

**North Carolina
Postlicensing Course Syllabus**

**POST 302
*CONTRACTS AND CLOSING***

(Student Version)

August 2021 Edition



North Carolina Real Estate Commission

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INTRODUCTION

Course Description: The *Post 302 – Contracts & Closing* course is one of the three 30-instructional hour courses in the North Carolina mandatory Postlicensing (PL) education program. The primary objective of the courses is to provide instruction at a level beyond that provided in Prelicensing courses on topics deemed to be of special importance in the active practice of real estate brokerage. 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 disclosure preparation,
- contracts for deed, options, and
- selected real estate license status and education issues.

Requirements for Offering the Course: This course may only be offered by Commission-certified Education Providers (EPs) that have received course approval for each specific course delivery method. EPs may only use 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 delivery, course completion standards, course completion reporting and other related matters may be obtained on the Commission website (www.ncrec.gov). The *Post 302 – Contracts & Closing* course must be taught as prescribed by this syllabus.

Course Hours and Delivery Method: Each Postlicensing course must consist of a minimum of 30 instructional hours. The course may be offered via in-person, synchronous distance, self-paced distance, or blended delivery. Course pre-approval is required for each type of delivery.

Prerequisite: Per [Commission Rule 58A .1902\(b\)](#), *a provisional broker as described in NCGS 93A-4(a1) shall complete all Postlicensing courses pursuant to Paragraph (a) of this Rule within 18 months following the date of initial licensure.*

An EP should require an individual enrolling in a Postlicensing course for Postlicensing educational credit to verify their identity and to provide their NC real estate license number to assure compliance with the above rule.

Course Materials: Per [Commission Rule 58H .0205\(c\)](#), the EP shall verify that each enrolled student possesses course materials by the first class session. Mandatory materials for this course include the current editions of:

- *North Carolina Real Estate Manual (hereinafter called Manual)*,
- *North Carolina Real Estate License Law and Commission Rules (hereinafter called LLCR), and*
- the Commission's *Residential Square Footage Guidelines* booklet.

These publications in print or digital format can be ordered through the [Commission's website](#) or the EP.

Text references throughout the syllabus are for the July 2020 edition of the *LLCR* and the 2020 edition of the *Manual*. For your benefit, all *Manual* chapters referenced in this course syllabus are consolidated within *Chapter 25. POST 302, Contracts and Closing* in the digital version of the *Manual*. Italicized [*Digital REM search words*] after a subheading will help you narrow your digital search for a *Manual* reference.

Course Scheduling: Refer to [Commission Rule 58H .0404](#) for course scheduling parameters.

Commission Rule 21 NCAC 58H .0304: Instructor Conduct and Performance

(a) All instructors shall ensure that class sessions are conducted at the scheduled time and for the full amount of time that is scheduled or required. Instructors shall conduct courses in accordance with the Commission's rules, and any applicable course syllabi, instructor guide, or course plan. Instructors shall conduct classes demonstrating the ability to:

- (1) state student learning objectives at the beginning of the course and present accurate and relevant information;
- (2) communicate correct grammar and vocabulary;
- (3) utilize a variety of instructional techniques that require students to analyze and apply course content, including teacher-centered approaches, such as lecture and demonstration, and student-centered approaches, such as lecture discussion, reading, group problem solving, case studies, and scenarios;
- (4) utilize instructional aids, such as:
 - (A) whiteboards;
 - (B) sample forms and contracts;
 - (C) pictures;
 - (D) charts; and
 - (E) videos;
- (5) utilize assessment tools, such as:
 - (A) in-class or homework assignments, and
 - (B) quizzes and midterm examinations for Prelicensing and Postlicensing courses;
- (6) avoid criticism of any other person, agency, or organization;
- (7) identify key concepts and correct student misconceptions; and
- (8) maintain control of the class.

(b) Instructors shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

Required Activities: EPs and instructors are REQUIRED to conduct "Required Activities" when teaching this course.

End-of-Course Examinations and Completion Standards: For successful completion of the course, students must

1. satisfactorily complete any required activities and homework exercises,
2. meet attendance requirements, and
3. pass the end-of-course examination.

Instructional time should only be used for the introduction, and review upon completion, of the homework assignment(s).

EPs are required to utilize end-of-course examinations in accordance with [Commission Rule 58H .0207](#). End-of-course exams must be closed-book and proctored. The minimum passing grade is 75%. The Commission recommends that certified EPs and approved instructors use end-of-course examinations that are comprehensive in scope. EPs and instructors shall safeguard the integrity and confidentiality of examinations at all times.

Syllabus Copies:

- The course syllabus is posted on the Commission's website, under Education.
- EPs and instructors may reproduce all or part of the syllabus for student use at their own expense, and may charge students for the cost of reproduction.

Order of Subject Area Presentation: The order in which subject areas are presented in the Syllabus is the recommended order, but instructors may make adjustments in the order of presentation.

Instructional Levels: The Commission utilizes *Instructional Levels* to prescribe the scope and depth of coverage of topics and subtopics throughout the course. There are three levels, with Level 1 being the lowest and Level 3 being the highest level of instruction. Instructional Levels are based on Bloom's Taxonomy.

Below are the definitions of the three Instructional Levels, including the prescribed competency and instruction for each. Competency means what students will be able to do by the end of topic/subtopic coverage. Instruction means the prescribed depth of coverage and instructional methods.

Level 1 – Recall

NOTE: Level 1 is based on Bloom's Taxonomy Level 1-Understand and Level 2-Remember.

Competency: Students should be able *to recall facts and basic concepts* and *to explain ideas or concepts*. Learning objectives may include terms such as define, duplicate, classify, explain, and describe.

Instruction: Instructor should review and discuss basic definitions, facts, concepts, procedures, etc. In-depth instruction is not required.

Level 2 – Application

NOTE: Level 2 is based on Bloom's Taxonomy Level 3-Apply and Level 4-Analyze.

Competency: Students should be able *to use information in new situations* and *to draw connections among ideas*. Learning objectives may include terms such as implement, solve, demonstrate, interpret, differentiate, relate, compare, and contrast.

Instruction: Instructor should review and discuss the topic in moderate depth sufficient to illustrate and enhance understanding of facts, principles, procedures, etc. and their relevance to brokerage practice.

Level 3 –Analysis

NOTE: Level 3 is based on Bloom's Taxonomy Level 5-Evaluate and Level 6-Create.

Competency: Students should be able *to justify a stand or decision* and *to produce new or original work* based on the information. Learning objectives may include terms such as defend, judge, critique, weigh, design, assemble, develop, or formulate.

Instruction: Instructor should review and discuss the topic in substantial depth, using examples to reinforce understanding of ideas, principles and practices, and requiring students to complete practical work assignments to demonstrate both their understanding of the topic and their ability to apply their knowledge to common fact situations that will be encountered in real estate practice.

Each *major topic* (i.e., preceded by a capital letter) in this syllabus has been assigned an Instructional Level. In some instances where a subtopic should be afforded significantly greater or lesser emphasis than the major topic under which it is listed, that subtopic has been assigned a different Instructional Level that applies to that subtopic only.

Education Providers and instructors are REQUIRED to comply with the assigned Instructional Levels when teaching this course. The majority of Postlicensing topics should be taught at a Level 3; therefore, assume the Instructional Level is 3 if no level is noted in the syllabus.

