

## GUIDELINES FOR COMPLETING THE EXCLUSIVE BUYER AGENCY AGREEMENT (Standard Form 201)

The Exclusive Buyer Agency Agreement (Form 201) (the “Agreement”) states the rights and obligations of an agent and a buyer-client when the agent is the client’s exclusive agent. If an agent is providing non-exclusive agency, then the Non-Exclusive Buyer Agency Agreement (Form 203) should be used. If an agent is providing only showing or touring services, then the Property Showing Agreement (Form 202), should be used. In this guide, paragraph numbering is identical to the Agreement for ease of reference.

**Identification of Parties:** Fill in the complete legal name of each buyer. Do not use shorthand names, abbreviations, or combine spouse’s names. Fill in the complete name of the agent’s firm, not the agent’s name, since the agreement is between Buyer (all the buyers) and Firm. If Buyer is a corporation, limited liability company, trust, or other legal entity, the entity should be named as Buyer and a duly authorized officer, manager, trustee, or other legal representative of the entity should sign this Agreement on the entity’s behalf.

1. **Services Provided.** Insert the type and location of property being sought by Buyer. Make sure the geographic area accurately reflects the area that Buyer is exploring with your firm, and agents should carefully list which types of properties Buyer is seeking to purchase. Properties not described or within the geographic area specified will not be subject to exclusive agency by the firm. The description should not be either overly general (for example, “North Carolina”) or too specific (for example, “Merry Acres Subdivision”), unless either one is truly an accurate statement of the scope of representation. In most cases, the name(s) of a county or counties within which Buyer will be looking should be inserted along with the property type.
2. **Buyer Disclosures.** Discuss Buyer’s disclosures and mark the appropriate boxes. Make sure to provide Buyer with sample copies of the appropriate purchase contract (Form 2-T or Form 12-T for vacant land) and the Professional Services Disclosure and Election Form (Form 760).
3. **Term of Agreement.** Insert the date the agency agreement will expire in the blank. A specific date is required under the License Law. If Buyer is buying multiple properties, then the firm will need to attach a custom addendum or insert the term of agency for multiple properties in the “Additional Terms” section.

The Real Estate Commission requires that any written agreement for brokerage services “shall provide for its existence for a definite period of time.” Although there is no rule which limits the period of time that the agreement can be in effect, the period of time should be reasonable, taking into account the period of time within which the objective of the agreement—acquisition by Buyer of the type of real property described in the agreement—can probably be accomplished. The Real Estate Commission rules also provide that an agreement for brokerage services cannot contain a provision that would require notice prior to termination. Although the form does not contain any such provision, agents are cautioned against inserting any “prior notice” or “automatic renewal” provision in the form.

If Buyer is under contract when this agency agreement is set to expire, every effort should be made to extend the agency agreement to complete the transaction. If Buyer refuses to extend, the firm still has a right to be paid so long as section 4 is satisfied. However, in order for an agent to have a clear right to assist Buyer all the way to the end of the transaction, a written agency agreement should be in effect.

4. **Fee for Services.** Check the appropriate boxes regarding how Firm will be paid. This section indicates when the fee will be earned and then due and payable. Both MLS rules and the License Law require that compensation be specific and not dependent on what a seller or listing firm may be offering as cooperative compensation. Do NOT insert N/A, \$0, or a range of compensation. Insert a specific dollar amount, specific percentage of purchase price, or other method of determining Firm’s compensation for each type of property Buyer may purchase, such as resale, new construction, land/lot, and/or unrepresented seller.

A non-refundable retainer collected pursuant to this agreement is not trust money, because Firm is not receiving those funds as an agent for another, but rather on its own behalf. Therefore, do NOT place a non-refundable retainer in a brokerage trust account, as to do so would constitute commingling.

If Firm expects to receive a fee for assisting Buyer in obtaining a home warranty, the Real Estate Commission’s compensation disclosure rule and MLS rules require the agent to disclose the expected fee to Buyer, which can be done in the “Other Specific Amount” line or with a custom addendum. A specific amount should also be included for a seller or builder paid bonus, if offered.



An agent is not relieved from assisting a Buyer client in acquiring property merely because there is no offer of compensation made to the agent by the listing agent or seller; consequently, if an agent does not insert specific compensation in the blank, he or she may become obligated to assist Buyer in acquiring property without the benefit of being compensated for their work. If an agent desires to relieve Buyer from any obligation to pay Firm a fee if there is no offer of compensation from the listing firm or seller, consideration should be given to using the Non-Exclusive Buyer Agency Agreement (Form 203) instead.

The Protection Period in this section operates the same as previous versions. Agents should remember that if Buyer signs another agency agreement with another firm during the Protection Period, then the Protection Period no longer applies and will no longer be enforceable.

