



What Changed in 2017
(since July 2015 Forms Revisions - effective 7/1/2017)

	Form No.	Form Name
1.	511	Confidentiality Agreement
2.	531	Non-Exclusive Buyer/Tenant Representation Agreement
3.	532	Non-Exclusive Buyer/Tenant Representation Agreement
4.	570	Exclusive Right to Lease and/or Sell Listing Agreement
5.	571	Exclusive Right to Sell Listing Agreement
6.	572	Exclusive Right to Lease Listing Agreement
7.	575	Agency Agreement Renewal and/or Amendment
8.	580-T	Agreement for Purchase and Sale of Real Property
9.	581-T	Additional Provisions Addendum
10.	581A-T	Back Up Agreement Addendum (NEW FORM)
11.	582-T	Termination of Contract and Release of Earnest Money (Joint Approval Only)
12.	583-T	Agreement to Extend Contract (Renamed Form)
13.	590	Property Management Agreement
14.	592-T	Commercial Lease Agreement (Single Tenant Facility)
15.	593-T	Commercial Lease Agreement (Multi-Tenant Facility)
16.	594-T	Notice to Elect Extension/Renewal (NEW FORM)

Outline of Changes to REALTORS® Commercial Alliance Forms

As to each of the revised forms, a redline of the proposed version against the current/effective 7/1/2016 version is provided. The last revisions to the RCA-NCAR Forms were in 2015, in 2016 there were no revisions submitted. Where redlines are provided, the clean version of the form comes first, followed by the redline version. The page references below are to the first page of the form in the package. There are some formatting issues which will be cleaned up when the forms are transmitted to the vendors. The redline function creates some additional formatting issues which will not appear in the final versions.

The materials below are broken into 3 groups of revisions: (1) formatting and technical changes only; (2) RCA-NCAR Forms with substantive changes; (3) revised and “new” joint forms submitted to the North Carolina Bar Association for approval.

Formatting and Technical Changes:

Form 511- Confidentiality Agreement

The changes to this form are technical in nature, to add a signature block for a representative (typically would be a broker), in addition to the signing principal and to add a line for e-mail address to the signatory information lines.

Form 531- Non-Exclusive Buyer/Tenant Representation Agreement

Form 532- Non-Exclusive Buyer/Tenant Representation Agreement

Form 575- Agency Agreement Renewal and/or Amendment

The only change to each of these 3 forms was to add language to clarify that the term of the agreement ends at “11:59 p.m. (based upon the time at the locale of the Property)” on the date stated for the end of the agreement.

Form 590- Property Management Agreement

The only change to this form was to revise the termination fee language in Section 4.d. to ALL CAPS to comply with the requirements of 21 NCAC 58A .0104 (a) as to making early termination fees conspicuous.

RCA-NCAR Forms with Substantive Changes

Form 570- Exclusive Right to Lease and/or Sell Listing Agreement,

This form was revised to add language to the definition of registered prospects to emphasize and expressly state that the concept contemplates only principals (the actual client/customer) being registered (brokers continue to register brokers instead of principals). The registered prospect definition is also now cross referenced in Paragraphs 8a and 8b to reinforce the clarification. Additional revisions were made to Paragraph 8b to clarify that: (i) the registration and “tail” provisions apply to any ending of the listing, not just term expiration (so it now states “*expiration or earlier termination*”), and (ii) to raise the contact threshold for qualifying as a registered prospect; the new language requires some bilateral communication regarding the listed property as opposed to just a communication to someone regarding the listed property. In Paragraph 13 a parenthetical was added to the attorneys fees provision to clarify that it is intended to apply in the context of mediation or arbitration. There also were a couple of minor technical changes to this form.

Form 571- Exclusive Right to Sell Listing Agreement

The language of the Advertising and Database Listings provision in Paragraph 4 had previously been changed in Form 570 Exclusive Right to Lease and/or Sell Listing Agreement and it was intended at that time that the same language (referencing sales only) be added to Form 571 Exclusive Right to Sell Listing Agreement. An oversight resulted in the language not getting added to Form 571 Exclusive Right to Sell Listing Agreement, so this revision includes the previously intended revised language consistent with the prior revision to Form 570 Exclusive Right to Lease and/or Sell Listing Agreement.

