



The NCAR Forms Committee and NCAR/NC Bar Association Joint Forms Task Force recommend that the residential forms listed below be revised, created or eliminated effective July 1, 2019. A summary of the significant changes to each form follows the list. A marked-up copy of each form showing the exact changes follows the summary.

WARNING: THE RECOMMENDED CHANGES SUMMARIZED BELOW ARE SUBJECT TO FINAL APPROVAL BY THE NC REALTORS EXECUTIVE COMMITTEE ON JUNE 27, 2019.

Jointly-Approved Forms (approved by NCAR and NC Bar Association)

- (1) Contingent Sale Addendum (form 2A2-T) (ELIMINATION)
- (2) Offer to Purchase and Contract (form 2-T)
- (3) Offer to Purchase and Contract (Vacant Lot/Land) (form 12-T)
- (4) Offer to Purchase and Contract (New Construction) (form 800-T)
- (5) Buyer Possession Before Closing Agreement (form 2A7-T)
- (6) Seller Possession After Closing Agreement (form 2A8-T)
- (7) Vacation Rental Addendum (form 2A13-T)
- (8) Real Estate Closing Information (form 9-T)

NCAR Residential Forms (approved by NCAR only)

- (9) Exclusive Right to Sell Listing Agreement (form 101)
- (10) Exclusive Right to Sell Listing Agreement (Vacant Lot/Land) (form 103)
- (11) Exclusive Buyer Agency Agreement (form 201)
- (12) Non-Exclusive Buyer Agency Agreement (form 203)
- (13) Seller Estimated Net Sheet (form 110)
- (14) Response to Buyer's Offer (form 340-T)
- (15) Notice To Seller That Buyer Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract (form 350-T)
- (16) Notice To Seller That Buyer Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract—Vacant Lot/Land (form 351-T)
- (17) Notice To Buyer That Seller Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract (form 352-T)
- (18) Notice To Buyer That Seller Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract—Vacant Lot/Land (form 353-T)
- (19) Notice To Buyer To Deliver Cash, Official Bank Check, Wire Transfer Or Electronic Transfer (form 355-T)
- (20) Termination of Contract By Mutual Consent With Release of Earnest Money Deposit (form 390-T)
- (21) Professional Services Disclosure And Election (form 760)

Jointly-Approved Forms (approved by NCAR and NC Bar Association)

(1) Contingent Sale Addendum (form 2A2-T) (ELIMINATION).

- Last year, the Joint Forms Task Force made significant suggested revisions to this form with the intention of making it easier for brokers and their clients to understand. The NC REALTORS Executive Committee declined to approve the revisions and requested that the Task Force "go back to the drawing board." Following extensive discussion and the consideration of 2 additional drafts, the Task Force ultimately decided that the best course of action would be to eliminate the Contingent Sale Addendum altogether.

Serious thought was given to eliminating the Contingent Sale Addendum at the time the "Due Diligence" contract was introduced in 2011. Proponents of removal--then and now--believe that the due diligence period can be used by a buyer who needs to sell another property to close on that property or determine to their reasonable satisfaction whether or not closing on the other property will take place prior to the Settlement Date of the contract with the seller. Largely as a result of a request from the Real Estate Commission's legal staff to keep the form in order to discourage agents from drafting their own contingency, a decision was made in 2011 not to eliminate the form. According to the Real Estate Commission attorney who currently sits on the Task Force, the Commission's legal staff no longer opposes elimination of the form. The Addendum is confusing, misunderstood and misused by agents, and this results in disputes between parties about their rights and obligations under the Addendum. In discussing elimination of the form, several members on the NCR Forms Committee explained how they have learned to use the due diligence contract rather than the Contingent Sale Addendum to accommodate buyers who need to sell a property before they can complete a purchase from the seller. Although it is anticipated that there will be some short-term pain associated with this change, it is felt that elimination of the Contingent Sale Addendum will, in the longer term, be a net benefit.

