



At the recommendation of the NC REALTORS® Forms Committee and NC REALTORS® /NC Bar Association Joint Forms Task Force, the NC REALTORS® Executive Committee has approved revisions to or the creation of the residential forms listed below, effective July 1, 2017. A summary of the significant changes to each form follows the list. A marked-up copy of a form showing the exact changes can be accessed by clicking on the name of the form immediately preceding the summary of that form.

**Jointly-Approved Forms (approved by NC REALTORS® and NC Bar Association)**

- (1) Offer to Purchase and Contract (form 2-T)
- (2) Guidelines for Completing Offer to Purchase and Contract (form 2G)
- (3) Offer to Purchase and Contract—Vacant Lot/Land (form 12-T)
- (4) Guidelines for Completing Offer to Purchase and Contract—Vacant Lot/Land (form 12G)
- (5) Offer to Purchase and Contract—New Construction (form 800-T)
- (6) Guidelines for Completing Offer to Purchase and Contract—New Construction (form 800G)
- (7) Back-Up Contract Addendum (form 2A1-T)
- (8) Agreement to Amend Contract (form 4-T)

**NC REALTORS® Residential Forms (approved by NC REALTORS® only)**

- (9) Exclusive Right to Sell Listing Agreement (form 101)
- (10) Exclusive Right to Sell Listing Agreement (Vacant Lot/Land) (form 103)
- (11) Exclusive Buyer Agency Agreement (form 201)
- (12) Non-Exclusive Buyer Agency Agreement (form 203)
- (13) Response to Buyer's Offer (form 340-T)
- (14) Termination of Agency Agreement and Release (form 720)
- (15) Referral Agreement (form 730)
- (16) Notice To Seller That Buyer Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract—New Construction (Form 800-T) (form 850-T) (NEW)
- (17) Notice To Buyer That Seller Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract—New Construction (Form 800-T) (form 852-T) (NEW)
- (18) Termination Of Contract By Mutual Agreement With Release Of Earnest Money and/or Building Deposit (form 890-T) (NEW)

**Jointly-Approved Forms (approved by NC REALTORS® and NC Bar Association)**

**(1) Offer to Purchase and Contract (form 2-T)**

- Blue and red boxes have been added around all “NOTES” and “WARNINGS” respectively in this and other forms containing NOTES and/or WARNINGS to bring greater attention to them
- Paragraph 1(d)—2 references to “immediately available funds” have been eliminated to avoid possible confusion since funds paid by methods of payment listed (official bank check, wire

transfer or electronic transfer) are not necessarily available immediately. Payments may still be made by any of the methods listed in relevant cases (for example, additional EMD)

- Paragraph 1(h)—A number of changes to the Contract have been made to clarify the rights and responsibilities of the parties with respect to post-Due Diligence Period inspections and examinations of the property. In essence, the changes clarify that the seller is obligated to provide reasonable access to the property through the entire contract period for the buyer to conduct due diligence, but that the buyer's rights to terminate the contract following the end of the Due Diligence Period are very limited. The change to the definition of "Due Diligence" confirms that the buyer's opportunity to investigate the property is not limited to the Due Diligence Period
- Paragraph 1(i)—In keeping with the recommended change described immediately above, the change to the definition of "Due Diligence Fee" clarifies that the primary purpose of the Due Diligence Fee is to give the buyer the right to terminate the contract for any reason or no reason during the Due Diligence Period rather than conducting due diligence only during the Due Diligence Period.
- Paragraph 2—The "Fixtures and Exclusions" paragraph has been reformatted and revised. The long list of "Specified Items" has been put in bullet-point format to make the individual items on the list more visible. In addition, several items have been added to the list and a number of existing items clarified as to their scope. It should be noted that new wording in the introductory clause provides that any "related equipment and remote control devices" is included with all items listed.
- Paragraph 4—The "WARNING" that appears at the end of paragraph 4 in the current version of the contract has been moved to the beginning of the paragraph and a new first sentence added in capital letters. The purpose of the change is to stress the importance to the buyer of conducting due diligence during the Due Diligence Period.
- Paragraph 4(a) and (b)—Consistent with the change described in paragraph 1(h) above, the words "During the Due Diligence Period" have been deleted from these two subparagraphs to clarify that the buyer's rights to pursue obtaining a loan and investigating the property are not limited to the Due Diligence Period. In addition, the wording of the "NOTE" in subparagraph (a) has been modified slightly to give greater emphasis to the fact that there is no loan contingency in the contract
- Paragraph 5(a)
  - Change from Buyer does or does not *have* to obtain a new loan to Buyer does or does not *intend* to obtain a new loan. This change has been made in response to a number of complaints about practice by "cash" buyers who submit offers indicating that they do not have to obtain a new loan to make their offer more attractive but who intend to apply for a loan if the seller accepts their offer. The change does NOT prohibit a "cash" buyer from deciding to finance their purchase after contract formation, but it will prohibit a buyer from representing in good faith that they are going to pay cash when they in fact intend to get a loan.
  - The single "NOTE" at the end of paragraph 5(a) in the current contract has been broken into two separate notes to give greater emphasis to the fact that the buyer's contractual obligations are not contingent on the ability of the buyer to obtain financing.
- Paragraph 6(b)—New subparagraph (b)(vii) has been added to clarify that the buyer is responsible for any charge associated with preparation of the Closing Disclosure, Seller Disclosure and any other settlement statement. This addition has been made in response to a number of reports of closing attorneys charging the seller for the cost of preparing the Seller's

