

**North Carolina  
Postlicensing Course Syllabus**

**POST 302  
*CONTRACTS AND CLOSING***

**(Student Version)**

**January 2019 Edition**



**North Carolina Real Estate Commission**

P.O. Box 17100

Raleigh, NC 27619

(919) 875-3700

Email: [educ@ncrec.gov](mailto:educ@ncrec.gov)

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## INTRODUCTION

**Course Description:** The *Post 302 - Contracts and Closing* course is one of the three 30-instructional hour courses in the North Carolina mandatory Postlicensing education program. At least one course must be completed annually by North Carolina provisional brokers within three (3) years after initial licensure to remain eligible for active license status. The primary objective of the course is to provide instruction at a level beyond that provided in Prelicensing courses on topics deemed to be of special importance. 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 Teaching the Course:** This course may be taught only by schools and instructors approved by the North Carolina Real Estate Commission to teach Prelicensing and Postlicensing courses. Rules governing the conduct of the course, including scheduling, course completion standards, course delivery, course completion reporting and other related matters may be obtained from the Commission. The *Post 302 - Contracts and Closing* course must be taught as prescribed by this syllabus.

### **Prerequisite:**

Per Rule 58H .0209, a school shall not enroll an individual in a Postlicensing course if:

- the first day of the Postlicensing course occurs while the individual is enrolled in a Prelicensing course;
- that individual has not passed the license examination; or
- the first day of the Postlicensing course occurs while the individual is taking another Postlicensing course at the same school or a different school if such enrollment results in the individual being in class more than 30 instructional hours in any given seven day period.

**Textbook:** The current edition of the *North Carolina Real Estate Manual*

Page references throughout the syllabus are for the 2017 edition of the *Manual*.

**Course Final Examinations and Completion Standards:** Schools and instructors are required to utilize end-of-course examinations provided by the Commission in accordance with Commission rules. Schools and instructors shall safeguard and protect at all times the confidentiality of examinations provided by the Commission. The examination minimum passing standard is 75%. Students must be required to pass the end-of-course examination and to satisfactorily complete any required activities and homework exercises. (Class time should include introduction of the assignment and review upon completion.)

## Commission Rule 21 NCAC 58A .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 teaching Prelicensing, Postlicensing, or Update courses shall interact with students either in person in a classroom setting or through an interactive telecommunication system, or comparable system, that permits continuous mutual audio and visual communication between the instructor and students. The school shall provide monitoring and technical support for the instructors or students.
- (c) Instructors teaching Prelicensing or Postlicensing courses shall:
- (1) safeguard and protect the security of course examinations;
  - (2) not allow students to review or retain copies of end-of-course examinations and any materials used during the examination; and
  - (3) only use guest lecturers that have been approved by the school director pursuant to Rule .0204(d) of this Section.
- (d) Instructors shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

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

**Order of Subject Area Presentation:** The order in which subject areas are presented in the Syllabus is the recommended order. Instructors and schools may make reasonable adjustments in the order of presentation, but should retain a logical order of presentation.

**Recommended Major Subject Area Emphasis:** Recommended emphasis by major subject area (i.e., preceded by a Roman numeral) has been provided in this Syllabus in the form of recommended number of instructional hours to be devoted to each major subject area.

**Competency and Instructional Levels:** Each major topic (i.e., preceded by a letter) in this Syllabus has been assigned a competency and instructional level of 1-3 to indicate the appropriate level of emphasis and instruction. In some instances where a subtopic should be afforded significantly greater or lesser emphasis than the major topic under which it is listed, the subtopic has been assigned a different level that applies to that subtopic only.

Competency and instructional levels have been assigned based on the relative importance of the topic and the degree of knowledge or skill needed by real estate brokers with regard to the topic. Schools and instructors are **REQUIRED** to comply with the assigned competency and instructional levels (and special notes to instructors) when teaching this course.

Shown on the next page are the three (3) competency and instructional levels used in the Course Syllabus and the meaning of each. The term *competency* refers to the cognitive level expected of students with regard to a particular topic, while the term *instruction* refers to the depth of instruction and the instructional methods that should be utilized. Level 1 is the lowest level and Level 3 is the highest level. **The majority of Postlicensing topics should be taught at a Level 3; therefore, assume the topic is a Level 3 topic if no level is noted.**

## COMPETENCY AND INSTRUCTIONAL LEVELS

### Level 1 – Recall

- Competency: Student should possess a basic level of knowledge of the topic that is sufficient to recall, recognize, identify, list, describe, etc. definitions of common terms, basic facts/concepts/principles, and basic procedures/methods.
- Instruction: Instructor should review and discuss the appropriate basic definitions, facts, concepts, procedures, etc. No in-depth instruction required.