**POST 302
CONTRACTS and CLOSING
POSTLICENSING COURSE**

Instructional Hours per Section

Section #	Section Title	Hours
1	Basic Selected Contract Law Concepts.....	1.5
2	Real Estate Sales Contract Preparation.....	12
3	Sales Contract Procedures.....	2
4	Closing Preparations and Procedures.....	2
5	TILA-RESPA Integrated Disclosure Rule (TRID) and Real Estate Settlement Procedures Act (RESPA)	2
6	The Settlement Statement.....	6.75
7	Other Topics (Alternate Conveyance Contracts; License Status and Education Issues).....	0.75
	Subtotal	27
	End-of-Course Examination (including a complete settlement problem)	3
	Total	30

Post 302
Contracts and Closing
Postlicensing Course Syllabus

Section 1: Basic Selected Contract Law Concepts (1½ hours)
(*Manual*, Chapter 10, Contract Law, pp. 293-322)

- I. Basic Contract Terms [Digital REM search for: *basic contract law*]
 - A. Definition of *Contract*: A deliberate agreement between two or more competent parties supported by legal consideration to perform or abstain from performing some act
 - B. Express and Implied Contracts: words vs. conduct
 - C. Unilateral and Bilateral Contracts: promises by one party vs. both parties
 - D. Executed and Executory Contracts: fully performed vs. in the process of performing
 - E. Valid Contracts: satisfy all legal requirements; fully enforceable in court
 - F. Voidable Contracts: one party can avoid performance based on a legal principle
 - G. Void Contracts: does not satisfy all legal requirements; unenforceable in court
 - H. Addenda: add something to the original contract; becomes part of the contract
 - I. Amendments: change some term(s) of the original contract through later mutual written agreement
- II. Essential Elements of a Contract (*Manual*, Chapter 10, Contract Law, pp. 295-303)
 - A. Mutual Assent / Offer and Acceptance / Meeting of the Minds (*Manual*, Chapter 11, Sales Contract Procedures, pp. 357-365)

<p>Required Activity: Thoroughly review the offer and acceptance concept by using varied fact situations, including situations that involve electronic communication of offer and acceptance and communication to agents vs. principals.</p>

- 1. Communication of offer & acceptance
 - a. Oral communication
 - b. Personal delivery

- c. Mail (traditional or special mail, such as USPS, FedEx, UPS, etc.)
 - d. Electronic methods of communication
2. Offer
- Note:** Pay careful attention to terminology. There is a huge difference between an *offer* and a *contract*.
- a. Definition: a promise (that is definite in terms) by an offeror asking for a promise or an action by an offeree
 - b. Typically, the buyer is the initial *offeror* and the seller is the initial *offeree*; but sellers can initiate offers
 - c. Brokers must present all offers to offeree (or their agent) *immediately* but in no case later than 3 days from receipt by broker [NCGS 93A-6(a)(13); Rule 58A .0106(a)]
 - i. Even if property is under contract
 - ii. Broker cannot “hold” offer while negotiating compensation agreement
 - iii. Use of *Back-up Contract Addendum* (NC REALTORS® Standard Form 2A1-T will be covered in Section 2 with other standard addenda)
3. Acceptance
- a. Mailbox rule [Digital REM search for: *mailbox*]
 - i. Acceptable notification as long as offer does not prohibit it
 - ii. Must be properly addressed to the offeror
 - iii. Offer considered accepted at date and time of mailing
 - Once in control of mail service & out of offeree’s control
 - Time of actual receipt by offeror is irrelevant
 - iv. Neither party can withdraw offer or acceptance once mailed
 - v. Only applies to communicating acceptance of an offer; not termination of an offer or contract
 - b. Communication to agent same as to principal
4. Termination of offers
- a. Counteroffer (a new offer with partial or conditional acceptance of original offer terms)
 - b. Rejection by offeree by notification or lapse of time specified in offer

- c. Revocation by offeror any time prior to communication of acceptance from offeree
- d. Destruction of the property
- e. Death or insanity of the offeror immediately terminates without notice to the offeree
- f. *Response to Buyer's Offer* (NC REALTORS® Standard Form 340-T) [Digital REM search for: 340-T]

Required Activity: Provide a detailed review of NC REALTORS® Standard Form 340-T. Discuss the pros and cons of the seller using this form, especially in a multiple offer scenario.

- i. Is **not** a counteroffer; the seller is not bound, so free to negotiate and even go under contract while waiting for original buyer's response to the form
- ii. Can be used with one or multiple offers
- iii. Three (3) possible responses to the buyer
 - Rejects offer and encourages new offer based on list of the seller's preferences for offer terms
 - Will hold offer until established offer deadline & consider it with any other offers
 - Rejects offer

B. Consideration: Anything that is bargained for and given in exchange for a promise; usually the sales price or rent in real estate

Note: The sales price is the consideration in a sales contract, not the earnest money deposit or the due diligence fee. Rent is the consideration in a lease, not the tenant security deposit.

C. Legal Capacity of the Parties [Digital REM search for: *legal capacity*]

1. Obtain legal advice if unsure of legal capacity of a party prior to executing an offer or acceptance
2. No legal capacity to contract
 - a. Minors (persons under the age of 18 in NC) - *voidable*
 - b. Persons declared mentally incompetent by court of law - *void*
 - c. Persons mentally incompetent in fact - *voidable*
 - d. Persons intoxicated or under drug influence who do not understand what they are doing when signing a contract - *voidable*

D. Lawful Objective

III. Impediments to Mutual Consent [Digital REM search for: *mutual consent*]

A. Mistake

1. Mistake of fact

- a. Definition: an erroneous impression on the part of one or both parties regarding some material aspect of the contract
- b. Contract may be voidable if the mistake of fact
 - i. Involves a material term or aspect;
 - ii. Is mutual; **and**
 - iii. Is not the result of fraud or negligence
- c. Unilateral mistakes of fact do not release parties from their obligations

2. Mistake of law does not excuse obligation of a party

- a. Definition: mistaken understanding of legal effect of the contract
- b. Does not excuse obligation of a party

B. Fraud and Misrepresentation

1. Fraud

- a. Elements of fraud
 - i. False misrepresentation or omission of a past or existing material fact
 - ii. Made with knowledge of falsity or in reckless disregard of its truth
 - iii. With the intent that it will be acted upon by the other party
 - iv. That is acted on by that party to their injury
- b. Voidable by the deceived party; not automatic

2. Innocent misrepresentation

- a. Definition: an untrue representation by a party believing it to be true
- b. May be basis for contract rescission

Note: Brokers should not make statements about matters about which they are ignorant

C. Unfair or Deceptive Trade Practices Act [NCGS 75-1.1] [Digital REM search for: *deceptive*]

1. Includes
 - a. Providing a misleading opinion or false inducement
 - b. Failing to disclose a material fact
 - c. Misleading advertising
 - d. Misrepresenting the nature or extent of a guarantee or warranty
2. Injured party is entitled to treble damages [NCGS 75-16]
3. Application
 - a. Applies to
 - i. Real estate brokers
 - ii. Owners who regularly sell real estate
 - b. Does **not** apply to *For Sale By Owner* that does not generally engage in real estate trade

D. Duress

1. Overcoming the will of a person by violence or threat of violence
2. Voidable by injured party through legal action within a reasonable time after duress is removed

E. Undue Influence

1. One person takes unfair advantage of another person due to a close, confidential, or fiduciary relationship (e.g., parent - child, broker - client, attorney - client)
2. Voidable if contract was induced by undue weight being given to the counsel of the fiduciary party

IV. Other Contract Law Issues

A. Statute of Frauds [NCGS 22-2] [Digital REM search for: *statute*]

1. Certain contracts must be in writing to be enforceable

- a. All contracts to convey interest in real property
 - b. A lease that exceeds 3 years from the “making”/signing of the lease agreement
 - c. Contract modifications
 - d. Agency agreements are considered employment contracts, not real estate contracts, and are excluded from Statute of Frauds; Commission rules require these to be in writing
2. Verbal negotiations and agreements are **not** enforceable (See Parol Evidence Rule below)
 3. Necessary elements for compliance with Act
 - a. Individual names of the parties to the contract
 - b. Subject matter of the contract
 - c. Material terms and conditions
 - d. Signature of any party to be charged with the contract (or an authorized agent)

B. Electronic Transactions

1. Uniform Electronic Transactions Act (UETA) [Digital REM search for: *UETA*]
 - a. Applies to interstate transactions involving at least one natural person who is
 - i. Purchasing or selling an owner-occupied dwelling, or
 - ii. Leasing a vacation rental property for personal use, or
 - iii. Leasing a pre-1978 dwelling to use as their residence
 - b. If parties consent to use electronic means, they cannot later deny the validity of those transactions
 - c. Electronic signature: a sound, symbol or process attached to, or logically associated with, a record, executed or adopted by a person with the *intent* to sign the record
 - d. North Carolina version (NCUETA) [NCGS Article 40, Chapter 66]
 - i. Regulates intrastate commerce
 - ii. Required notice in NC consumer transactions [NCGS 66-327]

2. Electronic Signatures in Global & National Commerce Act (ESIGN) [Digital REM search for: *electronic signatures*] regulates interstate and foreign commerce (i.e., commerce across state lines)

Note: Brokers must be diligent about using up-to-date cybersecurity measures. Refer to [Cybersecurity section of the 2020-2021 Update](#) and [Wire Fraud section of the 2019-2020 Update](#) for examples of application to brokerage transactions.

