

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)

August 2021 Edition

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INTRODUCTION

Course Description: The *Post 302 – Contracts & Closing* course is one of the three 30- instructional hour courses in the North Carolina mandatory Postlicensing (PL) education program. The primary objective of the courses is to provide instruction at a level beyond that provided in Prelicensing courses on topics deemed to be of special importance in the active practice of real estate brokerage. 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 Offering the Course: This course may only be offered by Commission- certified Education Providers (EPs) that have received course approval for each specific course delivery method. EPs may only use 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 delivery, course completion standards, course completion reporting and other related matters may be obtained on the Commission website (www.ncrec.gov). The *Post 302 – Contracts & Closing* course must be taught as prescribed by this syllabus.

Course Hours and Delivery Method: Each Postlicensing course must consist of a minimum of 30 instructional hours. The course may be offered via in-person, synchronous distance, self- paced distance, or blended delivery. Pre-approval is required for each type of delivery.

Prerequisite: Per [Commission Rule 58A .1902\(b\)](#), *a provisional broker as described in NCGS 93A-4(a1) shall complete all Postlicensing courses pursuant to Paragraph (a) of this Rule within 18 months following the date of initial licensure.*

An EP should require an individual enrolling in a Postlicensing course for Postlicensing educational credit to verify their identity and to provide their NC real estate license number to assure compliance with the above rule.

Course Materials: Per [Commission Rule 58H .0205\(c\)](#), the EP shall verify that each enrolled student possesses course materials by the first class session. Mandatory materials for this course include the current editions of:

- *North Carolina Real Estate Manual (hereinafter called Manual)*,
- *North Carolina Real Estate License Law and Commission Rules (hereinafter called LLCR)*, **and**
- the Commission's *Residential Square Footage Guidelines* booklet.

These publications in print or digital format can be ordered through the [Commission's website](#) or the EP.

Text references throughout the syllabus are for the July 2020 edition of the *LLCR* and the 2020 edition of the *Manual*. For your benefit, all *Manual* chapters referenced in this course syllabus are consolidated within *Chapter 25. POST 302, Contracts and Closing* in the digital version of the

Manual. Italicized [*Digital REM search words*] after a subheading will help you narrow your digital search for a *Manual* reference.

Instructor Note: Copies of current standard NC REALTORS® forms required for teaching this course may be downloaded (by instructors & education directors) in your ShareFile account (<https://ncrec.sharefile.com>) with *SAMPLE* watermarked across each page.

Course Scheduling: Refer to [Commission Rule 58H .0404](#) for course scheduling parameters.

Commission Rule 21 NCAC 58H .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 shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

Instructor Notes: EPs and instructors are REQUIRED to comply with the assigned Instructor Notes and conduct “Required Activities” when teaching this course. Any “Suggested Activities” are not required to be implemented.

End-of-Course Examinations and Completion Standards: For successful completion of the course, students must

1. satisfactorily complete any required activities and homework exercises,
2. meet attendance requirements, and
3. pass the end-of-course examination.

Instructional time should only be used for the introduction, and review upon completion, of the homework assignment(s).

EPs are required to utilize end-of-course examinations in accordance with [Commission Rule 58H .0207](#). End-of-course exams must be closed-book and proctored. The minimum passing grade is 75%. The Commission recommends that certified EPs and approved instructors use end-of-

course examinations that are comprehensive in scope. EPs and instructors shall safeguard the integrity and confidentiality of examinations at all times.

Syllabus Copies:

- The course syllabus is posted on the Commission's website, under Education.
- EPs and instructors may reproduce all or part of the 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, but instructors may make adjustments in the order of presentation.

Instructional Levels: The Commission utilizes *Instructional Levels* to prescribe the scope and depth of coverage of topics and subtopics throughout the course. There are three levels, with Level 1 being the lowest and Level 3 being the highest level of instruction. Instructional Levels are based on Bloom's Taxonomy.

Below are the definitions of the three Instructional Levels, including the prescribed competency and instruction for each. Competency means what students will be able to do by the end of topic/subtopic coverage. Instruction means the prescribed depth of coverage and instructional methods.

Level 1 – Recall

NOTE: Level 1 is based on Bloom's Taxonomy Level 1-Understand and Level 2-Remember.

Competency: Students should be able *to recall facts and basic concepts* and *to explain ideas or concepts*. Learning objectives may include terms such as define, duplicate, classify, explain, and describe.

Instruction: Instructor should review and discuss basic definitions, facts, concepts, procedures, etc. In-depth instruction is not required.

Level 2 – Application

NOTE: Level 2 is based on Bloom's Taxonomy Level 3-Apply and Level 4-Analyze.

Competency: Students should be able *to use information in new situations* and *to draw connections among ideas*. Learning objectives may include terms such as implement, solve, demonstrate, interpret, differentiate, relate, compare, and contrast.

Instruction: Instructor should review and discuss the topic in moderate depth sufficient to illustrate and enhance understanding of facts, principles, procedures, etc. and their relevance to brokerage practice.

Level 3 –Analysis

NOTE: Level 3 is based on Bloom's Taxonomy Level 5-Evaluate and Level 6-Create.

Competency: Students should be able *to justify a stand or decision* and *to produce new or original work* based on the information. Learning objectives may include terms such as defend, judge, critique, weigh, design, assemble, develop, or formulate.

Instruction: Instructor should review and discuss the topic in substantial depth, using examples to reinforce understanding of ideas, principles and practices, and requiring students to complete practical work assignments 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 practice.

Each *major topic* (i.e., preceded by a capital letter) in this syllabus has been assigned an Instructional Level. In some instances where a subtopic should be afforded significantly greater or lesser emphasis than the major topic under which it is listed, that subtopic has been assigned a different Instructional Level that applies to that subtopic only.

Education Providers and instructors are REQUIRED to comply with the assigned Instructional Levels when teaching this course. The majority of Postlicensing topics should be taught at a Level 3; therefore, assume the Instructional Level is 3 if no level is noted in the syllabus.

POST 302

CONTRACTS and CLOSING POSTLICENSING COURSE

Instructional Hours per Section

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

Post 302 Contracts and Closing Postlicensing Course Syllabus

Instructor Note: Some sections have **Required Activities** while others give **Suggested Activities** for a topic or section. In addition to the Required Activities, instructors are strongly encouraged to use other activities to maximize student engagement and retention of information.

Suggested Course-long Activity: The transactional timeline used as the basis for the Post 302 course lends itself to a course activity with steps that are continued throughout the course. Students can perform tasks at appropriate places in the syllabus that follow an imaginary buyer or seller client from the creation and delivery of an offer, through negotiation with a multiple offers scenario, to contract formation, and through settlement and closing. Instructor will need to provide guidance (maybe in the form of an informational handout or template that assures the inclusion of many course concepts) so students have all necessary information to complete all the various steps of the process. Some of the mentioned steps are Required Activities for the course.

Section 1: Basic Selected Contract Law Concepts (1½ hours)

(*Manual*, Chapter 10, Contract Law, pp. 293-322)

I. Basic Contract Terms [Digital REM search for: *basic contract law*]

Instructor Note: This section should be a **very brief review** of terminology.

Suggested Activity: Consider using a quiz or matching exercise to quickly refresh the information. A timed completion quiz like *Kahoot!* would work well.

- A. Definition of *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: words vs. conduct
- C. Unilateral and Bilateral Contracts: promises by one party vs. both parties
- D. Executed and Executory Contracts: fully performed vs. in the process of performing
- E. Valid Contracts: satisfy all legal requirements; fully enforceable in court
- F. Voidable Contracts: one party can avoid performance based on a legal principle
- G. Void Contracts: does not satisfy all legal requirements; unenforceable in court

- H. Addenda: add something to the original contract; becomes part of the contract
- I. Amendments: change some term(s) of the original contract through later mutual written agreement
- II. Essential Elements of a Contract (*Manual*, Chapter 10, Contract Law, pp. 295-303)

Instructor Note: This section should be a **brief review** of fundamental common law contract principles that continue to govern modern contract law. Real world examples should include commercial and residential brokerage transactions.

- A. Mutual Assent / Offer and Acceptance / Meeting of the Minds (*Manual*, Chapter 11, Sales Contract Procedures, pp. 357-365)

Required Activity: Thoroughly review the offer and acceptance concept by using varied fact situations, including situations that involve electronic communication of offer and acceptance and communication to agents vs. principals.

Instructor Note: Active student involvement is critically important to assure understanding of these crucial basic concepts. Revisit the *offeror/offeree* terms. Additional resources available on the Commission's website under *Publications* include: NCREC brochure titled *Q&A on Offer and Acceptance*; *Contracts* section of the 2020-2021 Update; and *Contract Formation and Negotiation* section of the 2013- 2014 Update.

1. Communication of offer & acceptance

- a. Oral communication
- b. Personal delivery
- c. Mail (traditional or special mail, such as USPS, FedEx, UPS, etc.)
- d. Electronic methods of communication

2. Offer

Note: Pay careful attention to terminology. There is a huge difference between an *offer* and a *contract*.

- a. Definition: a promise (that is definite in terms) by an offeror asking for a promise or an action by an offeree
- b. Typically, the buyer is the initial *offeror* and the seller is the initial *offeree*; but sellers can initiate offers
- c. Brokers must present all offers to offeree (or their agent) *immediately* but in no case later than 3 days from receipt by broker [NCGS 93A-6(a)(13); Rule 58A .0106(a)]

- i. Even if property is under contract
- ii. Broker cannot “hold” offer while negotiating compensation agreement
- iii. Use of *Back-up Contract Addendum* (NC REALTORS® Standard Form 2A1-T will be covered in Section 2 with other standard addenda)

3. Acceptance

a. Mailbox rule [Digital REM search for: *mailbox*]

- i. Acceptable notification as long as offer does not prohibit it
- ii. Must be properly addressed to the offeror
- iii. Offer considered accepted at date and time of mailing
 - Once in control of mail service & out of offeree’s control
 - Time of actual receipt by offeror is irrelevant
- iv. Neither party can withdraw offer or acceptance once mailed
- v. Only applies to communicating acceptance of an offer; not termination of an offer or contract

b. Communication to agent same as to principal

4. Termination of offers

- a. Counteroffer (a new offer with partial or conditional acceptance of original offer terms)
- b. Rejection by offeree by notification or lapse of time specified in offer
- c. Revocation by offeror any time prior to communication of acceptance from offeree
- d. Destruction of the property
- e. Death or insanity of the offeror immediately terminates without notice to the offeree
- f. *Response to Buyer’s Offer* (NC REALTORS® Standard Form 340-T) [Digital REM search for: 340-T]

Required Activity: Provide a detailed review of NC REALTORS® Standard Form 340-T. Discuss the pros and cons of the seller using this form, especially in a multiple offer scenario.

- i. Is **not** a counteroffer; the seller is not bound, so free to negotiate and even go under contract while waiting for original buyer’s response to the form
- ii. Can be used with one or multiple offers
- iii. Three (3) possible responses to the buyer

- Rejects offer and encourages new offer based on list of the seller's preferences for offer terms
- Will hold offer until established offer deadline & consider it with any other offers
- Rejects offer

B. Consideration: Anything that is bargained for and given in exchange for a promise; usually the sales price or rent in real estate

Note: The sales price is the consideration in a sales contract, not the earnest money deposit or the due diligence fee. Rent is the consideration in a lease, not the tenant security deposit.

C. Legal Capacity of the Parties [Digital REM search for: *legal capacity*]

1. Obtain legal advice if unsure of legal capacity of a party prior to executing an offer or acceptance
2. No legal capacity to contract
 - a. Minors (persons under the age of 18 in NC) - *voidable*
 - b. Persons declared mentally incompetent by court of law - *void*
 - c. Persons mentally incompetent in fact - *voidable*
 - d. Persons intoxicated or under drug influence who do not understand what they are doing when signing a contract - *voidable*

D. Lawful Objective

III. Impediments to Mutual Consent [Digital REM search for: *mutual consent*]

Instructor Note: Provide real world examples of each of the following ways that real estate contracts may be declared void or voidable.

Suggested Activity: Provide various scenarios that include some of the impediments below and have students identify situations that may produce an unenforceable contract. Also explore ways to resolve the issues.

A. Mistake

1. Mistake of fact
 - a. Definition: an erroneous impression on the part of one or both parties regarding some material aspect of the contract
 - b. Contract may be voidable if the mistake of fact

- i. Involves a material term or aspect;
 - ii. Is mutual; **and**
 - iii. Is not the result of fraud or negligence
 - c. Unilateral mistakes of fact do not release parties from their obligations
2. Mistake of law does not excuse obligation of a party
- a. Definition: mistaken understanding of legal effect of the contract
 - b. 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
 - iv. That is acted on by that party to their 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
- Note:** Brokers should **not** make statements about matters about which they are ignorant

C. Unfair or Deceptive Trade Practices Act [NCGS 75-1.1] [Digital REM search for: *deceptive*]

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

Suggested Activity: Have students brainstorm examples of statements or advertisements that might violate the Act.

Instructor Note: Help students differentiate between legal “puffing” and deceptive ads.

2. Injured party is entitled to treble damages [NCGS 75-16]

3. Application

a. Applies to

- i. Real estate brokers
- ii. Owners who regularly sell real estate

b. Does **not** apply to *For Sale By Owner* that does not generally engage in real estate trade

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 [NCGS 22-2] [Digital REM search for: *statute*]

- 1. Certain contracts must be in writing to be enforceable
 - a. All contracts to convey interest in real property
 - b. A lease that exceeds 3 years from the “making”/signing of the lease agreement
 - c. Contract modifications

- d. Agency agreements are considered employment contracts, not real estate contracts, and are excluded from Statute of Frauds; Commission rules require these to be in writing
- 2. Verbal negotiations and agreements are **not** enforceable (See Parol Evidence Rule below)
- 3. Necessary elements for compliance with Act
 - a. Individual names of the parties to the contract

Instructor Note: This is why *Mr. & Mrs.* is not acceptable on the sales contract.

- b. Subject matter of the contract
 - c. Material terms and conditions
 - d. Signature of any party to be charged with the contract (or an authorized agent)
- B. Electronic Transactions

Instructor Note: Refer to [*Electronic Signatures and Documents*](#) section of the 2014- 2015 Update for more detail about the laws, disclosure requirements, recommended practices, and examples of application to brokerage transactions.

- 1. Uniform Electronic Transactions Act (UETA) [Digital REM search for: *UETA*]
 - a. Applies to interstate transactions involving at least one natural person who is
 - i. Purchasing or selling an owner-occupied dwelling, or
 - ii. Leasing a vacation rental property for personal use, or
 - iii. Leasing a pre-1978 dwelling to use as their residence
 - 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. North Carolina version (NCUETA) [NCGS Article 40, Chapter 66]
 - i. Regulates intrastate commerce
 - ii. Required notice in NC consumer transactions [NCGS 66-327]

2. Electronic Signatures in Global & National Commerce Act (ESIGN) [Digital REM search for: *electronic signatures*] regulates interstate and foreign commerce (i.e., commerce across state lines)

Note: Brokers must be diligent about using up-to-date cybersecurity measures. Refer to [Cybersecurity section of the 2020-2021 Update](#) and [WireFraud section of the 2019-2020 Update](#) for examples of application to brokerage transactions.

C. Discharge of Contracts [Digital REM search for: *discharge of contracts*]

Instructor Note: Provide real world examples of each of the following ways that real estate contracts are terminated. Be sure to highlight that termination of a *contract* is different from termination of an *offer*.

1. Full and complete performance of all contract terms by all parties
2. Agreement of the parties
 - a. Release: a contract to destroy an earlier contract
 - b. Novation: a new contract substituted for a previous contract
 - c. Subsequent Modifying Agreement: a new contract changing the terms of the original contract
 - d. Accord and Satisfaction: mutually agreed upon compromise
 - e. Cancellation
3. Material breach
 - a. Failure of one party to perform a major contract obligation may release non-breaching party from obligation to perform
 - b. Not all failures to perform are material
 - c. Most contracts do not use “time of the essence” so a reasonable time to perform must be allowed
4. Impossibility of performance
 - a. Consequences of contingent contract conditions should be addressed in the contract terms; non-performance of such conditions seldom allow for contract termination without specific contract language
 - b. Generally refers to impossibility of the thing to be done, not the inability of the promisor to do it

- c. 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 may override contract (e.g., bankruptcy of a party; statutes of limitation; government action)

D. Assignment

- 1. Transfer of all contract rights and obligations of the assignor to the assignee
- 2. Unless released by the other party to the contract, the assignor will remain secondarily liable for performance of contract terms

E. Rules for Interpretation of Contracts

Instructor Note: This is a good opportunity to remind brokers that they are prohibited from drafting legal documents for others, interpreted as the unlawful practice of law per NCGS 93A-6(a)(11).

- 1. *Parol Evidence Rule* [Digital REM search for: *parol evidence*]
 - a. All previous negotiations and informal agreements are superseded by written contract terms
 - b. Preliminary negotiations inconsistent with terms of written contract are not admissible to alter the terms of the contract

Suggested Activity: Have students discuss what preliminary negotiations might cause a problem if not reflected in the final terms of the written contract. Possibilities include whether appliances or other personal property convey; what landscaping items remain; if Seller will leave furniture or lawn mower, etc.