(2) Offer to Purchase and Contract (form 2-T)

- Paragraph 1(e)—Recommended change to add any Due Diligence Fee paid together with any Earnest Money Deposit to constitute seller's liquidated damages. This change is being recommended as a result of a lawsuit reported by an NC attorney who is defending a buyer who terminated a contract formed using form 2-T. According to the attorney, there was no earnest money deposit because the seller insisted on the buyer paying due diligence money instead of earnest money. The seller/plaintiff is taking the position that since no EMD was paid or payable, the liquidated damages provision that limits the seller's remedy to payment of the EMD is inapplicable, and is suing the buyer for significant damages the seller allegedly incurred. The members of the Joint Forms Task Force agreed that this was not the intent of the liquidated damages provision, and the suggested changes to paragraph 1(e) is intended to preclude an argument like that being made in the lawsuit. The Task Force recognized the possibility that a contract could be formed without either EMD or a DDF, but concluded that such a remote possibility did not need to be addressed.
- Paragraph 4(c)—As a result of the recommended elimination of the Contingent Sale Addendum (see comments under #1 above), this new recommended subparagraph encourages a buyer who needs to sell their existing property in order to buy the seller's property to close on the property

during the due diligence period or, if the property will not close during the due diligence period, to be reasonably satisfied prior to the end of the due diligence period that the property will close by the settlement date of the contract with the seller.

- Paragraph 5(a)—If a buyer intends to seek assistance from a down payment assistance program, the program may impose additional obligations on the parties. The new recommended down payment assistance checkbox and recommended new sentence in the existing “Note” is intended to bring this issue to the attention of the parties, in particular the seller.
- Paragraph 5(b)—The recommended additions to existing paragraph 5(b) incorporate elements of the Contingent Sale Addendum, elimination of which is being recommended (see comments under #1 above). If the buyer’s property is under contract, the first box is checked and the buyer is expected to provide, or have already provided, a copy of their contract to the seller. If the buyer’s property is not yet under contract, the second box is checked and the buyer indicates whether the property is currently listed, will be listed in the future, or if the buyer is attempting to sell the property without the assistance of a real estate broker. Finally, the “Note” has been modified to reflect the elimination of the Contingent Sale Addendum.
- Paragraph 8(c)—Although it is implied that the seller’s obligation to provide “working, existing utilities” includes the obligation to pay for the cost of providing those utilities, disputes occasionally arise regarding which party is responsible for turning on utilities that have been turned off in properties that are vacant. The recommended change makes the seller’s obligation to pay the cost of utility service explicit.
- Paragraph 9—Disputes occasionally arise regarding which party is responsible for, or the beneficiary of, prorated amounts for taxes, rents, etc. attributable to the date on which Settlement takes place. The recommended change clarifies this issue and follows what the attorney members of the Joint Forms Task Force believe to be the prevailing practice of NC closing attorneys in residential transactions.
- Paragraph 11—The existing contract contains a “Condition of Property at Closing” condition (paragraph 11) and a “Risk of Loss” condition (paragraph 12). Occasional disputes arise about which condition may be applicable in a particular situation. Therefore, the two conditions have been combined into a single condition. The risk of loss by fire or other casualty continues to remain with the seller until closing.

(3) Offer to Purchase and Contract (Vacant Lot/Land) (form 12-T)

- Paragraph 1(e)—recommended changes parallel recommended changes to paragraph 1(e) of form 2-T (see comments under #1 above)
- Paragraph 2(xi)—recommended changes parallel recommended changes to paragraph 4(c) of form 2-T (see comments under #1 above)
- Paragraph 3(b)—recommended changes parallel recommended changes to paragraph 5(b) of form 2-T (see comments under #1 above)
- Paragraph 6(c)—recommended changes parallel recommended changes to paragraph 8(c) of form 2-T (see comments under #1 above)
- Paragraph 7—recommended changes parallel recommended changes to paragraph 9 of form 2-T (see comments under #1 above)
- Paragraph 8—recommended changes parallel recommended changes to paragraph 11 of form 2-T (see comments under #1 above)

(4) Offer to Purchase and Contract (New Construction) (form 800-T)

- Paragraph 2(a)-- recommended changes parallel recommended changes to paragraph 5(a) of form 2-T (see comments under #1 above)
- Paragraph 7-- recommended changes parallel recommended changes to paragraph 5(b) of form 2-T (see comments under #1 above)
- Paragraph 10(c)-- recommended changes parallel recommended changes to paragraph 8(c) of form 2-T (see comments under #1 above)
- Paragraph 11-- recommended changes parallel recommended changes to paragraph 9 of form 2-T (see comments under #1 above)

(5) Buyer Possession Before Closing Agreement (form 2A7-T)

- Paragraph 8—Recommended change will require the buyer to purchase a renter’s insurance policy to insure against bodily injury and property damage for which buyer may be responsible in connection with the buyer’s occupancy of the property prior to closing. This requirement will help “fund” the buyer’s obligation under paragraph 10 to indemnify and hold harmless the seller from liability for damage to the property or personal injury or death arising out of buyer’s occupancy of the property.
- Paragraph 9—The recommended addition clarifies that the insurance the seller must maintain through closing includes liability insurance.

