



Significant Changes Take Place to Forms Library

Effective July 1, a number of changes to the NC REALTORS® Forms Library took place. Sixteen residential forms have been updated and one new form introduced. The changes are summarized in this article, and a webcast was recorded on June 23 detailing the changes. You can view the archived recording at www.ncrealtors.org by clicking on the NC REALTORS® TV button.

Jointly-approved Forms

Contingent Sale Addendum (2A2-T).

This form underwent a major revision in 2008. Most of the recommended changes are for purposes of clarification. There are two substantive additions recommended.

- The July 1, 2008, version of this form contained two contingencies in the first paragraph: one, that the buyer's property goes under contract by an agreed-upon date, and two, that the sale of buyer's property closes on or before the closing date in the contract with the seller. For the sake of clarity, the new version identifies these two contingencies by different names ("Closing Contingency" and "Contract Contingency") and separates them into different paragraphs.
- The contract on the buyer's property was referred to as "Sales Agreement" in the 2008 version. To help agents and their clients more easily distinguish between references to the contract on the buyer's property and references to the contract between the buyer and the seller, the reference to the contract on the buyer's property has been changed to the "Contract for Buyer's Property."
- The substantive additions are in paragraph 2 and in subsection 3(e). They address certain rights of the parties to terminate the contract that were not addressed in the 2008 version. In paragraph 2, the buyer is given the right to terminate the contract with the seller if the buyer's property doesn't go under contract by the date in paragraph 2. In subsection 3(e), either the buyer or the seller is given the right to terminate the contract if the contract on the buyer's property falls through for some reason. (An exception to the buyer's right to terminate under paragraph 2 or subsection 3(e) would be if the buyer had previously waived the Contract Contingency and/or the Closing Contingency under subsection 6(a).)

FHA/VA Financing Addendum (2A4-T). The buyer, seller and "selling firm" were required to sign the previous version of the form certifying that they had read and understood the statements contained in the "Real

Estate Certification" above the signature lines. Recently, a number of members have reported that some FHA/VA lenders are returning contacts and demanding that the Addendum be signed by both the listing agent and the selling agent. Although these demands do not appear to be driven by any change in FHA/VA regulations, a decision was made to add a new "Listing Firm" signature line to the form. The statements contained in the "Certification" are reasonable, and there is no logical reason why the selling firm and not the listing firm should be required to sign the certification.

NC REALTORS® Forms

Exclusive Right to Sell Listing Agreement (form 101).

- Paragraph 4 (Home Warranty). The language disclosing the receipt of an "administrative fee" was added in January of this year to address the Real Estate Commission's new compensation disclosure rule. Since January, a few concerns have been expressed about the use of the phrase "administrative fee" because of the existence of a long-standing lawsuit against a large Alabama brokerage, in which the firm allegedly violated the Real Estate Settlement Procedures Act by charging an "administrative brokerage fee." Although a fee collected by a firm for assisting a client in obtaining a home warranty is clearly distinguishable from the so-called "ABC fees" charged by RealtySouth, which were not linked to any particular settlement service, the phrase "administrative fee" has been changed to "fee" out of an abundance of caution.
- Paragraph 8 (Firm's Compensation)
 - > New wording has been added to specifically state that the firm is entitled to its fee in a situation where the seller transfers its interest in an entity that owns the listed property rather than the property itself.
 - > New wording has been added to permit the firm to

recover attorney fees and court costs if the firm is required to sue the seller for recovery of its fee. Although such suits are relatively rare, there are occasional reports of closing attorneys being directed not to pay the listing firm its fee out of the closing proceeds. Since firms do not have any right to file a lien against the property for their fee, it is hoped that the addition of an attorney fees provision may help discourage sellers from refusing without good cause to pay the firm's fee at closing.

- Paragraph 9 (Cooperation With/Compensation to Other Firms). New wording has been added as a reminder to firms that in discussing their compensation policies with their seller clients, they should discuss any differing policies they may have regarding cooperation with/compensation to firms that do not participate in MLS and/or are not REALTORS®.
- Paragraph 17 (Earnest Money). New wording has been added to give the firm specific authorization to disclose the seller's mailing address to the escrow agent holding disputed monies so that the escrow agent may utilize the new procedure that allows the payment of the disputed funds to the Clerk of Court.
- Paragraph 21 (Dual Agency)
 - > Reports are occasionally received from members that when challenged by clients, they are unable to explain the indemnity provision appearing at the end of new subsection (c). In response, the complex "indemnity and hold harmless" wording has been eliminated in favor of a more straightforward waiver by the seller of certain claims against the firm arising as a result of the firm's role as a dual agent.
 - > The dual agency paragraph has otherwise been restructured so that the client's authorization regarding dual agency appears following, rather than prior to, the subsections that explain what the firm's duties will be as a dual agent. The organization of the designated agency subsection has also been modified slightly for the sake of clarity.