- 2. A contract is to be interpreted as a whole
- 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, if there is a conflict
- 5. Writer of ambiguous language will be held liable for confusion; court generally rules in favor of party that did not draft the confusing language

F. Contract Remedies for Breach [Digital REM search for: *contract remedies*]

- 1. Money Damages

- a. Compensatory damages: intended to make injured party whole, not to penalize the breaching party
- b. Consequential damages: also known as special damages, a money award made by a court to compensate the injured party for damages that resulted from a foreseeable result of wrongdoing that a reasonable person could have foreseen); very unusual in real estate transactions

(Example: “Assume that a seller of an airplane falsely reports the mechanical repair and flight history of the airplane in its logbook, which the buyer relies on when purchasing the airplane. Months after the purchase, the airplane’s engine malfunctions during flight. If the seller knew at the time of contract that the buyer would be using the airplane for commercial purposes, then it is foreseeable at the time of contracting that the buyer would incur lost profits in the form of lost airline ticket sales and loss of use costs while the airplane is in repair. Additionally, the buyer may be impacted by a loss of goodwill due to disgruntled customers.”

Read more at <https://www.metzlewis.com/incidental-damages-vs-consequential-damages-distinction-consequence/>)

- c. Liquidated damages: an amount pre-determined in the contract as the total compensation that either party will receive in the event of a breach (e.g., earnest money deposit or tenant security deposit)

Suggested Activity: Have students review the “liquidated damages” language of the *Earnest Money Deposit* contract provision in the *Offer or Purchase and Contract* NCBA/NCAR Standard Form #2-T.

2. Specific Performance [Digital REM search for: *specific performance*]

- a. One party sues the other party to make them perform according to the contract
- b. Frequently granted to buyers due to the unique nature of each parcel
- c. Rarely granted to sellers

3. Rescission [Digital REM search for: *rescission*]

- a. Declares the contract invalid and returns the parties to the position they were in prior to entering the contract
- b. May be granted for
 - i. *Mutual* mistake of fact
 - ii. Fraud or misrepresentation cases
 - iii. Undue influence or duress situations

G. Real Estate Auction Sales **Level 1**

1. With reserve vs. without reserve
2. Regulation of auctions & auctioneers
 - a. Real estate license not required for person acting solely as auction's cryer of sales
 - b. Real estate license is required for person performing any activity other than "cryer", such as advertising and conducting the auction, making representations about the property, or soliciting people to attend the auction

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

(*Manual*, Chapter 11, Sales Contracts and Practices, pp. 323-397)

I. Introductory Concepts

A. Expectation of Broker Competence [NCGS 93A-6(a)(8)]

1. Competent and accurate completion of pre-printed standard sales contract forms
2. Understanding of all provisions in standard pre-printed forms
3. Ensuring that all points of agreement are included in the final written contract; no ambiguous terms
4. Incompetence is a violation of fiduciary duties under the common law of agency and License Law

B. Prohibition against Drafting Contract Language for Others [Digital REM search for: *drafting*]

1. Drafting constitutes *unauthorized practice of law* [NCGS 93A-6(a)(11)]
2. Brokers are legally permitted to *fill in the blanks* of preprinted forms
3. Have an attorney draft any unique contract language

C. Sources of Standardized Sales Contract Forms

1. REALTORS® may obtain and use the contract forms created by NC REALTORS® as part of their membership benefits

2. Non-REALTOR® brokers may not initiate use of forms bearing the REALTOR® logo
3. Non-REALTOR® brokers may obtain and use the sales contract forms and standard addenda that are jointly approved by North Carolina REALTORS® and the North Carolina Bar Association (NCBA), that bear only the NCBA logo/approval, through an attorney or forms vendor

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:

- *Working With Real Estate Agents Disclosure*;
- *Residential Property & Owners' Association Disclosure Statement (RPOADS)*; and
- *Mineral and Oil and Gas Mandatory Disclosure Statement (MOG)*

D. Requirements for Broker-Provided Preprinted Sales Contract Forms [Rule 58A .0112] [Digital REM search for: *preprinted contract*]

Instructor Note: Remind brokers that this Rule does not apply to contract forms that are drafted or supplied by the parties/principals or their attorneys.

1. Must include 19 items/issues

Required Activity: Have students locate the 19 required items in Standard Form #2-T. This activity can be done now or during detailed review of that form later in the course.

2. The NC Bar Association/NC Association of REALTORS®, Inc. (NCBA/NCAR) jointly approved contract forms are Rule-compliant
3. Prohibited provisions [Rule 58A .0112(b)]
 - a. Brokerage compensation
 - b. Liability disclaimer for broker

Note: These 2 items cannot be added even at instruction of the parties or their attorneys

4. Parties to the contract
 - a. May alter, amend, or delete any provision in a standardized contract
 - b. May draft their own offer or contract
 - c. May have an attorney draft an offer or contract on their behalf

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

Instructor Note: Provide students with the current version of all referenced forms from <https://ncrec.sharefile.com>.

Use NC REALTORS® Guidelines for instructions on how to complete the forms. Train students to continually look for and use these resources.

Required Activity: Conduct a detailed review of each paragraph in each of the standard forms listed below. Be sure to discuss the intended use of each form, the meaning and purpose of each paragraph, 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.

A. Standard Contract Forms and Addenda to be Reviewed

Instructor Note: Stress the importance of brokers knowing what offer to purchase and contract form is appropriate for various types of transactions. Explain that standardized forms give uniformity to transactions and reduce brokers' temptation to draft.

Suggested Activity: Have students determine which form is the best to use for various sales situations.

1. Specialized standard NCBA/NCAR sales contracts (e.g., residential, vacant lot/land, commercial)
 - a. *Offer to Purchase & Contract*, Standard Form 2-T (with Form 2-G *Guidelines for Completing the Offer to Purchase and Contract*)
 - 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 Form 12-G *Guidelines*)
 - i. Intended for sale of unimproved land or lot being bought for personal use
 - ii. **not** intended for sale of a large tract of land, such as purchase of land for subdivision development and resale
 - c. *Offer to Purchase & Contract (New Construction)*, Standard Form 800-T (with Form 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 at time of contract formation, use Standard Form 2-T with 2A3-T, *New Construction Addendum*

Suggested Activity: Have brokers discuss when to use 800-T versus 2-T with the New Construction Addendum.

- d. *Agreement for Purchase & Sale of Improved Real Property*, Standard Form 580-T; commercial sales transactions

Instructor Note: Form name changed in 2020 to include “Improved” to help distinguish it from the new 580L-T for land sales. Brokers are encouraged to use *Land Information Worksheet*, Standard Form 502.

- e. *Agreement for Purchase & Sale of Land*, Standard Form 580L-T

Instructor Note: Form created in 2020 because many brokers were improperly using 12-T, intended for a single residential lot purchase, for the purchase of large acreage. Brokers are again encouraged to use *Land Information Worksheet*, Standard Form 502.

- i. Very similar to 580-T that was previously used with attorney-drafted addendum for land purchases
 - ii. Includes provisions that deal with unique land issues (e.g., possibility of a price per acre purchase price; rollback taxes; leases that may need to be terminated prior to closing; etc.)
2. Thirteen (13) NC REALTORS® /NCBA jointly approved standard addenda (Forms 2A1-T through 2A14-T and 3-T with Guidelines) for use in conjunction with the various standard residential Offer to Purchase and Contract forms

Instructor Note: Just mention the existence of standard addenda and guidelines here; coverage will be handled later in this section.

3. Guidelines are provided for many standard NC REALTORS® forms

B. Common Mistakes in Contract Completion

Instructor Note: The following are common mistakes that the Commission legal staff has noted while investigating complaints.

Required Activity: Discuss why the following issues are serious enough to generate complaints and possible disciplinary action by the Commission.

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

C. General Guidelines for Contract Completion [Digital REM search for: 2G]

Instructor Note: The following instructions are paraphrased from “General Instructions” area of NC REALTORS® 2G Guidelines. More detail is included there.

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; retain copies of all offers and contracts
6. Review ALL contract provisions with the parties and recommend they obtain legal advice to answer legal questions

III. Major Paragraphs of Standard Form 2-T (*Manual*, pp. 329-354) [Digital REM search for: 2-T]

Instructor Note: The review of Standard Form 2-T 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 later.

Use of the *Guidelines for Completing the Offer to Purchase and Contract* is strongly recommended. Paragraph numbers and letters noted below coincide with the current structure/format of Standard Form 2-T. The subtopics in the *Manual* may not strictly follow the sequence of the current Standard Form 2-T.

Note: Be sure to highlight all the Notes and Warnings in the form. Paragraph #1:

Terms and Definitions

Note: Whenever a term that would not normally be capitalized appears in the body of a contract and begins with a capital letter, 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

- Must use individual full legal names (e.g., no Mr. & Mrs.) for all parties
 - Include at least initial of middle name or *NMN* if there is no middle name
 - Include any suffix (e.g., Sr., Jr., III, etc.) even if not used all the time
 - Marital relationship can be identified but is not mandatory (e.g., John S. Doe and spouse, Mary R Doe **or** Pablo T. Martinez, an unmarried person)
- Never use *owner of record*
- Use full legal name of any entity party; not the *dba* or trade name 1-c.

Property Description

- Must include a legal description that clearly identifies the contract property
- Do not use the mailing address
- Reference to only a tax map or number is seldom adequate
- Pay close attention to the **Notes** in this provision
- Attach *Additional Provisions Addendum* (Standard Form 2A11-T) if a manufactured home is part of the Property

Instructor Note: Consider reviewing this Addendum at this time. Or you may reference it now and cover in detail later during the Addenda section.

Suggested Activity: Briefly discuss where to find the information needed to complete the Legal Description section.

1-d. Purchase Price

- 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 Buyer’s behalf)

Note: If a counteroffer changes any of the entries in (d), adjustment must also be made to the Balance line

- Due Diligence Fee (DDF) Amount
 - No DDF is required to create a binding contract
 - Made payable and delivered to Seller by Effective Date
 - Details of DDF and Due Diligence Period (DDP) covered later in Subpara. 1-h, i, j

- Earnest Money Deposit (EMD) Amount(s)
 - No EMD is required to create a binding contract
 - Initial EMD, if any, should be
 - Paid to named Escrow Agent
 - Delivered by Effective Date or within five business days of Effective Date, if checked
 - (Additional) EMD, if any
 - Cannot be paid by personal check
 - *Time being of the essence* in regard to payment

Note: There is no conflict between the option to deliver initial EMD within 5 days of contract formation and Rule 58A .0116(b) which requires deposit of trust monies into a trust account no later than 3 days from receipt by broker; it is impossible to deposit what has not been received

- Referenced financing addenda
 - Loan balance to be assumed in *Loan Assumption Addendum* (2A6-T)
 - Loan amount in *Seller Financing Addendum* (2A5-T)
 - Building Deposit in *New Construction Addendum* (2A3-T)

Instructor Note: Consider reviewing these Addenda at this time. Or you may reference them now and cover in detail later during the Addenda section.

- *Time Being of The Essence*: a “drop-dead” date and time for performance of a contract term that if not observed will be considered a default on the part of the obligated party and allows the non-defaulting party to exercise stated options
- Late or non-payment of Buyer’s funds (e.g., EMD, DDF) grants Seller the right to demand good funds within 1 banking day of notice

Suggested Activity: Have students discuss the merits of this Seller right and when, or if, Seller should be encouraged to exercise it.

1-e. Earnest Money Deposit [Rule 58A .0116] [Digital REM search for: *earnest money*]

Instructor Note: Refer to the *Contract* section of the 2020-2021 Update, and the *Contract Issues* section of the 2018-2019 Update for examples and discussions about handling EMDs and DDFs.

Required Activity: Use various scenarios to explore how both types of 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 58A .0116(b)(3-4) regarding following Buyer’s instructions for delivery to and the timing of deposit by the Escrow Agent.

- Addresses how EMD will be held and handled if:
 - Offer is not accepted
 - Buyer terminates during Due Diligence Period (DDP)
 - Contract condition is not met after DDP
 - Seller breaches contract 1-

f. Escrow Agent

- Should be the name of a brokerage company or closing attorney; not an individual agent unless the agent is a sole proprietor
- EMD checks should be made payable to named Escrow Agent
- Do not sign acknowledging receipt of monies unless actually received
- Permission given for an interest-bearing trust account
- Disputed EMD [NCGS 93A-12; Rule 58A .0116(d)]

Instructor Note: Escrow Agent is not required to transfer disputed EMD monies to clerk of court per this law; it is an option.

Suggested Activity: Since this discussion of the disputed funds rule is also included in the Post 303 course, ask students to share what they remember about the rule. Be sure to acknowledge correct information and to gently restructure information that is not accurate.

- Both brokers and attorneys serving as escrow agents may use the disputed funds rule
- 90-day written notification to all parties claiming ownership of the monies of Escrow Agent's 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 residential tenant security deposits 1-g.

Effective Date

- When last party has signed or initialed the current offer and has communicated this fact to the other party; there is no contract until acceptance is communicated to the last offeror or their agent
- Initials of the parties at the bottom of each contract page, or lack thereof, do not affect contract formation
- Oral agreements are meaningless per Statute of Frauds

1- h, i, j. Due Diligence [Digital REM search for: *due diligence fee*]

- Buyer's opportunity to fully investigate the Property to determine whether to proceed with or terminate contract
- 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
 - Becomes Buyer's credit if transaction closes

Note: Seller should cash the DDF check immediately

Suggested Activity: Discuss the reasons it is important for Seller to immediately cash the DDF checks, such as Buyer cannot receive credit at Settlement for the funds or Buyer terminates the contract and stops payment on the check. Some students may have scenarios to share.

- Due Diligence Period (DDP) [Digital REM search for: *due diligence period*]
 - Begins at contract formation; ends at 5 p.m. on date in blank
 - *Time Being of the Essence* as to expiration
 - Buyer's right to terminate addressed in Para. 4(g)
 - Termination must be made in writing and delivered to Seller or Seller's agent before DDP expiration
 - EMD is not at risk until after DDP

Instructor Note: Stress the unforgiving nature of the DDF deadline and why it is especially important for the buyer agent to clearly set expectations with Buyer about communicating termination in a timely manner.

1-k & l. Settlement [Digital REM search for: *settlement*]

- All executed documents and funds necessary to complete the transaction delivered to settlement agent
- Settlement Date
 - Time and place selected by Buyer
 - Delay of Settlement is addressed in Para. 12

Note: Brokers are strongly cautioned against suggesting inclusion of a *time being 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. This inclusion could be considered unlawful practice of law by a broker.

Suggested Activity: Discuss how inserting *time being of the essence* in regard to the settlement and closing dates might not be in the client's best interest.

1-m. Closing

Instructor Note: Pay particular attention to the discussion of this paragraph in the *Guidelines*. Stress that only a lawyer can legally represent or provide legal services at or during the settlement process.

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

Note: The settlement meeting and closing may not happen on the same day, especially if settlement is late in the day.

Required Activity: Break into groups and discuss why having the settlement meeting and closing dates on different days might be a problem. Explore ways to minimize the problem.

Instructor Note: Be prepared to address insurance plus keys and possession of the property being held until recordation of the deed, especially for a Friday settlement. Refer students to the contract provisions that address possession and insurance.

1-n. Special Assessments

- Buyer responsibilities addressed in Para. 6(a)
- Seller responsibilities addressed in Para. 8(k)

Paragraph #2: Fixtures and Exclusions [Digital REM search for: *fixtures*]

- Specified items in Subpara. (b) shall convey with related equipment and remain free of liens unless excluded in Subpara. (d) or (e); it is not necessary to mark out listed items that are not on the property
- Items leased or not owned by the Seller should be listed in (d)
- Items that will **not** convey should be clearly identified in (e) to avoid later dispute
- Seller must repair any damage caused by removal of excluded items

Paragraph #3: Personal Property

- Any personal property owned by Seller that will convey with the property must be clearly specified here

- Verbal agreement and/or personal items listed in MLS are not enforceable
- Item description should be accurate and precise to avoid later dispute

Example: “refrigerator” vs “GE Profile side-by-side refrigerator Model#DH-3594”

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

Instructor Note: Discuss possible loan complications arising from inclusion of personal property in the sales contract. Explore options for proper handling of the sale personal property item and of fully furnished properties.

Paragraph #4: Buyer’s Due Diligence Process (*Manual*, Chapter 14, Closing Real Estate Transactions, Buyer's Due Diligence Process, pp. 461-467) [Digital REM search for: *due diligence process*]

Note: Buyers should be **strongly** advised to perform due diligence activities as quickly as possible to allow time for negotiation about 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 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 their right to terminate without penalty unless there is a Seller breach

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.). Discussion of how to handle negotiations from both Seller and Buyer viewpoints using standard forms can be addressed here or under Para 4-d.

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 their ability to obtain loan approval.