C. Discharge of Contracts [Digital REM search for: *discharge of contracts*]

1. Full and complete performance of all contract terms by all parties
2. Agreement of the parties
 - a. Release: a contract to destroy an earlier contract
 - b. Novation: a new contract substituted for a previous contract
 - c. Subsequent Modifying Agreement: a new contract changing the terms of the original contract
 - d. Accord and Satisfaction: mutually agreed upon compromise
 - e. Cancellation
3. Material breach
 - a. Failure of one party to perform a major contract obligation may release non-breaching party from obligation to perform
 - b. Not all failures to perform are material
 - c. Most contracts do not use “time of the essence” so a reasonable time to perform must be allowed
4. Impossibility of performance
 - a. Consequences of contingent contract conditions should be addressed in the contract terms; non-performance of such conditions seldom allow for contract termination without specific contract language
 - b. Generally refers to impossibility of the thing to be done, not the inability of the promisor to do it

- c. If a party dies after contract formation, but prior to closing, the contract is binding upon heirs and/or estate of contract parties
5. Operation of law may override contract (e.g., bankruptcy of a party; statutes of limitation; government action)

D. Assignment

1. Transfer of all contract rights and obligations of the assignor to the assignee
2. Unless released by the other party to the contract, the assignor will remain secondarily liable for performance of contract terms

E. Rules for Interpretation of Contracts

1. *Parol Evidence Rule* [Digital REM search for: *parol evidence*]
 - a. All previous negotiations and informal agreements are superseded by written contract terms
 - b. Preliminary negotiations inconsistent with terms of written contract are not admissible to alter the terms of the contract
2. A contract is to be interpreted as a whole
3. Ordinary words will be interpreted in their ordinary, popular sense unless circumstances show that the parties clearly intended a different use
4. Written provisions will override pre-printed contract language, if there is a conflict
5. Writer of ambiguous language will be held liable for confusion; court generally rules in favor of party that did not draft the confusing language

F. Contract Remedies for Breach [Digital REM search for: *contract remedies*]

1. Money Damages
 - a. Compensatory damages: intended to make injured party whole, not to penalize the breaching party
 - b. Consequential damages: also known as special damages, a money award made by a court to compensate the injured party for damages that resulted from a foreseeable result of wrongdoing that a reasonable person could have foreseen); very unusual in real estate transactions

(Example: “Assume that a seller of an airplane falsely reports the mechanical repair and flight history of the airplane in its logbook, which the buyer relies on when purchasing the airplane. Months after the purchase, the airplane’s engine malfunctions during flight. If the seller knew at the time of contract that the buyer would be using the airplane for commercial purposes, then it is foreseeable at the time of contracting that the buyer would incur lost profits in the form of lost airline ticket sales and loss of use costs while the airplane is in repair. Additionally, the buyer may be impacted by a loss of goodwill due to disgruntled customers.” Read more at <https://www.metzlewis.com/incidental-damages-vs-consequential-damages-distinction-consequence/>)

- c. Liquidated damages: an amount pre-determined in the contract as the total compensation that either party will receive in the event of a breach (e.g., earnest money deposit or tenant security deposit)
2. Specific Performance [Digital REM search for: *specific performance*]
- a. One party sues the other party to make them perform according to the contract
 - b. Frequently granted to buyers due to the unique nature of each parcel
 - c. Rarely granted to sellers
3. Rescission [Digital REM search for: *rescission*]
- a. Declares the contract invalid and returns the parties to the position they were in prior to entering the contract
 - b. May be granted for
 - i. *Mutual* mistake of fact
 - ii. Fraud or misrepresentation cases
 - iii. Undue influence or duress situations

G. Real Estate Auction Sales **Level 1**

- 1. With reserve vs. without reserve
- 2. Regulation of auctions & auctioneers
 - a. Real estate license not required for person acting solely as auction’s cryer of sales

- b. Real estate license is required for person performing any activity other than “cryer”, such as advertising and conducting the auction, making representations about the property, or soliciting people to attend the auction

Section 2: Real Estate Sales Contract Preparation (12 hours)

(*Manual*, Chapter 11, Sales Contracts and Practices, pp. 323-397)

I. Introductory Concepts

A. Expectation of Broker Competence [NCGS 93A-6(a)(8)]

1. Competent and accurate completion of pre-printed standard sales contract forms
2. Understanding of all provisions in standard pre-printed forms
3. Ensuring that all points of agreement are included in the final written contract; no ambiguous terms
4. Incompetence is a violation of fiduciary duties under the common law of agency and License Law

B. Prohibition against Drafting Contract Language for Others [Digital REM search for: *drafting*]

1. Drafting constitutes *unauthorized practice of law* [NCGS 93A-6(a)(11)]
2. Brokers are legally permitted to *fill in the blanks* of preprinted forms
3. Have an attorney draft any unique contract language

C. Sources of Standardized Sales Contract Forms

1. REALTORS® may obtain and use the contract forms created by NC REALTORS® as part of their membership benefits
2. Non-REALTOR® brokers may not initiate use of forms bearing the REALTOR® logo
3. Non-REALTOR® brokers may obtain and use the sales contract forms and standard addenda that are jointly approved by North Carolina REALTORS® and the North Carolina Bar Association (NCBA), that bear only the NCBA logo/approval, through an attorney or forms vendor

Note: NCREC does not create the standardized sales contract forms used by the majority of NC licensees. The only standardized forms authored by the Commission are:

- *Working With Real Estate Agents Disclosure;*
- *Residential Property & Owners' Association Disclosure Statement (RPOADS);* and
- *Mineral and Oil and Gas Mandatory Disclosure Statement (MOG)*

D. Requirements for Broker-Provided Preprinted Sales Contract Forms [Rule 58A .0112] [Digital REM search for: *preprinted contract*]

1. Must include 19 items/issues

Required Activity: Have students locate the 19 required items in Standard Form #2-T. This activity can be done now or during detailed review of that form later in the course.

2. The NC Bar Association/NC Association of REALTORS®, Inc. (NCBA/NCAR) jointly approved contract forms are Rule-compliant

3. Prohibited provisions [Rule 58A .0112(b)]

- a. Brokerage compensation
- b. Liability disclaimer for broker

Note: These 2 items should **not** be added even at instruction of the parties or their attorneys

4. Parties to the contract

- a. May alter, amend, or delete any provision in a standardized contract
- b. May draft their own offer or contract
- c. May have an attorney draft an offer or contract on their behalf

II. Detailed Review and Completion of the Standard Sales Contract Forms Jointly Approved by NC REALTORS® and the North Carolina Bar Association (NCBA)

Required Activity: Conduct a detailed review of each paragraph in each of the standard forms listed below. Be sure to discuss the intended use of each form, the meaning and purpose of each paragraph, and common issues in filling various blanks. Improper completion of sales contract forms by brokers continues to be one of the greatest problems in real estate brokerage practice. Every broker completing this course should be able to accurately complete the appropriate offer to purchase and contract form (plus any needed addenda or related contract forms) for a wide variety of situations they will commonly encounter.

A. Standard Contract Forms and Addenda to be Reviewed

1. Specialized standard NCBA/NCAR sales contracts (e.g., residential, vacant lot/land, commercial)
 - a. *Offer to Purchase & Contract*, Standard Form 2-T (with Form 2-G *Guidelines for Completing the Offer to Purchase and Contract*)
 - i. Primarily intended for sale of existing single-family residences
 - ii. Use standard addenda to tailor to needs of the parties
 - iii. Do **not** use for lease-option agreement, lease-purchase agreement, or installment land contract
 - b. *Offer to Purchase & Contract -- Vacant Lot/Land*, Standard Form 12-T (with Form 12-G *Guidelines*)
 - i. Intended for sale of unimproved land or lot being bought for personal use
 - ii. **not** intended for sale of a large tract of land, such as purchase of land for subdivision development and resale
 - c. *Offer to Purchase & Contract (New Construction)*, Standard Form 800-T (with Form 800G *Guidelines*)
 - i. Intended for sale of new residential construction to be built prior to closing
 - ii. If sale involves completion of new construction that is well under way at time of contract formation, use Standard Form 2-T with 2A3-T, *New Construction Addendum*
 - d. *Agreement for Purchase & Sale of Improved Real Property*, Standard Form 580-T; commercial sales transactions
 - e. *Agreement for Purchase & Sale of Land*, Standard Form 580L-T
 - i. Very similar to 580-T that was previously used with attorney-drafted addendum for land purchases
 - ii. Includes provisions that deal with unique land issues (e.g., possibility of a price per acre purchase price; rollback taxes; leases that may need to be terminated prior to closing; etc.)
2. Thirteen (13) NC REALTORS® /NCBA jointly approved standard addenda (Forms 2A1-T through 2A14-T and 3-T with *Guidelines*) for use in conjunction with the various standard residential Offer to Purchase and Contract forms
3. Guidelines are provided for many standard NC REALTORS® forms

B. Common Mistakes in Contract Completion

Required Activity: Discuss why the following issues are serious enough to generate complaints and possible disciplinary action by the Commission.

