
Real Estate Closing Disclosures

In 2010, two federal laws were combined for enforcement and form compliance under the Consumer Financial Protection Bureau.

Those two federal laws resulted in the 47. _____, which is an acronym for

the Closing Disclosures. 48. _____

Pursuant to these laws, the 49. _____ is required to provide to the 50. _____ to the 51. _____ at least 52. _____ days prior to settlement.



In order to count the days properly, you will need to know all of the following:

- The days counted on banking 53. _____

They include Monday-Saturday and exclude Sundays and federal holidays

- You do not count the day of delivery to the borrower, you start counting the next day.
- The borrower may close on the 54. _____ day.

Real Estate Closing Disclosures (CONTINUED)

Examples of Counting Days

If the Disclosure is delivered on a Monday before midnight, the first day that the borrower can close is 55. _____.

If the Disclosure is delivered on a Thursday before midnight, the first day that the borrower can close is 56. _____.

The timeline and requirements for disclosure are 57. _____ and cannot be 58. _____.

Additional Closing Disclosure Issues to Keep in Mind

The buyer's and seller's closing disclosures are 59. _____ and should be kept 60. _____.

Brokers have an obligation to review the Closing Disclosure for its 61. _____ and 62. _____.

The Seller Closing Disclosure does not have to be provided prior to settlement.

If any of the following change, a new Closing Disclosure will be required:

63. _____

64. _____

65. _____

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information

Date Issued
Closing Date
Disbursement Date
Settlement Agent
File #
Property
Sale Price

Transaction Information

Borrower

Seller

Lender

Loan Information

Loan Term
Purpose
Product

Loan Type ☐ Conventional ☐ FHA
☐ VA ☐ _____
Loan ID #
MIC #

Loan Terms

Can this amount increase after closing?

Loan Amount

Interest Rate

Monthly Principal & Interest

See Projected Payments below for your
Estimated Total Monthly Payment

Does the loan have these features?

Prepayment Penalty

Balloon Payment

Projected Payments

Payment Calculation

Principal & Interest

Mortgage Insurance

Estimated Escrow
Amount can increase over time

Estimated Total Monthly Payment

Estimated Taxes, Insurance & Assessments

Amount can increase over time
See page 4 for details

This estimate includes

- ☐ Property Taxes
☐ Homeowner's Insurance
☐ Other:

In escrow?

See Escrow Account on page 4 for details. You must pay for other property costs separately.

Costs at Closing

Closing Costs

Includes _____ in Loan Costs + _____ in Other Costs –
in Lender Credits. See page 2 for details.

Cash to Close

Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information

Date Issued

Closing Date

Disbursement Date

Settlement Agent

File #

Property

Appraised Prop. Value

Transaction Information

Borrower

Seller

Lender

Loan Information

Loan Term

Purpose

Product

Loan Type ☐ Conventional ☐ FHA

☐ VA ☐ _____

Loan ID #

MIC #

Loan Terms

Can this amount increase after closing?

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Estimated Total
Monthly Payment

Estimated Taxes, Insurance
& Assessments

Amount can increase over time
See page 4 for details

This estimate includes

☐ Property Taxes

☐ Homeowner's Insurance

☐ Other:

See Escrow Account on page 4 for details. You must pay for other property costs separately.

In escrow?

Costs at Closing

Closing Costs

Includes _____ in Loan Costs +
in Lender Credits. See page 2 for details.

in Other Costs –

Cash to Close

Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information

Date Issued
Closing Date
Disbursement Date
Settlement Agent
File #
Property
Estimated Prop. Value

Transaction Information

Borrower

Seller

Lender

Loan Information

Loan Term
Purpose
Product

Loan Type ☐ Conventional ☐ FHA
☐ VA ☐ _____
Loan ID #
MIC #

Loan Terms

Can this amount increase after closing?

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Estimated Total
Monthly Payment

Estimated Taxes, Insurance
& Assessments

Amount can increase over time
See page 4 for details

This estimate includes

- ☐ Property Taxes
☐ Homeowner's Insurance
☐ Other:

In escrow?

See Escrow Account on page 4 for details. You must pay for other property costs separately.

Costs at Closing

Closing Costs

Includes _____ in Loan Costs + _____ in Other Costs –
in Lender Credits. See page 2 for details.