4-b. Property Investigation

- Inspections
 - Physical Inspection by Buyer and/or by qualified professionals
 - Property condition
 - Moisture & drainage
 - Environmental (e.g., asbestos, radon, lead, etc.)
 - Wood-destroying insects
 - Well & sewage disposal systems

- Review of Documents
 - *Residential Property & Owners' Association Disclosure Statement*
 - *Mineral and Gas and Oil Rights Mandatory Disclosure Statement*
 - *Lead-Based Paint or Lead-Based Paint Hazard Disclosure Addendum, if applicable*
 - Protective covenants
 - Owner association documents
- Insurance

Note: The availability and cost of homeowners insurance and/or flood insurance can be problematic on some properties
- Appraisal
- Survey
 - Reveals boundaries and setback lines
 - Identifies encroachments & easements
 - Locates mandatory septic repair field, if applicable
 - Required for title insurance policy coverage for homeowner, but not lender
- Zoning & Government Regulations
 - May affect Buyer's intended use of property
 - Can help identify
 - Adjacent land use
 - Possible road construction
 - School attendance zones
- Flood Hazard (and any flood insurance requirement)
- Utilities & Access
- Street/Roads
 - Public or private status
 - Discover if public streets/roads were accepted for maintenance
 - If not publicly maintained, determine who is responsible for maintenance
 - Discover private street/road maintenance agreement, if any, and provide to buyer
 - Lender may require road maintenance agreement if road is private
- Special Assessments

- Fuel tank

Note: Determine the location, type and ownership of any fuel tanks on the property; continued use of leased tanks, especially underground ones, should be verified.

4-c. Sale/Lease of Existing Property [Digital REM search for: *contingent sale*]

- Material fact that speaks to Buyer's ability to perform
- Not a contingent sale condition of the contract

Repair/Improvement Negotiations/Agreement

- Property being sold in its current condition (*as is*) unless other agreements are specified in the contract
- Repair Negotiation Agreements, if any, 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)

Required Activity: Discuss possible repair scenarios and how best to handle negotiations from both the Seller and Buyer viewpoints with use of above forms.

4-e. Buyer's Obligation to Repair Damage caused by inspections (even if contract fails)

4-f. Indemnification of Seller by Buyer for damage caused by Buyer or Buyer's agents and contractors

4-g. Buyer's Right to Terminate

- For *any reason or no reason*
- Written notification by 5 p.m. of stated date, *TIME BEING OF THE ESSENCE*
- EMD (initial and/or additional EMD) shall be refunded to the Buyer, only if written contract termination is delivered to the seller or seller's agent by 5pm

4-h. Closing shall constitute Acceptance unless other provisions made in writing

Instructor Note: Stress the importance of a final walk-through inspection of Property by the Buyer as close to Settlement as possible. Discuss why such an inspection by only the agent is not recommended. Remind students that only written agreements survive Closing.

Required Activity: Determine best way(s) to handle contract terms, such as incomplete repairs or missing fixtures, which are unmet at time of Settlement.

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

- Information for Seller to use in response to offer
- Material fact if Buyer must obtain financing to close this transaction
- Specified financing terms agreeable to Buyer
- Seller is advised to obtain documentation of Buyer's ability to close if no financing is needed (e.g., proof of funds)

Instructor Note: Even though the standard offer to purchase is not contingent on the buyer obtaining the noted financing, brokers need to pay attention to the loan information and help their seller evaluate its potential impact on likelihood of closing.

Suggested Activity: Have students discuss one or both of these questions:

- 1) How might a seller use loan information to select one offer over another in a multiple offer situation?
- 2) What is the potential impact if the buyer significantly changes the amount or type of loan needed to close?

5-b. Other Property

- Information for Seller to use in response to offer
- Material fact if Buyer must sell or lease other property to close this transaction
- Seller is strongly advised to review contract for sale of Buyer's current property prior to accepting offer
- Contract is **not** conditioned on sale of Buyer's other property

5-c. Performance of Buyer's Financial Obligations5-d.

& e. Property Disclosures [NCGS 42E-2]

- *Residential Property and Owners' Association Disclosure Statement*
 - Status of Buyer's receipt of required Statement
 - If exempt, indicate under what scenario
- *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

6-a. Responsibility for Special Assessments: Buyer takes title *subject to*

6-b. Responsibility for certain costs

- Loan costs
- Owner association fees
- Determining covenant compliance
- Appraisal
- Title search
- Title insurance
- Closing attorney fees
- Recording of deed & loan documents6-c.

Authorization to disclose information 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, if applicable [Digital REM search for: *lead-based paint disclosure*]

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

Suggested Activity: Review how to complete the *Lead-Based Paint or Lead-Based Paint Hazard Disclosure Addendum* 2A9-T at this time.

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 may also obtain reimbursement from Seller for reasonable costs incurred conducting the Due Diligence without affecting any other remedies available to Buyer. Brokers are reminded that an attorney should be consulted to determine if a breach has occurred.

8-a. Evidence of Title, Payoff Statement(s) and Non-Foreign Status8-b.

Authority to Disclose Information

8-c. Access to Property

- *Reasonable access* through time of Closing or Buyer Possession
- Including working, existing utilities at Seller's expense

Instructor Note: Discuss the importance of Seller leaving the utilities "on." It is a Seller breach if they disconnect utilities too early. This is a particular problem if the listing is vacant or right after the Seller moves out of the Property.

8-d. Removal of Seller's Property

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

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

Designation of Lien Agent, Payment & Satisfaction of Liens [if required by NCGS 44A-11.1]

8-g. Good Title, Legal Access

- Seller to provide General Warranty Deed
- 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

- Legal access to public right of way
- Consider using Short Sale Addendum (2A14-T) if possibility of short sale8-h.

Deed, Taxes & Fees

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

8-i. Agreement to Pay Buyer Expenses

- A stated dollar amount credited towards Buyer expenses, if applicable
- Include any FHA/VA lender and inspection costs (seller mandated fees) that cannot be paid by Buyer
- Subject to approval of Buyer's lender8-

j. Owners' Association Fees/Charges

- Confirming Seller's account info for payment or proration
- Imposed by HOA for transaction other than those to be paid by Buyer under Para. 6(b)
- Completion of RPOADS or other resale certifications8-k.

Payment of Special Assessments, if any

8-l. Late Listing Penalties, if any

8-m. Negotiated Repairs/Improvements

- Completed in *good & workmanlike manner*
Note: *Good & workmanlike manner* is a term of art that is not as vague as it first appears. It means the work has been completed to the standard of the industry.
- Buyer has right to verify prior to Settlement

8-n. Seller's Breach of Contract (Refer to Paragraph #23)

Paragraph #9: Prorations and Adjustments (Based on 365 days/year) [Digital REMsearch for: *prorations*]

- Taxes on Real Property (prorated based on 365 days/calendar year)
- Taxes on Personal Property (prorated based on 365 days/calendar year if conveying with Property)
- Rents, if any
- Owners' Association Dues

Paragraph #10: Home Warranty

Paragraph #11: Risk of Loss/Condition of Property at Closing

Instructor Note: Remind licensees that Paragraph 11 survives expiration of the Due Diligence Period.

- Buyer rights if Property not in same or better condition at Closing as on date of offer
 - May terminate contract by written notice to Seller & 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
 - Seller should maintain existing hazard insurance until they confirm recordation of deed and receive net proceeds
 - Buyer should obtain policy effective for entire day of Settlement
 - Possession other than at Closing can be problematic for insurance coverage; see Para. 13

Paragraph #12: Delay in Settlement/Closing

- *Delaying Party* acting in good faith should give as much notice as possible
- Automatic 7-day grace period to close after Settlement Date in contract
- If not closed by end of 7-day grace period, Non-Delaying Party may unilaterally terminate contract
- Written extension of Settlement Date can be negotiated; new date will also have 7-day grace period

Paragraph #13: Possession

- Shall be at Closing (after deed recordation), **not** Settlement

- No means of access (e.g., keys, garage door openers, etc.) to be granted to Buyer between Settlement and Closing

Note: If possession date is critical to Buyer, Settlement should be scheduled so that there is sufficient time for Closing to occur before that date

- Use appropriate addendum if possession at a time other than Closing and/or an existing lease is involved

Instructor Note: Consider a detailed review of both the *Buyer Possession Before Closing Agreement* (2A7-T) and the *Seller Possession After Closing Agreement* (2A8-T) at this time. Also discuss Provision #3 in *Additional Provisions Addendum* (2A11-T) and *Vacation Rental Addendum* (2A13-T) if the Property is subject to a lease.

Required Activity: Discuss the advantages and disadvantages of allowing possession at a time other than Closing. Be sure to address insurance issues and what happens if the transaction does not close. Remind brokers to encourage their clients to consult an attorney about risks/implications of possession before/after closing.

Paragraph #14: Addenda [Digital REM search for: *addenda*]

Note: A NC real estate broker is **not** permitted to suggest or draft any addenda for others (unless they are an actively licensed NC attorney)

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

Paragraphs #15-23: Miscellaneous Paragraphs

Instructor Note: Coverage of these boilerplate provisions should be quick and basic. Address any student clarification questions.

Suggested Activity: Provide a matching game that requires students to identify the purpose of these provisions.

- #15. Assignments must have written consent of all parties
- #16. Tax-Deferred Exchange cooperation agreement
- #17. Parties clarified
- #18. Survival of some contract provisions past Closing

- #19. Entire Agreement contained in contract with listed addenda and agreement that all changes will be made in writing and signed by all parties
- #20. Conduct of Transaction
 - Electronic communication and actions are endorsed
 - All written notices and communications may be sent to any address authorized in Notice Information section
 - *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
- #21. Execution
- #22. Computation of Days/Time of Day
 - *Days* means consecutive calendar days including weekends and all holidays
 - Day count begins the day after the act or notice required by contract
 - Date & time of day are for North Carolina
- #23. Remedies
 - Breach by Buyer
 - Established as sole remedy for Seller for a breach by Buyer
 - Seller cannot sue for specific performance or damages (other than damages to property by Buyer)
 - Breach by Seller
 - Buyer may terminate the Contract and
 - Receive refund of any EMD and Due Diligence Fee previously paid by Buyer
 - Can obtain reimbursement from Seller for reasonable costs incurred conducting the Due Diligence Process
 - Other remedies may be available to Buyer
 - Attorneys' Fees

Page 13: Signature and Dates

- Must be signed by all Buyers and Sellers; use *Additional Signatures Addendum* (3-T) if there are more than two Buyers or two Sellers
- To transfer clear title, Seller spouse should sign contract, even if not named on the deed, to assure spouse's participation at Settlement
- Verify correct signators for entities or trusts
- Date all signatures to clearly establish Effective Date; although contract is valid without dates
- Wire Fraud Warning

Page 14: Notice Information

- At least one notice address must be entered for each party or agent approved to receive notices contemplated by the contract
- Insert N/A for all blanks

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

- Enter names of individual listing and selling brokers, their license numbers, firm names and license numbers, and check appropriate agency representation boxes [Rule 58A .0104(f)]

Page 15: Acknowledgment of Receipt of Monies

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

IV. All Standard NC REALTORS® Residential Addenda

Instructor Note: Provide and review all current standard NC REALTORS® addenda for 2-T and any available *Guidelines* in detail. Any addenda that have not already been reviewed during the review of Form 2-T should be covered in this section.

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 Buyer or Seller in which case the contract will control

A. 2A1-T: *Back-up Contract Addendum* (Manual, Chapter 11, Back-Up Contract Addendum, pp. 356-357)

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

Instructor Note: Discuss how the Due Diligence Period might affect a buyer's decision to write an offer on a property that is already under contract. Discuss the pros and cons of a Back-up Contract from Seller's viewpoint. Be sure to stress that in order for a buyer to hold a secondary contract position after the primary contract, the secondary buyer must have a fully executed contract with Seller, including the Offer to Purchase & Contract with the Back-up Contract Addendum (and any other needed addenda). An OTP and Back-up Contract Addendum signed only by Buyer is not sufficient.

Suggested Activity: Have students share any experience with this Addendum especially in situations with multiple offers.

1. Seller is not required to take Property off the market once under contract
2. Addendum ties dates for DDP and Settlement Date to Seller's delivery of notice that the contract has primary status; contract blanks for these dates should reference the Addendum
3. Back-up 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 their contract has primary status
5. There can be multiple Back-up Contracts on the same property; proper completion of the forms is critical for clarity

Instructor Note: Discussion of the next 7 addenda (2A3-T through 2A9-T) should be very basic. Be sure to address any questions the students have about form use or completion. Be aware that NC REALTORS® do not currently have a contingent sale addendum; a real estate attorney should be consulted before adding such a contingency to an offer.

Suggested Activity: Assign an addendum to each group and have them give a quick overview of the form and any points that caught their attention.

Required Activity: Have students prepare a complete 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. If assigned as homework, allow instructional time to review the exercise. For smaller classes, consider dividing the class into two or more groups and assigning one specific property to each group (all students in the same group will write an offer on the same property but keep the terms to themselves). For this exercise, instructors will need to provide the tax card information.

Suggested Course-long Activity Step: These offers will be used for a multiple offer exercise later in this course.

- B. 2A3-T: *New Construction Addendum*
- C. 2A4-T: *FHA/VA Financing Addendum*
- D. 2A5-T: *Seller Financing Addendum*
- E. 2A6-T: *Loan Assumption Addendum*
- F. 2A7-T: *Buyer Possession Before Closing Addendum*
- G. 2A8-T: *Seller Possession After Closing Addendum*
- H. 2A9-T: *Lead-Based Paint or Lead-Based Paint Hazard Addendum*

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

Instructor Note: Briefly review the 6 issues that are addressed by this addendum.

Suggested Activity: Have students discuss when and how they would use this addendum.

1. Expiration of offer with *Time Being of the Essence*
2. Septic System Installation/Modification
3. Rental/Income/Investment Property
4. Agreed-Upon Repairs and/or Improvements (for items identified **before** contract formation)
5. Manufactured (Mobile) Home
6. Pool/Spa Inspection/Preparation

Instructor Note: Discussion of the next 3 addenda (2A12-T through 2A14-T) should be very basic, unless you are in an area where vacation rental management is prevalent. In that case, spend more time on 2A13-T.

Suggested Activity: Survey the class to see who has encountered a transaction that could use any of these addenda; invite discussion on whether the appropriate addendum was actually used and how it helped.

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

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

L. 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

V. Review of Other Specialized Sales Contracts

Suggested Activity: After the thorough whole-class review of 2-T, the review of the remaining contracts could be conducted in small groups that report back to the entire class. Encourage a compare and contrast to the 2-T; what are the differences and why are the differences necessary.

- A. *Offer to Purchase and Contract – Vacant Lot/Land* (Form 12-T) and *Guidelines for Completing* (Form 12-G)
- B. *Offer to Purchase & Contract (New Construction)*, (Form 800-T) and *Guidelines for Completing* (Form 800-G)
- C. *Agreement for Purchase & Sale of Improved Real Property* (Form 580-T)
- D. *Agreement for Purchase & Sale of Land*, (Form 580L-T)

Section 3: Sales Contract Procedures (2 hours)

(*Manual*, Chapter 11, Submitting Offers to Sellers, pp. 363-367)

Instructor Note: Active student involvement is critically important to ensure understanding of these basic procedures. Additional resources available on the Commission's website under *Publications* include: *Contract* section of the 2020-2021 Update; *Contract Issues* section of the 2018-2019 Update; and *Contract Formation and Negotiation* section of the 2013-2014 Update.

- I. Submitting Offers to Sellers [NCGS 93A-6(a)(13); Rule 58A .0106] [Digital REM search for: *submitting offers*]
 - 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 who they represent or how they will be compensated
 - 3. Oral presentation of the offer terms to the offeree does not negate the requirement for the broker to deliver the offer within 3 days
 - 4. Listing broker has no authority to accept or reject an offer on behalf of Seller; the broker should point out advantages and disadvantages of the offer and provide any information that might affect the Seller's decision, such as notice that another offer is forthcoming
 - 5. Only 1 contract signed by all parties required to be binding; copies to all contract parties required by Rule 58A .0106

Suggested Activity: There are several examples regarding contracts and procedures in Chapter 11 of the *Manual*. Assign examples to student groups or review in class and encourage student discussion of possible outcomes.

B. Multiple Offers [Digital REM search for: *multiple offers*]

1. All Offers must be presented *immediately* (but no later than 3 days) even if Property already under contract
2. Concurrent Offers must be presented at the same time; no particular order of presentation is required
3. Disclosure of Offer and/or Terms
 - i. Existence of other offers **not** a material fact
 - ii. Broker prohibited from sharing material terms of an offer without express permission of offeror [Rule 58A .0115]
 - iii. Broker needs Seller's authority to share existence of other offers and/or terms that might be acceptable to the Seller

Suggested Activity: Discuss pros and cons of notifying offeror(s) of existence of other offers. Best practices would require equal communication for all offerors.

II. Offer Modification and Counteroffers

- A. Assume any change to an offer rejects the original offer
- B. A counteroffer is created if offeree makes changes, initials those changes, and signs the offer before returning it to the original offeror
- C. Possible use of NC REALTORS® Standard Form #340-T *Response to Buyer's Offer*

Instructor Note: Remind students of earlier discussion of this form in Section I.

- D. Numerous term changes should prompt use of a new offer form completed with current terms under consideration by the parties
- E. Retain all offers, even if rejected or replaced [Rule 58A .0108]

Suggested Activity: For smaller classes, using a whiteboard (actual or electronic) or other means, write or type the key terms from each offer within one group (purchase price, deposits, dates, personal property, loan details and other terms that might influence a seller's decision). Then have a second group act as the "Seller" by selecting the best offer. Repeat with the next group and have the "Seller" select an offer and either make a counter offer or draft a Response to Buyer's Offer (Form 340-T). Repeat with remaining groups.