(6) Seller Possession After Closing Agreement (form 2A8-T)

- Paragraph 7—Recommended change will require the seller to purchase a renter’s insurance policy to insure against bodily injury and property damage for which seller may be responsible in connection with the seller’s occupancy of the property after closing. This requirement will help “fund” the seller’s obligation under paragraph 9 to indemnify and hold harmless the buyer from liability for damage to the property or personal injury or death arising out of seller’s occupancy of the property.

(7) Vacation Rental Addendum (form 2A13-T)

- Paragraph 3— recommended addition will give the parties the ability to agree that the seller will be entitled to enter into additional vacation rental agreements after contract, provided that such agreements end no later than the Settlement Date of the contract.

(8) Real Estate Closing Information (form 9-T)

- Recommended elimination of references to loan numbers due to privacy laws
- Recommended addition of direction to provide social security numbers of parties to closing attorney via a secure method rather than putting numbers in form, also due to privacy laws

NOTE: In addition to the above-referenced changes, the signature sections of the following forms have been reformatted for consistency and clarity: Forms 2A1-T, 2A3-T, 2A4-T, 2A5-T, 2A6-T, 2A7-T, 2A8-T, 2A9-T, 2A11-T, 2A12-T, 2A13-T, and 2A14-T.

NCAR Residential Forms (approved by NCAR only)

(9) Exclusive Right to Sell Listing Agreement (form 101)

- Top of page 1--Questions frequently arise about how to list “estate properties” (i.e., properties that were owned by a recently-deceased person), properties that are owned by entities and trusts, and properties owned by a person who is married to a non-owner spouse. A new “Note” has been added at the top of the first page to help guide agents in properly identifying the seller in such cases.
- Paragraph 7(c)—Recommended change to clarify that firm is entitled to its fee only if and when closing proceeds are distributed by the closing attorney. This change is being recommended in response to occasional complaints by closing attorneys regarding agents who demand payment of their fee at Settlement (i.e., before the deed is recorded).
- Paragraph 9—In accordance with its rules, MLSs can demand that a participant submit a listing agreement on a listed property. It is recommended that a new sentence be added immediately above the capitalized anti-discrimination language in paragraph 9 whereby the seller gives the listing firm specific authority to submit the listing agreement to any listing service if such a demand is made by the MLS.
- Paragraph 10(d)(iv)—new recommended wording advises seller of the potential that information about the property may remain on the Internet after the listing agreement has expired, and that neither the firm nor its agents have control over information about the property placed on the Internet for marketing purposes.
- Signature section—reformatting to aid understanding how to properly complete blanks

(10) Exclusive Right to Sell Listing Agreement (Vacant Lot/Land) (form 103)

- Top of page 1-- recommended change corresponds to recommended change to form 101 (see comments under #9 above)
- Paragraph 4(c)-- recommended change corresponds to recommended change to paragraph 7(c) of form 101 (see comments under #9 above)
- Paragraph 6-- recommended change corresponds to recommended change to paragraph 9 of form 101 (see comments under #9 above)
- Paragraph 7(d)(iv)-- recommended change corresponds to recommended change to paragraph 10(d)(iv) of form 101 (see comments under #9 above)
- Signature section—recommended changes correspond to recommended changes to signature section of form 101 (see comments under #9 above)

(11) Exclusive Buyer Agency Agreement (form 201)

- Paragraph 4(d)-- recommended change corresponds to recommended change to paragraph 7(c) of form 101 (see comments under #9 above)
- Paragraph 4(f)—in some instances where a buyer is purchasing vacant land, the buyer agent assists them in locating a builder to construct a dwelling on the property and the builder agrees to compensate the agent for the referral. The Forms Committee recommends that new subsection (f) be added to specifically address this possibility and to obtain the buyer’s “up-front” consent to the payment of such compensation, provided that the agent timely discloses the arrangement to the buyer.
- Paragraph 18-- recommended change corresponds to recommended change to paragraph 10(d)(iv) of form 101 (see comments under #9 above)

- Signature section—recommended changes correspond to recommended changes to signature section of form 101 (see comments under #9 above)

(12) Non-Exclusive Buyer Agency Agreement (form 203)