### Level 2 – Application

- Competency: Student should possess a moderately comprehensive level of knowledge and understanding of the topic that is sufficient to explain, discuss, interpret, restate, summarize, apply, etc. facts, principles, procedures, etc. and how they relate to real estate brokerage practice.
- Instruction: Instructor should review and discuss the topic in moderate depth sufficient to reasonably assure substantial comprehension, using examples (as appropriate) to illustrate and enhance understanding of facts, principles, procedures, etc. and their relevance to real estate brokerage practice.

### Level 3 – Analysis

- Competency: Student should possess a substantial working knowledge and understanding of the topic that is sufficient to compare/contrast and analyze relevant facts, principles, procedures, etc. in a variety of common fact situations likely to be encountered in real estate brokerage practice.
- Instruction: Instructor should review and discuss the topic in substantial depth, using examples (as appropriate) to reinforce understanding of ideas, principles and practices, and requiring students to complete practical work assignments (as appropriate) 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 brokerage practice.

**POST 302  
CONTRACTS AND CLOSING  
POSTLICENSING COURSE**

**RECOMMENDED TOPIC EMPHASIS**

<b>Section #</b>	<b>Section Title</b>	<b>Hours</b>
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	Real Estate Settlement Procedures Act (RESPA) and TILA-RESPA Integrated Disclosure Rule (TRID).....	2
6	The Settlement Statement.....	6.75
7	Other Topics (Alternate Conveyance Contracts; License Status and Education Issues).....	0.75
	<b>Subtotal</b>	<b>27</b>
	Final Examination (including a complete settlement problem)	3
	<b>Total</b>	<b>30</b>

# **Post 302 Contracts and Closing**

## **Postlicensing Course Syllabus**

### **Section 1: Basic Selected Contract Law Concepts** (1 hour, 30 minutes) (*Manual*, Chapter 10, pp. 275-300)

#### I. Basic Contract Terms

- A. Definition of a 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
- C. Unilateral and Bilateral Contracts
- D. Executed and Executory Contracts
- E. Valid, Voidable, and Void Contracts
- F. Addenda and Amendments

#### II. Essential Elements of a Contract

##### A. Mutual Assent / Offer and Acceptance (*Manual*, pp. 339-346)

**Required Activity:** Thoroughly review offer and acceptance by using varied fact situations, including situations that involve electronic communication of offer and acceptance and communication to agents. Active student involvement is critically important to assure understanding of these crucial basic concepts.

##### 1. Offer

- a. Definition: a promise (that is definite in terms) by an offeror calling for a promise or an action by an offeree
- b. Must be presented to offeree *immediately* but in no case later than 3 days from receipt by broker [Rule A .0106(a)]

##### 2. Acceptance

- a. Communication of offer & acceptance
  - i. Oral communication
  - ii. Personal delivery

- iii. Mail (traditional or special mail, such as UPS, FedEx, etc.)
- iv. Electronic methods of communication

- b. Mailbox Rule
- c. Communication to Agent

### 3. Termination of Offers

- a. Counteroffer (partial or conditional acceptance)
- b. Rejection by offeree
- c. Revocation by offeror
- d. Destruction of the property
- e. Death or insanity of the offeror
- f. Use of NCAR Response to Buyer's Offer (340-T)

<p><b>Required Activity:</b> Provide a detailed review of Form 340-T and encourage discussion about the pros and cons of the seller using this form, especially in a multiple offer scenario.</p>
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- i. Rejects offer
- ii. Is NOT a counteroffer
- iii. Lists Seller's preferences for offer terms
- iv. Can be used with one or multiple offers

B. Consideration: Anything that is bargained for and given in exchange for a promise

### C. Legal Capacity of the Parties

- 1. Obtain legal advice if unsure of legal capacity of a party
- 2. No legal capacity
  - a. Minors (under the age of 18) - *voidable*
  - b. Persons declared mental incompetent by court of law - *void*
  - c. Persons mentally incompetent in fact - *voidable*
  - d. Persons intoxicated or under drug influence - *voidable*

