

SUMMARY OF CHANGES TO NCAR FORMS (JULY 2012)

The residential forms listed below have been revised effective July 1, 2012. A summary of significant changes follows the list.

Jointly-Approved Forms (approved by NCAR 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) Additional Provisions Addendum (form 2A11-T)
- (9) Short Sale Addendum (form 2A14-T)
- (10) Real Estate Closing Information (form 9-T)

NCAR Residential Forms (approved by NCAR only)

- (11) Exclusive Right to Sell Listing Agreement (form 101)
- (12) Exclusive Right to Sell Listing Agreement (Vacant Lot/Land) (form 103)
- (13) Short Sale Addendum to Exclusive Right to Sell Listing Agreement (form 104)
- (14) Notice of Buyer/Seller Termination Forms (forms 350-T, 351-T, 352-T and 353-T)

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

- Paragraph 1(c)—A new “Note” has been added to refer the parties to a new provision that has been added to the Additional Provisions Addendum addressing mobile homes that will be a part of the transaction (see discussion under Additional Provisions Addendum below).
- Paragraphs 1(k), 1(m) and 13—Effective January 26, 2012, the NC State Bar revised Authorized Practice Advisory Opinion 2002-1, which addresses the role of non-attorneys in the handling of residential real estate closings. The revised Advisory Opinion clarifies the limited services that non-attorneys may perform in connection with a closing, and that non-attorneys may not handle closings or represent that they handle closings. In addition, N.C. General Statute §84-10, enacted last year, provides a private cause of action to recover damages and attorneys’ fees to any person who is damaged by the unauthorized practice of law against both the person who engages in unauthorized practice *and* anyone who knowingly aids and abets such person. In light of these changes, the term “settlement agent” has been replaced with “closing attorney” in the seven places where it appears in paragraphs 1(k), 1(m) and 13, and a new “Warning” has been added at the end of paragraph 1(m).
- Escrow Acknowledgment—Reference to the Property and the name of the Buyer and Seller have been added to clarify what transaction the Escrow Agent’s

acknowledgment applies to in situations where only the last page of the contract is provided to the Escrow Agent to acknowledge receipt of the Earnest Money Deposit.

- (2) **Guidelines for Completing the Offer to Purchase and Contract (form 2G)**
 - Paragraph 1(m) of the Guidelines has been expanded to include additional information pertaining to the role of non-attorneys in closing residential real estate transactions.
- (3) **Offer to Purchase and Contract—Vacant Lot/Land (form 12-T).** Same changes as those made to form 2-T (see discussion above)
- (4) **Guidelines for Completing Offer to Purchase and Contract—Vacant Lot/Land (form 12G).** Same changes as those made to form 2G (see discussion above)
- (5) **Offer to Purchase and Contract—New Construction (form 800-T).** Paragraphs 1(m), 1(n) and 1(o) have been changed to substitute “closing attorney” for “settlement agent” and the new “Warning.” Has been added (see discussion above under changes to form 2-T)
- (6) **Guidelines for Completing Offer to Purchase and Contract—New Construction (form 800G).** Same changes as those made to form 2G (see discussion above)
- (7) **Back-Up Contract Addendum (form 2A1-T)**
 - The first paragraph has been broken into two paragraphs and each paragraph has been given a caption
 - A new paragraph 9 has been added to tie the date that the Due Diligence Fee will be payable, the date that Due Diligence Period will end, and the date of Settlement to the date that the Seller notifies the Buyer that the Back-Up Contract has become primary, thereby avoiding the necessity of agents inserting wording of this type in the blank spaces in the Offer to Purchase and Contract.
 - A new “NOTE” at the end of paragraph 9 instructs agents to insert “See attached Back-Up Contract Addendum” in Due Diligence Period and Settlement Date blanks in Contract rather than dates.
- (8) **Additional Provisions Addendum (form 2A11-T).** A new provision addressing the identification of any mobile home(s) that will be part of the transaction has been added. This addition was made at the request of a number of real estate lawyers who commonly close transactions in which mobile homes are involved. Closing attorneys sometimes aren’t aware of the existence of the mobile home until just before settlement and this can cause delays in settlement if the proper steps haven’t been taken to make the mobile home a part of the underlying real estate being bought and sold. Addressing mobile homes in the contract will alert the closing attorney to the fact that a mobile home is part of the transaction and providing the VIN # will facilitate any work that the closing attorney must do to either confirm that the mobile

home has been made a part of the real estate or take necessary steps to make it a part of the real estate.