1. Use of the phrase “owner of record”
2. Failure to clearly list fixtures that will not convey
3. Failure to clearly specify Seller’s personal property that will convey
4. Failure to clearly define all critical dates
5. Failure to timely present offers and executed contracts
6. Confusion about negotiating repair issues vs. completion of repair work

C. General Guidelines for Contract Completion [Digital REM search for: 2G]

1. Type or print legibly
2. Fill in **ALL** the blanks; enter “N/A” or “none” as appropriate
3. Be precise; avoid abbreviations, acronyms, or unclear terminology
4. Both Buyer & Seller should initial and date **every** change, addition, or deletion
5. Rewrite offer if there are numerous changes; retain copies of all offers and contracts
6. Review ALL contract provisions with the parties and recommend they obtain legal advice to answer legal questions

III. Major Paragraphs of Standard Form 2-T (*Manual*, pp. 329-354) [Digital REM search for: 2-7]

Note: Be sure to highlight all the Notes and Warnings in the form.

Paragraph #1: Terms and Definitions

Note: Whenever a term that would not normally be capitalized appears in the body of a contract and begins with a capital letter, it indicates that the word or phrase is a *defined term* that can be found somewhere earlier in that contract. Most of the *defined terms* in Form 2-T are defined in Paragraph #1. Words that appear in parenthesis, such as (Additional) Earnest Money Deposit in 1(d), are optional words to be used or ignored as appropriate.

1-a & b. Names of Seller and Buyer

- Must use individual full legal names (e.g., no Mr. & Mrs.) for all parties
 - Include at least initial of middle name or *NMN* if there is no middle name
 - Include any suffix (e.g., Sr., Jr., III, etc.) even if not used all the time
 - Marital relationship can be identified but is not mandatory (e.g., John S. Doe and spouse, Mary R Doe **or** Pablo T. Martinez, an unmarried person)
- Never use *owner of record*
- Use full legal name of any entity party; not the *dba* or trade name

1-c. Property Description

- Must include a legal description that clearly identifies the contract property
- Do not use the mailing address
- Reference to only a tax map or number is seldom adequate
- Pay close attention to the **Notes** in this provision
- Attach *Additional Provisions Addendum* (Standard Form 2A11-T) if a manufactured home is part of the Property

1-d. Purchase Price

- Entry for "Balance" line should be equal to Purchase Price on 1st line minus all entries in the 2nd through 7th line (funds that will be applied to the Purchase Price on Buyer's behalf)

Note: If a counteroffer changes any of the entries in (d), adjustment must also to be made to the Balance line

- Due Diligence Fee (DDF) Amount
 - No DDF is required to create a binding contract
 - Made payable and delivered to Seller by Effective Date
 - Details of DDF and Due Diligence Period (DDP) covered later in Subpara. 1-h, i, j
- Earnest Money Deposit (EMD) Amount(s)
 - No EMD is required to create a binding contract
 - Initial EMD, if any, should be
 - Paid to named Escrow Agent

- Delivered by Effective Date or within five business days of Effective Date, if checked
- (Additional) EMD, if any
 - Must not be paid by personal check
 - *Time being of the essence* in regard to payment

Note: There is no conflict between the option to deliver initial EMD within 5 days of contract formation and Rule 58A .0116(b) which requires deposit of trust monies into a trust account no later than 3 days from receipt by broker; it is impossible to deposit what has not been received

- Referenced financing addenda
 - Loan balance to be assumed in *Loan Assumption Addendum (2A6-T)*
 - Loan amount in *Seller Financing Addendum (2A5-T)*
 - Building Deposit in *New Construction Addendum (2A3-T)*
- *Time Being of The Essence:* a “drop-dead” date and time for performance of a contract term that if not observed will be considered a default on the part of the obligated party and allows the non-defaulting party to exercise stated options
- Late or non-payment of Buyer’s funds (e.g., EMD, DDF) grants Seller the right to demand good funds within 1 banking day of notice

1-e. Earnest Money Deposit [Rule 58A .0116] [Digital REM search for: *earnest money*]

Required Activity: Use various scenarios to explore how both types of EMD should be handled and when it should be delivered to the Escrow Agent at various points during the transaction. Pay particular attention to application of Rule 58A .0116(b)(3-4) regarding following Buyer’s instructions for delivery to and the timing of deposit by the Escrow Agent.

- Addresses how EMD will be held and handled if:
 - Offer is not accepted
 - Buyer terminates during Due Diligence Period (DDP)
 - Contract condition is not met after DDP
 - Seller breaches contract

1-f. Escrow Agent

- Should be the name of a brokerage company or closing attorney; not an individual agent unless the agent is a sole proprietor
- EMD checks should be made payable to named Escrow Agent
- Do not sign acknowledging receipt of monies unless actually received

- Permission given for an interest-bearing trust account
- Disputed EMD [NCGS 93A-12; Rule 58A .0116(d)]
 - Both brokers and attorneys serving as escrow agents may use the disputed funds rule
 - 90-day written notification to all parties claiming ownership of the monies of Escrow Agent's intent to deposit monies with clerk of court
 - Deposited with clerk of court in county where contract property is located
 - Parties have 1 year to file special proceedings with clerk of court or funds will escheat to the state
 - Does **not** apply to residential tenant security deposits

1-g. Effective Date

- When last party has signed or initialed the current offer and has communicated this fact to the other party; there is no contract until acceptance is communicated to the last offeror or their agent
- Initials of the parties at the bottom of each contract page, or lack thereof, do not affect contract formation
- Oral agreements are meaningless per Statute of Frauds

1-h, i, j. Due Diligence [Digital REM search for: *due diligence fee*]

- Buyer's opportunity to fully investigate the Property to determine whether to proceed with or terminate contract
- Due Diligence Fee (DDF)
 - Negotiated amount paid by Buyer for right to terminate for any or no reason during Due Diligence Period
 - Paid directly to Seller
 - Non-refundable unless Seller breaches or Property is materially damaged or destroyed
 - Becomes Buyer's credit if transaction closes

Note: Seller should cash the DDF check immediately

- Due Diligence Period (DDP) [Digital REM search for: *due diligence period*]
 - Begins at contract formation; ends at 5 p.m. on date in blank
 - *Time Being of the Essence* as to expiration
 - Buyer's right to terminate addressed in Para. 4(g)
 - Termination must be made in writing and delivered to Seller or Seller's agent before DDP expiration
 - EMD is not at risk until after DDP

1-k & l. Settlement [Digital REM search for: *settlement*]

- All executed documents and funds necessary to complete the transaction delivered to settlement agent
- Settlement Date
 - Time and place selected by Buyer
 - Delay of Settlement is addressed in Para. 12

Note: Brokers are strongly cautioned against suggesting inclusion of a *time being of the essence* provision regarding the settlement date unless it is imperative to one of the parties that the transaction close by a specific date. This inclusion could be considered unlawful practice of law by a broker.

1-m. Closing

- Completion of the legal process to transfer title
- Recordation of the deed and deed of trust required prior to disbursement of funds held by settlement agent

Note: The settlement meeting and closing may not happen on the same day, especially if settlement is late in the day.

Required Activity: Break into groups and discuss why having the settlement meeting and closing dates on different days might be a problem. Explore ways to minimize the problem.

