

## What Changed in 2020 (since July 2019 Forms Revisions - to be effective 7/1/2020)

	Form No.	Form Name
1.	502	Land Information Worksheet
2.	575	Agency Agreement Renewal and/or Amendment
3.	580-T	Agreement for Purchase and Sale of Improved Real Property ( <b>form name change</b> )
4.	580L-T	Agreement for Purchase and Sale of Land ( <b>NEW FORM- pending 2020 NCR and NCBA final approval</b> )
5.	581-T	Additional Provisions Addendum
6.	581A-T	Back Up Agreement Addendum ( <b>pending 2020 NCBA approval as joint form</b> )
7.	583-T	Agreement to Amend Contract-Notice of Assignment ( <b>form name change-joint NCBA approval 2017</b> )
8.	586-T	Unilateral Termination By Buyer ( <b>pending 2020 NCBA approval as joint form</b> )
9.	587-T	Notice of Offer Rejection ( <b>pending 2020 NCBA approval as joint form</b> )
10.	588-T	Notice of Revocation of Offer ( <b>NEW FORM- pending 2020 NCR and NCBA final approval</b> )
11.	592-T	Commercial Lease Agreement (Single Tenant Facility)
12.	593-T	Commercial Lease Agreement (Multi-Tenant Facility)

### **RCA-NCR Forms Changes**

#### **Form 502- Land Information Worksheet**

In light of the creation of Form 580L-T- Agreement for Purchase and Sale of Land, this form was revised to add a note at the top which makes reference to the new land form and notes that Deliveries under that agreement and due diligence under that agreement will cover matters addressed by the form.

#### **Form 575- Agency Agreement Renewal and/or Amendment**

This form was revised to add “if applicable” as to the reference to a specific property address. This change was made in light of the instances, such as in a buyer or tenant agency agreement, where a specific property address reference may not be applicable.

#### **Form 580L-T- Agreement for Purchase and Sale of Land (**NEW FORM**)**

(Jointly Approved form with North Carolina Bar Association)

Brokers had made several comments to the Committee that brokers and attorneys were improperly using the residential vacant lot form (Form 12-T) for transactions involving purchases of acres of land. It was noted that the title and survey provisions of the vacant lot form are not very robust and that other provisions of the agreement are really inapplicable given the form contemplates a residential lot purchase. An informal survey of commercial structure members in North Carolina indicated a clear desire for a land specific commercial agreement. The Form 580L-T- Agreement for Purchase and Sale of Land is purposefully similar in content to the revised Form 580-T Agreement for Purchase and Sale of

Improved Property (many brokers had used the Form 580-T with an attorney addendum for land deals), but has specific provisions which deal in more detail with matters such as: (i) the possibility of a per acre purchase price, (ii) rollback taxes, (iii) cross references to the Form 502- Land Information Worksheet, (iv) addressing leases differently in contemplation of the fact certain leases might be terminated prior to closing, (v) modifying the representations of seller to add matters common to land transactions such as cemeteries and landfills, and (vi) removing the EFIS disclosure.

**Form 580-T- Agreement for Purchase and Sale of Improved Real Property** (form name change)  
(Jointly Approved form with North Carolina Bar Association)

The title of this form was changed, to add the word “Improved” before real property, to evidence the intended use of the form and to distinguish it from the Form 580L-T- Agreement for Purchase and Sale of Land.

Brokers and attorneys have noted an increased incidence of: (i) entities who are parties to a contract being administratively dissolved or revenue suspended, or (ii) entities being named as a party (particularly buyers), which entities have not been formed/do not exist (meaning formation of a valid contract is not possible). In an attempt to heighten awareness that entity status and formation is an important consideration in establishing a contract, a note regarding these matters was added under the initial paragraph which identifies the parties.

Section 1(b)(i) was revised to provide that the Earnest Money is to be deposited within five (5) calendar days of the Contract Date (replacing “promptly”). The provision was also revised to provide a process for addressing Earnest Money deposits that are not timely delivered or checks for Earnest Money which are dishonored.

Section 1(b)(ii) was deleted because the loan contingency has been removed and Section 6(a) which permitted a seller to demand proof of such loan (and terminate if not receive) has also been removed. A provision noting that the buyer can obtain a loan, with a note that makes clear there is no loan contingency, was added at the end of Section 1.

Section 1(k) was added as an option to be used where Form 581A-T- Back Up Agreement Addendum may be attached. Since that form is now proposed to be jointly approved (it was not before), it is now appropriate to reference the form in this jointly approved form.

Section 3 on prorations was modified to expressly address and allocate fees charged in connection with acquiring information from owners associations.

Section 4 was revised to: (i) require a buyer return to seller only hard copy materials delivered to buyer (no need to return items provided digitally), (ii) to clarify language that the buyer’s obligation to turn over its reports is conditioned upon return of the Earnest Money, and (iii) to make it clear that if there is separate non-disclosure or confidentiality agreement between buyer and seller which deals with matters in this Section, that separate agreement will control as to delivery and return of information and documentation.

Section 6(a) dealing with a new loan was deleted as noted above.

Section 7(e) regarding estoppel certificates was revised to reflect the fact that tenants, not sellers, sign estoppel certificates and to clarify that a seller must diligently pursue execution of reasonable forms of estoppel certificates and subordination, non-disturbance and attornment agreements requested by buyer.

Section 12 was revised to provide that e-mail notice is deemed received when the sender performs the final act of sending it in a form capable of being processed by the receiving party's system. The prior language made the e-mail effective upon a read receipt. Given that parties can reject issuance of a read receipt, the old language permitted a party to effectively nullify e-mail notice.