This form also was revised to add language to the definition of registered prospects to emphasize and expressly state that the concept contemplates only principals (the actual client/customer) being registered (brokers continue to register brokers instead of principals). The registered prospect definition

is also now cross referenced in Paragraphs 8a and 8b to reinforce the clarification. Additional revisions were made to Paragraph 8b to clarify that: (i) the registration and “tail” provisions apply to any ending of the listing, not just term expiration (so it now states “*expiration or earlier termination*”), and (ii) to raise the contact threshold for qualifying as a registered prospect; the new language requires some bilateral communication regarding the listed property as opposed to just a communication to someone regarding the listed property. In Paragraph 13 a parenthetical was added to the attorneys fees provision to clarify that it is intended to apply in the context of mediation or arbitration. There also were a couple of minor technical changes to this form (including removal of some “stray” references to leasing).

Form 572- Exclusive Right to Lease Listing Agreement

The language of the Advertising and Database Listings provision in Paragraph 4 had previously been changed in Form 570 Exclusive Right to Lease and/or Sell Listing Agreement and it was intended at that time that the same language (referencing sales only) be added to Form 572 Exclusive Right to Lease Listing Agreement. An oversight resulted in the language not getting added to Form 572 Exclusive Right to Lease Listing Agreement, so this revision includes the previously intended revised language consistent with the prior revision to Form 570 Exclusive Right to Lease and/or Sell Listing Agreement.

Paragraph 1 of the form has been revised to insert an automatic 12-month renewal provision as permitted by 21 NCAC 58A .0104 (a). This form also was revised to add language to the definition of registered prospects to emphasize and expressly state that the concept contemplates only principals (the actual client/customer) being registered (brokers continue to register brokers instead of principals). The registered prospect definition is also now cross referenced in Paragraphs 8a and 8b to reinforce the clarification. Additional revisions were made to Paragraph 8b to clarify that: (i) the registration and “tail” provisions apply to any ending of the listing, not just term expiration (so it now states “*expiration or earlier termination*”), and (ii) to raise the contact threshold for qualifying as a registered prospect; the new language requires some bilateral communication regarding the listed property as opposed to just a communication to someone regarding the listed property. In Paragraph 13 a parenthetical was added to the attorneys fees provision to clarify that it is intended to apply in the context of mediation or arbitration. There also were a couple of minor technical changes to this form (including removal of some “stray” references to sales).

Form 581A-T Back Up Agreement Addendum (NEW FORM)

This new form is a slightly adapted version of the residential Form 2A1-T Back Up Contract Addendum. A number of practitioners have indicated that market circumstances are increasingly creating situations where back-up contracts are appropriate, so this adapted version to work with the Form 580-T Agreement for Purchase and Sale of Real Property was created. This form is NOT included with the forms below submitted to the North Carolina Bar Association for joint approval; this form was developed and approved after the review of all the joint forms had been completed. If the complete set of 580-T forms are approved by the North Carolina Bar Association, it would be intended that this form would be submitted for joint approval next year.

Form 592-T- Commercial Lease Agreement (Single Tenant Facility)

The Paragraph 6 language regarding the Landlord’s representation and warranty that the HVAC and utilities would be in good working order had previously been changed in Form 593-T Commercial Lease Agreement (Multi-Tenant Facility) and it was intended at that time that the same language be modified in Form 592-T Commercial Lease Agreement (Single Tenant Facility). An oversight resulted in the language not getting added to Form 592-T Commercial Lease Agreement (Single Tenant Facility), so

this revision includes the previously intended revised language consistent with the prior revision to Form 593-T Commercial Lease Agreement (Multi-Tenant Facility).

Paragraph 19 of the form was revised to incorporate a Landlord right, as contemplated in NCGS §42-26(c), to accept partial rent without waiving summary ejection rights.

There also were a couple of minor technical and grammatical changes to this form (including a Paragraph 12(a) change to correct a reimbursement obligation to “up to” as opposed to “in excess of”).