### D. Lawful Objective



### III. Impediments to Mutual Consent

#### A. Mistake

##### 1. Mistake of Fact

- a. Involves a material term or aspect;
- b. Is mutual; and
- c. Is not the result of fraud or negligence

##### 2. Mistake of Law 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; and
- iv. That is acted on by that party to his/her 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

#### C. Unfair or Deceptive Practices Act [G.S.75-1.1]

##### 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. Subject to Treble Damages

### 3. Application

- a. Does NOT apply to For Sale By Owner that does not generally engage in real estate trade
- b. Applies to
  - i. Real Estate Brokers
  - ii. Owners who regularly sell real estate

### 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 [G.S. 22-2]

1. Must be in writing to be enforceable
  - a. All contracts to convey interest in land
  - b. A lease that exceeds 3 years from the “making”/signing of the lease agreement
  - c. Contract modifications
  - d. Verbal negotiations and agreements are NOT enforceable (See *Parol Evidence Rule* below)
2. Necessary Elements for Compliance with Act
  - a. Names of the parties to the contract
  - b. Subject matter of the contract

- c. Material terms and conditions
- d. Signature of party to be charged with the contract or an authorized agent

## B. Electronic Transactions

1. Uniform Electronic Transactions Act (UETA)
  - a. North Carolina version [G.S. Article 40, Chapter 66]
  - 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. Required Notice in Consumer Transactions [G.S. 66-327]
2. Electronic Signatures in Global & National Commerce Act (eSign)

## C. Discharge of Contracts

<b>Note:</b> Termination of a contract is different from termination of an offer.
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1. Full Performance
2. Agreement of the Parties
  - a. Release: a contract to destroy an earlier contract
  - b. Novation: a new contract substituted for a previous one
  - c. Subsequent Modifying Agreement
  - d. Accord and Satisfaction: mutually agreed upon compromise
  - e. Cancellation
3. Material Breach of Contract
4. Impossibility of Performance
  - a. Generally refers to impossibility of the thing to be done, not the inability of the promisor to do it
  - b. 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 (e.g., bankruptcy of a party; statutes of limitation; government action may override contract)

#### D. Assignment of Contracts

#### E. Rules for Interpretation of Contracts

1. *Parol Evidence Rule*: all previous negotiations/informal agreements are superseded by final written contract terms and cannot be used to alter the written contract terms
2. A contract is to be interpreted as a whole; not parts interpreted out of context
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
5. Writer of ambiguous language will be held liable for confusion

#### F. Contract Remedies

1. Money Damages
  - a. Compensatory Damages
  - b. Consequential Damages
  - c. Liquidated Damages (e.g., earnest money deposit or tenant security deposit)
2. Specific Performance: rarely granted to sellers
3. Rescission: declares the contract invalid and returns the parties to the position they were in prior to entering the contract

#### G. Auction Sales **Level 1**

1. With reserve vs. without reserve
2. Regulation of Auctions & Auctioneers

## Section 2: Real Estate Sales Contract Preparation (12 hours) (Manual, Chapter 11, pp. 301-378)

### I. Introductory Concepts

#### A. Expectation of Broker Competence

1. Competent & accurate completion of pre-printed standard sales contract forms
2. Understanding of all standard provisions in pre-printed forms
3. Ensuring that all points of agreement are included in the final written contract
4. Incompetence is a violation of fiduciary duties under the Law of Agency and License Law

#### B. Prohibition against Drafting Contract Language for Others

1. Constitutes *unauthorized practice of law*
2. Brokers are legally permitted to *fill in the blanks* of preprinted forms

#### C. Sources of Standardized Sales Contract Forms

**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 (1) *Working With Real Estate Agents* brochure; (2) *Residential Property & Owners' Association Disclosure Statement (RPOADS)*; and (3) *Mineral and Oil and Gas Mandatory Disclosure Statement (MOG)*.

