

**North Carolina
Postlicensing Course Syllabus**

**CONTRACTS AND CLOSING
COURSE**

January 2013 Edition

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INTRODUCTION

Course Description: The *Contracts and Closing Course* is one of three 30-classroom hour mandatory postlicensing courses that must be completed by newly licensed North Carolina provisional brokers within three years after licensure. The primary objective of the course is to provide instruction at a level beyond that provided in prelicensing courses on topics deemed to be of special importance to licensees. Topics addressed in this course include selected basic contract law concepts, real estate sales contract preparation, sales contract procedures, buyer's due diligence, closing procedures, Real Estate Settlement Procedures Act, closing statement preparation, contracts for deed, options, and real estate license status and education issues.

Requirements for Teaching the Course: This course may only be taught by schools and instructors approved by the North Carolina Real Estate Commission to teach prelicensing and postlicensing courses. Rules governing the conduct of the course, including scheduling, course completion standards, course delivery, course completion reporting and other related matters may be obtained from the Commission. Course must be taught as prescribed by this syllabus.

Prerequisite: Possession of a North Carolina broker license (either provisional or not provisional).

Textbook: The most current edition of the *North Carolina Real Estate Manual*. **Note:** Instructors must obtain for student use copies of all the North Carolina Association of REALTORS® and North Carolina Bar Association **standard sales contract forms** referenced in the syllabus for student use in order to effectively teach form preparation. Sample copies of NCAR forms may be obtained by non-members by going to www.nc.living.net (site of the NC Living Network operated by NCAR) and then click on "Consumer Information" and then "NCAR Sample Forms."

Course Final Examinations and Completion Standards: Schools and instructors are required to utilize course final examinations provided by the Commission in accordance with Commission rules for such examinations. The confidentiality of examinations provided by the Commission must be protected at all times by schools and instructors. The examination minimum passing standard is 75%. Schools and instructors may, in their discretion, also require completion of in-class or out-of-class graded assignments that may count for up to 25% of a student's grade for the course.

Order of Topic Presentation and Recommended Topic Emphasis: *Topics must be presented in the order shown in the outline.* Instructors may make reasonable minor adjustments in subject area emphasis as needed to facilitate instruction, but should be careful not to devote undue overemphasis or underemphasis to any topic.

General Instructional Approach: Instructors are expected to utilize "real world" illustrative examples, to employ instructional techniques that encourage active student participation in class, and to employ practical in-class and out-of-class work assignments to the maximum extent possible in this course.

Syllabus Copies: Copies of this syllabus will be provided by the Commission only for use by school officials and instructors. Schools are authorized to reproduce all or part of this syllabus for student use at their own expense, and may charge students for the cost of reproduction.

CONTRACTS AND CLOSING POSTLICENSING COURSE

RECOMMENDED TOPIC EMPHASIS

	Hours
I. Review of Selected Basic Contract Law Concepts	1½
II. Real Estate Sales Contract Preparation	12
III. Sales Contract Procedures	2
IV. Closing Preparations and Procedures	2
V. Real Estate Settlement Procedures Act (RESPA)	2
VI. The Closing Statement	6¾
VII. Other Topics (Alternate Conveyance Contracts; License Status and Education Issues)	¾
Final Examination (including a complete closing statement problem)	3
Total Hours	30

CONTRACTS AND CLOSING

Postlicensing Course Outline

References to “**Manual**” in this outline refer to the **North Carolina Real Estate Manual, 2013-14 Edition**, which is the prescribed text for this course. Page number references to the **Manual** are included with major headings and some subheadings to assist instructors and students.

I. Review of Selected Basic Contract Law Concepts (1½ Hours) ***Manual, Chapter 10, pages 361-388***

A. Basic Contract Terms (Very brief review) (*Manual, pages 361-363*)

B. Essential Elements of a Contract (*Manual, pages 363-371*)

Instructor Notes: the following is intended as a brief review of fundamental common law contract principles by which modern contract law largely continues to be governed. Defer an in-depth practical discussion of the presentation, negotiation and acceptance of offers (1. and 2. below) until Section III of this Syllabus.