1-n. Special Assessments

- Buyer responsibilities addressed in Para. 6(a)
- Seller responsibilities addressed in Para. 8(k)

Paragraph #2: Fixtures and Exclusions [Digital REM search for: *fixtures*]

- Specified items in Subpara. (b) shall convey with related equipment and remotes free of liens unless excluded in Subpara. (d) or (e); it is not necessary to mark out listed items that are not on the property
- Items leased or not owned by the Seller should be listed in (d)
- Items that will **not** convey should be clearly identified in (e) to avoid later dispute
- Seller must repair any damage caused by removal of excluded items

Paragraph #3: Personal Property

- Any personal property owned by Seller that will convey with the property must be clearly specified here
- Verbal agreement and/or personal items listed in MLS are not enforceable
- Item description should be accurate and precise to avoid later dispute

Example: “refrigerator” vs “GE Profile side-by-side refrigerator Model #DH-3594”

Note: Buyers should be advised to consult with their lender in regard to the possible effect of any personal property listed in the sales contract

Paragraph #4: Buyer’s Due Diligence Process (*Manual*, Chapter 14, Closing Real Estate Transactions, Buyer's Due Diligence Process, pp. 461-467) [Digital REM search for: *due diligence process*]

Note: Buyers should be **strongly** advised to perform due diligence activities as quickly as possible to allow time for negotiation about any discovered issues to be resolved prior to the end of the DDP. The Buyer is not limited to the investigative items listed in this Paragraph. Seller is not obligated to extend the DDP. If the Buyer does not terminate the contract prior to the end of the DDP, the Buyer may continue to investigate the Property after the DDP but has waived their right to terminate without penalty unless there is a Seller breach

Required Activity: Discuss possible issues arising during the DDP (e.g., loan issues, broken appliances, house systems that need repair, insurability issues, mechanic’s liens, use restrictions, etc.). Discussion of how to handle negotiations from both Seller and Buyer viewpoints using standard forms can be addressed here or under Para 4-d.

4-a. Loan

Note: There are no financing or appraisal contingencies in this contract. Buyer should be strongly encouraged to meet with a mortgage lender prior to starting a property search. DDP should be long enough for Buyer to receive the appraisal and to feel confident in their ability to obtain loan approval.

4-b. Property Investigation

- Inspections
 - Physical Inspection by Buyer and/or by qualified professionals
 - Property condition
 - Moisture & drainage
 - Environmental (e.g., asbestos, radon, lead, etc.)
 - Wood-destroying insects
 - Well & sewage disposal systems

- Review of Documents
 - *Residential Property & Owners' Association Disclosure Statement*
 - *Mineral and Gas and Oil Rights Mandatory Disclosure Statement*
 - *Lead-Based Paint or Lead-Based Paint Hazard Disclosure Addendum, if applicable*
 - Protective covenants
 - Owner association documents

- Insurance

Note: The availability and cost of homeowners insurance and/or flood insurance can be problematic on some properties

- Appraisal

- Survey
 - Reveals boundaries and setback lines
 - Identifies encroachments & easements
 - Locates mandatory septic repair field, if applicable
 - Required for title insurance policy coverage for homeowner, but not lender

- Zoning & Government Regulations
 - May affect Buyer's intended use of property
 - Can help identify
 - Adjacent land use
 - Possible road construction
 - School attendance zones

- Flood Hazard (and any flood insurance requirement)

- Utilities & Access

- Street/Roads
 - Public or private status
 - Discover if public streets/roads were accepted for maintenance
 - If not publicly maintained, determine who is responsible for maintenance
 - Discover private street/road maintenance agreement, if any, and provide to buyer
 - Lender may require road maintenance agreement if road is private

- Special Assessments

- Fuel tank

Note: Determine the location, type and ownership of any fuel tanks on the property; continued use of leased tanks, especially underground ones, should be verified.

4-c. Sale/Lease of Existing Property [Digital REM search for: *contingent sale*]

- Material fact that speaks to Buyer's ability to perform
- Not a contingent sale condition of the contract

4-d. Repair/Improvement Negotiations/Agreement

- Property being sold in its current condition (*as is*) unless other agreements are specified in the contract
- Repair Negotiation Agreements, if any, should be resolved in writing as part of the contract before the end of the DDP; agreed upon repairs must be complete prior to Settlement [see Para. 8(m)]
 - *Due Diligence Request & Agreement* (Standard Form 310-T) with Guidelines
 - *Agreement to Amend Contract* (Standard Form 4-T)

Required Activity: Discuss possible repair scenarios and how best to handle negotiations from both the Seller and Buyer viewpoints with use of above forms.
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4-e. Buyer's Obligation to Repair Damage caused by inspections (even if contract fails)

4-f. Indemnification of Seller by Buyer for damage cause by Buyer or Buyer's agents and contractors

4-g. Buyer's Right to Terminate

- For *any reason or no reason*
- Written notification by 5 p.m. of stated date, *TIME BEING OF THE ESSENCE*
- EMD (initial and/or additional EMD) shall be refunded to the Buyer, only if written contract termination is delivered to the seller or seller's agent by 5pm

4-h. Closing shall constitute Acceptance unless other provisions made in writing

Required Activity: Determine best way(s) to handle contract terms, such as incomplete repairs or missing fixtures, which are unmet at time of Settlement.
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Paragraph #5: Buyer Representations

Note: Buyer is liable for the accuracy of all representations made and Seller is entitled to rely on the information. The representations are informational only and do not rise to the level of a contract condition or contingency absent relevant attached addenda.

5-a. Loan

- Information for Seller to use in response to offer
- Material fact if Buyer must obtain financing to close this transaction
- Specified financing terms agreeable to Buyer
- Seller is advised to obtain documentation of Buyer's ability to close if no financing is needed (e.g., proof of funds)

5-b. Other Property

- Information for Seller to use in response to offer
- Material fact if Buyer must sell or lease other property to close this transaction
- Seller is strongly advised to review contract for sale of Buyer's current property prior to accepting offer
- Contract is **not** conditioned on sale of Buyer's other property

5-c. Performance of Buyer's Financial Obligations

5-d. & e. Property Disclosures [NCGS 42E-2]

- *Residential Property and Owners' Association Disclosure Statement*
 - Status of Buyer's receipt of required Statement
 - If exempt, indicate under what scenario
- *Mineral and Gas and Oil Rights Mandatory Disclosure Statement*
 - Status of Buyer's receipt of required Statement
 - If exempt, indicate under what scenario

Paragraph #6: Buyer Obligations

6-a. Responsibility for Special Assessments: Buyer takes title *subject to*

6-b. Responsibility for certain costs

- Loan costs
- Owner association fees
- Determining covenant compliance
- Appraisal
- Title search
- Title insurance
- Closing attorney fees
- Recording of deed & loan documents

6-c. Authorization to disclose information

Paragraph #7: Seller Representations

Note: Seller is liable for the accuracy of all representations made and Buyer is entitled to rely on the information. The representations are informational only and do not rise to the level of a contract condition or contingency absent relevant attached addenda.

7-a. Length of property ownership

7-b. Lead-Based Paint, if applicable [Digital REM search for: *lead-based paint disclosure*]

- Applicable for residential property built prior to 1978
- Use *Lead-Based Paint or Lead-Based Paint Hazard Addendum (2A9-T)*

7-c. Assessments

7-d. Owners' Association(s) & Dues

Paragraph #8: Seller Obligations

Note: If Seller fails to comply with the numerous obligations imposed by the Contract, Buyer may terminate the Contract & receive a refund of any Earnest Money Deposit and Due Diligence Fee paid. In a Seller breach, Buyer may also obtain reimbursement from Seller for reasonable costs incurred conducting the Due Diligence without affecting any other remedies available to Buyer. Brokers are reminded that an attorney should be consulted to determine if a breach has occurred.

8-a. Evidence of Title, Payoff Statement(s) and Non-Foreign Status

8-b. Authority to Disclose Information

8-c. Access to Property

- *Reasonable access* through time of Closing or Buyer Possession
- Including working, existing utilities at Seller's expense

8-d. Removal of Seller's Property

- All Seller's personal property that is not part of the sale
- Including garbage & debris anywhere on the Property

8-e. Affidavit & Indemnification Agreement (against Mechanics Liens) [NCGS 44A-8]

8-f. Designation of Lien Agent, Payment & Satisfaction of Liens [if required by NCGS 44A-11.1]

8-g. Good Title, Legal Access

- Seller to provide General Warranty Deed
- Fee simple marketable title free of all liens, encumbrances or defects except for:
 - Ad valorem taxes for current year
 - Utility easements
 - Unviolated covenants
 - Other encumbrances assumed or approved by Buyer
- Legal access to public right of way
- Consider using Short Sale Addendum (2A14-T) if possibility of short sale

8-h. Deed, Taxes & Fees

- Seller pays for deed preparation, excise tax and any conveyance fees
- Identify exact legal names of Buyer(s) for new deed
- Optional indication of Buyer's relationship status can be helpful to Settlement Agent (e.g., spouses, siblings, unmarried person, etc.)