CD. It is felt that since the Seller's CD is prepared in connection with the Buyer's loan, the Buyer, not the Seller, should be responsible for any charges for its preparation.

- Paragraph 8(a)—A new subparagraph (a)(iii) has been added to specifically address the seller's obligation to provide to the closing attorney a "Non-foreign status affidavit" required by the "Foreign Investment in Real Property Tax Act ("FIRPTA"). FIRPTA requires a buyer to withhold 10% of the sales price if the seller is a "foreign person" as defined in FIRPTA.
- Paragraph 8(c)—As described above, changes have been made to the contract to clarify that the seller is obligated to provide reasonable access to the property through the entire contract period for the buyer to conduct due diligence, verify the completion of agreed-upon repairs and do a final walk-through. The new "NOTE" appearing at the end of paragraph 8(c) refers the buyer back to the WARNING at the beginning of paragraph 4 to reiterate the fact that the buyer's right to terminate the contract after the end of the Due Diligence Period is limited.
- Paragraph 8(g)—The wording of the "NOTE" in this subparagraph has been reworded to clarify its meaning.
- Paragraph 8(i)
  - Changes to this subparagraph have been made to clarify that the buyer, in the buyer's discretion, can apply *any* expense "associated with the purchase of the property" to the amount the seller has agreed to pay, provided that the buyer's lender approves. The previous "NOTE" has been eliminated because the examples given all related to "closing costs," which has caused the NOTE to be incorrectly read in some instances to limit buyer expenses to such costs. The Joint Forms Task Force believes the provision should be interpreted broadly to help avoid disputes by sellers regarding a buyer's right to apply an item of expense to the agreed-upon amount, subject to lender approval, since the seller should have no reasonable expectation that they will recover any part of that amount once they've agreed to it.
  - A new "NOTE" has been added to give a "heads-up" to buyers who seek FHA/VA financing and their agents to insert an amount in the blank that will at least cover inspection costs the buyer's lender will not allow the buyer to pay. This has been done in response to several reports of disputes where a zero has been inserted in the blank and the seller has refused to pay expenses that the buyer's lender will not allow the buyer to pay, based on the wording in paragraph 8(i) and the FHA/VA Financing Addendum (form 2A4-T).
- Paragraph 8(k)—In rare situations, a special assessment can be confirmed and although its exact amount is not known at settlement, it is still payable by seller because the amount can be "reasonably estimated." It is thus possible that the exact amount, when finally determined sometime after closing, may be more or less than the estimated amount. A new sentence has been added to this subparagraph to make it clear that payment of the estimated amount is considered final as between the buyer and seller.
- Paragraph 10—As a result of recent changes in State tax laws, providers of home warranty products are now required to collect sales tax on the cost of home warranties. Thus, the second and third choices in paragraph 10 have been amended to provide that the amount inserted in the blank is **inclusive** of the amount of any sales tax.
- "NOTICE INFORMATION" (immediately following signature lines)—In response to a number of reports of agents leaving the addresses and contact information for the parties and their agents completely blank, the "NOTE" has been amended to direct users to insert at least one address and/or electronic delivery address for each party. Paragraph 21 of the contract provides that "[a]ny written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below." If no address

and/or electronic delivery addresses are inserted, it can lead to a dispute about how a party may properly be notified.

(2) **Guidelines for Completing Offer to Purchase and Contract (form 2G)**. The Guidelines have been updated to reflect the changes to form 2-T describe above as well as changes made in 2016.