1. Offer and Acceptance
2. Acceptance and Counteroffers
3. Termination of Offers
4. Other Legal Prerequisites
 - a) Consideration
 - b) Capacity
 - c) Lawful objective

C. Impediments to Mutual Consent (*Manual, pages 371-375*)

1. Mistake
2. Fraud and Misrepresentation
3. Unfair/Deceptive Practices
4. Duress
5. Undue Influence

- D. Other Contract Law Issues (*Manual, pages 375-388*)
 - 1. Statute of Frauds – Real Estate Sales Contract Must Be in Writing
 - 2. Uniform Electronic Transactions Act (UETA)
 - 3. Discharge of Contracts
 - 4. Rules for Interpretation of Contracts
 - 5. Contract Remedies
 - 6. Auction Sales

II. Real Estate Sales Contract Preparation (12 Hours) *Manual, Chapter 11, pages 387-438*

- A. Introduction (*Manual, pages 394-399*)
 - 1. Expectation of Licensee Competence in Completing Contract Forms
 - 2. Brokers Prohibited from Drafting Sales Contract Forms for Others
 - 3. Sources of Sales Contract Forms

Note: REALTORS® may obtain and use the NCAR contract forms. Although others may not use forms with the REALTOR® logo, anyone may view and print SAMPLE contract forms by visiting www.nc.living.net, a website operated by NCAR, and click on “Consumer Information” and then on “NCAR Sample Forms.” The sales contract forms and addenda jointly approved by NCAR and NCBA but without the REALTOR® logo may be obtained through their attorney.

- 4. Real Estate Commission’s Minimum Requirements for Preprinted Sales Contract Forms. [*See Commission Rule 58A.0112 – Offers and Sales Contracts.*] Note that this rule does not apply to contract forms brokers are instructed to use and supplied by the parties/principals or their attorneys.
- 5. Using the Appropriate Standard Contract Forms and Addenda
- 6. Persistent Problems in Contract Completion (*Manual, page 400*)

- B. Review and Completion of the Standard Residential Sales Contract Forms Jointly Approved by the North Carolina Association of REALTORS® (NCAR) and the North Carolina Bar Association (NCBA). (*Manual pages 399-446*)

Forms to be Obtained and Reviewed:

- **Form 2-T** – Offer to Purchase and Contract (and Form 2-G, Guidelines for Completing the Offer to Purchase and Contract)
- **Forms 2A1-T through 2A14-T** – All standard addenda forms for use in conjunction with the standard Offer to Purchase and Contract form
- **Form 12-T** – Offer to Purchase and Contract – Vacant Lot/Land (and guidelines for proper completion)

Instructor Notes:

- (1) *Instructors must actively engage students in a detailed **line-by-line review of each provision in each of the above noted standard forms**, with discussion as appropriate on the meaning and purpose of each provision, the use of each form, and issues in filling in the various provisions with blanks to be completed. Improper completion of sales contract forms by licensees continues to be one of the greatest problems in real estate practice. Every student completing this course should be able to properly complete an offer to purchase and contract form and any needed addenda or related forms for a wide variety of situations they will commonly encounter.*

*The line-by-line review of Standard Form 2-T should be facilitated by the discussion in II.C below. Instructors should then review all addenda and Form 12-T based on the forms themselves and any guidelines. There is no discussion of addenda forms or the Vacant Lot contract form in the **Manual** except for the discussion of the Contingent Sale Addendum (Form 2A1-T) and the Back-Up Contract Addendum (Form 2A2-T). Instructors also must create various fact situations to illustrate proper form/addenda selection and completion.*