8-i. Agreement to Pay Buyer Expenses

- A stated dollar amount credited towards Buyer expenses, if applicable
- Include any FHA/VA lender and inspection costs (seller mandated fees) that must not be paid by Buyer

- Subject to approval of Buyer's lender

8-j. Owners' Association Fees/Charges

- Confirming Seller's account info for payment or proration
- Imposed by HOA for transaction other than those to be paid by Buyer under Para. 6(b)
- Completion of RPOADS or other resale certifications

8-k. Payment of Special Assessments, if any

8-l. Late Listing Penalties, if any

8-m. Negotiated Repairs/Improvements

- Completed in *good & workmanlike manner*

Note: *Good & workmanlike manner* is a term of art that is not as vague as it first appears. It means the work has been completed to the standard of the industry.

- Buyer has right to verify prior to Settlement

8-n. Seller's Breach of Contract (Refer to Paragraph #23)

Paragraph #9: Prorations and Adjustments (Based on 365 days/year) [Digital REM search for: *prorations*]

- Taxes on Real Property (prorated based on 365 days/calendar year)
- Taxes on Personal Property (prorated based on 365 days/calendar year if conveying with Property)
- Rents, if any
- Owners' Association Dues

Paragraph #10: Home Warranty

Paragraph #11: Risk of Loss/Condition of Property at Closing

- Buyer rights if Property not in same or better condition at Closing as on date of offer
 - May terminate contract by written notice to Seller & receive refund of any Earnest Money Deposit and Due Diligence Fee paid

- May close on Property & receive Seller's property insurance proceeds on Property claim
- Seller should maintain existing hazard insurance until they confirm recordation of deed and receive net proceeds
- Buyer should obtain policy effective for entire day of Settlement
- Possession other than at Closing can be problematic for insurance coverage; see Para. 13

Paragraph #12: Delay in Settlement/Closing

- *Delaying Party* acting in good faith should give as much notice as possible
- Automatic 7-day grace period to close after Settlement Date in contract
- If not closed by end of 7-day grace period, Non-Delaying Party may unilaterally terminate contract
- Written extension of Settlement Date can be negotiated; new date will also have 7-day grace period

Paragraph #13: Possession

- Shall be at Closing (after deed recordation), **not** Settlement
- No means of access (e.g., keys, garage door openers, etc.) to be granted to Buyer between Settlement and Closing

Note: If possession date is critical to Buyer, Settlement should be scheduled so that there is sufficient time for Closing to occur before that date

- Use appropriate addendum if possession at a time other than Closing and/or an existing lease is involved

Required Activity: Discuss the advantages and disadvantages of allowing possession at a time other than Closing. Be sure to address insurance issues and what happens if the transaction does not close. Remind brokers to encourage their clients to consult an attorney about risks/implications of possession before/after closing.

Paragraph #14: Addenda [Digital REM search for: *addenda*]

Note: A NC real estate broker is not permitted to suggest or draft any addenda for others (unless they are an actively licensed NC attorney)

- Check appropriate boxes and attach all standard addenda that are to be part of the contract

- All attorney or party drafted addenda must be properly identified and attached to become part of the contract

Paragraphs #15-23: Miscellaneous Paragraphs

- #15. Assignments must have written consent of all parties
- #16. Tax-Deferred Exchange cooperation agreement
- #17. Parties clarified
- #18. Survival of some contract provisions past Closing
- #19. Entire Agreement contained in contract with listed addenda and agreement that all changes will be made in writing and signed by all parties
- #20. Conduct of Transaction
 - Electronic communication and actions are endorsed
 - All written notices and communications may be sent to any address authorized in Notice Information section
 - *Notice Information* and *Acknowledgement of Receipt of Monies* sections are not material parts of the contract; can be altered without creating a rejection or counteroffer
- #21. Execution
- #22. Computation of Days/Time of Day
 - *Days* means consecutive calendar days including weekends and all holidays
 - Day count begins the day after the act or notice required by contract
 - Date & time of day are for North Carolina
- #23. Remedies
 - Breach by Buyer
 - Established as sole remedy for Seller for a breach by Buyer
 - Seller cannot sue for specific performance or damages (other than damages to property by Buyer)
 - Breach by Seller
 - Buyer may terminate the Contract and
 - Receive refund of any EMD and Due Diligence Fee previously paid by Buyer
 - Can obtain reimbursement from Seller for reasonable costs incurred conducting the Due Diligence Process
 - Other remedies may be available to Buyer
 - Attorneys' Fees

Page 13: Signature and Dates

- Must be signed by all Buyers and Sellers; use *Additional Signatures Addendum (3-T)* if there are more than two Buyers or two Sellers
- To transfer clear title, Seller spouse should sign contract, even if not named on the deed, to assure spouse's participation at Settlement
- Verify correct signators for entities or trusts
- Date all signatures to clearly establish Effective Date; although contract is valid without dates
- Wire Fraud Warning

Page 14: Notice Information

- At least one notice address must be entered for each party or agent approved to receive notices contemplated by the contract
- Insert N/A for all blanks
Note: Entry of any Buyer or Seller contact information in the Notice Information section authorizes communication directly to a Party rather than the standard practice of communicating through the agents
- Enter names of individual listing and selling brokers, their license numbers, firm names and license numbers, and check appropriate agency representation boxes [Rule 58A .0104(f)]

Page 15: Acknowledgment of Receipt of Monies

- Listing Agent Acknowledgment of Receipt of DDF
- Seller Acknowledgment of Receipt of DDF
- Escrow Agent Acknowledgment of Receipt of Initial EMD
- Escrow Agent Acknowledgment of Receipt of (Additional) EMD

IV. All Standard NC REALTORS® Residential Addenda

Note: In an event of a conflict between information in an addendum and the contract, the addendum will control, unless the conflict involves the description of the Property or the identity of Buyer or Seller in which case the contract will control

- A. 2A1-T: *Back-up Contract Addendum (Manual, Chapter 11, Back-Up Contract Addendum, pp. 356-357)*

Required Activity: Detailed review of this Addendum and how to complete and use it.

1. Seller is not required to take Property off the market once under contract
2. Addendum ties dates for DDP and Settlement Date to Seller's delivery of notice that the contract has primary status; contract blanks for these dates should reference the Addendum
3. Back-up Contract remains in secondary position until primary contract is performed or terminated
4. Back-up Buyer may terminate with automatic termination date or any time prior to notification that their contract has primary status
5. There can be multiple Back-up Contracts on the same property; proper completion of the forms is critical for clarity

Required Activity: Have students prepare a complete offer for a residential property that will require use of at least three standard addenda. This may be performed as a class, group, or individual exercise. If assigned as homework, allow instructional time to review the exercise. For smaller classes, consider dividing the class into two or more groups and assigning one specific property to each group (all students in the same group will write an offer on the same property but keep the terms to themselves). For this exercise, instructors will need to provide the tax card information.

- B. 2A3-T: *New Construction Addendum*
- C. 2A4-T: *FHA/VA Financing Addendum*
- D. 2A5-T: *Seller Financing Addendum*
- E. 2A6-T: *Loan Assumption Addendum*
- F. 2A7-T: *Buyer Possession Before Closing Addendum*
- G. 2A8-T: *Seller Possession After Closing Addendum*
- H. 2A9-T: *Lead-Based Paint or Lead-Based Paint Hazard Addendum*
- I. 2A11-T: *Additional Provisions Addendum*
1. Expiration of offer with *Time Being of the Essence*
 2. Septic System Installation/Modification

3. Rental/Income/Investment Property
 4. Agreed-Upon Repairs and/or Improvements (for items identified **before** contract formation)
 5. Manufactured (Mobile) Home
 6. Pool/Spa Inspection/Preparation
- J. 2A12-T: *Owners' Association Disclosure and Condominium Resale Statement Addendum*
- K. 2A13-T: *Vacation Rental Addendum*
- L. 2A14-T: *Short Sale Addendum*
1. Definition of Short Sale and associated risks
 2. Contingent on written approval of all Seller's lienholders
 3. Rights to Terminate
 4. Dates established for DDP and Settlement
 5. Other Offers
 6. Issues with Foreclosure/Bankruptcy/Tax Consequences
- V. Review of Other Specialized Sales Contracts
- A. *Offer to Purchase and Contract – Vacant Lot/Land* (Form 12-T) and *Guidelines for Completing* (Form 12-G)
 - B. *Offer to Purchase & Contract (New Construction)*, (Form 800-T) and *Guidelines for Completing* (Form 800-G)
 - C. *Agreement for Purchase & Sale of Improved Real Property* (Form 580-T)
 - D. *Agreement for Purchase & Sale of Land*, (Form 580L-T)

Section 3: Sales Contract Procedures (2 hours)

(Manual, Chapter 11, Submitting Offers to Sellers, pp. 363-367)