Cash to Close

Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

Closing Cost Details

Loan Costs		Borrower-Paid		Seller-Paid		Paid by Others
		At Closing	Before Closing	At Closing	Before Closing	
A. Origination Charges						
01	% of Loan Amount (Points)					
02						
03						
04						
05						
06						
07						
08						
B. Services Borrower Did Not Shop For						
01						
02						
03						
04						
05						
06						
07						
08						
09						
10						
C. Services Borrower Did Shop For						
01						
02						
03						
04						
05						
06						
07						
08						
D. TOTAL LOAN COSTS (Borrower-Paid)						
Loan Costs Subtotals (A + B + C)						
Other Costs						
E. Taxes and Other Government Fees						
01	Recording Fees Deed: Mortgage:					
02						
F. Prepays						
01	Homeowner's Insurance Premium (mo.)					
02	Mortgage Insurance Premium (mo.)					
03	Prepaid Interest (per day from to)					
04	Property Taxes (mo.)					
05						
G. Initial Escrow Payment at Closing						
01	Homeowner's Insurance per month for mo.					
02	Mortgage Insurance per month for mo.					
03	Property Taxes per month for mo.					
04						
05						
06						
07						
08	Aggregate Adjustment					
H. Other						
01						
02						
03						
04						
05						
06						
07						
08						
I. TOTAL OTHER COSTS (Borrower-Paid)						
Other Costs Subtotals (E + F + G + H)						
J. TOTAL CLOSING COSTS (Borrower-Paid)						
Closing Costs Subtotals (D + I)						
Lender Credits						

CLOSING DISCLOSURE

PAGE 2 OF 5 • LOAN ID #

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
Cash to Close			

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION**K. Due from Borrower at Closing**

- 01 Sale Price of Property
 02 Sale Price of Any Personal Property Included in Sale
 03 Closing Costs Paid at Closing (J)

04

Adjustments

05

06

07

Adjustments for Items Paid by Seller in Advance

- 08 City/Town Taxes to
 09 County Taxes to
 10 Assessments to

11

12

13

14

15

L. Paid Already by or on Behalf of Borrower at Closing

- 01 Deposit
 02 Loan Amount
 03 Existing Loan(s) Assumed or Taken Subject to

04

05 Seller Credit

Other Credits

06

07

Adjustments

08

09

10

11

Adjustments for Items Unpaid by Seller

- 12 City/Town Taxes to
 13 County Taxes to
 14 Assessments to

15

16

17

CALCULATION

- Total Due from Borrower at Closing (K)
 Total Paid Already by or on Behalf of Borrower at Closing (L)

Cash to Close ☐ **From** ☐ **To Borrower****SELLER'S TRANSACTION****M. Due to Seller at Closing**

- 01 Sale Price of Property
 02 Sale Price of Any Personal Property Included in Sale
 03

04

05

06

07

08

Adjustments for Items Paid by Seller in Advance

- 09 City/Town Taxes to
 10 County Taxes to
 11 Assessments to

12

13

14

15

16

N. Due from Seller at Closing

- 01 Excess Deposit
 02 Closing Costs Paid at Closing (J)
 03 Existing Loan(s) Assumed or Taken Subject to
 04 Payoff of First Mortgage Loan
 05 Payoff of Second Mortgage Loan

06

07

08 Seller Credit

09

10

11

12

13

Adjustments for Items Unpaid by Seller

- 14 City/Town Taxes to
 15 County Taxes to
 16 Assessments to

17

18

19

CALCULATION

- Total Due to Seller at Closing (M)
 Total Due from Seller at Closing (N)

Cash ☐ **From** ☐ **To Seller**

Additional Information About This Loan

Loan Disclosures

Assumption

If you sell or transfer this property to another person, your lender

- ☐ will allow, under certain conditions, this person to assume this loan on the original terms.
- ☐ will not allow assumption of this loan on the original terms.

Demand Feature

Your loan

- ☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- ☐ does not have a demand feature.

Late Payment

If your payment is more than ____ days late, your lender will charge a late fee of _____

Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

- ☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☐ do not have a negative amortization feature.

Partial Payments

Your lender

- ☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- ☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
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If this loan is sold, your new lender may have a different policy.