#### D. Requirements for Broker-Provided Preprinted Sales Contract Forms [Rule A .0112]

1. Must include 19 separately named issues to be agreed to by the buyer and seller
2. The NCAR/NCBA jointly approved contract forms are Rule-compliant
3. Prohibited Provisions
  - a. Brokerage Compensation
  - b. Liability Disclaimer for Broker's Transactional Representations
  - c. Cannot 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/contract
  - c. May have an attorney draft an offer/contract
  
- E. Use of Appropriate Standard Contract Forms and Addenda
  1. Give uniformity to transactions & reduce brokers' temptation to draft
  2. Specialized standard sales contracts (e.g., residential, lot, commercial)
    - a. *Offer to Purchase & Contract*, Standard Form 2-T (with 2G Guidelines)
      - 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 12G Guidelines) vacant land or lot for personal use
      - i. Intended for sale of unimproved land or lot being bought for personal use; not for subdivision and resale
      - ii. NOT intended for sale of a large tract of land
    - c. *Offer to Purchase & Contract (New Construction)*, Standard Form 800-T (with 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, use Standard Form 2-T with 2A3-T, *New Construction Addendum*
    - d. *Agreement for Purchase & Sale of Real Property*, Standard Form 580-T; commercial sales transactions
  3. Thirteen (13) NCAR/NCBA jointly approved standard addenda for use with residential contracts
  4. Guidelines are provided for many forms

## F. Persistent Problems in Contract Completion

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

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

**Required Activity:** Engage students in a detailed review of each paragraph in each of the standard forms listed below. Be sure to discuss the meaning and purpose of each paragraph, the intended use of each form, 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.

Begin the review of sales contract forms with Standard Form 2-T which should be a line-by-line review guided by the discussion in Section III. Consider covering the 13 standard addenda as they are referenced in the 2-T so that students can see the relevance of the addenda to the contract terms. Any remaining addenda can be covered as a group later.

### A. Forms to be Reviewed:

1. Form 2-T *Offer to Purchase and Contract* and Form 2-G *Guidelines for Completing the Offer to Purchase and Contract*
2. Form 12-T *Offer to Purchase and Contract Vacant Lot/Land* and Form 12-G *Guidelines* for proper completion
3. Forms 2A1-T through 2A14-T -- All standard addenda forms for use in conjunction with the various standard residential Offer to Purchase and Contract forms (**Note:** there is no active #10 addendum.)
4. Form 580-T *Agreement for Purchase & Sale of Real Property* (commercial)

## B. General Guidelines for Contract Completion

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
6. Review ALL contract provisions with the parties & recommend they obtain legal advice to answer questions

## III. Major Paragraphs of Standard Form 2-T

**Note:** Be sure to read all the Notes and Warnings in the form. This information is very important to successful completion of the offer on terms that are agreeable to the parties.

### Paragraph #1: Terms and Definitions

**Note:** Whenever a term appears in the body of a contract and begins with a capital letter that would not normally be capitalized, 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 legal names (e.g., no *Mr. & Mrs.*) for all parties
- Never use *owner of record*
- Use full legal name of any entity party; not the trade name
- Undisclosed Buyer-Principal (not allowed by dual agent)

#### 1-c. Property Description

- Must include a legal description that clearly identifies the subject property
- Reference to only a tax map or number is seldom adequate
- Pay close attention to the Notes
- Attach Additional Provisions Addendum (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 the buyer’s behalf)
- Referenced financing addenda
  - *Loan Assumption Addendum (2A6-T)*
  - *Seller Financing Addendum (2A5-T)*
- Time Being of The Essence
- Seller’s right to demand good funds within 1 banking day of notice

#### 1-e. Earnest Money Deposit (EMD) [Rule A .0116]

**Required Activity:** Use various scenarios to explore how 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 A .0116(b)(3-4) regarding following the 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
  - Contract condition is not met
  - Buyer terminates during Due Diligence Period
  - Seller breaches contract
- Not the Consideration required for a valid contract
- Established as sole remedy for breach by Buyer
- Disputed EMD [G.S. 93A-12]
  - 90-day written notification to all parties claiming ownership of the monies of 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 disputed tenant security deposits
  - Funds are not subject to law until contract formation

#### 1-f. Escrow Agent

- Should be the name of a firm or closing attorney; not an individual agent unless he/she is a sole proprietor

- Do not sign acknowledging receipt of monies unless actually received
- Both brokers and attorneys serving as escrow agents may use the disputed funds rule
- Permission given for an interest-bearing trust account