- I. Submitting Offers to Sellers [NCGS 93A-6(a)(13); Rule 58A .0106] [Digital REM search for: *submitting offers*]
 - A. Delivery to Parties of Offers, Contracts, and other Transactional Documents
 1. No later than 3 days from receipt by broker of executed document
 2. Applies to all brokers in the transaction regardless of who they represent or how they will be compensated
 3. Oral presentation of the offer terms to the offeree does not negate the requirement for the broker to deliver the offer within 3 days
 4. Listing broker has no authority to accept or reject an offer on behalf of Seller; the broker should point out advantages and disadvantages of the offer and provide any information that might affect the Seller's decision, such as notice that another offer is forthcoming
 5. Only 1 contract signed by all parties required to be binding; copies to all contract parties required by Rule 58A .0106
 - B. Multiple Offers [Digital REM search for: *multiple offers*]
 1. All Offers must be presented *immediately* (but no later than 3 days) even if Property already under contract
 2. Concurrent Offers must be presented at the same time; no particular order of presentation is required
 3. Disclosure of Offer and/or Terms
 - i. Existence of other offers **not** a material fact
 - ii. Broker prohibited from sharing material terms of an offer without express permission of offeror [Rule 58A .0115]
 - iii. Broker needs Seller's authority to share existence of other offers and/or terms that might be acceptable to the Seller
- II. Offer Modification and Counteroffers
 - A. Assume any change to an offer rejects the original offer
 - B. A counteroffer is created if offeree makes changes, initials those changes, and signs the offer before returning it to the original offeror

- C. Possible use of NC REALTORS® Standard Form #340-T *Response to Buyer's Offer*
- D. Numerous term changes should prompt use of a new offer form completed with current terms under consideration by the parties
- E. Retain all offers, even if rejected or replaced [Rule 58A .0108]

Section 4: Closing Preparations and Procedures (2 hours)

(*Manual*, Chapter 14, Pre-Closing Procedures, pp. 460-469)

Note: Real estate brokers should possess a thorough understanding of closing practices and procedures, as well as the competence to properly assist buyers, sellers, and settlement agents with the closing process

- I. General Pre-Closing Procedures [Digital REM search for: *pre-closing*]
 - A. Respective Responsibilities of the Parties
 - B. Select the Settlement Agent [Digital REM search for: *settlement agent*]
 - 1. Buyer should identify the Settlement Agent of their choice immediately after contract formation, if not before
 - 2. In North Carolina, most real estate closings are handled by a real estate closing attorney
 - 3. Settlement Agent usually represents Buyer, Buyer's lender, and may provide some services to Seller
 - 4. Buyer agent may make recommendations for Settlement Agent as long as there is no reward for referring (e.g., kickback)
 - C. Provide Information to Settlement Agent
 - 1. All available information that will assist in preparing for closing, including but not limited to
 - a. Copies of the contract
 - b. Seller's deed
 - c. Seller's title insurance policy
 - d. Information on Seller's loan payoff or lender

- e. Contact information for any owners' association that charges dues, fees, or assessments
 - f. Any invoices or services that are to be paid at Settlement
 - g. Any contract amendments as soon as executed
2. Both parties should provide information to Settlement Agent as soon as available to expedite Closing

D. Settlement Date and Delays

Note: Settlement date delays are commonplace due to many variables frequently beyond the control of either party. Buyer and Seller should be well advised about their individual obligations, the need for timeliness, and the repercussions for non-performance. Review the paragraphs in Standard Form 2-T regarding this matter

II. Buyer's Due Diligence Process [Digital REM search for: *due diligence process*]

A. General Responsibility of Broker Working with a Buyer

B. Inspections and Investigations

- 1. Including, but not limited to, those recommended under Paragraph 4 of Standard Form 2-T
- 2. Possible Discoveries during Physical Inspection by Buyer
 - a. Tenants
 - b. Easements & encroachments
 - c. Recent construction or renovations

Note: Broker working with a buyer should recognize "red flags" of possible issues such as those listed above.

C. Resolution of Inspection/Repair Issues

- 1. Buyer strongly encouraged to resolve any issues prior to the end of DDP
- 2. Seller is under no obligation to make repairs or improvements to the Property, unless they are terms of the contract

3. Standard forms to use in negotiation of repair issues

Required Activity: Explore correct form completion for various scenarios, including
(1) Repairs to be negotiated as part of the initial offer,
(2) Items to be repaired based on home inspection report, and
(3) Adjustment in sales price in lieu of repairs.

- a. *Additional Provisions Addendum* (Form 2A11-T)
- b. *Due Diligence Request & Agreement* (Form 310-T)
- c. *Agreement to Amend Contract* (Form 4-T)

III. Other Pre-Closing Matters

- A. Title Search [Digital REM search for: *title search*]
- B. Clearing of any Title Defects by Seller [Digital REM search for: *title defect*]
 1. Seller's existing mortgage loan
 2. Any home equity loans
 3. Mechanic's liens
- C. Prepare Assignment of any Outstanding Leases and Related Security Deposits from Seller to Buyer
- D. Final Pre-Closing Procedures [Digital REM search for: *final pre-closing*]
 1. Transfer EMD from Escrow Agent to the Settlement Agent no earlier than 10 days prior to scheduled Settlement [Rule 58A .0116(e)]
 2. Review draft of Closing Disclosure by listing and selling broker for accuracy as soon as available
 - a. TRID requires lender to provide *Borrower's Closing Disclosure (BCD)* to borrower at least 3 business days prior to Settlement
 - i. Definition of delivery and receipt
 - ii. Buyer agents should alert buyers to look for and acknowledge receipt of BCD in a timely manner
 - b. Any of the following three (3) changes will prompt the need for a new *BCD* and a new 3 business day waiting period
 - i. An increase in APR
 - ii. A change in loan product

iii. Addition of a prepayment penalty

c. No delivery deadline prior to Settlement for *Seller's Closing Disclosure*

3. Notify Buyer of certified funds needed to close

4. Attorney orders title insurance policy for lender and owner

Note: Buyer should be strongly advised to obtain a title insurance policy even if no lender is involved or lender does not require

IV. Closing Methods [Digital REM search for: *closing method*]

A. Escrow Closing Method

1. Escrow agreement instructions accomplished virtually by Escrow Agent; parties do not attend a meeting

2. Escrow Agent is generally a title company or lender's escrow division

3. *Relation Back Doctrine*: deed is considered delivered once Seller has delivered it to Escrow Agent

4. Extremely rare in NC

B. Settlement Meeting Method

1. Most common closing method in NC

2. Residential closings in NC are generally coordinated by 1 attorney; separate attorneys may be used in complex or commercial transactions

3. Role of Non-lawyers at Settlement

a. Present & identify documents necessary to complete NC closing

b. Direct parties where to sign documents

c. Ensure parties have properly executed the documents

d. Receive & disburse closing funds

e. Avoid performing unlawful practice of law activities

Note: A broker is strongly discouraged from attempting to act as a settlement agent

5. Settlement Meeting Procedures

a. Location and parties attending

- i. Buyer generally attends
- ii. Seller may not attend if all documents have been signed
- iii. Listing broker and selling broker should attend, unless broker's license is no longer on active status on settlement date

b. Review of documents

- c. Post-settlement meeting tasks: title update, recording, disbursing funds, tax reporting requirements, etc.