Security Interest

You are granting a security interest in _____

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account

For now, your loan

- ☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

- ☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

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Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

CLOSING DISCLOSURE

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Adjustable Interest Rate (AIR) Table

Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

PAGE 4 OF 5 • LOAN ID #

Additional Information About This Loan

Loan Disclosures

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Step Payments?	
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First Change/Amount	
Subsequent Changes	
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PAGE 4 OF 5 • LOAN ID #

Additional Information About This Loan

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Adjustable Interest Rate (AIR) Table

Index + Margin

Initial Interest Rate

Minimum/Maximum Interest Rate

Change Frequency

First Change

Subsequent Changes

Limits on Interest Rate Changes

First Change

Subsequent Changes

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.

Finance Charge. The dollar amount the loan will cost you.

Amount Financed. The loan amount available after paying your upfront finance charge.

Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.

Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.



Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

Other Disclosures

Appraisal

If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details

See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- ☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.
- ☐ state law does not protect you from liability for the unpaid balance.

Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

CLOSING DISCLOSURE

PAGE 5 OF 5 • LOAN ID #

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.

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Loan Acceptance

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Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

Loan Calculations

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___ License ID					
Contact					
Contact NMLS ID					
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Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

Closing Disclosure

Closing Information

Date Issued

Closing Date

Disbursement Date

Settlement Agent

File #

Property

Sale Price

Transaction Information

Borrower

Seller

Summaries of Transactions

SELLER'S TRANSACTION

Due to Seller at Closing

- | | | |
|----|--|--|
| 01 | Sale Price of Property | |
| 02 | Sale Price of Any Personal Property Included in Sale | |
| 03 | | |
| 04 | | |
| 05 | | |
| 06 | | |
| 07 | | |
| 08 | | |

Adjustments for Items Paid by Seller in Advance

- | | | |
|----|-----------------|----|
| 09 | City/Town Taxes | to |
| 10 | County Taxes | to |
| 11 | Assessments | to |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |

Due from Seller at Closing

- | | | |
|----|--|--|
| 01 | Excess Deposit | |
| 02 | Closing Costs Paid at Closing (J) | |
| 03 | Existing Loan(s) Assumed or Taken Subject to | |
| 04 | Payoff of First Mortgage Loan | |
| 05 | Payoff of Second Mortgage Loan | |
| 06 | | |
| 07 | | |
| 08 | Seller Credit | |
| 09 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |

Adjustments for Items Unpaid by Seller

- | | | |
|----|-----------------|----|
| 14 | City/Town Taxes | to |
| 15 | County Taxes | to |
| 16 | Assessments | to |
| 17 | | |
| 18 | | |
| 19 | | |

CALCULATION

Total Due to Seller at Closing

Total Due from Seller at Closing

Cash ☐ From ☐ To Seller

Contact Information

REAL ESTATE BROKER (B)

Name

Address

__ License ID

Contact

Contact __ License ID

Email

Phone

REAL ESTATE BROKER (S)

Name

Address

__ License ID

Contact

Contact __ License ID

Email

Phone

SETTLEMENT AGENT

Name

Address

__ License ID

Contact

Contact __ License ID

Email

Phone



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Closing Cost Details

Loan Costs		Seller-Paid	
		At Closing	Before Closing
A. Origination Charges			
01	% of Loan Amount (Points)		
02			
03			
04			
05			
06			
07			
08			
B. Services Borrower Did Not Shop For			
01			
02			
03			
04			
05			
06			
07			
08			
C. Services Borrower Did Shop For			
01			
02			
03			
04			
05			
06			
07			
08			
Other Costs			
E. Taxes and Other Government Fees			
01	Recording Fees	Deed:	Mortgage:
02			
F. Prepays			
01	Homeowner's Insurance Premium (mo.)		
02	Mortgage Insurance Premium (mo.)		
03	Prepaid Interest (per day from to)		
04	Property Taxes (mo.)		
05			
G. Initial Escrow Payment at Closing			
01	Homeowner's Insurance	per month for	mo.
02	Mortgage Insurance	per month for	mo.
03	Property Taxes	per month for	mo.
04			
05			
06			
07			
08	Aggregate Adjustment		
H. Other			
01			
02			
03			
04			
05			
06			
07			
08			
09			
10			
11			
12			
13			
J. TOTAL CLOSING COSTS			