Section 15 was revised to address owner association assessments and to clarify language on the allocation of assessments. A new subsection (c) was added to obligate sellers to provide certain owners association documentation as deliveries pursuant to Section 4 of the agreement and to authorize the buyer and their representatives to obtain such information directly if the seller does not deliver the information.

A wire fraud warning was added beneath the signature lines on the agreement. As well, notice information for the Escrow Agent was added to the Escrow Agent receipt, to facilitate the notices regarding the Earnest Money called for in the new language of Section 1(b)(i).

Other changes to the form were technical corrections and grammatical changes.

#### **Form 581A-T- Back Up Agreement Addendum**

(Jointly Approved form with North Carolina Bar Association)

This form was revised to permit it to be used with either the Form 580-T-Agreement for Purchase and Sale of Improved Property or the Form 580L-T- Agreement for Purchase and Sale of Land (previously the form only addressed the Form 580-T-Agreement for Purchase and Sale of Improved Property). Changes were made to the footer and disclaimer to address the fact that this form is now a jointly approved form.

#### **Form 581-T- Additional Provisions Addendum**

(Jointly Approved form with North Carolina Bar Association)

This form was revised to permit it to be used with either the Form 580-T-Agreement for Purchase and Sale of Improved Property or the Form 580L-T- Agreement for Purchase and Sale of Land (previously the form only addressed the Form 580-T-Agreement for Purchase and Sale of Improved Property). The Acquisition and Development Loan option was removed because it was tied to the loan contingency which is no longer in the form 580L-T- Agreement for Purchase and Sale of Land or the Form 580-T-Agreement for Purchase and Sale of Improved Property. Comments from brokers and attorneys indicated that Form 580-T-Agreement for Purchase and Sale of Improved Property is frequently used in connection with business purchases (where the business is owned by an entity different than the one which owns the land), so a provision was added which, where this provision is selected, make the real estate agreement and the identified business asset purchase agreement cross contingent.

#### **Form 583-T- Agreement to Amend Contract-Notice of Assignment** (form name change)

(Jointly Approved form with North Carolina Bar Association)

This form was revised to permit it to be used with either the Form 580-T-Agreement for Purchase and Sale of Improved Property or the Form 580L-T- Agreement for Purchase and Sale of Land (previously the form only addressed the Form 580-T-Agreement for Purchase and Sale of Improved Property).

It was noted that the Examination Period and Closing dates are sometimes moved up, as opposed to being extended (the form previously contemplated only extensions). The form has been revised to

permit replacement of either or both of the Examination Period and Closing provisions, so that they can be adjusted in whatever manner the parties desire.

Many brokers had requested a simple assignment of contract form because it is so common for contracts to be assigned. The Real Estate Commission was wary of a stand-alone form because they have had extensive experience with assignments being misused in improper transactions. Accordingly, it was determined to add a notice of assignment provision to this form (together with the existence and good standing note that has been added to the Form 580-T-Agreement for Purchase and Sale of Improved Property and the Form 580L-T- Agreement for Purchase and Sale of Land). A note was also added to remind sellers, if they are doing 1031 exchanges, that they should seek professional advice if consideration is received for Examination Period or Closing changes.

In light of the new ability to shorten or extend the Examination Period or Closing and the addition of the assignment provision, the name of the form was revised to reflect its purposes.

#### **Form 586-T- Unilateral Termination By Buyer**

(Jointly Approved form with North Carolina Bar Association)

This form was revised to permit it to be used with either the Form 580-T-Agreement for Purchase and Sale of Improved Property or the Form 580L-T- Agreement for Purchase and Sale of Land (previously the form only addressed the Form 580-T-Agreement for Purchase and Sale of Improved Property). Changes were made to the footer and disclaimer to address the fact that this form is now a jointly approved form.

#### **Form 587-T- Notice of Offer Rejection**

(Jointly Approved form with North Carolina Bar Association)

Changes were made to the footer and disclaimer to address the fact that this form is now a jointly approved form.

#### **Form 588-T- Notice of Revocation of Offer (NEW FORM)**

(Jointly Approved form with North Carolina Bar Association)

In light of the existing Form 587-T-Notice of Offer rejection form, the Ad Hoc Group suggested that a revocation of offer form might be appropriate to provide a simple tool that would permit parties to clearly revoke an offer (so there would be no question as to the status of the offer). This form was developed to serve that purpose.

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

Section 9- Brokers had made comments that the option providing that reimbursement is not applicable should not be at the end of the Section, but more properly should be at the start of the Section. So, the check box option to provide that the Tenant has no reimbursement responsibility to Landlord for taxes and insurance was moved from the end of the Section to the front of the Section and the wording adjusted slightly to reflect the new location.

Section 12- Several comments had been received from brokers that the HVAC options were unclear, particularly as to the application of the per event expense cap and the annual expense cap and how those caps worked together. The provision was re-written to be more detailed and clear.

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

Exhibit references- Brokers had noted that there were some references to Exhibit B in the form which appeared to be intended to reference Exhibit C. Those incorrect references were corrected.

Section 9- Brokers had made comments that the option providing that reimbursement is not applicable should not be at the end of the Section, but more properly should be at the start of the Section. So, the check box option to provide that the Tenant has no reimbursement responsibility to Landlord for taxes, insurance, and property operating expenses was moved from the end of the Section to the front of the Section and the wording adjusted slightly to reflect the new location.

Section 12- Several comments had been received from brokers that the HVAC options were unclear, particularly as to the application of the per event expense cap and the annual expense cap and how those caps worked together. The provision was re-written to be more detailed and clear.