- (2) *The Offer to Purchase & Contract form (Figure 11-1) and the Contingent Sale Addendum (Figure 11-2) are reprinted in the **Manual**; however, instructors will almost certainly want to provide students with separate copies of these forms. Moreover, it will be necessary for instructors to provide copies of the other forms required to be taught. Current copies of **sample** contract forms and guidelines that you may use for this purpose may be obtained by accessing www.nc.living.net, a public website sponsored by NCAR, then clicking on “Consumer Information” and then “NCAR Sample Forms.”*
- (3) *Use the Guidelines for Completing the Offer to Purchase and Contract (Form 2-G) and other Guidelines to the extent they exist for completing forms and encourage students to also do so in their practice. These were prepared by highly experienced experts and are extremely helpful.*

C. **Major Provisions of Standard Form 2-T.** Review of all of the major provisions of the Offer to Purchase and Contract form, as well as discussion of a few common problem areas that will need special attention when teaching contract completion. All of these (and many other contract completion issues) provide an excellent opportunity for class discussion that will benefit students. [See *Standard Form 2-T* reproduced in the *Manual, pages 401-410*, and the discussion of the contract provisions listed below appears on *pages 411-446*. The provisions are listed using the numbers/letters assigned in the contract form]

1. Terms and Definitions.

- a.&b. Names of Seller and Buyer. [Also discuss handling of an undisclosed buyer-principal]
- c. Property Description
- d. Purchase Price
- e. Earnest Money Deposits
- f. Escrow Agent

Note: Include at this point the discussion in the *Manual* at pages 415-421 on Handling of Earnest Money.

- g. Effective Date
- h. Due Diligence (the concept)
- i. Due Diligence Fee
- j. Due Diligence Period
- k. Settlement
- l. Settlement Date [Note: In addition to the coverage of this on page 423 of the Manual, see also the discussion on page 436 cautioning against using a “time is of the essence” provision in connection with the settlement date.]
- m. Closing
- n. Special Assessments (Proposed and Confirmed)

2. Fixtures

3. Personal Property

4. Buyer's Due Diligence Process

[Note: Subtopics in Manual, pages 425-427 do not strictly follow sequence in the OPC form.]

- a. Loan
- b. Property Investigation
- c. Repair/Improvement Negotiations/Agreement
- d. Buyer's Obligation to Repair Damage
- e. Indemnity
- f. Buyer's Right to Terminate
- g. Closing shall constitute acceptance...

5. Buyer Representations
 - a. Loan (Information on buyer's loan, not a condition)
 - b. Other Property (Info on whether sale is needed for buyer to qualify for a new loan, not a condition)
 - c. Ability of Buyer to perform financial obligations under contract
 - d. Property Disclosure (Whether buyer has received, not received or is exempt from requirement for seller to provide Residential Property and Owners' Association Disclosure Statement)
6. Buyer Obligations (for certain owners' association fees, proposed special assessments and certain closing costs)
7. Seller Representations
 - a. Length of property ownership
 - b. Seller's primary residence or not
 - c. Lead-Based Paint (if applicable)
 - d. Assessments Pending
 - e. Owners' Association Information and Dues
 - f. Oil and Gas Rights Disclosure
8. Seller Obligations [Long list – see form. *Note especially the provisions on "Title, Legal Access," "Deed, Excise Taxes," "Agreement to Pay Buyer Expenses," and "Seller's Failure to Comply or Breach," as well as the note on the possibility of a "short sale."*]
9. Prorations and Adjustments
10. Home Warranty (or not)
11. Condition of Property at Closing
12. Risk of Loss
13. Delay in Settlement/Closing
14. Possession
15. Other Provisions and Conditions (Standard Addenda)
- 16.-23. Miscellaneous Provisions

Signature and Dates

- D. All Standard Addenda Forms (2A1-T through 2A14-T)
*[Note: The Back-Up Contract Addendum and the Contingent Sale Addendum are discussed in the **Manual, pages 441-446]***
- E. Offer to Purchase and Contract – Vacant Lot/Land (Form 12-T) and Guidelines for Completing... (Form 12-G)

III. Sales Contract Procedures (2 Hours)

Manual, Chapter 11, pages 446-457

- A. Offer and Acceptance — Review of basic contract principles.