5. **Negotiable Fee; Additional Compensation.** This language is required by MLS rule.
6. **Dual Agency.** This dual agency section is significantly shorter than the old version, but it contains the same principles and operates similarly to the old form. The beginning paragraph is meant to provide a consumer-accessible primer on dual agency, but agents should have a more in-depth discussion as necessary.

Choose only one of the first two initial lines, and, if dual agency is permitted, then initial only one of the next three initial lines.

The Real Estate Commission expects agents to agree to a specific form of dual agency when an agency agreement is signed. This section should not be treated like a Working With Real Estate Agents Disclosure form. This means for the second section of initial lines, Buyer and Firm must decide whether Firm is going to practice simple dual agency with either one or two agents in Firm, or designated dual agency with two agents. If Buyer and Firm agree to change dual agency later, Form 710 may be used or Buyer can provide written direction.

7. **Surveillance; Photographs; and Video.** Agents should cover the issue of surveillance and privacy in detail with Buyer.
8. **Other Professional Advice.** Standard Form 760 is an excellent tool to use to discuss other services with Buyer.
9. **Inspection Costs.** If possible, give Buyer a projection of costs so that Buyer understands what they may need to pay for once they go under contract.
10. **Confidentiality.** Standard of Practice 1-13 of the Code of Ethics requires REALTORS® who enter into buyer agency agreements to advise potential clients of “the possibility that sellers or sellers’ representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.” Since confidentiality of the material terms of offers is required by the Real Estate Commission rule, a REALTOR® will not be required to advise his/her buyer clients of the possibility that listing agents may “shop” Buyer’s offer. However, since the new Real Estate Commission rule does not prohibit sellers themselves from “shopping” offers, REALTORS® will still be required to advise their clients of that possibility. Additionally, Standard of Practice 1-15 of the Code of Ethics requires REALTORS® to disclose the existence of other offers on a listed property only with the seller’s approval and only in response to inquiries from buyers or cooperating brokers. The last sentence of this paragraph advises Buyer that a seller may not authorize the listing agent to disclose the existence of other offers.
11. **Wire Fraud Warning.** Wire fraud scams continue to be prevalent. However, agents should be aware and take steps to ensure that *the prospective buyer* they are communicating with is real and not a scam. In many buyer scams, the “buyer” tries to entice the agent into going into business with them.
12. **FinCEN Disclosure:** FinCEN, the Financial Crimes Enforcement Network, is a bureau of the Department of the Treasury. Its purpose is to investigate and prosecute financial crimes, such as money laundering and terrorism financing. It collects and analyzes financial transaction data for this purpose, among others. This section of Form 2-T addresses FinCEN’s Residential Real Estate Rule, but it is broad enough to apply to other government reporting requirements from other agencies, if applicable. The Residential Real Estate Rule requires certain professionals involved in real estate closings, including closing attorneys, to submit reports to FinCEN regarding certain transfers of residential real estate to legal entities or trusts. The rule aims to increase transparency in residential real estate and combat money laundering.
13. **Additional Terms.** Firms are encouraged to use custom addenda as necessary to customize this agency agreement. To reduce length and preserve readability, many unnecessary parts of the old form were eliminated, such as: a term of agency for multiple properties;



the warning on buyer letters; specific buyer duties; home warranty fees; and required mediation. Firms may draft their own custom addenda to modify this form to accommodate these and other contract terms so long as such addenda comply with NC law, the Code of Ethics, and MLS rules. Firms should consult with their own legal counsel regarding any such custom addenda.

14. **Merger; Termination; Modification; Assignment; Enforcement; Attorney's Fees; and Governing Law.** This section, among other things, makes clear that termination requires both the agent and Buyer's consent. If Buyer hires another firm or wishes that agent no longer represent Buyer during the term of this Agreement, then Buyer may be in breach, which means Firm may be entitled to damages. If a Buyer breaches the Agreement, agents should first consult with their broker-in-charge, and then consult legal counsel if necessary. Standard Form 710 can be used to amend this agency agreement, and Standard Form 720 can be used to terminate it.
15. **Nondiscrimination.** This language is required by the License Law and the Code of Ethics. Agents may discuss with clients that personal letters to sellers expressing why Buyer wishes to purchase a seller's property is a tactic sometimes used to attempt to make a buyer's offer stand out to the seller. However, such letters often contain personal information and reveal characteristics of a buyer which could be used, knowingly or through unconscious bias, as a basis for the seller's decision to accept or reject an offer that may violate State and Federal Fair Housing laws. In order to avoid potential liability for unlawful discrimination as well as the appearance of impropriety, Buyer should discuss with the firm how any such letters will be handled.

**Signature Lines:** All parties named as "Buyer" must sign as Buyer. A married Buyer's spouse should join in the execution of the Agreement and any subsequent purchase agreement, even if the married Buyer might be taking title to the property in his/her name alone. Failure to do so may result in any earned fee not becoming due and payable due to a spouse's refusal to be part of the loan but not be on the deed.