Suggested Course-long Activity Step: The offers that students created in Section 2, IV. should be used for this multiple offer and contract formation exercise.

Section 4: Closing Preparations and Procedures (2 hours)

(Manual, Chapter 14, Pre-Closing Procedures, pp. 460-469)

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 [Digital REM search for: *pre-closing*]

A. Respective Responsibilities of the Parties

Suggested Activity: Responsibilities for each party (Buyer, Seller, each agent) are established by contract and customary practice. A quick review might be accomplished with a *Kahoot!* quiz about who pays for what.

B. Select the Settlement Agent [Digital REM search for: *settlement agent*]

1. Buyer should identify the Settlement Agent of their choice immediately after contract formation, if not before
2. In North Carolina, most real estate closings are handled by a real estate closing attorney
3. Settlement Agent usually represents Buyer, Buyer's lender, and may provide some services to Seller
4. Buyer agent may make recommendations for Settlement Agent as long as there is no reward for referring (e.g., kickback)

C. Provide Information to Settlement Agent

1. All available information that will assist in preparing for closing, including but not limited to
 - a. Copies of the contract
 - b. Seller's deed
 - c. Seller's title insurance policy
 - d. Information on Seller's loan payoff or lender
 - e. Contact information for any owners' association that charges dues, fees, or assessments
 - f. Any invoices or services that are to be paid at Settlement
 - g. Any contract amendments as soon as executed

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 many variables frequently beyond the control of either party. Buyer and 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 [Digital REM search for: *due diligence process*]

A. General Responsibility of Broker Working with a Buyer

B. Inspections and Investigations

1. Including, but not limited to, those recommended under Paragraph 4 of Standard Form 2-T
2. Possible Discoveries during Physical Inspection by Buyer
 - a. Tenants
 - b. Easements & encroachments
 - c. Recent construction or renovations

Note: Broker working with a buyer should recognize “red flags” of possible issues such as those listed above.

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, unless they are terms of the contract
3. Standard forms to use in negotiation of repair issues

Instructor Note: If not done previously in this course, provide current versions of the forms listed below and lead a detailed review of how to complete and use them during repair negotiations. 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.

Required Activity: Explore correct form completion for various scenarios, including

- (1) Repairs to be negotiated as part of the initial offer,
- (2) Items to be repaired based on home inspection report, and
- (3) Adjustment in sales price in lieu of repairs.

Suggested Course-long Activity Step: The offers that students created in Section 2, IV, should be used for this repair negotiation exercise.

- a. *Additional Provisions Addendum* (Form 2A11-T)
- b. *Due Diligence Request & Agreement* (Form 310-T)
- c. *Agreement to Amend Contract* (Form 4-T)

III. Other Pre-Closing Matters

- A. Title Search [Digital REM search for: *title search*]
- B. Clearing of any Title Defects by Seller [Digital REM search for: *title defect*]
 - 1. Seller's existing mortgage loan
 - 2. Any home equity loans
 - 3. Mechanic's liens
- C. Prepare Assignment of any Outstanding Leases and Related Security Deposits from Seller to Buyer
- D. Final Pre-Closing Procedures [Digital REM search for: *final pre-closing*]
 - 1. Transfer EMD from Escrow Agent to the Settlement Agent no earlier than 10 days prior to scheduled Settlement [Rule 58A .0116(e)]
 - 2. Review draft of Closing Disclosure by listing and selling broker for accuracy as soon as available
 - a. TRID requires lender to provide *Borrower's Closing Disclosure (BCD)* to borrower at least 3 business days prior to Settlement
 - i. Definition of delivery and receipt
 - ii. Buyer agents should alert buyers to look for and acknowledge receipt of BCD in a timely manner
 - b. Any of the following three (3) changes will prompt the need for a new *BCD* and a new 3 business day waiting period
 - i. An increase in APR
 - ii. A change in loan product
 - iii. Addition of a prepayment penalty
 - c. No delivery deadline prior to Settlement for *Seller's Closing Disclosure*

3. Notify Buyer of certified funds needed to close

Instructor Note: Discuss the need to verify with the Settlement Agent what constitutes acceptable *certified funds* for the transaction. Be sure to address cash, money orders, out-of-state certified checks, etc. Reach out to a local real estate attorney for local insight into this topic, if possible.

4. Attorney orders title insurance policy for lender and owner

Note: Buyer should be strongly advised to obtain a title insurance policy even if no lender is involved or lender does not require

IV. Closing Methods [Digital REM search for: *closing method*]

A. Escrow Closing Method

1. Escrow agreement instructions accomplished virtually by Escrow Agent; parties do not attend a meeting
2. Escrow Agent is generally a title company or lender's escrow division
3. *Relation Back Doctrine*: deed is considered delivered once Seller has delivered it to Escrow Agent

4. Extremely rare in NC

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
3. Role of Non-lawyers at Settlement
 - a. Present & identify documents necessary to complete NC closing
 - b. Direct parties where to sign documents
 - c. Ensure parties have properly executed the documents
 - d. Receive & disburse closing funds
 - e. Avoid performing unlawful practice of law activities

Note: A broker is strongly discouraged from attempting to act as a settlement agent

5. Settlement Meeting Procedures

- a. Location and parties attending
 - i. Buyer generally attends
 - ii. Seller may not attend if all documents have been signed
 - iii. Listing broker and selling broker should attend, unless broker's license is no longer on active status on settlement date
- b. Review of documents
- c. Post-settlement meeting tasks: title update, recording, disbursing funds, tax reporting requirements, etc.

Instructor Note: Brokers should be reminded that no funds will/should be disbursed at the settlement meeting so their clients will be well-informed. Per the NC Good Funds Settlement Act, the Settlement Agent must update the title search, record the new deed and deed of trust, and only then will funds be disbursed as appropriate to Seller, brokers and others. Disbursement of funds can occur several days after Settlement depending on when deed recordation can happen.

Suggested Activity: Survey students to see whose clients have received funds or keys to the property at Settlement. Revisit why this might not be in the best interest of all parties.

Section 5: Real Estate Settlement Procedures Act (RESPA) and TILA-RESPA Integrated Disclosure Rule (TRID) (2 hours) (*Manual*, Chapter 14, Real Estate Settlement Procedures Act, pp. 474- 486)

Instructor Note: Refer to the [TRID section](#) of the 2015-2016 Update course and the Bulletin article, [TRID vs. HUD-1](#) to supplement the *Manual* content.

- I. Applicability of RESPA [Digital REM search for: *respa*]
 - A. Federally related residential mortgage loan made by institutional lenders to purchase 1-4 family dwelling that is or will be constructed or placed on the property within 2 years of purchase
 - B. *Regulation X* administered by Consumer Financial Protection Bureau (CFPB) under the Dodd-Frank Act
 - C. Applies to all settlement services providers (brokers, lenders, closing attorneys, title companies, appraisers, surveyors, etc.)
 - D. Does **not** apply to loans for commercial, business or agricultural purposes, even if residential property is included

II. RESPA Requirements/Consumer Protections

A. Purpose is to protect consumers against abusive lending practices and ensure accurate and timely disclosure of settlement costs

B. Disclosure & Borrower Credit for *Yield Spread Premiums*

C. Loan Servicing Disclosure Requirements

1. Whether loan servicing can be sold, transferred or assigned

2. Borrower notification required prior to transfer of servicing

D. 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

E. 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* includes money, prizes, coupons, gift certificates, etc.

4. Disclosure of Affiliated Business Arrangements

- a. Disclosure of relationship and a written estimate of charges for services

- b. Person is not required to use a particular service provider

- c. Only “thing of value” received for referral is return on ownership interest

F. Special Information Booklet for Homebuyer/Borrowers

1. Lender or mortgage broker must provide booklet to consumer within 3 business days following loan application

2. Educational booklet about the buying and borrowing process [available at consumerfinance.gov/owning-a-home/explore/home-loan-toolkit/]

G. Written Estimate of Settlement Charges (the *Loan Estimate*) within 3 businessdays of loan application [Digital REM search for: *loan estimate*]

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

H. HUD-1 Settlement Statement generally replaced by Closing Disclosures

I. 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 and orders to compensate victims for illegal profits
4. Civil lawsuits for treble damages
5. Violation of License Law 93A-6(a)(10) for brokers

III. TILA-RESPA Integrated Disclosure (TRID) Rule [Digital REM search for: *TRID*]

A. The Loan Estimate (LE)

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

B. The Closing Disclosures [Digital REM search for: *closing disclosure*]

1. Delivery of Borrowers' Closing Disclosure no less than 3 business days prior to Settlement (excludes only Sundays & 10 federal holidays in day count)
2. Corrected/Revised Closing Disclosure requiring a 3 day waiting period to Close (See Section 4, III.D.2.b.)
3. Brokers' Responsibilities [93A-6(a)(14)]
 - a. Confirm accuracy of entries about which they have direct knowledge
 - i. Amounts noted in contract
 - ii. Broker may assume amounts paid by third parties are correct unless there is cause for a reasonable broker to suspect an amount is incorrect
 - iii. **All** expenses related to the transaction should be reflected, not just amounts paid by Settlement Agent or paid by third parties

- iv. As to all debits and credits related to the transaction, whether paid before or at closing, the broker must
 - Review and confirm that all charges and credits have been properly debited or credited to the seller or buyer and are entered in the correct column
 - Review and confirm accuracy of the calculations for all prorated items, escrow reserves, interim interest, excise tax and “bottom line figures”
- b. Notify all parties to the transaction of any errors or omissions
- c. May rely on attorney or lawful settlement agent for delivery of statement to parties

Instructor Note: Emphasize what a broker is and is **not** expected to verify regarding the information on a closing disclosure.

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

(*Manual*, Chapter 14, The Settlement Statement, pp. 486-501) [Digital REM search for: *settlement statement*]

- I. Allocation of Settlement Expenses [Digital REM search for: *closing expenses*]
 - A. Credits and Debits for Buyers and Sellers

Suggested Activity: Have students (collectively or in groups) identify the buyer credits, buyer debits, seller credits, and seller debits in a typical transaction.

- 1. Definitions
 - a. *Credit*: an amount payable to a party usually for an amount already paid (e.g., EMD or DDF for buyer) or being reimbursed (e.g., prepayment of buyer’s prorated tax portion for seller) or being paid by a third party on one’s behalf (e.g., loan amount for buyer)
 - b. *Debit*: an amount owed by a party that is to be paid at settlement
- 2. Typical NC Buyer Expenses
 - a. Closing attorney’s fee
 - b. Appraisal
 - c. Inspection fees
 - d. Loan fees, if applicable

- e. Interim interest on loan
 - f. Escrow pre-paid deposits, if required by lender
 - i. Property taxes
 - ii. Mortgage insurance
 - iii. Homeowners insurance
 - iv. Owner association dues, if paid by lender on behalf of owner
 - v. Aggregate adjustment
 - g. Survey
 - h. Recording fees for deed and loan documents
3. Typical NC Seller Expenses
- a. Broker's commission
 - b. Excise tax
 - c. Deed preparation
 - d. Quick claim deed preparation, if needed to clear title
 - e. Seller concessions per contract terms

B. Prorated Entries [Digital REM search for: *prorated*]

1. Definition of *Proration*: the division or distribution of property expenses at settlement between the buyer and the seller proportionate to the ownership period of each
2. Common Prorated Items
 - a. Real Estate Taxes (various situations)

Required Activity: Have students calculate tax prorations in various situations(e.g., prepaid by Seller; unpaid before Sept. 1st; unpaid after Sept. 1st).
 - b. Rents
 - c. Homeowner's Dues

II. Buyer's Closing Disclosure

Required Activity: After reviewing the basics, students must complete at least one closing disclosure problem. This may be completed during class either individually or in groups or as homework. Allow instructional time to review the problem line-by-line with the entire class. Including a complete closing scenario problem on the end-of-course examination is required.

Suggested Activities: Consider providing students with a completed closing disclosure containing several errors and ask students to find the errors. Provide students with one or more practice closing problems.

Suggested Course-long Activity Step: The contracts that students created in Section 3, II. should be used generate the entries for a settlement statement exercise.

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

- I. Alternate Conveyance Contracts (*Manual*, Chapter 11, Installment Land Contract, pp.368-377)
 - A. Installment Land Contract (also called Contract for Deed, Land Contract) [DigitalREM search for: *installment land*]
 1. Definition: Agreement whereby real property is sold on the installment payment method with the seller (*vendor*) retaining legal title until all the purchase price is paid or until some other agreed upon time; the buyer (*vendee*) receives equitable title and possession
 2. No standard contract form; consult an attorney; do **not** use REALTOR® Standard Form 2-T
 3. Seller must record Contract for Deed or a Memorandum within 5 business days of execution
 4. Buyer must be allowed up to 30 days to cure a default
 5. Advantages and Disadvantages
 - B. Option to Purchase [Digital REM search for: *option to purchase*]
 1. Definition of *Option*: Unilateral contract that binds the property owner (*optionor*) to hold an offer to sell open for a set period of time and gives the other party (*optionee*) a legal right, in exchange for an option fee, to accept or not accept that offer to sell during the time period of the option
 2. No standard option form; consult an attorney; do **not** use NC REALTORS® Standard Form 2-T

3. Rights of parties

a. Optionor

- i. Gives up right to sell property to anyone other than optionee during option period
- ii. Negotiations during the option period do not affect original terms of the option

b. Optionee

- i. Has exclusive right to buy property during the option period only on specified terms of the option
- ii. Has no obligation to exercise the option
- iii. Can negotiate different terms during the option period without giving up right to exercise the option

4. Two types of consideration

a. Option fee, generally non-refundable

b. Purchase price

5. Must be in writing and recorded

6. *Time Being of the Essence* in regard to date to exercise the option

7. Residential leases may include an option to purchase

Note: No standard form exists for a residential lease with option to purchase, and a broker **must not** suggest that landlords/tenants attempt to cobble together the lease and offer to purchase forms. A broker should direct the parties to enlist an attorney to draft this special type of agreement

8. Advantages and Disadvantages

Suggested Activity: Have students discuss situations in which a buyer or seller might want to use an installment land contract or an option to purchase contract.

C. Preemptive Rights *Level 1* [Digital REM search for: *preemptive*]

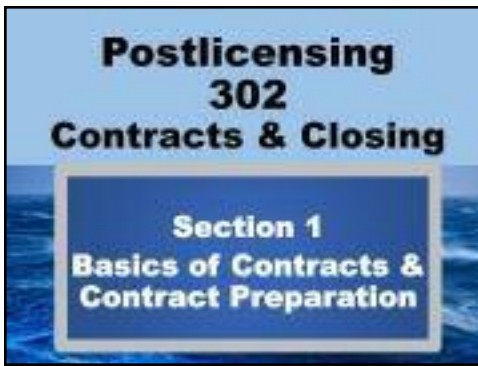
1. Right of First Refusal: owner legally promises another party that, **if** the owner decides to sell in the future, the other party can buy the property by matching a bona fide offer from a third party
2. Right of First Opportunity to Purchase: owner legally promises another party that, **if** the owner decides to sell in the future, the owner will give the other party the first opportunity to buy the property at a price to be determined at that time

II. License Status and Education Issues [NCGS 93A-4; Rules 58A .0503, A .0504, A .0505, and A .0506]

Instructor Note: Refer to the *Licensing & Education Review* section of the current Update course.

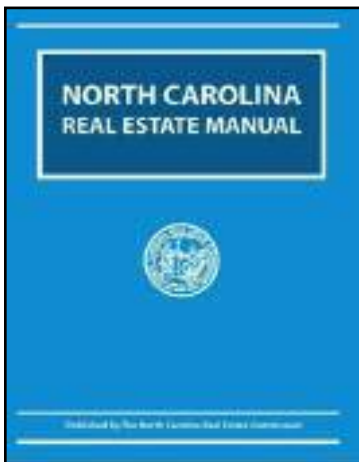
- A. License Status: Meaning of provisional broker, active, inactive, expired, suspended, and revoked status.
- B. Postlicensing Education Requirement (and consequences of failure to satisfy) [Rule 58A .1902]
- C. Continuing Education Requirement (and consequences of failure to satisfy) [Rules 58A .0504(b); 58A .1702]
- D. Requirements and procedures to activate an Inactive license [Rules 58A .0504(c) & (d); 58A .1703]
- E. Requirements and procedures to reinstate an Expired license
 - 1. License expired for not more than 6 months [Rules 58A .0505(c) & (h)]
 - 2. License expired between 6 months and 2 years [Rules 58A .0505(d) & (h)]
 - 3. License expired for more than 2 years [Rules 58A .0505(e) (f) & (h)]

--End of Course Syllabus--



Section 1: Basics of Contracts & Contract Preparation

Critical Reading Information



- Chapter 10 – Contract Law
- Chapter 11 – Sales Contracts & Practices



- 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.

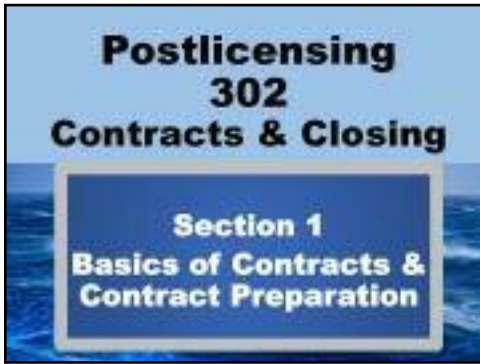
Working with the Neighbor Next Door

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 disclosure 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.

