diligence period expires, the earnest money should be refunded to you. If you terminate after the due diligence period, the earnest money is usually forfeited to the seller unless the seller is unable to perform by the deadline, but do so within a reasonable time, the seller must still go forward with the transaction. Although the seller may be able to recover damages from you for your failure to perform by the stated date, the seller must still return the earnest money to you. If you terminate for any or no reason prior to the expiration of the due diligence period, the seller must still return the earnest money to you.

® Condominiums. If you are purchasing a condominium (a small apartment building), the seller (whether or not a real estate broker is involved) must provide you with two written disclosures: (1) Residential Sale and Owner’s Disclosure Statement, and (2) Mineral and Oil Gas Rights Mandatory Disclosure Statement. If the seller does not, you may be entitled to receive a refund of your earnest money in a lawsuit for its slender or non-refundable and paid directly to the seller for taking possession of the property during the option period. Although subject to negotiation, option money is non-refundable and paid directly to the seller at the signing of the option. Depending upon the terms of the option agreement, you may or may not receive any refund for all or some of your option money against the purchase price if you “exercise” your option. You should read any option contract carefully and consult your attorney if you have any questions.

® Lease-Purchase. When a lease is coupled with an option to purchase, you have the right to buy property at a set price while leasing it. There are many lease-purchase forms available, so you are again advised to consult your attorney.

® Lease-Purchase. In lease-purchase transactions, the buyer must agree to purchase the property at a set price while leasing it. There are many lease-purchase forms available, so you are again advised to consult your attorney.
Questions and Answers on: OFFER AND ACCEPTANCE

The purchase contract is the most important document in any real estate sale. It must reflect the entire agreement between the buyer and seller. The broker examines issues arising during contract negotiations in professional real estate sales transactions. In particular, it focuses on “offer” and “acceptance” of the process by which a buyer and seller create a binding legal contract. This process typically begins when a prospective buyer makes an offer. Then, the seller either accepts, rejects, or makes a counteroffer. The most common residential real estate sales contract is the “Offer to Purchase and Contract” (Form No. 2-T), jointly approved by the N.C. Bar Association and the North Carolina Real Estate Commission. Many standard “addenda” forms are also available to address provisions of special importance to the parties. Your real estate broker must have a copy of these forms, but if a standard, prepared form is not available covering the specific terms of your offer, you should consult a private attorney to draft an appropriate document for your use. Real estate brokers are not permitted to draft contracts or even special provisions such as contingencies.

Q: What should be in my offer?
A: As a minimum, your offer must accurately identify you as the buyer and the seller, state the sale price, and closing date, and all of the terms agreed upon by you and the seller. It must also contain an adequate legal description of the property (for example, a reference to a recorded plat or map or deed) — a street address alone is not sufficient. This is an important provision you should consider. For example, if your offer fails because of a title dispute or lacks sufficient funds, you will be the loser.

Q: How will my offer be communicated to the seller?
A: Most offer to purchase forms require that the buyer broker or a representative of the buyer broker present it to the seller. If the seller accepts your offer, ask whether the seller has accepted your offer, and ask for a signed copy of the contract. Your real estate broker must furnish it to you.

Q: What if the seller changes my offer in some way and then signs it?
A: Once the seller accepts your offer, it becomes a contract.

Q: What happens if someone else makes an offer to purchase property before the seller accepts your offer?
A: Even if your offer was submitted first and is for a higher purchase price, a broker is required to deliver offers promptly. In order to protect their seller clients, the broker will usually wind up competing against the buyer that has the highest bid. In most cases, the seller's broker can only negotiate the price and terms of competing offers without the express authority of the offering party. Whether you have formally submitted a competing offer or not, you should not assume that your offer will receive special consideration or that you are the only buyer who is interested in the property.

Q: In what circumstances may the seller not close?
A: If you terminate the contract before the due date in the offer, your only remedy is to recover your earnest money deposit. For more information, contact your real estate broker or the Commission’s consumer brochure, “Questions and Answers on Earnest Money Deposits.”