#### 1-g. Effective Date

- When last party has signed or initialed and has communicated this fact to the other party
- Initials of the parties at the bottom of each contract page do not affect contract formation
- Oral agreements are meaningless per Statute of Frauds

#### 1-h, i, j. Due Diligence

- Buyer's opportunity to 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
  - Buyer credit if transaction closes
  - No DDF is required to create a binding contract
- Due Diligence Period
  - Time Being of the Essence as to expiration
  - Buyer's right to terminate addressed in Para. 4(g)

#### 1-k & l. Settlement

- Delivery to settlement agent of all executed documents and funds necessary to complete the transaction
- Settlement Date
  - Time and place selected by Buyer
  - Delay of Settlement is addressed in Para. 13

**Note:** Brokers are strongly cautioned against suggesting inclusion of a *time is 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.

#### 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

#### 1-n. Special Assessments

- Proposed: Identified in Para. 7(c); payment addressed in Para. 6(a)
- Confirmed: Identified in Para. 7(c); payment addressed in Para. 8(k)

#### Paragraph #2: Fixtures and Exclusions

- Specified items in Subpara. (a) shall convey with related equipment and remotes free of liens unless excluded in Subpara. (b) or (d)
- Items leased or not owned by the Seller should be listed
- Items that will NOT convey should be clearly identified to avoid later dispute
- Seller must repair any damage caused by removal of excluded items

#### Paragraph #3: Personal Property

- Any personal property of the Seller that should convey with the property must be clearly specified here
- Verbal agreement and notice in MLS are not enforceable
- Item description should be accurate and precise to avoid later dispute

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

#### Paragraph #4: Buyer's Due Diligence Process (*Manual*, pp. 443-451)

**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.) and how to handle negotiations from both the Seller and Buyer viewpoints.

**Note:** Buyers should be strongly advised to perform due diligence activities as quickly as possible to allow negotiation for 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 Due Diligence Period (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 his/her right to terminate without penalty unless there is a Seller breach.

#### 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 his/her ability to obtain loan approval.

#### 4-b. Property Investigation

- Inspections
  - Physical Inspection by Buyer and/or by Qualified Professional(s)
  - 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*
  - Restrictive covenants
  - Owner association documents
  - Receive & disburse closing funds
- Insurance
- Appraisals
- Survey
  - Reveals boundaries & setback lines
  - Identifies encroachments & easements
  - Locates mandatory septic repair field, if applicable
  - Required for title insurance policy coverage for homeowner
- Zoning & government regulations
- Flood hazard

- Utilities & access
- Street/roads
- Fuel tank

4-c. Repair/Improvement Negotiations and /or Agreement

- Property being sold in its current condition (as is) unless other agreements are specified in the contract
- Repair negotiation agreements 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)

4-d. Buyer's Obligation to Repair Damage

4-e. Indemnity

4-f. 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 shall be refunded to the Buyer

4-g. Closing shall constitute acceptance

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
- Specified financing terms agreeable to Buyer

- Seller is advised to obtain documentation of Buyer's ability to close if no financing is needed

#### 5-b. Other Property

- Information for Seller to use in response to offer
- Material fact if Buyer must sell or lease other property in order to close this transaction
- Contingent Sales Addendum (2A2-T) needed to make disposition of Other Property a contract condition

#### 5-c. Performance of Buyer's Financial Obligations

#### 5-d. & e. Property Disclosures [G.S. 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

- Proposed Special Assessments
- Responsibility for certain costs
  - Loan costs
  - Owner association fees
  - Appraisal
  - Title search
  - Title insurance
  - Closing attorney fees
  - Recording of deed & loan documents
- 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

- Applicable for residential property built prior to 1978
- Attach 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 can also obtain reimbursement from Seller for reasonable costs incurred conducting the Due Diligence without affecting any other remedies available to Buyer.