Instructor Notes: *Instructors should thoroughly review/illustrate the law governing contract offer and acceptance by utilizing numerous and varied fact situations, including situations that involve electronic communication of offer and acceptance and communication of acceptances to agents. Student involvement is critically important to assure understanding of these crucial basic concepts. See also REC brochure “Q&A on Offer and Acceptance.”*

- B. Submitting Offers to Sellers
 - 1. Requirements of G.S. 93A-6(a)(13) and REC Rule 58A.0106 regarding delivery to parties of offers, contracts and other documents
 - 2. Multiple Offers
- C. Contract Modification and Counteroffers
- D. Furnishing Copies of Contracts (Reminder)

IV. Closing Preparations and Procedures (2 Hours)

Manual, Chapter 14, pages 540-557

- A. Pre-Closing – General Issues
 - 1. *Educate the parties.* Brokers should explain to buyers and sellers all the steps involved in preparing for closing and closing the transaction. [*See also the NCREC brochure: Q&A on Real Estate Closings.*]
 - 2. *Select and coordinate with closing attorney.* Identify the closing attorney of the buyer's choice and immediately contact (or have buyer contact) his/her

office to determine the attorney's fee and be placed on the attorney's calendar. Immediately provide a copy of the contract, copy of seller's deed, information on seller's loan/lender, information on seller's title insurance policy and any other available information that will assist the attorney in preparing for closing. This will help avoid a delay in closing.

3. *Be prepared for settlement delays.* Remember the provisions in the standard contract form regarding this matter.

B. Pre-Closing – Buyer's Due Diligence Process. (*Manual, pages 541-549*)

1. *General Responsibility of Broker working with a Buyer.* Broker working with buyer, whether a buyer's agent or seller's subagent, should assist the buyer with performing those tasks necessary to consummate the transaction. (This is in the best interest of both the buyer and the seller.)
2. Buyer's Loan
3. Appraisal
4. Survey
5. Property Insurance
6. Inspections/Inquiries
 - a. Wood-Destroying Insect Inspection
 - b. Physical Inspection by Buyer *and* by a Professional
 - c. Sewage Disposal Systems
 - d. Wells or Water Quality
 - e. Environmental Inspections: Lead-Based Paint (if buyer is concerned), possibly Radon and Asbestos (if there is a reason for buyer to be concerned)
 - f. Resolution of Inspection/Repair Issues
 - g. Review of Restrictive Covenants and HOA Documents
 - h. Review of Zoning (if "red flag" situation exists)

Instructor Note: Remind students of the requirement under the standard Offer to Purchase and Contract form that the buyer must complete all desired inspections, investigations, inquiries, financing arrangements, surveys, etc. ***prior to the expiration of the due diligence period.***

C. Other Pre-Closing Matters (*Manual, pages 549-551*)

1. Title search (must be performed by or under the supervision of an attorney).

2. Clearing of any title defects by seller, if applicable.
 3. Prepare for Assignment of any outstanding leases.
 4. Final Pre-Closing Procedures
 - a. Transfer earnest money from broker/firm to the closing attorney, if applicable.
 - b. Review draft closing statement provided by closing attorney for accuracy as soon as available. [Both listing and selling brokers.]
 - c. Advise buyer of amount to bring to closing in the form of certified funds and explain exactly what form of payment will be acceptable. [Attorney's responsibility but often accomplished through the broker(s).]
 - d. Arrange for Title Insurance [Attorney's responsibility]
- D. Closing Procedures (*Manual, pages 551-557*)
1. Escrow Closing Method
 2. Settlement Meeting Method
 - a. Role of nonlawyers in closings
 - b. Broker conducting closings as settlement agent [**Caution!**]
 3. Settlement Meeting Procedures
 - a. Location and parties attending
 - b. Review of documents (particularly the closing statement) for accuracy
 - c. Post-meeting tasks – title update, recording, disbursing funds, etc.