[illegible]



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. _____

Executory: 17. _____

Executed: 18. _____

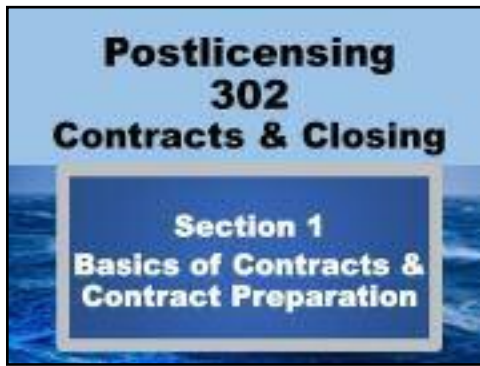
Oral contracts exist in many instances. Only certain types of contracts need to be in

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. _____

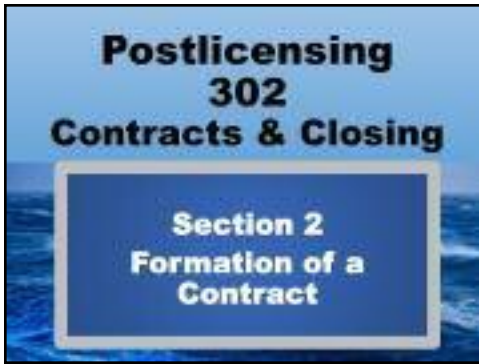




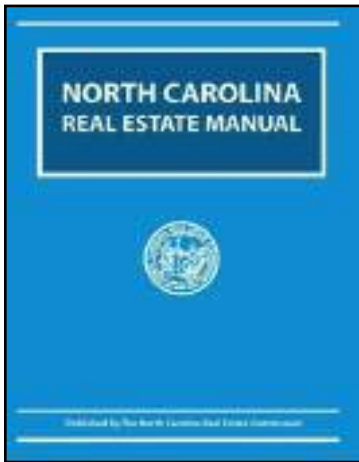
Section 1: Basics of Contracts & Contract Preparation Notebook Guide

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

[illegible]



Section 2: Formation of a Contract





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

OFFER DATE: _____

[check only ONE box]

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

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

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

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

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

Seller _____ Date _____ Time _____

Seller _____ Date _____ Time _____

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

By: _____ Date: _____ Time: _____

Name: _____ Title: _____
Print Name

Page 1 of 1



North Carolina Association of REALTORS®, Inc.



STANDARD FORM 340-T
Revised 7/2019
© 7/2019



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. _____.



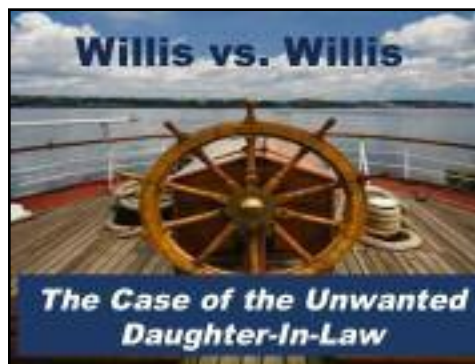
The North Carolina Case Study of *Willis vs. Willis*

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. _____

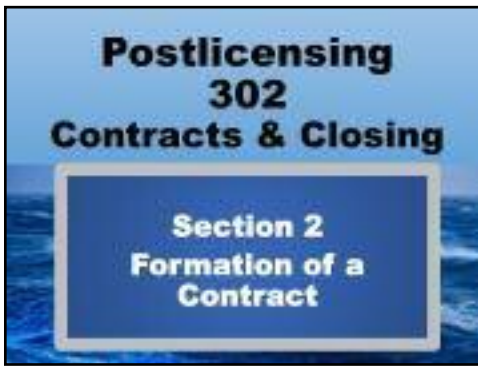
Helm Simulator

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

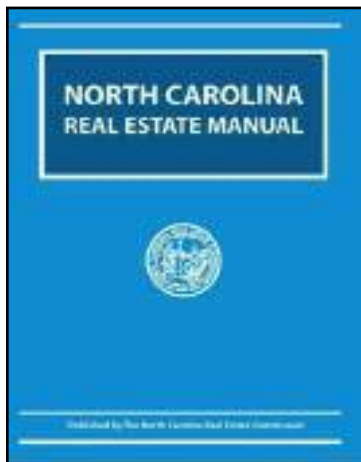
Notebook Guide (CONTINUED)

- 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)

List the 19 required items, locate each one in the Standard Form 2-T & list the paragraph number where the required item is located in the Form #2-T

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?

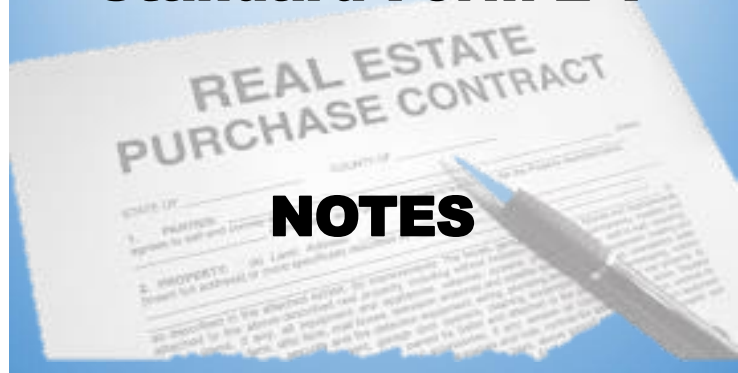
12. On what date will the buyer be given possession and allowed to move into the property?

Analyzing the Offer to Purchase & Contract Standard Form 2-T

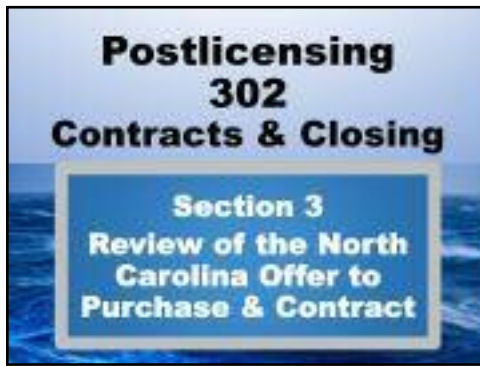


NOTES

Analyzing the Offer to Purchase & Contract Standard Form 2-T



NOTES



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. _____

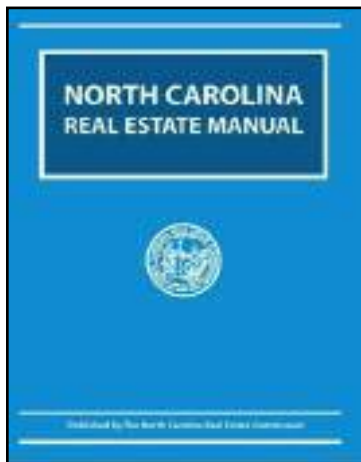
7. _____

8. _____



Section 4: Closing Preparations & Procedures

Critical Reading Information



- Chapter 14 – Closing Real Estate Transactions



- 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?

[illegible]

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

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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 -
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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. _____.



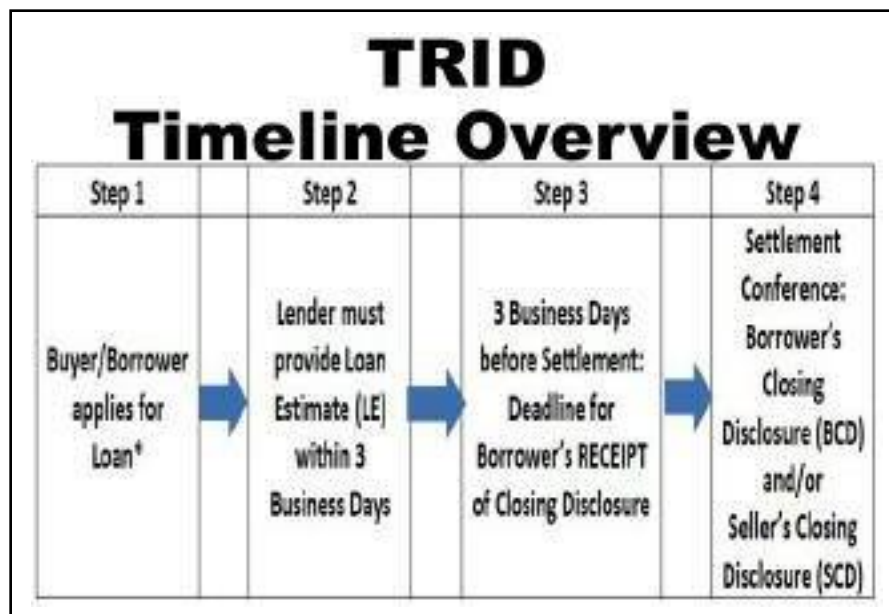
Real Estate Closing Disclosures

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?

Loan Amount

Interest Rate

Monthly Principal & Interest

See Projected Payments below for your
Estimated Total Monthly Payment

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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:

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

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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
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?

Loan Amount

Interest Rate

Monthly Principal & Interest

See Projected Payments below for your
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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 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.
- ☐ does not accept any partial payments.

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.

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.
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- ☐ 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.
- ☐ does not accept any partial payments.

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.

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

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.
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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

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Step Payments?	
Seasonal Payments?	
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First Change/Amount	
Subsequent Changes	
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CLOSING DISCLOSURE

PAGE 4 OF 5 • LOAN ID #

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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

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Loan Acceptance

You do not have to accept this loan because you have received this form or signed a loan application.

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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

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

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CLOSING DISCLOSURE

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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

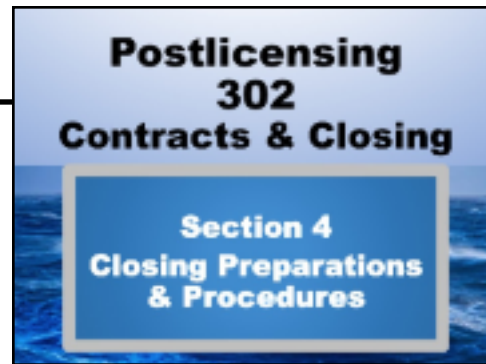


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Closing Cost Details

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			

Section 4: Closing Preparations & Procedures Notebook Guide



1. Co-ordinates the process
2. Issues validity of title opinions
3. Prepares closing documents
4. Conducts the closing
5. Buyer
6. A copy of the seller's deed
7. Accurate HOA information
8. Info on the seller's title insurance
9. Current and accurate copy of contract
10. Bills and invoices to be paid at closing
11. 7 days
12. Attorney's opinion letter
13. ALTA policy for the lender
14. Owner's policy for the buyer
15. Buyer
16. One-time charge
17. When policy is issued at closing
18. Recording
19. All funds over \$5,000
20. No sooner than 10 days prior to settlement
21. Disclosure
22. Eliminate kickbacks
23. Federally related loan (any loan government can regulate)
24. 1-4 family residential
25. Cash transactions
26. Vacant land
27. Commercial transactions
28. Seller carrybacks

Section 4: Closing Preparations & Procedures Notebook Guide (CONTINUED)

29. 3 days
30. Loan application
31. Required APR per TILA
32. Consumer Settlement Costs booklet
33. Lender
34. ONLY
35. Credit report
36. Anything of value
37. Settlement service providers
38. Referral fees between licensees
39. Crediting commissions to clients for costs
40. Receipt of bonuses by a licensee from someone other than settlement service provider
41. Affiliated business arrangements
42. Disclosure of relationship
43. Cannot require use
44. Must disclose all fees to be charged
45. Settlement service providers
46. Consumer Financial Protection Bureau (CFPB)
47. TRID
48. TILA/RESPA Integrated Disclosures
49. Lender
50. Closing disclosure
51. Borrower
52. 3 days
53. Lender business days
54. 3rd day
55. Thursday
56. Monday

Section 4: Closing Preparations & Procedures Notebook Guide (CONTINUED)

- 57. Not negotiable
- 58. Waived
- 59. Confidential
- 60. Separate
- 61. Accuracy
- 62. Completeness
- 63. APR increases
- 64. Prepayment penalty added
- 65. Basic loan product changes



Section 5: The Closing Disclosures

Preparation & Review Guide to Success


The Closing Disclosures

Costs and fees that are paid by the seller include all of the following:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

NC Excise Tax

- NC charges a transfer tax on real estate
- \$1 for each \$500 of value
- Round up to the nearest \$500
- Divide by \$500

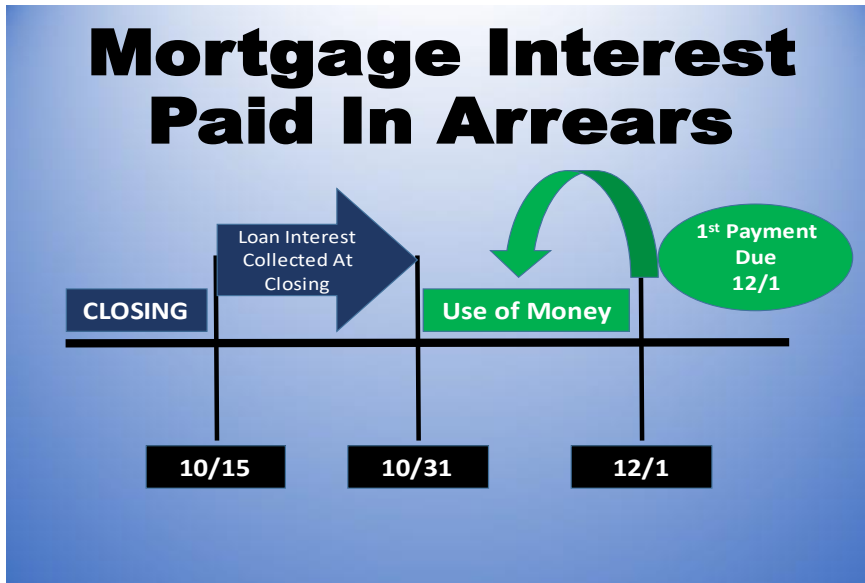


\$195,700 Sales Price
\$196,000 + \$500 = \$392 Excise Tax

Costs and fees that are paid by the buyer include all of the following:

- | | |
|-----------|-----------|
| 7. _____ | 13. _____ |
| 8. _____ | 14. _____ |
| 9. _____ | 15. _____ |
| 10. _____ | 16. _____ |
| 11. _____ | 17. _____ |
| 12. _____ | |

When fees are indicated to be 18. _____, POC means that those fees have been 19. _____ and they are not collected at closing. These POC items may show on the paid Before Closing column of the Borrower's Paid costs.



Mortgage Interest is Paid in Arrears



Borrowers Pay Items in Advance to Lenders to Set Up Reserve/Escrow Accounts for Taxes, Insurance, and Mortgage Insurance

Handling Seller Paid Loan Costs

When the seller is paying portions of the buyer's costs:

- Charge the costs to the 20. _____ on the 1st page.
- Debit the seller and credit the buyer on the 2nd page.

The Closing Disclosures (CONTINUED)

Brokerage Retention of Earnest Money

When the brokerage is retaining the earnest money deposit (EMD) and not delivering it to the attorney, you may see it reflected on the Closing Disclosure in this manner:

- Reduce the 21. _____ on the 1st page.
- Deduct the amount of the earnest money from the 22. _____ on page 2.

When a Transfer Involves a Rental Property

The new owner must 23. _____
all rental agreements. On Vacation Rentals only those
leases for 180 days.



- Security deposits appear as 24. _____ for the 25. _____.
- They appear as a 26. _____ for the 27. _____.

Rents May Have to Be Prorated per the Following Example

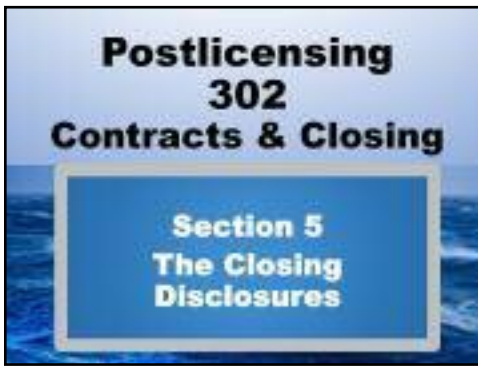
Example: A buyer is purchasing a rental property from the seller. The total rent collected each month is \$1,850. Closing is on September 14. The tenant has already paid the rent for the month of September. What will be the Closing Disclosure entry?