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

8-d. Removal of Seller's Property

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

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

8-f. Designation of Lien Agent, Payment & Satisfaction of Liens  
[if required by G.S. 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

#### 8-h. Deed, Taxes & Fees

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

#### 8-i. Agreement to Pay Buyer Expenses

- A stated dollar amount credited towards Buyer expenses, if applicable
- Subject to approval of Buyer's lender

#### 8-j. Owners' Association Fees/Charges

#### 8-k. Payment of Confirmed Special Assessments

#### 8-l. Late Listing Penalties

#### 8-m. Negotiated Repairs/Improvements

- Completed in good & workmanlike manner
- Buyer has right to verify prior to Settlement



#### 8-n. Seller's Failure to Comply or Breach

- Buyer may terminate the Contract and:
  - Receive refund of any EMD and Due Diligence Fee paid
  - Can obtain reimbursement from Seller for reasonable costs incurred conducting the Due Diligence Process
- Other remedies may be available to Buyer

#### Paragraph #9: Prorations and Adjustments

- Taxes on Real Property (calculated on calendar year basis)
- Taxes on Personal Property
- Rents
- Dues

#### Paragraph #10: Home Warranty

#### Paragraph #11: Condition of Property at Closing

#### Paragraph #12: Risk of Loss

- Buyer rights if material damage occurs prior to Closing
  - May terminate contract & 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
- Property Insurance [G.S. 39-39]
  - Seller should maintain policy until Closing
  - Buyer should obtain policy effective for entire day of Closing
  - Possession other than Closing can be problematic

#### Paragraph #13: Delay in Settlement/Closing

- *Delaying Party* acting in good faith should give as much notice as possible
- Automatic 14-day grace period to close after Settlement Date
- If not closed by end of 14-day period, Non-Delaying Party may terminate contract

- Written extension of Settlement Date will also have 14-day grace period option

#### Paragraph #14: Possession

- Assumed to be at Closing (after deed recordation)
- No means of access (e.g., keys, garage door openers, etc.) to be granted to Buyer between Settlement and Closing
- Use appropriate addendum if possession at a time other than Closing

**Required Activity:** Discuss the advantages and disadvantages of allowing possession at a time other than Closing.

#### Paragraph #15: Addenda

**Note:** A NC real estate broker is not permitted to suggest or draft any contract language or addenda for others (unless he/she is an actively licensed NC attorney).

- Check appropriate boxes and attach all standard addenda that are to be part of the contract
- All drafted addenda must be properly identified and attached to become part of the contract

#### Paragraph #s 16-23: Miscellaneous Paragraphs

- #16. Assignments
- #17. Tax-Deferred Exchange
- #18. Parties
- #19. Survival
- #20. Entire Agreement
- #21. Conduct of Transaction
  - Electronic communication and actions are endorsed
  - All written notices & communications may be sent to any address authorized in Notice Information section

**Note:** Entry of any Buyer or Seller contact information authorizes communication directly to a Party rather than the standard practice of communicating through the agents.

- *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
- #22. Execution
- #23. Computation of Days
  - *Days* means calendar days including weekends and all holidays
  - Day count begins the day after act or notice required by contract
  - Date & time are for North Carolina

#### Page 11: Signature and Dates

- Must be signed by all Buyers and Sellers
- To transfer clear title, Seller spouse must sign even if not named on the deed
- Verify correct signators for entities or trusts
- Date all signatures to clearly establish Effective Date; although contract is valid without dates

#### Page 12: Notice Information

- At least one notice address must be entered for each party or agent
- Enter names of individual listing and selling brokers, their license numbers, firm names and license numbers, and check appropriate agency representation boxes [Rule A .0104(f)]

#### Page 13: 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 NCAR 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 the Buyer or the Seller in which case the contract will control.

A. 2A1-T: *Back-up Contract Addendum* (Manual, pp. 338-339)

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

1. Seller is not required to take the Property off the market once under contract
2. Addendum addresses dates for DDP and Settlement Date
3. 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 his/her contract is in primary position

B. 2A2-T: *Contingent Sale Addendum* (Manual, pp. 336-338)

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

1. Buyer's need to sell a property becomes a condition of the contract
2. Copy of Contract for Buyer's Property
3. Closing on Contract for Buyer's Property
4. Termination of Contract for Buyer's Property
5. Listing of Buyer's Property

C. 2A3-T: *New Construction Addendum*

D. 2A4-T: *FHA/VA Financing Addendum*

E. 2A5-T: *Seller Financing Addendum*

F. 2A6-T: *Loan Assumption Addendum*

G. 2A7-T: *Buyer Possession Before Closing Addendum*

H. 2A8-T: *Seller Possession After Closing Addendum*

I. 2A9-T: *Lead-Based Paint or Lead-Based Paint Hazard Addendum*

J. 2A11-T: *Additional Provisions Addendum*

1. Expiration of offer
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

K. 2A12-T: *Owners' Association Disclosure and Condominium Resale Statement Addendum*

L. 2A13-T: *Vacation Rental Addendum*

M. 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

**Required Activity:** Have students prepare an 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. Allow class time to review the exercise.