Section 5: Real Estate Settlement Procedures Act (RESPA) and TILA-RESPA Integrated Disclosure Rule (TRID) (2 hours)

(*Manual*, Chapter 14, Real Estate Settlement Procedures Act, pp. 474-486)

I. Applicability of RESPA [Digital REM search for: *respa*]

- A. Federally related residential mortgage loan made by institutional lenders to purchase 1-4 family dwelling that is or will be constructed or placed on the property within 2 years of purchase
- B. *Regulation X* administered by Consumer Financial Protection Bureau (CFPB) under the Dodd-Frank Act
- C. Applies to all settlement services providers (brokers, lenders, closing attorneys, title companies, appraisers, surveyors, etc.)
- D. Does **not** apply to loans for commercial, business or agricultural purposes, even if residential property is included

II. RESPA Requirements/Consumer Protections

- A. Purpose is to protect consumers against abusive lending practices and ensure accurate and timely disclosure of settlement costs
- B. Disclosure & Borrower Credit for *Yield Spread Premiums*
- C. Loan Servicing Disclosure Requirements
 1. Whether loan servicing can be sold, transferred or assigned

2. Borrower notification required prior to transfer of servicing

D. Escrow Account Restrictions

1. Maximum amount collected monthly by the lender is 1/12 of annual tax & insurance disbursement
2. Lender may escrow a *cushion* amount not to exceed 1/6 of annual tax & insurance disbursement

E. Prohibited Kickbacks or Referral Fees

1. Applies to all service providers including real estate brokers for payment or receipt of payment for referral of business to or from another service provider
2. Referral fees between real estate brokers for brokerage activities are expressly permitted
3. Any *thing of value* includes money, prizes, coupons, gift certificates, etc.
4. Disclosure of Affiliated Business Arrangements
 - a. Disclosure of relationship and a written estimate of charges for services
 - b. Person is not required to use a particular service provider
 - c. Only “thing of value” received for referral is return on ownership interest

F. Special Information Booklet for Homebuyer/Borrowers

1. Lender or mortgage broker must provide booklet to consumer within 3 business days following loan application
2. Educational booklet about the buying and borrowing process [available at consumerfinance.gov/owning-a-home/explore/home-loan-toolkit/]

G. Written Estimate of Settlement Charges (the *Loan Estimate*) within 3 business days of loan application [Digital REM search for: *loan estimate*]

1. Definition of *Loan Application*
2. Intended to encourage borrowers to shop for loans

H. HUD-1 Settlement Statement generally replaced by Closing Disclosures

I. Penalties for Violating RESPA

1. Criminal fines up to \$10,000 per violation
2. Imprisonment for up to 1 year
3. Injunctions against illegal activity and orders to compensate victims for illegal profits
4. Civil lawsuits for treble damages
5. Violation of License Law 93A-6(a)(10) for brokers

III. TILA-RESPA Integrated Disclosure (TRID) Rule [Digital REM search for: *TRID*]

A. The Loan Estimate (LE)

1. Permissible Variations/Tolerance Limits
2. Brokers' Responsibility for LE

B. The Closing Disclosures [Digital REM search for: *closing disclosure*]

1. Delivery of Borrowers' Closing Disclosure no less than 3 business days prior to Settlement (excludes only Sundays & 10 federal holidays in day count)
2. Corrected/Revised Closing Disclosure requiring a 3 day waiting period to Close (See Section 4, III.D.2.b.)
3. Brokers' Responsibilities [93A-6(a)(14)]
 - a. Confirm accuracy of entries about which they have direct knowledge
 - i. Amounts noted in contract
 - ii. Broker may assume amounts paid by third parties are correct unless there is cause for a reasonable broker to suspect an amount is incorrect
 - iii. **All** expenses related to the transaction should be reflected, not just amounts paid by Settlement Agent or paid by third parties
 - iv. As to all debits and credits related to the transaction, whether paid before or at closing, the broker must
 - Review and confirm that all charges and credits have been properly debited or credited to the seller or buyer and are entered in the correct column
 - Review and confirm accuracy of the calculations for all prorated items, escrow reserves, interim interest, excise tax and "bottom line figures"

- b. Notify all parties to the transaction of any errors or omissions
- c. May rely on attorney or lawful settlement agent for delivery of statement to parties

Section 6: The Settlement Statement (6 hours, 45 minutes)

(*Manual*, Chapter 14, The Settlement Statement, pp. 486-501) [Digital REM search for: *settlement statement*]

I. Allocation of Settlement Expenses [Digital REM search for: *closing expenses*]

A. Credits and Debits for Buyers and Sellers

1. Definitions

- a. *Credit*: an amount payable to a party usually for an amount already paid (e.g., EMD or DDF for buyer) or being reimbursed (e.g., prepayment of buyer's prorated tax portion for seller) or being paid by a third party on one's behalf (e.g., loan amount for buyer)
- b. *Debit*: an amount owed by a party that is to be paid at settlement

2. Typical NC Buyer Expenses

- a. Closing attorney's fee
- b. Appraisal
- c. Inspection fees
- d. Loan fees, if applicable
- e. Interim interest on loan
- f. Escrow pre-paid deposits, if required by lender
 - i. Property taxes
 - ii. Mortgage insurance
 - iii. Homeowners insurance
 - iv. Owner association dues, if paid by lender on behalf of owner
 - v. Aggregate adjustment
- g. Survey
- h. Recording fees for deed and loan documents

3. Typical NC Seller Expenses

- a. Broker's commission
- b. Excise tax
- c. Deed preparation
- d. Quick claim deed preparation, if needed to clear title
- e. Seller concessions per contract terms

B. Prorated Entries [Digital REM search for: *prorated*]

1. Definition of *Proration*: the division or distribution of property expenses at settlement between the buyer and the seller proportionate to the ownership period of each
2. Common Prorated Items
 - a. Real Estate Taxes (various situations)

Required Activity: Have students calculate tax prorations in various situations (e.g., prepaid by Seller; unpaid before Sept. 1st; unpaid after Sept. 1st).

- b. Rents
- c. Homeowner's Dues

II. Buyer's Closing Disclosure

Required Activity: After reviewing the basics, students must complete at least one closing disclosure problem. This may be completed during class either individually or in groups or as homework. Allow instructional time to review the problem line-by-line with the entire class. Including a complete closing scenario problem on the end-of-course examination is required.

Section 7: Other Topics (45 minutes) Level 2

- I. Alternate Conveyance Contracts (*Manual*, Chapter 11, Installment Land Contract, pp. 368-377)
 - A. Installment Land Contract (also called Contract for Deed, Land Contract) [Digital REM search for: *installment land*]

1. Definition: Agreement whereby real property is sold on the installment payment method with the seller (*vendor*) retaining legal title until all the purchase price is paid or until some other agreed upon time; the buyer (*vendee*) receives equitable title and possession
2. No standard contract form; consult an attorney; do **not** use REALTOR® Standard Form 2-T
3. Seller must record Contract for Deed or a Memorandum within 5 business days of execution
4. Buyer must be allowed up to 30 days to cure a default
5. Advantages and Disadvantages

B. Option to Purchase [Digital REM search for: *option to purchase*]

1. Definition of *Option*: Unilateral contract that binds the property owner (*optionor*) to hold an offer to sell open for a set period of time and gives the other party (*optionee*) a legal right, in exchange for an option fee, to accept or not accept that offer to sell during the time period of the option
2. No standard option form; consult an attorney; do **not** use NC REALTORS® Standard Form 2-T
3. Rights of parties
 - a. Optionor
 - i. Gives up right to sell property to anyone other than optionee during option period
 - ii. Negotiations during the option period do not affect original terms of the option
 - b. Optionee
 - i. Has exclusive right to buy property during the option period only on specified terms of the option
 - ii. Has no obligation to exercise the option
 - iii. Can negotiate different terms during the option period without giving up right to exercise the option
4. Two types of consideration
 - a. Option fee, generally non-refundable
 - b. Purchase price

5. Must be in writing and recorded
6. *Time Being of the Essence* in regard to date to exercise the option
7. Residential leases may include an option to purchase

Note: No standard form exists for a residential lease with option to purchase, and a broker **must not** suggest that landlords/tenants attempt to cobble together the lease and offer to purchase forms. A broker should direct the parties to enlist an attorney to draft this special type of agreement

8. Advantages and Disadvantages

C. Preemptive Rights **Level 1** [Digital REM search for: *preemptive*]

1. Right of First Refusal: owner legally promises another party that, **if** the owner decides to sell in the future, the other party can buy the property by matching a bona fide offer from a third party
2. Right of First Opportunity to Purchase: owner legally promises another party that, **if** the owner decides to sell in the future, the owner will give the other party the first opportunity to buy the property at a price to be determined at that time

II. License Status and Education Issues [NCGS 93A-4; Rules 58A .0503, A .0504, A .0505, and A .0506]

- A. License Status: Meaning of provisional broker, active, inactive, expired, suspended, and revoked status.
- B. Postlicensing Education Requirement (and consequences of failure to satisfy) [Rule 58A .1902]
- C. Continuing Education Requirement (and consequences of failure to satisfy) [Rules 58A .0504(b); 58A .1702]
- D. Requirements and procedures to activate an Inactive license [Rules 58A .0504(c) & (d); 58A .1703]
- E. Requirements and procedures to reinstate an Expired license
 1. License expired for not more than 6 months [Rules 58A .0505(c) & (h)]
 2. License expired between 6 months and 2 years [Rules 58A .0505(d) & (h)]
 3. License expired for more than 2 years [Rules 58A .0505(e) (f) & (h)]

--End of Course Syllabus--