Answer: $\$1,850 \div 30$ (#of days in September) = \$61.6667 per day in rent

Seller owned the property for 14 days and is entitled to rent of $\$61.667 \times 14 = \863.33

Tenant paid $\$1,850 - \$863.33 =$ Amount due to buyer \$986.67

Debit the seller and credit the buyer \$968.67



Section 5: The Closing Disclosures Notebook Guide

1. Commission
2. Deed preparation
3. Mortgage payoff
4. Lien release recording
5. Excise tax
6. Unpaid or double debit taxes
7. Loan origination fees
8. Discount points
9. Interest on loan
10. Mortgage insurance
11. Homeowner's insurance
12. Reserves deposited with lender
13. Closing attorney fees
14. Title insurance premium
15. Recording of mortgage lien
16. Surveys/inspections
17. Courier fees
18. POC
19. Paid outside of closing
20. Buyer
21. Commission
22. Seller
23. Honor
24. Debit
25. Seller
26. Credit
27. Buyer

Closing Cost Details

Closing Disclosure Core (Page 1 of 2)

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 Loan Origination Fee					
03					
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For					
01 Appraisal Fee					
02 Credit Report Fee					
03					
04					
05					
06					
07					
08					
09					
10					
C. Services Borrower Did Shop For					
01 Attorney's Closing Fee					
02 Deed Preparation					
03 Title Ins Premium (Lender's and/or Owner's policy)					
04 Pest Inspection Report					
05 Survey					
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 Excise Tax					
F. Prepays					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest (y from o)					
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 Brokerage Commission					
02 Home Inspection					
03 Home Warranty					
04 Courier Fee for Seller's Loan Payoff					
05 Courier Fee for docs to Buyer's Lender					
06					
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					
J. TOTAL CLOSING COSTS (Borrower-Paid)/Seller-Paid					
Closing Costs Subtotals (D + I)					
Lender Credits					

CLOSING DISCLOSURE
NCREC, October 2015

LOAN ID #

Closing Disclosure Core (Page 2 of 2)

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			

O M I T

FOR TESTING PURPOSES

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 Due Diligence Fee

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 Due Diligence Fee

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

Closing Disclosure Practice #1

Based on the fact situation presented below, complete pages 1 and 2 of the Closing Disclosure Statement form provided to you for this exercise and answer questions 1 through 4. Your two pages of the Closing Disclosure Statement form will not be scored but must be completed. Indicate your answers to the questions rounding to the nearest whole dollar. For prorated entries, use the 365-day year method, and for prorated entries involving the seller, consider the seller responsible for the day of closing.



Facts: Seller's home was listed and sold by a real estate company. The standard NCAR/NCBA Offer to Purchase and Contract form was used. Pertinent facts about the transaction include the following:

- Settlement date: April 18
- Contract sales price: \$285,400
- Earnest money: \$3,800
- Due diligence fee: \$500
- Financing: Conventional 30-year loan of \$256,860 at a fixed rate of 4.75%, with a 1% loan origination fee. Buyer has agreed to pay two discount points
- Items paid outside of closing by buyer:
 - o Appraisal fee: \$450
 - o Credit report: \$35
- Interim interest on buyer's new mortgage loan through April 30
- Private mortgage insurance: \$840 for first year's premium due at closing
- Buyer's homeowner's insurance premium: \$650 due at closing
- Reserves deposited with lender:
 - o 2 months' homeowner's insurance premiums based on cost of first year's premium
 - o 2 months' private mortgage insurance premiums based on a monthly renewal cost of \$65
 - o 2 months of real property taxes based on estimated taxes for the current year
- Seller's brokerage commission: 7% of sales price
- Seller's mortgage loan payoff: \$212,300
- Real property taxes: Based on the previous year's tax bill, real property taxes for the current year are estimated to be \$2,860 and will be paid later in the year by the buyer

Closing Disclosure Practice #1 (CONTINUED)

- Miscellaneous expenses: The expenses listed below should be charged to the seller or buyer according to standard practice when using the NCAR/NCBA standard contract form:
 - o Settlement or closing fee: \$480
 - o Lender's title insurance: \$468
 - o Owner's title insurance: \$78
 - o Deed preparation: \$125
 - o Government recording and transfer charges:
 - Deed: \$20
 - Buyer's mortgage (deed of trust): \$47
 - Excise tax based on statutory rate
 - o Additional settlement charges
 - Survey: \$450
 - Wood-destroying insect report: \$230
 - Homeowner's warranty provided by the seller: \$480
 - Courier fee to pay off seller's mortgage: \$20

Closing Cost Details

Closing Disclosure Core (Page 1 of 2)

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 Loan Origination Fee					
03					
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For					
01 Appraisal Fee					
02 Credit Report Fee					
03					
04					
05					
06					
07					
08					
09					
10					
C. Services Borrower Did Shop For					
01 Attorney's Closing Fee					
02 Deed Preparation					
03 Title Ins Premium (Lender's and/or Owner's policy)					
04 Pest Inspection Report					
05 Survey					
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 Excise Tax					
F. Prepays					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest (y from o)					
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 Brokerage Commission					
02 Home Inspection					
03 Home Warranty					
04 Courier Fee for Seller's Loan Payoff					
05 Courier Fee for docs to Buyer's Lender					
06					
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					
J. TOTAL CLOSING COSTS (Borrower-Paid)/Seller-Paid					
Closing Costs Subtotals (D + I)					
Lender Credits					

CLOSING DISCLOSURE
NCREC, October 2015

LOAN ID #

Closing Disclosure Core (Page 2 of 2)

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			

O M I T

FOR TESTING PURPOSES

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 Due Diligence Fee

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 Due Diligence Fee
- 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

Questions for Closing Disclosure Practice #1

1. On page 1 of 2 of the Closing Disclosure on line J, what are the total borrower paid closing costs rounded to the nearest whole dollar?
 - (A) \$12,118
 - (B) \$6,981
 - (C) \$11,400
 - (D) \$7,300

2. On page 1 of 2 of the Closing Disclosure on line J, what are the total seller paid closing costs rounded to the nearest whole dollar?
 - (A) \$26,311
 - (B) \$21,174
 - (C) \$20,603
 - (D) \$18,300

3. At the bottom of page 2 of the Closing Disclosure what is the cash to close from borrower rounded to the nearest whole dollar?
 - (A) \$35,512
 - (B) \$25,238
 - (C) \$23,450
 - (D) \$21,860

4. At the bottom of page 2 of the Closing Disclosure what is the cash to seller at closing rounded to the nearest whole dollar?
 - (A) \$24,600
 - (B) \$22,500
 - (C) \$50,580
 - (D) \$15,680

Closing Cost Details

Closing Disclosure Core (Page 1 of 2) Practice 1

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)	5,137.20				
02	Loan Origination Fee	2,568.60				
03						
04						
05						
06						
07						
08						
B. Services Borrower Did Not Shop For						
01	Appraisal Fee		450.00			
02	Credit Report Fee		35.00			
03						
04						
05						
06						
07						
08						
09						
10						
C. Services Borrower Did Shop For						
01	Attorney's Closing Fee	480.00				
02	Deed Preparation			125.00		
03	Title Ins Premium (Lender's and/or Owner's policy)	546.00				
04	Pest Inspection Report	230.00				
05	Survey	450.00				
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:	67.00	571.00	
02	Excise Tax					
F. Prepays						
01	Homeowner's Insurance Premium (mo.)		650.00			
02	Mortgage Insurance Premium (mo.)		840.00			
03	Prepaid Interest (per day from to)		434.55			
04	Property Taxes (mo.)					
05						
G. Initial Escrow Payment at Closing						
01	Homeowner's Insurance	per month for	mo.	108.33		
02	Mortgage Insurance	per month for	mo.	130.00		
03	Property Taxes	per month for	mo.	476.66		
04						
05						
06						
07						
08	Aggregate Adjustment					
H. Other						
01	Brokerage Commission			19,978.00		
02	Home Inspection					
03	Home Warranty			480.00		
04	Courier Fee for Seller's Loan Payoff			20.00		
05	Courier Fee for docs to Buyer's Lender					
06						
07						
08						
I. TOTAL OTHER COSTS (Borrower-Paid)						
Other Costs Subtotals (E + F + G + H)						
J. TOTAL CLOSING COSTS (Borrower-Paid)/Seller-Paid						
Closing Costs Subtotals (D + I)		12,118.34		21,174.00		
Lender Credits						

CLOSING DISCLOSURE
NCREC, October 2015

LOAN ID #

Closing Disclosure Core (Page 2 of 2)

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

Calculating Cash to Close

	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			

O M I T
FOR TESTING PURPOSES

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	285,400.00
02 Sale Price of Any Personal Property Included in Sale	
03 Closing Costs Paid at Closing (J)	12,118.34
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	3,800.00
02 Loan Amount	256,860.00
03 Existing Loan(s) Assumed or Taken Subject to	
04	
05 Seller Credit	
Other Credits	
06 Due Diligence Fee	500.00
07	
Adjustments	
08	
09	
10	
11	
Adjustments for Items Unpaid by Seller	
12 City/Town Taxes to	
13 County Taxes to	846.24
14 Assessments to	
15	
16	
17	
CALCULATION	
Total Due from Borrower at Closing (K)	297,518.34
Total Paid Already by or on Behalf of Borrower at Closing (L)	262,006.24
Cash to Close <input type="checkbox"/> From <input type="checkbox"/> To Borrower	35,512.10

SELLER'S TRANSACTION

M. Due to Seller at Closing	
01 Sale Price of Property	285,400.00
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)	21,174.00
03 Existing Loan(s) Assumed or Taken Subject to	
04 Payoff of First Mortgage Loan	212,300.00
05 Payoff of Second Mortgage Loan	
06	
07 Due Diligence Fee	500.00
08 Seller Credit	
09	
10	
11	
12	
13	
Adjustments for Items Unpaid by Seller	
14 City/Town Taxes to	
15 County Taxes to	846.24
16 Assessments to	
17	
18	
19	
CALCULATION	
Total Due to Seller at Closing (M)	285,400.00
Total Due from Seller at Closing (N)	234,820.24
Cash <input type="checkbox"/> From <input type="checkbox"/> To Seller	50,579.76



Closing Disclosure Practice #2

Based on the fact situation presented below, complete pages 1 and 2 of the Closing Disclosure Statement form provided to you for this exercise and answer questions 1 through 4. Your two pages of the Closing Disclosure Statement form will not be scored but must be completed. Indicate your answers to the questions rounding to the nearest whole dollar. For prorated

entries, use the 365-day year method, and for prorated entries involving the seller, consider the seller responsible for the day of closing.

Facts: Seller's home was listed and sold by a real estate company. The standard NCAR/NCBA Offer to Purchase and Contract form was used. Pertinent facts about the transaction include the following:

- Settlement date: March 13
- Contract sales price: \$164,250
- Earnest money: \$4,200
- Due diligence fee: \$1,000
- Financing: Conventional 30-year loan of \$150,500 at a fixed rate of 5.25%, with a 1% loan origination fee. Buyer has agreed to pay 1 discount point.
- Items paid outside of closing by buyer:
 - o Appraisal fee: \$375
 - o Credit report: \$40
- Interim interest on buyer's new mortgage loan through March 31
- Private mortgage insurance: \$760 for first year's premium due at closing
- Buyer's homeowner's insurance premium: \$580 due at closing
- Reserves deposited with lender:
 - o 2 months' homeowner's insurance premiums based on cost of first year's premium
 - o 2 months' private mortgage insurance premiums based on a monthly renewal cost of \$45
 - o 2 months of real property taxes based on estimated taxes for the current year
- Seller's brokerage commission: 6.5% of sales price
- Seller's mortgage loan payoff: \$128,500
- Real property taxes: Based on the previous year's tax bill, real property taxes for the current year are estimated to be \$2,250 and have already been paid in full by the seller.

Closing Disclosure Practice #2 (CONTINUED)

- Miscellaneous expenses: The expenses listed below should be charged to the seller or buyer according to standard practice when using the NCAR/NCBA standard contract form:
 - o Settlement or closing fee: \$520
 - o Lender's title insurance: \$425
 - o Owner's title insurance: \$65
 - o Deed preparation: \$75
 - o Government recording and transfer charges:
 - Deed: \$30
 - Buyer's mortgage (deed of trust): \$35
 - Excise tax based on statutory rate
 - o Additional settlement charges
 - Survey: \$400
 - Wood-destroying insect report: \$215
 - Homeowner's warranty provided by the seller: \$450
 - Courier fee to pay off seller's mortgage: \$20

Closing Cost Details

Closing Disclosure Core (Page 1 of 2)

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 Loan Origination Fee					
03					
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For					
01 Appraisal Fee					
02 Credit Report Fee					
03					
04					
05					
06					
07					
08					
09					
10					
C. Services Borrower Did Shop For					
01 Attorney's Closing Fee					
02 Deed Preparation					
03 Title Ins Premium (Lender's and/or Owner's policy)					
04 Pest Inspection Report					
05 Survey					
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 Excise Tax					
F. Prepays					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest (y from o)					
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 Brokerage Commission					
02 Home Inspection					
03 Home Warranty					
04 Courier Fee for Seller's Loan Payoff					
05 Courier Fee for docs to Buyer's Lender					
06					
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					
J. TOTAL CLOSING COSTS (Borrower-Paid)/Seller-Paid					
Closing Costs Subtotals (D + I)					
Lender Credits					

CLOSING DISCLOSURE
NCREC, October 2015

LOAN ID #

Closing Disclosure Core (Page 2 of 2)

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			

O M I T

FOR TESTING PURPOSES

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 Due Diligence Fee
- 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 Due Diligence Fee
- 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

Questions for Closing Disclosure Practice #2

1. On page 1 of 2 of the Closing Disclosure on line J, what are the total borrower paid closing costs rounded to the nearest whole dollar?
 - (A) \$5,800
 - (B) \$6,284
 - (C) \$7,013
 - (D) \$8,240

2. On page 1 of 2 of the Closing Disclosure on line J, what are the total seller paid closing costs rounded to the nearest whole dollar?
 - (A) \$10,900
 - (B) \$11,550
 - (C) \$11,800
 - (D) \$12,325

3. At the bottom of page 2 of the Closing Disclosure what is the cash to close from borrower rounded to the nearest whole dollar?
 - (A) \$15,594
 - (B) \$16,480
 - (C) \$17,369
 - (D) \$17,900

4. At the bottom of page 2 of the Closing Disclosure what is the cash to seller at closing rounded to the nearest whole dollar?
 - (A) \$19,560
 - (B) \$20,435
 - (C) \$22,680
 - (D) \$25,006

Closing Cost Details

Closing Disclosure Core (Page 1 of 2) Practice 2

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)	1,505.00				
02	Loan Origination Fee	1,505.00				
03						
04						
05						
06						
07						
08						
B. Services Borrower Did Not Shop For						
01	Appraisal Fee		375.00			
02	Credit Report Fee		40.00			
03						
04						
05						
06						
07						
08						
09						
10						
C. Services Borrower Did Shop For						
01	Attorney's Closing Fee	520.00				
02	Deed Preparation			75.00		
03	Title Ins Premium (Lender's and/or Owner's policy)	490.00				
04	Pest Inspection Report	215.00				
05	Survey	400.00				
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:	65.00	329.00	
02	Excise Tax					
F. Prepays						
01	Homeowner's Insurance Premium (mo.)			580.00		
02	Mortgage Insurance Premium (mo.)			760.00		
03	Prepaid Interest (per day from to)			411.30		
04	Property Taxes (mo.)					
05						
G. Initial Escrow Payment at Closing						
01	Homeowner's Insurance	per month for	mo.	96.66		
02	Mortgage Insurance	per month for	mo.	90.00		
03	Property Taxes	per month for	mo.	375.00		
04						
05						
06						
07						
08	Aggregate Adjustment					
H. Other						
01	Brokerage Commission				10,676.25	
02	Home Inspection					
03	Home Warranty				450.00	
04	Courier Fee for Seller's Loan Payoff				20.00	
05	Courier Fee for docs to Buyer's Lender					
06						
07						
08						
I. TOTAL OTHER COSTS (Borrower-Paid)						
Other Costs Subtotals (E + F + G + H)						
J. TOTAL CLOSING COSTS (Borrower-Paid)/Seller-Paid						
Closing Costs Subtotals (D + I)		7,012.96		11,550.25		
Lender Credits						

CLOSING DISCLOSURE
NCREC, October 2015

LOAN ID #

Closing Disclosure Core (Page 2 of 2)			
Use this table to see what has changed from your Loan Estimate.			
Calculating Cash to Close	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			

O M I T
 FOR TESTING PURPOSES

Summaries of Transactions		Use this table to see a summary of your transaction.	
BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
K. Due from Borrower at Closing		M. Due to Seller at Closing	
01 Sale Price of Property	164,250.00	01 Sale Price of Property	164,250.00
02 Sale Price of Any Personal Property Included in Sale		02 Sale Price of Any Personal Property Included in Sale	
03 Closing Costs Paid at Closing (J)	7,012.96	03	
04		04	
Adjustments		05	
05		06	
06		07	
07		08	
Adjustments for Items Paid by Seller in Advance		Adjustments for Items Paid by Seller in Advance	
08 City/Town Taxes to		09 City/Town Taxes to	
09 County Taxes to	1,806.17	10 County Taxes to	1,806.17
10 Assessments to		11 Assessments to	
11		12	
12		13	
13		14	
14		15	
15		16	
L. Paid Already by or on Behalf of Borrower at Closing		N. Due from Seller at Closing	
01 Deposit	4,200.00	01 Excess Deposit	
02 Loan Amount	150,500.00	02 Closing Costs Paid at Closing (J)	11,550.25
03 Existing Loan(s) Assumed or Taken Subject to		03 Existing Loan(s) Assumed or Taken Subject to	
04		04 Payoff of First Mortgage Loan	128,500.00
05 Seller Credit		05 Payoff of Second Mortgage Loan	
Other Credits		06	
06 Due Diligence Fee	1000.00	07 Due Diligence Fee	1000.00
07		08 Seller Credit	
Adjustments		09	
08		10	
09		11	
10		12	
11		13	
Adjustments for Items Unpaid by Seller		Adjustments for Items Unpaid by Seller	
12 City/Town Taxes to		14 City/Town Taxes to	
13 County Taxes to		15 County Taxes to	
14 Assessments to		16 Assessments to	
15		17	
16		18	
17		19	
CALCULATION		CALCULATION	
Total Due from Borrower at Closing (K)	173,069.13	Total Due to Seller at Closing (M)	166,056.17
Total Paid Already by or on Behalf of Borrower at Closing (L)	155,700.00	Total Due from Seller at Closing (N)	141,050.25
Cash to Close <input type="checkbox"/> From <input type="checkbox"/> To Borrower	17,369.13	Cash <input type="checkbox"/> From <input type="checkbox"/> To Seller	25,005.92

Closing Disclosure Practice #3

Based on the fact situation presented below, complete pages 1 and 2 of the Closing Disclosure Statement form provided to you for this exercise and answer questions 1 through 4. Your two pages of the Closing Disclosure Statement form will not be scored but must be completed. Indicate your answers to the questions rounding to the nearest whole dollar. For prorated entries, use the 365-day year method, and for prorated entries involving the seller, consider the seller responsible for the day of closing.