***Instructor Note:** Licensees should be reminded that no funds will/should be disbursed at the settlement meeting. Rather, the closing attorney must update the title search, record the new deed and deed of trust, and only then will funds be disbursed as appropriate to the seller, brokers and others.*

V. Real Estate Settlement Procedures Act (RESPA) (2 Hours) ***Manual, Chapter 14, pages 557-572***

***Important Instructor Note:** See *Manual*, pages 557-558 regarding important changes related to RESPA pursuant to the Dodd-Frank Wall Street and Consumer Protection Act (“**Dodd-Frank Act**”) passed in 2010. RESPA rules (commonly referred to as “*Regulation X*,” are now administered by the new **Consumer Financial Protection Bureau (CFPB)**, which has proposed major rule changes relating to RESPA (including the GFE form and HUD-1 form) that are planned to take effect sometime in 2013. Because the specifics of the proposed rules are still subject to substantial change, no attempt has been made to address them in this syllabus or*

*in the **Manual**. Whenever the planned rule changes become final, the Commission will make information on the changes available to instructors.*

- A. Purpose and Applicability of RESPA
- B. Current Consumer Protection Requirements
 - 1. Information Booklet “Shopping for Your Home Loan”
 - 2. Good Faith Estimate (GFE) of Closing Costs
 - 3. Borrower Credit for “Yield Spread Premiums”
 - 4. HUD-1 Settlement Statement form *[Introduction to form only; detailed coverage is in the next section on “The Closing Statement.”]*
 - 5. Loan Servicing Disclosure Requirements and Escrow Account Restrictions
 - 6. Prohibited Kickbacks and Referral Fees *[Instructors should cover this topic in considerable depth using various examples to enhance student understanding.]*
- C. Penalties for Violating RESPA

VI. The Closing Statement (6¾ Hours) ***Manual, Chapter 14, pages 572-588***

- A. Broker Responsibilities and Providing Copies *[Emphasize what a broker is expected to verify and NOT expected to verify regarding the HUD-1 form.]*
- B. Prorations
 - 1. Real Estate Taxes (various situations)
 - 2. Rents
 - 3. Owner's Association Dues
- C. HUD-1 Settlement Statement (***Manual, pages 578-588***)
 - 1. Instructions for Completing HUD-1 Form
 - 2. Review of Sample HUD-1
 - 3. Practice Preparation of Closing Statement using the HUD-1 Form

Instructor Notes: *After reviewing basics, instructors should consider using a completed closing statement with several errors and have students find the errors as an in-class assignment. Instructors should also require students to complete in-class closing statement problems either individually or in groups and review the problems with the entire class. Final course examination includes a complete closing statement problem.*

VII. Other Topics **[¾ Hour]**

- A. Alternate Conveyance Contracts (*Manual, pages 457-467*)
 - 1. Installment Land Contract (Contract for Deed)
 - 2. Option to Purchase
 - 3. Contractual Preemptive Rights
 - a. Right of First Refusal
 - b. Right of First Opportunity to Purchase

- B. License Status and Education Issues [**Instructor Note:** *Refer to the section with this title in most recent **Real Estate Update Course** for materials, if necessary.*)
 - 1. License Status: Meaning of provisional broker, active, inactive, expired, suspended, revoked, and canceled status.
 - 2. Postlicensing Education Requirement (and consequences of failure to satisfy)
 - 3. Continuing Education Requirement (and consequences of failure to satisfy)
 - 4. Requirements and procedures to activate an inactive license
 - 5. Requirements and procedures to reinstate an expired license
 - a) License expired for not more than 6 months
 - b) License expired for more than 6 months

End of Syllabus