- Paragraph 3(d)-- recommended change corresponds to recommended change to paragraph 7(c) of form 101 (see comments under #9 above)
- Paragraph 10--recommended change corresponds to recommended change to paragraph 10(d)(iv) of form 101 (see comments under #9 above)
- Signature section—recommended changes correspond to recommended changes to signature section of form 101 (see comments under #9 above)

(13) Seller Estimated Net Sheet (form 110)

- “Closing Costs” section—Change recommended to more accurately reflect statutory cost for “revenue stamps,” which are charged at the rate of \$1.00 per \$500 of value rather than \$2.00 per \$1,000 of value

(14) Response to Buyer’s Offer (form 340-T)

- First check box—The words “This is not a counter offer” capitalized to emphasize that the seller’s response is simply an invitation to submit another offer containing different terms rather than a counteroffer that the buyer may accept.
- First Check box—The words “At any time” added in last capitalized sentence to emphasize the fact that the seller is not obligated to “wait” on the buyer to submit another offer and may accept another offer from a different buyer at any time.
- Second Check box—new choice added to address common situation where seller desires to notify buyers of seller’s intent to consider offers received by a specified date and time. The new choice makes it clear that the seller may accept an offer before the specified date and time and that the seller may choose not to accept any offers submitted by the specified date and time. Also note that the buyer is encouraged to submit their “best offer” rather than their “highest and best offer” since the “best” offer is not always the “highest” offer.

(15) Notice To Seller That Buyer Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract (form 350-T)

- Third checkbox modified to correspond to the consolidation of paragraphs 11 and 12 in the Offer to Purchase and Contract (see discussion under #2 above)
- Sixth and seventh checkboxes eliminated in light of recommended elimination of Contingent Sale Addendum (see discussion under #1 above)

(16) Notice To Seller That Buyer Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract—Vacant Lot/Land (form 351-T)

- Fourth checkbox modified to correspond to the consolidation of paragraphs 11 and 12 in the Offer to Purchase and Contract (see discussion under #2 above)
- Fifth and sixth checkboxes eliminated in light of recommended elimination of Contingent Sale Addendum (see discussion under #1 above)

(17) Notice To Buyer That Seller Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract (form 352-T)

- First and second checkboxes under paragraph 2 amended to conform to wording change previously made to Offer to Purchase and Contract pertaining to elimination of phrase “immediately available funds”
- Fourth and fifth checkboxes eliminated in light of recommended elimination of Contingent Sale Addendum (see discussion under #1 above)

(18) Notice To Buyer That Seller Is Exercising Their Unilateral Right To Terminate The Offer To Purchase And Contract (form 353-T)

- First and second checkboxes under paragraph 2 amended to conform to wording change previously made to Offer to Purchase and Contract pertaining to elimination of phrase “immediately available funds”
- Fourth and fifth checkboxes eliminated in light of recommended elimination of Contingent Sale Addendum (see discussion under #1 above)

(19) Notice To Buyer To Deliver Cash, Official Bank Check, Wire Transfer Or Electronic Transfer (form 355-T)

- Name of form, paragraph 1 (second and third bullets) and paragraph 3 amended to conform to wording change previously made to Offer to Purchase and Contract pertaining to elimination of phrase “immediately available funds”

(20) Termination of Contract By Mutual Consent With Release of Earnest Money Deposit (form 390-T)

- Paragraph 4—Occasionally, the parties’ agreement to terminate by mutual consent may include the payment of an amount in addition to any EMD that was paid. For example, a buyer may agree to terminate a contract if, in addition to a refund of their EMD, the seller is willing to refund all or some part of the Due Diligence Fee. Thus, the Forms Committee recommends that a new sentence/blank space be added to identify any such amount.
- Paragraph 3—Paragraphs 3 and 4 in the existing version of the form are simply being reformatted into a single paragraph in order to keep the form a “one-pager.”

(21) Professional Services Disclosure And Election (form 760)

- Addition of "Home Re-inspections" to list of suggested services

In addition, minor formatting changes to the signature sections of the Agency Agreement Renewal And/Or Amendment (form 710) and the Termination of Agency Agreement and Release (form 720) for purposes of clarity.

The forms will be updated on the NCR web site by July 1st. They have already been provided to NCAR’s approved forms software vendor. Questions regarding the availability of updated forms software should be addressed to the vendor.

Permitted users of NCAR’s forms will have 60 days following their effective date to transition to the revised forms. Therefore, old versions should not be used on transactions taking place after the end of August 2018.