- (9) **Short Sale Addendum (form 2A14-T)**. This form has been substantially rewritten in response to input from brokers who do significant numbers of shorts sales. In making revisions, the Joint Forms Task Force also received significant input from two lawyers in a firm which handles short sale transactions exclusively.
- Paragraph 1—In order to encompass so-called “strategic short sales” (sales where the lender is willing to approve a short sale even though the seller has sufficient liquid assets to cover the deficiency), the definition of a short sale has been modified slightly (see paragraph 1(b)).
 - Paragraph 2—This list of short sale approval risks consolidates items already present in various paragraph of the current Short Sale Addendum (with the exception of the 5th bullet, which is new), and moves them to a more prominent place toward the beginning of the Addendum.
 - Paragraph 3—The contingency has been modified to clarify that the contract is contingent not only on lienholder approval of the short sale contract but also on seller’s acceptance of the lienholder’s proposed terms for approving the sale. Seller acceptance of the lienholder’s terms is implicit in the current Addendum; the new Addendum makes this requirement explicit.
 - Paragraph 4—The old Addendum gave the buyer the right to terminate the short sale contract anytime prior to receipt of lienholder approval. The new Addendum permits both the buyer *and* the seller to terminate the contract prior to seller’s notification to buyer that the seller has accepted the lienholder’s terms for approval of the short sale. This change reflects the practical reality that a seller may decline to go forward with a short sale by simply refusing to accept the lienholder’s proposed terms, and will permit a seller to terminate a contract in a straight-forward manner.
 - Paragraph 5—This paragraph is new. It ties the end of the Due Diligence Period and Settlement Date to the seller’s notice to buyer of the seller’s acceptance of the lienholder’s terms, thereby avoiding necessity of agents inserting wording of this type in the blank spaces in the Offer to Purchase and Contract.
 - A new “NOTE” at the end of paragraph 5 instructs agents to insert “See attached Short Sale Addendum” in the Due Diligence Period and Settlement Date blanks in the Contract rather than dates.
 - Paragraph 6
 - Paragraph 6(a) draws a distinction between the listing agent’s duty to *present* additional offers to the seller and the obligation to *inform* lienholders of additional offers and contracts once the seller has submitted a request for a short sale.
 - Paragraph 6 of the new Short Sale Addendum handles multiple contracts on the property differently than the Back-Up Contract Addendum (form 2A1-T). The distinction between “primary” and “back-up” contracts doesn’t exist in a short sale situation, so the structure of the Back-Up Contract Addendum just didn’t work well

with short sales. Paragraph 6(b) of the new Short Sale Addendum requires the seller to disclose whether there are existing contracts on the property and Paragraph 6(c) makes it clear that the seller may enter into contracts with other buyers, or substitute a different contract for lienholder consideration, or withdraw the buyer's contract from consideration. If neither party terminates the contract, paragraph 6(d) also requires the seller to keep the buyer posted on all developments affecting the contract, such as the seller's acceptance of another contract, or short sale approval of another contract, or seller's closing on another contract.

- Paragraph 8—A new seller representation has been added pertaining to whether the seller is in bankruptcy.

(10) **Real Estate Closing Information (form 9-T)**. Reformatted and updated.

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

- Paragraph 10—The “Internet Advertising” section has been modified to clarify that any listing service of which the Firm is a member or in which any of Firm's agents participate may use, license or sell to others information about the Property.
- Paragraph 12(n)—A new seller representation has been added pertaining to any mobile home that may be sold as a part of the property

(12) **Exclusive Right to Sell Listing Agreement (Vacant Lot/Land) (form 103)**. Same changes as those made to form 101 (see above).

(13) **Short Sale Addendum to Exclusive Right to Sell Listing Agreement (form 104)**.

- Paragraph 1—The definition of “short sale” has been modified in accordance with the change to the definition in the Short Sale Addendum (form 2A14-T) (see above)
- Paragraph 10—The last sentence in the fourth bullet in paragraph 9 has been moved into its own new paragraph and modified to clarify that the limitation on an agent's ability to negotiate with lienholders is applicable not only in the context of a foreclosure proceeding but also to negotiating the terms of lienholder approval of the short sale
- Paragraph 11—Modified in accordance with change to paragraph 6 of the Short Sale Addendum (see above)

(14) **Notice of Buyer/Seller Termination Forms (forms 350-T, 351-T, 352-T and 353-T)**.

- These four unilateral notice of termination forms have been modified to track changes to the Short Sale Addendum (form 2A14-T)
- The Release of Earnest Money Deposit section has been updated to track changes previously made to the “Escrow Agent” definition in the Offer to Purchase and Contract

- A new menu choice has been added to form 350-T only to address termination by a buyer when the financing is VA or FHA and the property under-appraises

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, 2012.