Facts: Seller's home was listed and sold by a real estate company. The standard NCAR/NCBA Offer to Purchase and Contract form was used. Pertinent facts about the transaction include the following:

- Settlement date: September 9
- Contract sales price: \$232,500
- Earnest money: \$3,500
- Due diligence fee: \$500
- Financing: Conventional 30-year loan of \$210,500 at a fixed rate of 4.25%, with a 1% loan origination fee and 2 discount points to be paid by the buyer
- Items paid outside of closing by buyer:
 - o Appraisal fee: \$400
 - o Credit report: \$40
- Interim interest on buyer's new mortgage loan through September 30
- Private mortgage insurance: \$820 for first year's premium due at closing
- Buyer's homeowner's insurance premium: \$680 due at closing
- Reserves deposited with lender:
 - o 2 months' homeowner's insurance premiums based on cost of first year's premium
 - o 2 months' private mortgage insurance premiums based on a monthly renewal cost of \$45
 - o 2 months of real property taxes based on estimated taxes for the current year
- Seller's brokerage commission: 6% of sales price
- Seller's mortgage loan payoff: \$178,300

Closing Disclosure Practice #3 (CONTINUED)

- Real property taxes: The tax bill of \$2,460 for the current year is outstanding and will be prorated between the parties at closing. For purposes of this exercise, treat the real property taxes to be paid at closing as additional charges. On page 1 of 2 in Section H (Other) Line 6, write in “Double Debit Taxes” and determine the amount to be paid by the seller at closing and the amount to be paid by the buyer at closing.
- Miscellaneous expenses: The expenses listed below should be charged to the seller or buyer according to standard practice when using the NCAR/NCBA standard contract form:
 - o Settlement or closing fee: \$680
 - o Lender’s title insurance: \$525
 - o Owner’s title insurance: \$65
 - o Deed preparation: \$120
 - o Government recording and transfer charges:
 - Deed: \$20
 - Buyer’s mortgage (deed of trust): \$30
 - Excise tax based on statutory rate
 - o Additional settlement charges
 - Survey: \$475
 - Wood-destroying insect report: \$185
 - Homeowner’s warranty provided by the seller: \$650
 - Courier fee to pay off seller’s mortgage: \$25

Closing Cost Details

Closing Disclosure Core (Page 1 of 2)

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 Loan Origination Fee					
03					
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For					
01 Appraisal Fee					
02 Credit Report Fee					
03					
04					
05					
06					
07					
08					
09					
10					
C. Services Borrower Did Shop For					
01 Attorney's Closing Fee					
02 Deed Preparation					
03 Title Ins Premium (Lender's and/or Owner's policy)					
04 Pest Inspection Report					
05 Survey					
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 Excise Tax					
F. Prepays					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest (y from o)					
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 Brokerage Commission					
02 Home Inspection					
03 Home Warranty					
04 Courier Fee for Seller's Loan Payoff					
05 Courier Fee for docs to Buyer's Lender					
06					
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					
J. TOTAL CLOSING COSTS (Borrower-Paid)/Seller-Paid					
Closing Costs Subtotals (D + I)					
Lender Credits					

CLOSING DISCLOSURE
NCREC, October 2015

LOAN ID #

Closing Disclosure Core (Page 2 of 2)

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			

O M I T

FOR TESTING PURPOSES

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 Due Diligence Fee

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 Due Diligence Fee

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

Questions for Closing Disclosure Practice #3

1. On page 1 of 2 of the Closing Disclosure on line J, what are the total borrower paid closing costs rounded to the nearest whole dollar?
 - (A) \$10,499
 - (B) \$11,709
 - (C) \$12,183
 - (D) \$15,600

2. On page 1 of 2 of the Closing Disclosure on line J, what are the total seller paid closing costs rounded to the nearest whole dollar?
 - (A) \$16,908
 - (B) \$14,620
 - (C) \$14,930
 - (D) \$15,200

3. At the bottom of page 2 of the Closing Disclosure what is the cash to close from borrower rounded to the nearest whole dollar?
 - (A) \$26,300
 - (B) \$29,709
 - (C) \$31,800
 - (D) \$32,700

4. At the bottom of page 2 of the Closing Disclosure what is the cash to seller at closing rounded to the nearest whole dollar?
 - (A) \$36,792
 - (B) \$38,421
 - (C) \$38,892
 - (D) \$39,430

Closing Cost Details

Closing Disclosure Core (Page 1 of 2)

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)	2105.00				
02	Loan Origination Fee	4210.00				
03						
04						
05						
06						
07						
08						
B. Services Borrower Did Not Shop For						
01	Appraisal Fee		400.00			
02	Credit Report Fee		40.00			
03						
04						
05						
06						
07						
08						
09						
10						
C. Services Borrower Did Shop For						
01	Attorney's Closing Fee	680.00				
02	Deed Preparation			120.00		
03	Title Ins Premium (Lender's and/or Owner's policy)	590.00				
04	Pest Inspection Report	185.00				
05	Survey	475.00				
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:	50.00		
02	Excise Tax				465.00	
F. Prepays						
01	Homeowner's Insurance Premium (mo.)	680.00				
02	Mortgage Insurance Premium (mo.)	820.00				
03	Prepaid Interest (per day from to)	539.22				
04	Property Taxes (mo.)					
05						
G. Initial Escrow Payment at Closing						
01	Homeowner's Insurance	per month for	mo.	113.33		
02	Mortgage Insurance	per month for	mo.	90.00		
03	Property Taxes	per month for	mo.	410.00		
04						
05						
06						
07						
08	Aggregate Adjustment					
H. Other						
01	Brokerage Commission			13,950.00		
02	Home Inspection					
03	Home Warranty			650.00		
04	Courier Fee for Seller's Loan Payoff			25.00		
05	Courier Fee for docs to Buyer's Lender					
06						
07						
08	DOUBLE DEBIT TAXES	761.60		1698.40		
I. TOTAL OTHER COSTS (Borrower-Paid)						
Other Costs Subtotals (E + F + G + H)						
J. TOTAL CLOSING COSTS (Borrower-Paid)/Seller-Paid						
Closing Costs Subtotals (D + I)		11,709.15		16,908.40		
Lender Credits						

Closing Disclosure Core (Page 2 of 2)

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			

O M I T
FOR TESTING PURPOSES

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	232,500.00	+
02 Sale Price of Any Personal Property Included in Sale		
03 Closing Costs Paid at Closing (J)	11,709.15	
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	3500.00	
02 Loan Amount	210,500.00	
03 Existing Loan(s) Assumed or Taken Subject to		
04		
05 Seller Credit		

Other Credits

06 Due Diligence Fee	500.00	
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)	244,209.15	
Total Paid Already by or on Behalf of Borrower at Closing (L)	214,500.00	
Cash to Close <input type="checkbox"/> From <input type="checkbox"/> To Borrower	29,709.15	±

SELLER'S TRANSACTION**M. Due to Seller at Closing**

01 Sale Price of Property	232,500.00	+
02 Sale Price of Any Personal Property Included in Sale		
03		
04		

Adjustments

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)	16,908.40	
03 Existing Loan(s) Assumed or Taken Subject to		
04 Payoff of First Mortgage Loan	178,300.00	
05 Payoff of Second Mortgage Loan		

Other Credits

07 Due Diligence Fee	500.00	
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		

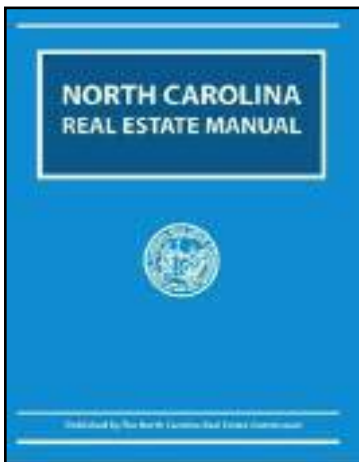
CALCULATION

Total Due to Seller at Closing (M)	232,500.00	±
Total Due from Seller at Closing (N)	195,708.40	
Cash <input type="checkbox"/> From <input type="checkbox"/> To Seller	36,791.60	



Section 6: Advanced Contract Issues & Addenda

Critical Reading Information



- Chapter 10 – Contract Law
- Chapter 11 – Sales Contract & Practices



- Rule 58A.0016 – Trust Accounts
- Rule 58A.0017 – Trust Accounts
- Rule 58A.0106 – Submission of Offers
- Rule 58A.0115 – Multiple Offers

A Matter of Signatures

All purchase contracts should be signed by 1. _____.

When identifying people in the contract, use their 2. _____.

The signature line should indicate whether or not people are “married” or “husband and wife.”

The one to buy, two to sell rule in North Carolina means the following:

3. _____

Spouses buying properties in their own name in North Carolina usually are required to:

4. _____ and
5. _____.

Electronic signatures are permitted and authorized by both a federal law dealing with interstate commerce and a state law dealing with intrastate commerce. These two laws are:

6. _____

Electronic systems such as DocuSign or Dotloop contain a mandated disclosure for the consumers that informs them of the extent of use and purpose of their electronic signature.





The Modification or Amendment of Contracts

As an attorney state, North Carolina prohibits licensees from 7. _____ a contract for 8. _____.

This does not prohibit any of the following:

9. _____
10. _____
11. _____
12. _____

When a contract is changed it is called an 13. _____.

Changing or editing existing terms of a contract is considered an

13. _____.

Adding additional terms or conditions to a contract is properly done with an

14. _____.

There are a total of 13 NCAR/NCBA jointly approved standard addenda for use with residential contracts.

Most of the forms have accompanying Guidelines. All of the following should be adhered to:

15. _____
16. _____
17. _____
18. _____
19. _____
20. _____

Working With Addenda

In groups or pairs, work through the following addenda and answer the respective questions for each of them.

Backup Contract Addendum

1. What is the purpose and use of this form?

2. How does the primary contract get terminated?

3. How does the buyer with the backup contract know that they are now in primary position?

4. Does the buyer on the backup contract get to see the primary contract?

5. How is the backup buyer to handle due diligence fees and earnest money deposits?

6. How and when may the buyer terminate their backup contract?



**The New Construction
Addendum
Form 2A3-T**



Working With Addenda (CONTINUED)

New Construction Addendum

1. When should a broker use this Addendum as opposed to form 800-T – The New Construction Offer to Purchase and Contract?

2. When must the seller provide a Certificate of Occupancy?

3. Can improvements or additions to the property be made using this Addendum?

4. Who pays for the construction of additional improvements?

5. What happens if construction is delayed?

6. Does the buyer have the right to inspect the improvements?

7. Under what circumstances does the buyer have the right to cancel the Contract?

8. What is a building deposit and how is it handled?

Working With Addenda (CONTINUED)

FHA/VA Financing Addendum



1. What is the purpose and use of this form?

2. What is an amendatory clause and what is its effect?

3. If additional inspections and certifications are performed, whose responsibility are those?

4. What funds constitute “any penalty by forfeiture”?

5. Why are agents required to sign this form when the Offer to Purchase and Contract is between the seller and the buyer?



Working With Addenda (CONTINUED)

Buyer Possession Before Closing Agreement

1. What is the purpose and use of this form?

2. Who are the two professionals that a buyer and seller may want to consult with before using this form?

3. What is the earliest time under which a buyer can take possession using this form?

4. Does the buyer using this form agree to pay additional money to the seller?

5. What additional obligations does a buyer assume when they utilize this form?

6. What obligations does the seller retain regarding the property even though it is occupied by the buyer?

7. What happens if the buyer can't or doesn't close?

Working With Addenda (CONTINUED)

Seller Possession After Closing Agreement



1. What is the purpose and use of this form?

2. Why is there a big warning to sellers about talking with an insurance professional?

3. How long after closing can a seller occupy the home using this Addendum?

4. How can the seller be required to maintain condition when they are no longer occupying the property?

5. Who bears the risk of loss if the property is destroyed or damaged after closing?

6. What must the buyer do to obtain occupancy if the seller remains beyond the time in the Addendum?



Working With Addenda (CONTINUED)

Lead Based Paint & Hazard Addendum

1. What is the purpose and use of this form?
- _____
- _____
- _____
- _____
- _____
2. Where would the seller check for any records or reports to comply with paragraph (b) of the Seller’s Disclosure?
- _____
- _____
- _____
- _____
- _____
3. Who is responsible for making certain that the buyer gets the pamphlet *Protect Your Family From Lead in Your Home*?
- _____
- _____
- _____
- _____
- _____

Working With Addenda (CONTINUED)

Additional Provisions Addendum



1. In which situations should a broker use this Addendum?

2. Why should a broker not use this form for a vacation rental property?

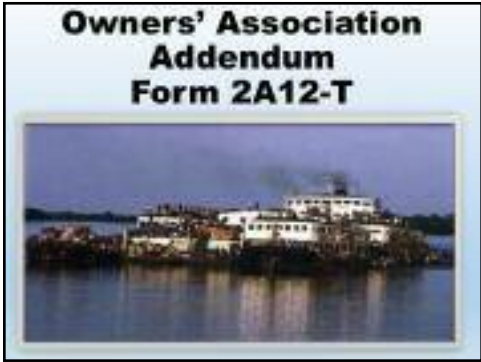
3. What makes something a vacation rental?

4. What is the best way to complete the agreed-upon repairs and/or improvement sections?

5. Does a seller have to use a licensed contractor for repairs and/or improvements?

6. What does “workmanlike manner” mean?

7. What other document should be obtained if the transaction involves a manufactured home?



Working With Addenda (CONTINUED)

Owners' Association Addendum

- 1. What is the use and purpose of this form?

- 2. Who completes this form?

- 3. What if the Owner’s Association charges fees and costs for the completion of this Disclosure or the providing of any of the information? Who pays for that?

- 4. How is this form different from the information that is provided in the RPOADS disclosure?

- 5. Who pays all of the fees referenced in paragraph 5?

Working With Addenda (CONTINUED)

Agreement to Amend the Contract

1. Why was this form created? Can the parties just initial and change the original document?

2. What specific items does this form allow to be altered in the original contract?





Working With Addenda (CONTINUED)

Due Diligence Request & Agreement

1. What is the purpose of this form?

2. When should this form be completed?

3. How specific should the requests be in paragraph 1? Pick specific examples and write with the proper language.

4. Who can make the repairs? Can the seller make them?

5. When does the seller have to complete the repairs?

6. What are the consequences of the buyer releasing the inspection reports?



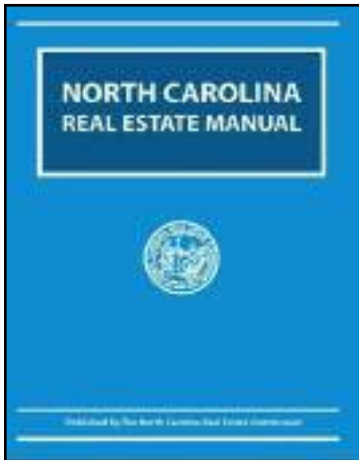
Section 6: Advanced Contract Issues & Addenda Notebook Guide

1. All owners of the property
2. Individual legal names
3. Both spousal signatures to sell, one spouse may buy on their own
4. Acknowledge deed of trust
5. Sign a free trader agreement
6. E-Sign Act
UETA – Uniform Electronic Transaction Act
7. Drafting contracts
8. Others
9. A person altering an agreement to which they are a party
10. Licensees own employment agreement with the firm
11. A listing agreement on behalf of the firm
12. A buyer broker agreement on behalf of the firm
13. Amendment
14. Addendum
15. Type or print legibly
16. Fill in all blanks
17. Be precise – avoid abbreviations and acronyms
18. Parties should initial and date every change, addition, or deletion
19. Rewrite offer if numerous changes
20. Review all contract provisions with parties and recommend legal advice

[illegible]



Section 7: Dealing with the Funds in



Integrating the Contractual Handling of Money with Commission Rules

There is no law requiring a residential brokerage to maintain a trust account.

A trust account is only required when a brokerage is holding money

1. _____.