Form 593-T- Commercial Lease Agreement (Multi-Tenant Facility)

Paragraph 19 of the form was revised to incorporate a Landlord right, as contemplated in NCGS §42-26(c), to accept partial rent without waiving summary ejection rights. The remainder of changes to this form were technical, conforming and grammatical changes (including a Paragraph 12(a) change to correct a reimbursement obligation to “up to” as opposed to “in excess of”).

Form 594-T- Notice to Elect Extension/Renewal (NEW FORM)

Practitioners have encountered circumstances where extension/renewal options in existing 592-T Commercial Lease Agreement (Single Tenant Facility) and 593-T Commercial Lease Agreement (Multi-Tenant Facility) leases are contemplated being exercised and questions have arisen as to: (i) if the renewal has been exercised or if the Tenant is holding over, (ii) how to accurately reflect a change in rent for the renewal term, and (iii) what is the new lease termination date. This form was developed to provide a form to document the answers to these questions (and in doing so identify clearly the documents that constitute the Lease) and clarify the status and terms of the Lease in the context of an extension/renewal.

Revised and “new” joint forms submitted to the North Carolina Bar Association:

Process:

The jointly approved Form 580-T Agreement for Purchase and Sale of Real Property has not been revised since 2013 and the ancillary addenda forms related thereto have never been jointly approved. The RCA-NCAR Forms Committee has proposed revisions to the 580-T Agreement for Purchase and Sale of Real Property and has also recommended that the as proposed to be revised Form 581-T- Additional Provisions Addendum, Form 583-T- Agreement to Extend Contract and the existing Form 582-T- Termination of Contract and Release of Earnest Money be adopted by the North Carolina Bar Association as jointly approved forms.

The RCA-NCAR Forms Committee made proposals for revisions to 3 forms, the 580-T Agreement for Purchase and Sale of Real Property, Form 581-T- Additional Provisions Addendum and Form 583-T- Agreement to Extend Contract. A task force of members from the RCA-NCAR Forms Committee and attorneys from the NCAR Joint Forms Committee then reviewed these proposed changes, approved some and made suggestions for additional changes to the 580-T Agreement for Purchase and Sale of Real Property. No changes were proposed to the Form 582-T- Termination of Contract and Release of Earnest Money; it was only recommended to be a part of the “set” of jointly approved forms. The cumulative, collected set of revisions as recommended by the joint task force were then subsequently approved by both the RCA-NCAR Forms Committee and the NCAR Joint Forms Committee.

The proposed revisions to the 580-T Agreement for Purchase and Sale of Real Property have been submitted to the North Carolina Bar Association Real Property Section Council for review and approval at their May 2017 Section Meeting. The submittal to the North Carolina Bar Association Real Property Section Council also includes the Form 581-T- Additional Provisions Addendum (as proposed to be revised), Form 582-T- Termination of Contract and Release of Earnest Money, and Form 583-T- Agreement to Extend Contract (as proposed to be revised) for consideration as additional jointly approved forms. The request/expectation is that the North Carolina Bar Association Real Property Section Council will approve the “complete set” for joint approval (as revised) and recommend that the North Carolina Bar Association Board of Governors approve the “complete set” at its June 2017 meeting.

It is recommended to the NCAR Executive Committee that the revisions to 580-T Agreement for Purchase and Sale of Real Property, Form 581-T- Additional Provisions Addendum and Form 583-T- Agreement to Extend Contract be approved and that the joint approval of Form 582-T- Termination of Contract and Release of Earnest Money be approved as well.

If the North Carolina Bar Association Real Property Section Council and Board of Governors concur on the approval, the forms will move forward as a “complete set” of jointly approved forms as of July 1, 2017. If the North Carolina Bar Association Real Property Section Council and Board of Governors do not concur on the approval, the “complete set” would move forward as RCA-NCAR forms as of July 1, 2017 (none being jointly approved). If this were the outcome, references in form footers to joint approval by the North Carolina Bar Association and references to the North Carolina Bar Association in the disclaimers would be removed.

