

Summary Of Significant Changes To NCAR Residential Forms—July 1, 2011

The residential forms listed on the chart following this summary are changing effective July 1, 2011. Many of the changes are technical formatting or word changes. Significant changes are summarized below.

NCAR/NC Bar Association Jointly-Approved Residential Forms

Offer to Purchase and Contract (form 2-T)

Paragraph 1(d)

- Adds choice for delivery date of initial earnest money deposit to permit delivery either with offer or within 5 days of effective date of contract.
- Adds wire transfer as permissible means for paying initial earnest money deposit

Paragraph 1(n): Clarifies that governmental service fees included with ad valorem tax bill (such as annual solid waste or storm water management fees) are not “special assessments” (proposed change to paragraph 9(a) establishes that any such service fees will be prorated to date of Settlement like ad valorem taxes).

Paragraph 4(a): “Note” amended together with “Note” in paragraph 5(a) to clarify that there is no loan condition which would condition Buyer’s obligations under contract on buyer’s ability to obtain a loan.

Paragraph 4(b)(v): This subsection has been amended together with paragraph 8(f) to clarify that Buyer may terminate contract after end of the due diligence period if seller is unable to deliver “good” title due to the existence of an encumbrance or defect that was or would have been revealed by a survey of the property during the due diligence period. This clarification would *not* permit buyer to terminate contract following end of due diligence period based on a condition that did not render the title uninsurable or unmarketable (for example, buyer discovers just before Settlement that an unviolated set-back requirement will not permit construction of desired pool in backyard).

Paragraph 4(c): Requirement that negotiated repairs be made in good and workmanlike manner and Buyer’s right to verify same moved from due diligence paragraph to paragraph 8(l) to clarify that this is a seller obligation, breach of which would entitle buyer to recover due diligence fee and costs in addition to refund of earnest money deposit, and that buyer’ right to verify that repairs have been properly made survives the end of the due diligence period.

Paragraph 4(d): Moved from due diligence paragraph to paragraph 8(b) to clarify that buyer’s right to do final walk-through survives end of the due diligence period and that seller’s refusal to permit final walk-through is a breach of contract by seller.

Paragraph 5(a): See discussion under 4(a) above.

Paragraph 6(b): Amended to clarify that buyer would take title subject to a proposed special assessment that seller did not disclose in paragraph 7(d) due to the fact that the proposed special assessment either was not in existence as of the date of the contract, or seller was unaware that

the proposed special assessment was in existence to the best of seller's knowledge. (Note that if seller fails to disclose the existence of a proposed special assessment that seller *is* aware of at time of contract, buyer may have claim against seller for breach of the seller's representation in paragraph 7(d).)

Paragraph 8(b): See discussion under 4(d) above.

Paragraph 8(e): Amended to clarify that seller is obligated to pay any deferred ad valorem taxes no later than settlement.

Paragraph 8(f): See discussion under paragraph 4(b)(v) above.

Paragraph 8(l): See discussion under paragraph 4(c) above.

Paragraph 8(m): New sentence added to permit recover of attorney fees by prevailing party if buyer sues seller for breach of contract.

Paragraph 9(a): See discussion under paragraph 1(n) above.

Paragraph 10: New choice added to expressly address situation where seller will not pay for cost of home warranty.

Paragraph 14: New choice added to address situation where possession is subject to rights of tenants.

Guidelines for Completing Offer to Purchase and Contract (form 2G): Several conforming changes made to Guidelines to track changes to form 2-T. Additional explanations added in paragraph 12 and "Signatures and Dates" section.

Offer to Purchase and Contract—Vacant Lot/Land (form 12-T): Changes throughout conform to those made to form 2-T summarized above.

Addenda to Offer to Purchase and Contract (forms 2A1-T through 2A14-T): Format of all contract addenda modified so that they are uniform with respect to blanks for identification of property, seller and buyer and to clarify that contract controls with respect to conflict between addendum and contract regarding description of property or identity of buyer or seller.

New Construction Addendum (form 2A3-T): "Note" under caption of form modified to clarify that form may be used for townhouses.

FHA/VA Financing Addendum (form 2A4-T): Addition at end of VA Financing section to clarify that seller's obligation to pay certain inspection costs is limited by amount set forth in paragraph 8(b) in contract.

Owners' Association Disclosure and Addendum (form 2A12-T): Paragraph 2 amended to address situation where some recreational amenities may be included in regular association dues while others require payment of an additional fee. New format will require included amenities to be specifically described.