Exclusive Right to Sell Listing Agreement – Vacant Land (form 103). Same recommended changes as those to form 101 summarized above, except for the Home Warranty paragraph, which does not appear in the Vacant Land Listing Agreement.

Listing Agreement Addenda

- Agreement to Procure Tenant (form 106) (NEW). In the current market, listing firms are being asked by sellers who are unable to sell their property to help them lease the property instead. Since the Exclusive Right to Sell Listing Agreement does not authorize the firm to offer the property for lease, this new form is designed to be used with the listing agreement in such a situation. Paragraph 5 makes it clear that the scope of services offered by the firm is quite limited. Any prospects procured by the firm will be referred to the owner or a specified property management firm, and the firm will not provide or be responsible for any management services in connection with the property.
- Short Sale Addendum to Exclusive Right To Sell Listing Agreement (form 104). Since this new form was introduced in January of this year, numerous calls have been received about the last bullet in paragraph 9 relating to the firm's role if the property goes into fore-

(continued on page 20)

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closure. The wording of the bullet has been modified to help clarify that the listing agent is not required to cease efforts to negotiate and close a short sale contract on the property simply because a foreclosure proceeding is filed with the Clerk of Court, out of fear that the agent may be accused of engaging in the unauthorized practice of law. The agent should, however, take care to avoid conduct that might be interpreted as advocating on the seller's behalf in connection with the foreclosure proceeding itself. An example of such advocacy would be to negotiate with the lender or the attorney handling the foreclosure for a continuance of the date of the foreclosure sale.

- Internet Advertising Addendum (form 105). An "Other" blank line has been added to the menu of agency agreements so that the Addendum may be used with an agency agreement other than those listed.

Exclusive Right to Represent Buyer (form 201)

- Paragraph 4 (Compensation of Firm). Paragraph 4, subsection (b) ii. in the 2008 version of this form contained initial lines enabling a choice to be made whether the buyer will or will not pay any difference between the fee the buyer agreed to pay and the compensation being offered by the listing agent or seller. The new version eliminates the initial lines and simply provides that the buyer will pay the difference. If the firm wants to relieve the buyer from any obligation to pay the difference between the agreed-upon fee and the fee being offered by the listing agent or seller, consideration should be given to using the Non-Exclusive Buyer Agency Agreement (form 203) instead. Note that the firm must give timely notice to the buyer if the compensation offered is less than expected. The buyer may always choose not to purchase a property where the buyer may be obligated to pay any portion of the firm's fee. Of course, the firm may also choose to waive the right to any difference.
- Paragraph 5 (Disclosure of Buyer's Name/Mailing Address). See discussion of changes to paragraph 17 of form 101 above.
- Paragraph 11 (Home Warranty). See discussion of changes to paragraph 4 of form 101 above.
- Paragraph 16 (Dual Agency). See discussion of changes to paragraph 21 of form 101 above.
- Paragraphs 4 and 16 of the *Guidelines For Completing The Exclusive Right To Represent Buyer* (form 201G) have been updated to reflect recent

changes to the agreement.

Non-Exclusive Buyer Agency Agreement (form 203)

- Several formatting changes have been made to this form, including a change in the name of the form.
- A number of substantive changes have also been made, including those discussed above pertaining to the dual agency paragraph and the authorization to disclose the client's mailing address.
- The most significant substantive changes are in the "Compensation of Firm" section of the form. A fee blank has been added so that a specific fee may be inserted. This will enable the buyer agent to more easily comply with the Real Estate Commission's new compensation disclosure rule. If the compensation offered by the listing agent or seller is the same as the compensation inserted in the blank in the agency agreement, there will be no need for further disclosure/written confirmation under the rule. Note that the buyer is under no obligation to pay any fee to the firm. However, also note that new wording has been added that will allow the firm to terminate the agreement if they are unable to negotiate a reasonable modification of the compensation terms of the agreement in situations where the compensation offered by the listing agent or seller is less than the amount inserted in the blank.