(3) **Offer to Purchase and Contract—Vacant Lot/Land (form 12-T)**

- Paragraph 1(d)—changes correspond to changes to paragraph 1(d) of form 2-T. See above.
- Paragraph 1(h)—changes correspond to changes to paragraph 1(h) of form 2-T. See above.
- Paragraph 1(i)—changes correspond to changes to paragraph 1(h) of form 2-T. See above.
- Paragraph 2—changes correspond to changes to paragraph 4 of form 2-T. See above.
- Paragraph 2(a) and (b)—changes correspond to changes to paragraph 4(a) and (b) of form 2-T. See above.
- Paragraph 3(a)—changes correspond to changes to paragraph 5(a) of form 2-T. See above.
- Paragraph 4(b)—changes correspond to changes to paragraph 6(b) of form 2-T. See above.
- Paragraph 6(a)—changes correspond to changes to paragraph 8(a) of form 2-T. See above.
- Paragraph 6(c)—changes correspond to changes to paragraph 8(c) of form 2-T. See above.
- Paragraph 6(g)—changes correspond to changes to paragraph 8(g) of form 2-T. See above.
- Paragraph 6(i)—changes correspond to changes to paragraph 8(i) of form 2-T. See above.
- Paragraph 6(k)—changes correspond to changes to paragraph 8(k) of form 2-T. See above.
- “NOTICE INFORMATION” (immediately following signature lines)—changes correspond to changes to “NOTICE INFORMATION” section of form 2-T. See above.

(4) **Guidelines for Completing Offer to Purchase and Contract—Vacant Lot/Land (form 12G)**. The Guidelines have been updated to reflect the changes to form 12-T describe above as well as changes made in 2016.

(5) **Offer to Purchase and Contract—New Construction (form 800-T)**

- Paragraph 1(d)—changes correspond to changes to paragraph 1(d) of form 2-T. See above.
- Paragraph 7(a)—change from Buyer does or does not *have* to sell other property to obtain a new loan or complete purchase to Buyer does or does not *intend* to sell other property to obtain a new loan or complete purchase. The rationale for this change is the same rationale supporting the change to paragraph 5(a) of form 2-T. See above.
- Paragraph 10(a)—changes correspond to changes to paragraph 8(a) of form 2-T. See above.
- Paragraph 10(c)—changes correspond to changes to paragraph 8(c) of form 2-T. See above.
- Paragraph 10(i)—changes correspond to changes to paragraph 8(i) of form 2-T. See above.
- Paragraph 10(k)—changes correspond to changes to paragraph 8(k) of form 2-T. See above.
- Paragraph 12—changes correspond to changes made to paragraph 10 of form 2-T. See above.
- NOTICE INFORMATION Section—changes correspond to changes to “Notice Information” section of form 2-T. See above.

(6) **Guidelines for Completing Offer to Purchase and Contract—New Construction (form 800G)**. The Guidelines have been updated to reflect the changes to form 2-T describe above as well as changes made in 2016.

(7) **Back-Up Contract Addendum (form 2A1-T)**.

- Paragraph 10—The wording “before said date” in the current version of the Addendum is confusing and redundant and has thus been eliminated

**(8) Agreement to Amend Contract (form 4-T)**

- A new menu item reflecting a change in the identity of the Escrow Agent has been added to this form. A “NOTE” appearing under this new item directs users to have the new Escrow Agent sign for the EMD using an ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF EARNEST MONEY DEPOSIT

**NC REALTORS® Residential Forms (approved by NC REALTORS® only)**

**(9) Exclusive Right to Sell Listing Agreement (form 101)**

- Paragraph 3—Change corresponds to change made to paragraph 2 of form 2-T. See above.
- Paragraph 10
  - Subparagraph (a)—In the current version, the agent is required to check a box to indicate whether marketing will commence on the effective date of the listing agreement or on a later date. Based on reports of agents incorrectly failing to check either box or checking both boxes, subparagraph (a) has been revised so that marketing will automatically commence on the effective date of the listing agreement unless the agent checks a box indicating that it will commence at a later date, which will be referred to as the “Delayed Marketing Date” in the new version. The new “NOTE” brings to the attention of the parties important considerations to take into account if marketing of the property is delayed, including limitations on showings during the delayed marketing period and the benefit to the seller of fully exposing the property to the market in most situations.
  - Subparagraph (b)—The “Lock/Key Box” authorization has been moved from its own subparagraph (c) to subparagraph (b)
  - Subparagraph (c)—If a broker engages in “Coming Soon” advertising, this new subparagraph will give the seller the choice to authorize the broker to do so, subject to applicable MLS rules, a copy of which may or may not be attached. Assuming a Delayed Marketing Date is selected in subparagraph (b), the three bullet points in the “NOTE” will be relevant.
  - Subparagraph (d)
    - New wording has been added in (d)(ii) to make it clear that the taking and use of photos or videos by a prospective buyer is not within the reasonable control of the firm.
    - A new “WARNING” has been added advising the seller on the use of video/audio/surveillance devices during any showings, open houses, investigations, examinations or inspections of the Property.
    - The indemnification/hold harmless wording in the current version has been modified in response to occasional concerns by sellers that the wording was too broad. In the new version, the seller agrees to release the firm from any claims arising out of the firm’s marketing of the property, but the seller will not be required to defend the firm from claims by third parties arising out the firm’s marketing efforts.
- Paragraph 15—A new sentence clarifies that the seller does not have any rights to use any marketing materials created by, on behalf of, or at the direction of the firm or an agent of the firm, such as photographs or videos of the property, without the firm’s written consent.