Offer to Purchase and Contract—New Construction (form 800-T): Changes throughout conform to those made to form 2-T summarized above.

NCAR Residential Forms

Exclusive Right To Sell Listing Agreement (form 101)

- **Paragraphs 1, 6 and 10:** These 3 paragraphs have been amended or deleted to clarify the extent to which the listing agreement is binding on the seller and firm in situations where marketing of the property will be delayed for some period of time following the execution of the listing agreement or the seller is currently under an existing listing agreement. These changes should help clarify that the seller is fully obligated under the agreement following its execution even though marketing efforts will not begin until a later date.
- **Paragraph 9:** New sentence added to NC Real Estate Commission's required anti-discrimination wording to address new ethical duty of REALTORS® not to discriminate on the basis of sexual orientation. **(NOTE: Same sentence is being added in all forms containing anti-discrimination wording)**

Exclusive Right To Sell Listing Agreement (Vacant Lot/Land) (form 103): Changes conform to those made to form 101 summarized above.

Short Sale Addendum to Exclusive Right to Sell Listing Agreement (form 104): New paragraph 10 added to address firm's obligation to present all offer to seller and to disclose the existence of any offers on property to lienholders.

Agreement to Amend Contract (form 330-T): The existing "Additional Earnest Money" choice has been broken out into two different choices, the first to reflect an agreement to change the amount of additional earnest money previously agreed to, and the second to reflect an agreement to change the date by which the additional earnest money will be due.

Availability of forms. The revised forms will be available in the "Forms and Contracts" section of the NCAR website no later than July 1st. They have also been sent to each of NCAR's forms software providers to incorporate into their respective forms software programs. Questions about the roll-out date for a forms software program should be directed to the vendor.

There will be a 60-day grace period during which NCAR members may transition to the revised forms. Older versions of forms that have been updated should not be used after August 31, 2011.

100 SERIES: NCAR SELLER INITIATED FORMS	
No.	Name
101	Exclusive Right to Sell Listing Agreement
103	Exclusive Right to Sell Listing Agreement (Vacant Lot/Land)
104	Short Sale Addendum to Exclusive Right to Sell Listing Agreement
105	Internet Advertising Addendum
106	Agreement to Procure Tenant
150	Unrepresented Seller Disclosure and Fee Agreement
200 SERIES: NCAR BUYER INITIATED FORMS	
No.	Name
201	Exclusive Right to Represent Buyer (Buyer Agency Agreement)
203	Non-Exclusive Buyer Agency Agreement
300 SERIES: NCAR RESIDENTIAL CONTRACT FORMS	
No.	Name
330-T	Agreement to Amend Contract
335-T	Acknowledgement of Receipt of Monies
350-T	Notice to Seller that Buyer is Exercising Their Right to Terminate the Offer to Purchase and Contract
351-T	Notice to Seller that Buyer is Exercising Their Right to Terminate the Offer to Purchase and Contract-Vacant Lot/ Land
352-T	Notice to Buyer that Seller is Exercising Their Right to Terminate the Offer to Purchase and Contract
353-T	Notice to Buyer that Seller is Exercising Their Right to Terminate the Offer to Purchase and Contract-Vacant Lot/Land
391-T	Termination of Contract By Mutual Agreement Without Release of Earnest Money
800 SERIES: NEW CONSTRUCTION	
No.	Name
800-T	Offer to Purchase & Contract (New Construction)
NCAR/NCBA JOINTLY APPROVED FORMS	
No.	Name
2-T	Offer to Purchase & Contract
2G	<i>Guidelines for Completing the Offer to Purchase & Contract</i>
12-T	Vacant Lot Offer to Purchase & Contract – Vacant Lot/Land
2A1-T	Back-Up Contract Addendum
2A2-T	Contingent Sale Addendum
2A3-T	New Construction Addendum
2A4-T	FHA/VA Financing Addendum
2A5-T	Seller Financing Addendum
2A6-T	Loan Assumption Addendum
2A7-T	Buyer Possession Before Closing Agreement
2A8-T	Seller Possession After Closing Agreement
2A9-T	Lead-Based Paint or Lead-Based Paint Hazard Addendum
2A11-T	Additional Provisions Addendum
2A12-T	Owners' Association Disclosure and Addendum
2A13-T	Vacation Rental Addendum
2A14-T	Short Sale Addendum