Notice To Seller That Buyer Is Exercising Their Right To Terminate The Offer To Purchase And Contract (form 350-T and form 351-T)

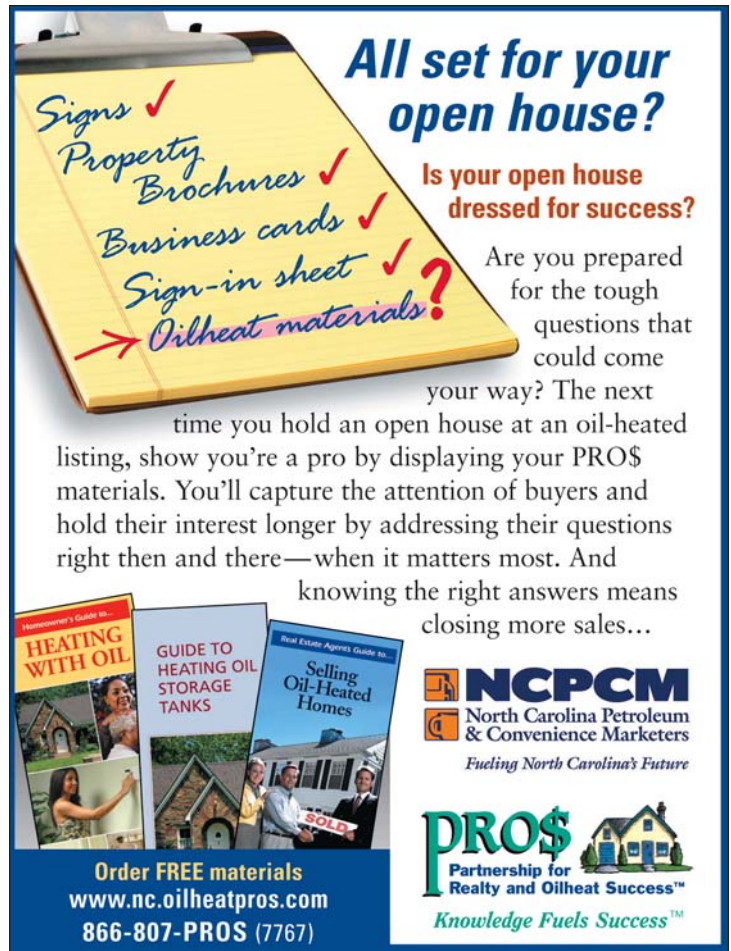
- Two new check boxes have been added to these two forms to reflect changes to the new version of the Contingent Sale Addendum (discussed above) that give the buyer two additional rights to terminate the contract if the buyer's property doesn't go under contract by an agreed-upon date or if the contract on the buyer's property falls through. An additional check box has been added to form 350-T addressing the buyer's right to terminate the contract if the property improvements have been destroyed or materially damaged.
- Two new check boxes have been added to incorporate rights buyer has to terminate under Short Sale Addendum adopted this past January.
- Mailing address lines have been added for the buyer and seller mailing addresses.

Notice To Buyer That Seller Is Exercising Their Right To Terminate The Offer To Purchase And Contract (form 352-T and form 353-T)

- A new check box has been added to these two forms to address the right of the seller to terminate the contract under the new version of the Contingent Sale Addendum (discussed above) if the contract on the buyer's property falls through. Additional technical changes have been made to reflect language changes in the Contingent Sale Addendum.
- A new check box has been added to incorporate rights seller has to terminate under Short Sale Addendum adopted this past January.
- Mailing address lines have been added for the buyer and seller mailing addresses.

Miscellaneous Changes

- Agreement to Amend Contract (form 330-T). A technical change has been made in the last check box on the menu to reflect language changes in the Contingent Sale Addendum.
- Guidelines For Completing Confirmation Of Additional Compensation Form (form 770G). The "NOTE" appearing immediately above Example #3 in the 2008 version of the Guidelines has been removed since the Non-Exclusive Buyer Agency Agreement has been modified to comply with the compensation disclosure obligation under the Real Estate Commission's rule. (See discussion of changes to form 203 above.) Also, a new Example #6 has been added to the



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Guidelines that addresses the disclosure of home warranty fees under the Real Estate Commission's compensation disclosure rule. ■

Have a question or questions for the Forms Guy?
Email Will Martin at wmartin@ncrealtors.org.

Availability of forms.

Copies of the updated forms are available on the NC Association of REALTORS® website. To access the forms, go to www.ncrealtors.org and click on "NCAR Contract Forms (non-interactive)." Enter your user name and password. Your user name is the e-mail address that you have on file with NC REALTORS® and your default password is your nine-digit NRDS number. For your convenience, your NRDS number is printed after your name on the mailing label of this publication.

Updated versions of the forms have been sent to all of NC REALTORS® approved forms software vendors. You should contact your vendor regarding the anticipated "roll-out" date of an update to your forms software program.

NC REALTORS® Forms Use Policy allows permitted users a 60-day "grace period" to continue using an old version of a standard form following a modification of the form. Thus, old versions of the updated forms may be used through the end of August. However, you should check with your broker-in-charge concerning your own firm's policy on use of the new forms, in case your firm requires that you use them prior to the end of the NC REALTORS® grace period.

For more information, contact the NC Association of REALTORS® legal department at 800-443-9956.