Form 580-T- Agreement for Purchase and Sale of Real Property

In Section 1(b)(i) the defined term “Escrow Agent” has been created for the person/entity holding the Earnest Money. A conforming change was made to the Earnest Money acknowledgement receipt. Section 10 Earnest Money Disbursement was substantially rewritten, using this defined term, to include specific references to the Escrow Agent and also to clarify the Escrow Agent’s duties. Hold harmless language for the Escrow Agent has been added as many Escrow Agents have been regularly adding such language to the form via addendum.

In Section 1(b)(iv) the language addressing conditions surrounding a loan assumption was removed and transferred to Section 6(b) Conditions, as more appropriate placement (since Section 6 deals with Conditions to the obligations under the Agreement).

In Section 1(c) the definition of Closing was modified to tie out to completion of the process outlined in Section 11 which contemplates meeting conditions to disburse as the completion of Closing.

In Section 1(e) the time for the end of the Examination Period has been modified from 11:59 pm to 5:00 pm to align with business hours.

In Sections 1(g) and 1(h) e-mail address and fax number information lines have been added in contemplation of the revised Notice provision in Section 12.

A new Section 1(i) has been added to expressly reference/contemplate the attachment of a 581-T Additional Provisions Addendum (since that form is now proposed for joint approval).

In Section 4 Deliveries, the language regarding the scope of what the Seller is to deliver has been modified to contemplate material information in the possession of Seller. This change is consistent with modifications that have been regularly been added to the form via addendum. Many practitioners have

indicated that the prior language perhaps created an obligation on the Seller to provide every little bit of information a Seller might have or be able to obtain, thereby placing an onerous, unreasonable duty on Seller that did not bear a reasonable relationship to the value of the information.

In Section 5 Evidence of Title, the language regarding Permitted Exceptions was modified to clarify the intention that the conveyance be subject to the specific instruments of record (not objected to by Buyer) and that the deed specifically reference the Permitted Exceptions.

In Section 6(a), the loan contingency language was removed as most Buyers are using the Examination Period to make their credit determination and the contingency is not really being used.

In Section 6(e), the inspections language was revised to: (i) require Seller consent as to any invasive testing, and (ii) require reasonable advance notice of entry onto the Property, and (iii) require compliance with any existing lease terms as regards Buyer entry on the Property.

Section 7 Leases was revised to include: (i) an express representation that if there are Leases, the Leases listed in the Agreement are all the leases, and (ii) to provide that the assignment of Leases will include typical pre and post-Closing indemnification language.

Section 10 Earnest Money was revised to use the term Escrow Agent (as previously noted) and was further revised to remove language regarding “forfeiture” and replace the same with more appropriate liquidated damages language.

Section 11 Closing has been modified to require delivery of a special warranty deed given the prevalent market practice of using this standard and the routine modification of “general” to “special” by attorneys using the form. Other language revisions are to conform process to actual practice (e.g. the purchase price is typically not delivered by Buyer directly to Seller).

Section 12 Notices has been modified to permit e-mail (if e-mail address provided), fax (if fax number provided) and overnight delivery of notices and to provide that if notice is sent by more than one method, notice is deemed to be delivered upon the earlier of the dates of receipt pursuant to the section.

Section 13 Counterparts; Entire Agreement has been modified to add counterparts language and to treat fax or e-mail copies of signature pages as originals.

Form 581-T- Additional Provisions Addendum

This form has been revised to add a new option for Septic System Evaluation as commercial properties in non-urban areas may need to address this issue. The footer and disclaimer have been modified in contemplation of pending joint approval.

Form 582-T- Termination of Contract and Release of Earnest Money (Joint Approval Only)

There are no changes to this form other than the footer and disclaimer being modified in contemplation of pending joint approval. The form is included only because it is a part of the package of forms submitted for joint approval.

Form 583-T- Agreement to Extend Contract (Renamed Form- previously Agreement to Amend Contract)

While the revisions to this form may appear substantial, they are essentially mechanical to clarify whether: (i) payment is required for extension of the Examination Period and/or Closing, (ii) if such payment is applicable to the Purchase Price or not, and (iii) whether the payment is to be made directly to the Seller or to Escrow Agent. A technical change was made to add a disclaimer to the form and it was renamed to “Agreement **Extend** Contract” because the provisions address extensions only and not general amendments. The footer has been modified in contemplation of pending joint approval.