V. *Offer to Purchase and Contract – Vacant Lot/Land* (Form 12-T) and Guidelines for Completing (Form 12-G)

VI. *Agreement for Purchase & Sale of Real Property* Form 580-T (commercial)

### **Section 3: Sales Contract Procedures** (2 hours) (*Manual*, pp. 346-351)

- I. Submitting Offers to Sellers [G.S. 93A-6(a)(13); Rule 58A .0106]
  - 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 whom they represent or how they will be compensated

3. Listing broker has no authority to accept or reject an offer on behalf of Seller
4. Only 1 contract signed by all parties required to be binding; copies to all contract parties required by Rule A .0106

#### B. Multiple Offers

1. All offers must be presented *immediately* even if Property already under contract
2. Concurrent offers must be presented at the same time
3. Disclosure of Offer and/or Terms
  - i. Existence of other offers not a material fact
  - ii. Broker prohibited from sharing material terms without express permission of offeror [Rule A .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

1. Any change to an offer rejects the original offer
2. A counteroffer is usually created if offeree makes changes, initials those changes, and signs the offer before returning it to the original offeror
3. Possible use of NCAR Standard Form #340-T *Response to Buyer's Offer*
4. Numerous term changes should prompt use of a new blank offer form

### **Section 4: Closing Preparations and Procedures** (2 hours) (*Manual*, Chapter 14, pp 441-457)

<p><b>Note:</b> 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.</p>
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#### I. General Pre-Closing Procedures

- A. Respective responsibilities of the parties

## B. Select the Settlement Agent

1. Buyer should identify the Settlement Agent of his/her choice immediately after contract formation, if not before
2. Settlement Agent usually represents Buyer, Buyer's lender, and may provide some services to the Seller

## C. Provide Information to the Settlement Agent

1. All available information that will assist in preparing for closing such as:
  - i. Copies of the contract
  - ii. Seller's deed
  - iii. Seller's title insurance policy
  - iv. Information on the seller's loan payoff or lender
  - v. Any invoices or services that are to be paid at closing
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 lots of variables frequently beyond the control of either party. Buyer & 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

### A. General Responsibility of Broker working with a Buyer

### B. Inspections and Investigations including those recommended under Paragraph 4 of Standard Form 2-T

### 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
3. Standard forms to use in negotiation of repair issues
  - i. *Additional Provisions Addendum* (Form 2A11-T)
  - ii. *Due Diligence Request & Agreement* (Form 310-T)
  - iii. *Agreement to Amend Contract* (Form 4-T)
  - iv.

**Required Activity:** Provide current forms and lead a detailed review of how to complete & use them during repair negotiations. Explore various scenarios including items to be repaired and adjustment in sales price in lieu of repairs, etc. Be sure to advocate for Buyer requesting, as part of original offer, repairs or improvements that the Buyer knows about before contract formation; this is done through the use of Additional Provisions Addendum. This does not affect Buyer's right to investigate and request further concessions during the DDP.

### III. Other Pre-Closing Matters

#### A. Title Search

#### B. Clearing of any Title Defects by Seller

#### C. Prepare Assignment of any Outstanding Leases

#### D. Final Pre-Closing Procedures

1. Transfer Earnest Money from Escrow Agent to the Settlement Agent [Rule A .0116(e)]
2. Review Draft of Closing Disclosure by listing and selling broker for accuracy as soon as available
  - i. TRID requires lender to provide *Borrower's Closing Disclosure (BCD)* at least 3 business days prior to Settlement
  - ii. 3 changes require new *BCD* and a new 3 business day waiting period
    - An increase in APR
    - A change in loan product
    - Addition of a prepayment penalty
  - iii. No delivery deadline prior to Settlement for *Seller's Closing Disclosure*
3. Notify Buyer of Personal Funds Needed to Close
4. Attorney orders Title Insurance Policy for Lender and Owner