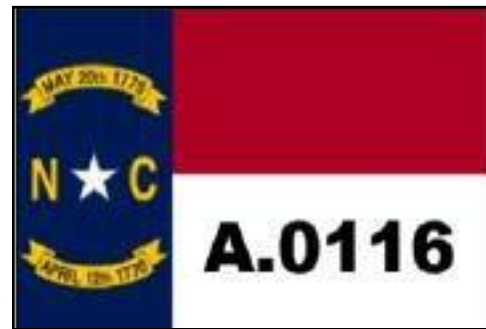
In residential sales the earnest money may be held either in a:

2. _____ or 3. _____.

All monies that are received by a 4. _____ must be
delivered to a 5. _____ 6. _____.

BICs must deposit all client monies to the trust
account within 7. _____.

The counting of the three days can be delayed until
the date of 8. _____.



The only monies which a North Carolina licensee is authorized to accept for delivery are:

9. _____
10. _____

Licensees are not permitted to courier or deliver funds relating to any of the following:

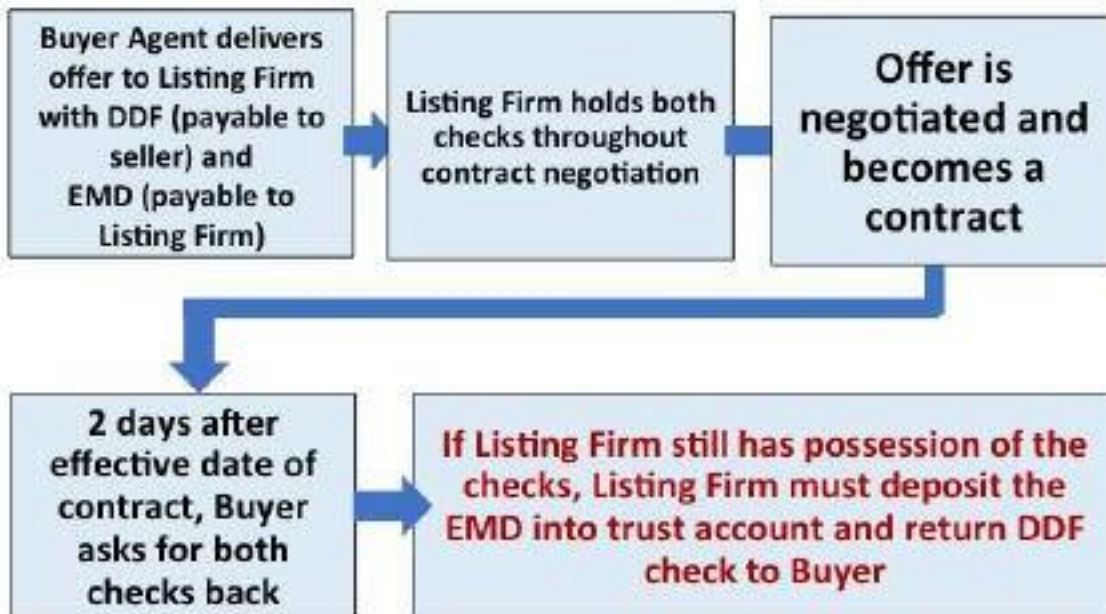
11. _____
12. _____
13. _____
14. _____

When a licensee accepts due diligence fees or earnest money for delivery they must

15. _____ until delivery.

**Integrating the Contractual
Handling of Money with Commission
Rules (CONTINUED)**

Listing Firm DOES Hold Earnest Money



MLS States “Listing Firm does not hold earnest money. ‘Jane Smith, Attorney’ is Escrow Agent.”



Integrating the Contractual Handling of Money with Commission Rules (CONTINUED)

Firms are permitted to earn interest on trust accounts so long as there is a written agreement specifying: 16. _____.

In the event of a dispute regarding the earnest money, there are two options for the brokerage prior to releasing the earnest money to either party:

17. _____

18. _____

Firms are permitted to transfer the earnest money from their brokerage account to the attorney/escrow agent:

19. _____



It is prohibited for any licensee or brokerage to engage in the

20. _____

or 21. _____ of client monies.

There is an exception to the commingling rule for real estate brokerages operating a trust account.

The brokerage is permitted to keep

22. _____ in

the trust account without it being considered commingling of funds.



Trust accounts must be balanced every 23. _____ days.



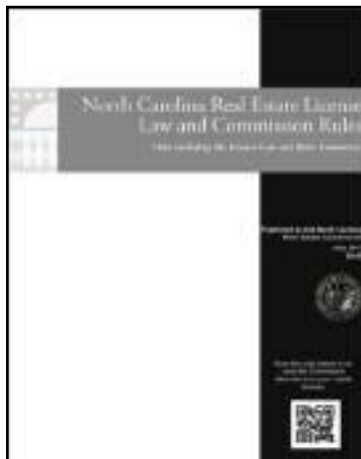
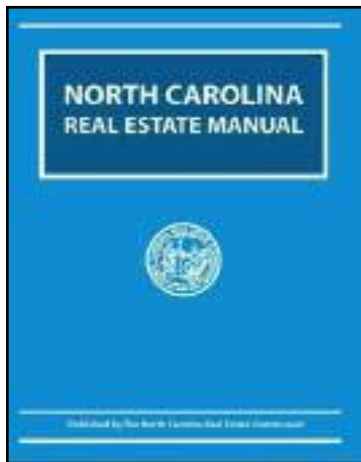
Section 7: Dealing with the Funds in Contracts Notebook Guide

1. Money belonging to another
2. Firm's trust account
3. Escrow agent/attorney
4. Provisional broker
5. BIC
6. Immediately
7. 3 banking days
8. Acceptance of contract
9. Due diligence for delivery
10. Earnest money to an escrow agent/attorney
11. Inspection payments
12. Repair payments
13. Survey payments
14. Settlement distributions other than to them or their firm
15. Direction of the buyer
16. Written instructions with the client
17. Written consent between the parties
18. Deposit with clerk of courts
19. No more than 10 days
20. Conversion
21. Commingling
22. \$100 or whatever the bank requires
23. Every 30 days

[illegible]



Section 8: Dealing with Multiple Offers



Dealing with Offers & Counteroffers

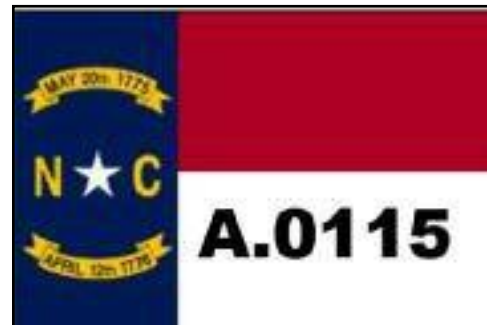
A licensee is required to submit 1. _____ offers right up through and including the 2. _____.

All offers must be presented 3. _____ but never later than 4. _____ days.

When multiple offers are created the offers should be presented to the seller at 5. _____.

When multiple buyers exist, neither the buyers nor the buyers have any right to know of the existence of other offers because the existence of multiple offers is not a 6. _____.

Because all buyers must be treated fairly and equally, a licensee may not disclose the conditions or terms of any buyers offer without first obtaining the 7. _____.



The Proper Use of Addendum 340-T Response to Buyer's Offer

The form acts a 8. _____ of the buyer's offer. It does not create a 9. _____.

The form does invite the buyer to take the following action:

10. _____



Practical Pointers for Handling Multiple Offers & Counteroffers

(See the NC Real Estate Manual, pp 384–385)

1. **Initial and date each change.**
2. **Keep all communication prompt.**
3. **Consider starting over again with a blank form.**
4. **Seek out phone calls and conversations for clarification.**
5. **Make it clear the inquiries and questions are not creating a counteroffer.**
6. **Consider referral to an attorney for complex negotiations and changes.**

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[illegible]



Helm Simulator

The Real World Scenarios

The following scenarios occur often in the real world. There is no one right answer to these scenarios, but your understanding the various forms, rules and contract provisions are essential to protecting and promoting your client's interest when they occur.

Scenario #2
The Reluctant Seller

I've changed my mind.
It seems to work better now.

Scenario #2 – The Reluctant Seller

Discuss the various options and negotiate a resolution of the scenario referencing and utilizing the proper forms.

This image shows a single sheet of white paper with horizontal blue 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.



Scenario #3 – The Exuberant Inspector

Raphael signed a purchase contract and tendered a \$500 due diligence fee and a \$10,000 earnest money check regarding a property he agreed to purchase for \$289,000. His due diligence date is May 20 and has not yet passed.

On May 10, Raphael received a very lengthy and detailed home inspection report that indicated the home was in terrible shape. The inspector noted problems with the roof, the foundation and the electrical system. Raphael has obtained estimates that indicate the cost of the repairs will be approximately \$28,000. The seller does not agree that all of the repairs are necessary.

Discuss the various options and negotiate a resolution of the scenario referencing and utilizing the proper forms.


Now renegotiate the resolution if the facts had been that Raphael’s due diligence date had already passed and he did not receive the final home inspection report nor obtain the estimates until after May 20.

Scenario #4
The Unfortunate Storm



Helm Simulator (CONTINUED)

Scenario #4 – The Unfortunate Storm



Desiree agreed to sell her home to Barbara for \$189,000. Barbara tendered a \$1,000 due diligence fee and \$2,500 in earnest money. Two weeks before the closing date and after the due diligence period had expired, a wind storm caused significant damage to the roof of the home. The damage will cost about \$22,000 to repair and is covered under Desiree's home owner's insurance policy. However, due to a high volume of claims, the repairs are going to take approximately 6 weeks.

Discuss the various options and negotiate a resolution of the scenario referencing and utilizing the proper forms.

[illegible]



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. _____

Section 8: Dealing with Multiple Offers Notebook Guide

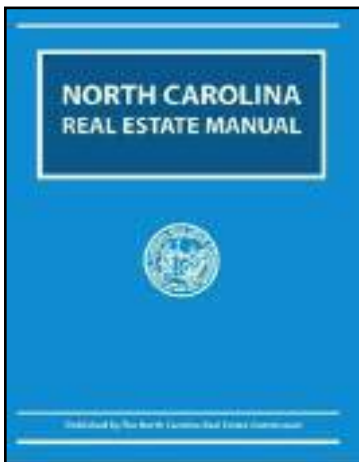
1. All
2. Through and including the day of closing
3. Immediately
4. 3 days
5. Presented at the same time
6. Material fact
7. Offeror's consent
8. Express rejection of the offer
9. Not a counteroffer
10. Rewrite your offer on different terms





Section 9: Other Types of Purchase Contracts

Critical Reading Information



- Chapter 10 – Contract Law
- Chapter 11 – Sales Contract & Practices



Dealing with Land Purchases & Subdivisions

In North Carolina, the Vacant Land Contract should **NOT** be used to transfer parcels where

1. _____ is involved.

Subdivided land requires compliance with NC Subdivision laws and statutes.

A subdivision in North Carolina exists when a parcel of land is divided into 2. _____ lots.

There are two exceptions:

- No lot is smaller than 3. _____ acres
- A division of up to a 4. _____ lot into as many as 3 lots by a single owner.

The NC Subdivision requirements mandate approval by the municipality or county where the subdivision is going to be located. The final step in the subdivision approval process is issuance of a **FINAL PLAT APPROVAL**.

Prior to approval of a final plat map, the developer may do/not do the following:

What They Can Do

5. _____

What They Cannot Do

6. _____





The Interstate Land Sales Full Disclosure Act

Applies when the sale of lots occurs

7. _____.

Only applies to developments of

8. _____ lots or more.

Requires that the buyers be provided with a HUD Property report containing:

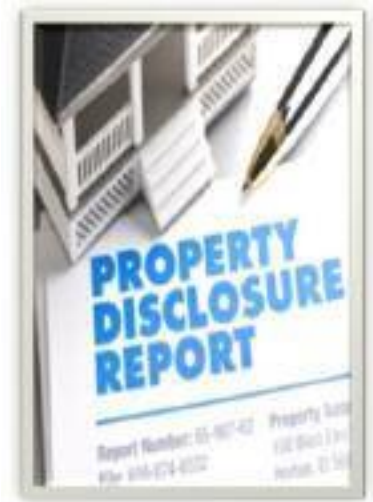
9. _____

10. _____

11. _____

12. _____

13. _____



Buyer must be provided with the report

14. _____

There is a 15. _____ day rescission period on such transactions.

Failure to provide allows the buyer to revoke the contract and a full refund of all monies paid for a 16. _____ period.

Helm Simulator

In groups, identify one unique issue that occurs in regard to due diligence on vacant land.

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.



Reviewing the Offer to Purchase & Contract – Vacant Land

1. What is the purpose and use of this form?

2. Is there any limit on the size of the parcel?

3. Is there still a due diligence period?

4. How are the earnest money and due diligence fees handled?

5. What are 10 items of the buyer's due diligence (paragraph 2b)?

6. What are the items about which the seller makes representations (paragraph 5a)?

7. What are the seller's obligations (paragraph 6a)?

8. Can a licensee still use with this contract the addenda we discussed for the Residential Offer to Purchase and Contract?



Working in new construction requires that you know whether you are working with a licensed agent or not. NCREC Commission Rules allow unlicensed individuals who are W2 employees to be involved in the sale of their employer's own property without licensure.

Contractors are licensed by 17. _____.



Buying a Newly Constructed Home

1. What is the purpose and use of this form?

2. What is the limitation on improvements and additional work?

3. Who pays for all labor, materials and costs under this Addendum?

4. What is a building deposit and how is it handled?

5. What are the buyer's options to cancel the Contract?

6. What warranties does the builder make?





Review of Offer to Purchase & Contract New Construction Form 800T

1. What is the difference between this form and Addendum 2A3-T?

2. How does the building deposit differ from the earnest money and due diligence fee?

3. What is a “Pre-construction Evaluation Period” and how is it used?

4. Why is there a plans and specifications section?

5. What are the buyer’s obligations?

6. What are the additional contingencies for the seller?

7. How are changes in construction handled?

8. What happens if there are construction delays?



The Art of Seller Financing

A seller can assist the buyer when traditional financing is not available by:

18. _____
19. _____
20. _____

All FHA, VA, and Conventional loans are 21. _____
so long as the borrower qualifies in the same manner and method as the original owner.

Approval by the lender is almost always required so as not to trigger the
22. _____ or 23. _____ in most loans.



Classroom Discussion

Captain Training



1. When writing an offer and using this Addendum where does the licensee get all of the information on the first page?

2. Who is making the representations about the loan in this Addendum?

3. Should the buyer and the buyer's agent verify the representations? How?

4. Who pays all of the assumption costs?

5. What unique pro-rations have to occur when using this Addendum?

6. What is unique about the property insurance?

7. How is the seller's ongoing liability for the loan handled?

8. Is the seller relieved of liability under this Addendum?



A Guideline to Understanding Seller Financing

All of the following are synonymous terms where the seller is simply acting as the bank. Transfers full title to the owner and has a lien for all or part of the home's price. The buyer typically executes a Promissory Note and a

Deed of Trust to the seller. The seller retains no ownership of the home.

24. _____
25. _____
26. _____

When subordinate financing is utilized the 27. _____ should always be informed and all financing should appear on the 28. _____.

In the event of a default in North Carolina, state statutes prevent the seller from obtaining 29. _____.



Under What Circumstances Might the Parties Consider Seller Financing?

Review of Seller Financing Addendum Form 2A5-T



1. Does the borrower obligate themselves to execute a Promissory Note and Deed of Trust to the seller?

2. Should the drafted Promissory Note & Deed of Trust accompany the Addendum?
Who must prepare these?

3. Does this Addendum provide for subordinate financing?

4. How are payments collected and handled? By whom?

/2017



Installment Land Contract Vendor's Deeds & Contracts for Deeds

Land Contracts in North Carolina have all of the following characteristics:

30. _____
31. _____
32. _____
33. _____



NC State law requires all of the following in a Land Contract or Deed of Trust:

34. _____
35. _____
36. _____

Dealing with Options

Options in North Carolina must be in

37. _____

Options are 38. _____

because only one party is bound.



Helm Simulator





Section 9: Other Types of Purchase Contracts Notebook Guide

1. Subdividing
2. Two or more
3. 10 acres
4. 2 acre parcel into 3 lots by a single owner
5. Write contracts
 - Take reservations
 - Sign contracts
 - Hold deposits
6. Cannot transfer, convey, or close until after final plat approval
7. Across state lines
8. 25 lots or more
9. Distance to paved roads
10. Number of homes occupied
11. Soil conditions and septic
12. Type of title
13. Existence of liens
14. Prior to signing lease or purchase contract
15. 7 day
16. 2 years
17. NC Licensing Board for General Contractors
18. Assumptions
19. Seller financing & carrybacks
20. Contracts for deed
21. Assumable
22. Alienation Clause
23. Due on Sale Clause

Section 9: Other Types of Purchase Contracts Notebook Guide (CONTINUED)

24. Seller financing
25. Seller carryback
26. Subordinated seller mortgage
27. Lender
28. Closing disclosures
29. Deficiency judgment
30. Buyer provides downpayment
31. Seller retains title
32. Buyer makes payments
33. Sellers transfers title upon full payment
34. 3-day cancellation
35. Seller must record within 5 days of execution
36. Buyer must be given 30 days to cure any default
37. Writing
38. Unilateral contract



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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