- Paragraph 17(e)—The wording “to the exclusion of any other individual agents associated with the Firm” is being stricken from the designated agency authorization as the wording is not required by law or rule and has caused some confusion as to its meaning.

**(10) Exclusive Right to Sell Listing Agreement (Vacant Lot/Land) (form 103)**

- Paragraph 7—Change corresponds to change made to paragraph 10(a) through (d) of form 101. See above.
- Paragraph 11—Change corresponds to change made to paragraph 15 of form 101. See above.
- Paragraph 13(e)—Change corresponds to change made to paragraph 17(e) of form 101. See above.

**(11) Exclusive Buyer Agency Agreement (form 201)**

- Paragraph 4(e)—New attorney fee provision added like that appearing in existing Exclusive Right to Sell Listing Agreement (form 101, paragraph 7(f)).
- Paragraph 14(e)—Change corresponds to change made to paragraph 17(e) of form 101. See above.
- Paragraph 17—New paragraph advises the buyer regarding (i) the possible presence of surveillance/audio device(s) located on any property examined by the buyer, and (ii) the taking and use by buyer of photographs or videos of a seller’s property.

**(12) Non-Exclusive Buyer Agency Agreement (form 203)**

- Paragraph 10—New paragraph corresponds to recommended new paragraph 17 in form 201. See above.

**(13) Response to Buyer’s Offer (form 340-T)**

- In the existing form, the seller notifies the buyer that their offer is being rejected but invites the buyer to submit a new offer with specified changes that the seller will consider accepting. A new checkbox has been added that will give a seller the option of notifying the buyer that their offer is being rejected outright.

**(14) Termination of Agency Agreement and Release (form 720)**

- Paragraph 4—On occasion, a seller will inform an agent who has their property listed that the seller has decided they no longer want to sell their property or otherwise want to take it off the market. The listing firm accommodates the seller’s request and enters into a mutual agreement to terminate the listing using form 720. The seller then sells the property to a buyer who was introduced to the property before the listing agreement was terminated. Under the previous version of this form, the firm generally had no recourse against the seller to collect a fee because the form contained a complete release of any claims under the listing agreement. This new paragraph has been added to help protect a listing firm’s entitlement to its fee in such a situation by preserving the firm’s rights under the Protection Period. It should be noted that the seller still will not be obligated to pay a fee if a valid listing agreement is entered into between the seller and another real estate broker and the property is sold during the Protection Period.

**(15) Referral Agreement (form 730)**

- New wording has been added in the “Compensation” section of the form in an effort to address occasional misunderstandings over when a referring firm’s right to receive a referral fee on a sale and/or purchase by a referred prospect comes to an end. The new wording provides blanks

for the referring and receiving firms to agree on a date(s) that the receiving firm's obligation to pay a referral fee(s) ends.

**(16) [Notice To Seller That Buyer Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract—New Construction \(Form 800-T\) \(form 850-T\) \(NEW\)](#)**

- New form contains menu of choices for buyer who desires to notify the seller of their decision to unilaterally terminate the New Construction Contract for one of the reasons specified in the New Construction Contract

**(17) [Notice To Buyer That Seller Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract—New Construction \(Form 800-T\) \(form 852-T\) \(NEW\)](#)**

- New form contains menu of choices for seller who desires to notify the buyer of their decision to unilaterally terminate the New Construction Contract for one of the reasons specified in the New Construction Contract

**(18) [Termination Of Contract By Mutual Agreement With Release Of Earnest Money and/or Building Deposit \(form 890-T\) \(NEW\)](#)**

- New form for a buyer and seller to use who have mutually decided to terminate a New Construction Contract, including the disposition of any earnest money deposit and/or building deposit.

**The jointly-approved forms have been approved by the Bar Associations' Real Property Section but are still subject to final approval by the NCBA's Board of Governors on June 25th.** Assuming Bar Association approval, the forms will be updated on the NC REALTORS® web site in late June. The forms have been provided to NC REALTORS®' approved forms software vendor and should be available on July 1 or soon thereafter. Questions about the roll-out date for the updated forms software package should be addressed to the vendor.

Permitted users of NC REALTORS® forms will have 60 days following their effective date to transition to the revised forms. Therefore, old versions should not be used on transactions taking place after the end of August 2017.

Questions should be directed to Kay Bailey, NC REALTORS® Legal Assistant, at 336/808-4235 or [kbailey@ncrealtors.org](mailto:kbailey@ncrealtors.org).