### IV. Closing Methods

#### A. Escrow Closing Method

1. Escrow agreement instructions accomplished virtually by escrow agent; parties do not attend
2. Escrow agent is generally a title company or escrow division of lender



3. *Relation Back Doctrine*: deed is considered delivered once Seller has given it to Escrow Agent
- 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 Nonlawyers in Closing
    - i. Present & identify documents necessary to complete NC closing
    - ii. Direct parties where to sign documents
    - iii. Ensure parties have properly executed the documents
    - iv. Receive & disburse closing funds
  4. Settlement Meeting Procedures
    - i. Location and parties attending
    - ii. Review of documents
    - iii. 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*, pp. 457-470)

- I. Applicability of RESPA
  - A. Federally related residential mortgage loan to purchase 1-4 family dwelling that is or will be situated within 2 years of purchase
  - B. *Regulation X* administered by Consumer Financial Protection Bureau (CFPB) under the Dodd-Frank Act
  - C. Does not apply to loans for commercial, business or agricultural purposes
- II. RESPA Requirements/Consumer Protections
  - A. Disclosure & Borrower Credit for *Yield Spread Premiums*
  - B. Loan Servicing Disclosure Requirements
    1. Whether loan servicing can be sold, transferred or assigned

2. Borrower notification required prior to transfer of servicing
- C. 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
- D. 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
  4. Disclosure of Affiliated Business Arrangements
- E. Special Information Booklet for Homebuyer/Borrowers
- F. Written Estimate of Settlement Charges (formerly the *Good Faith Estimate* - now the *Loan Estimate*) within 3 business days of loan application
1. Definition of *Loan Application*
  2. Intended to encourage borrowers to shop for loans
- G. Settlement Statement
- H. 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 & orders to compensate victims for illegal profits
  4. Also a violation of License Law 93A-6(a)(10)

### III. TILA-RESPA Integrated Disclosure (TRID) Rule

#### A. The Loan Estimate (LE)

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

#### B. The Closing Disclosures

1. Delivery of Borrowers' Closing Disclosure
2. Corrected/Revised Closing Disclosure
3. Brokers' Responsibility [93A-6(a)(14)]
  - i. Confirm accuracy of entries about which he/she has direct knowledge
  - ii. Notify all parties to the transaction of any errors
  - iii. May rely on lawful settlement agent for delivery to parties

## **Section 6: The Settlement Statement** (6 hours, 45 minutes) (*Manual*, pp. 470-484)

### I. Basic Terminology

### II. Prorations

#### A. Real Estate Taxes (various situations)

#### B. Rents

#### C. Homeowner's Dues

### III. Buyer's Closing Disclosure

**Required Activity:** After reviewing the basics, students must complete at least one closing disclosure problem. This may be completed either individually or in groups. Allow class time to fully review the problem with the entire class. The end-of-course examination includes a complete closing scenario problem.

## **Section 7: Other Topics** (45 minutes) **Level 2**

- I. Alternate Conveyance Contracts (*Manual*, pp. 351-360)
  - A. Installment Land Contract (Contract for Deed)
    1. Definition
    2. No standard contract; consult an attorney
    3. Seller must record within 5 business days of execution
    4. Buyer is allowed up to 30 days to cure a default
    5. Advantages and Disadvantages
  - B. Option to Purchase
    1. Rights of parties
    2. Must be in writing & recorded
    3. Advantages and Disadvantages
  - C. Preemptive Rights **Level 1**
    1. Right of First Refusal
    2. Right of First Opportunity to Purchase
- II. License Status and Education Issues [G.S. 93A-4; Rules A .0503, A .0504, A .0505, and A .0506]
  - A. License Status: Meaning of provisional broker, active, inactive, expired, suspended, revoked, and canceled status.
  - B. Postlicensing Education Requirement (and consequences of failure to satisfy) [Rule A .1902]
  - C. Continuing Education Requirement (and consequences of failure to satisfy) [Rules A .0504(b); A .1702]
  - D. Requirements and procedures to activate an Inactive license [Rules A .0504(c) & (d); A .1703]

E. Requirements and procedures to reinstate an Expired license

1. License expired for not more than 6 months [Rules A .0505(c) & (h)]
2. License expired between 6 months and 2 years [Rules A .0505(d) & (h)]
3. License expired for more than 2 years [Rules A .0505(e) (f) & (h)]

**--End of Course Syllabus--**