



# BUSINESS

## Difficult Economy

### Additional Clarifications Prompt New Forms You Must Adhere To

Because it's important at all times to know and understand the proper use of forms, we'll examine each of these in detail.

We'll begin with so-called "short sales." NC REALTORS® have been faced recently with increasing numbers of situations where the likely sales price of a property may not be enough to pay all the costs of

sale and the seller doesn't have sufficient assets to pay any deficiency. Three new forms have been developed and two existing listing agreements revised to help members better handle short sales.

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#### **Short Sale Addendum (to Offer to Purchase and Contract).**

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This new form has been designed as an addendum to either the Offer to Purchase and Contract (#2-T) or the Offer to Purchase and Contract-Vacant Lot/Land (#12-T) and may be used in situations where any sale of the property would be a "Short Sale" as defined in paragraph 1 of the addendum.

The addendum serves two important purposes. First, it establishes important contractual rights of the parties to a short sale. Paragraph 2 provides that the seller can terminate the contract if the short sale isn't approved by all necessary lienholders, and paragraph 3 provides that the buyer has the right to terminate the contract at any time prior to receiving notice of short sale approval from the seller. The rest of the addendum (paragraphs 4 through 8) addresses the second important purpose of the addendum, which is to help educate the parties about the process and potential consequences of a short sale, so that any decision they make to enter into a short sale contract will be an informed one.

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#### **Short Sale Addendum To Exclusive Right To Sell Listing Agreement.**

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This new form may be used as an addendum to either the Exclusive Right To Sell Listing Agreement or the Exclusive Right To Sell Listing Agreement (Vacant Land) (#103). Its principal purpose is to educate the seller about short sales – what they are (paragraph 1), the potential alternatives and consequences (paragraphs 2 and 3), what the lienholders

Changes to the NC Association of REALTORS® forms library typically take place on July 1 of each year, but the 2008-2009 forms cycle has been anything but typical.

First, as a result of an N.C. Real Estate Commission rule change (effective Oct. 1, 2008) pertaining to disclosure of compensation, your state association introduced a new "Confirmation of Additional Compensation" form (#770) and revised the Exclusive Right to Sell Listing Agreements (#101 and #103) and Exclusive Right to Represent Buyer (#201) forms.

Now, in response to difficult economic times and mandatory changes to MLS rules, as well as additional clarification regarding the N.C. Real Estate Commission's compensation disclosure rule, the state association has rolled out four new forms and revised four existing forms. They are:

- › Short Sale Addendum (to Offer to Purchase and Contract) (#2A14-T) **(New)**
- › Short Sale Addendum To Exclusive Right To Sell Listing Agreement (#104) **(New)**
- › Seller Estimated Net Sheet (#110) **(New)**
- › Exclusive Right To Sell Listing Agreement (#101)
- › Exclusive Right To Sell Listing Agreement (Vacant Land) (#103)
- › Exclusive Right To Represent Buyer (#201)
- › Exclusive Property Management Agreement (Long-term Rentals) (#401)
- › Internet Advertising Addendum (#105) **(New)**

may or may not agree to do (paragraph 4), and what the seller's responsibilities will be (paragraphs 5, 7, 8 and 9).

Paragraph 6 of the addendum lists several "additional actions" that the firm may take with respect to the marketing and sale of the property, including rights to communicate directly with and provide information directly to any lienholders.

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### **Seller Estimated Net Sheet.**

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This new form may be used in conjunction with any listing, but it has been added at the present time to the NC REALTORS® forms library principally as a tool in helping to determine whether any sale of the seller's property will be a short sale. The format enables listing agents to estimate net proceeds based on three different sales prices.

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### **Exclusive Right To Sell Listing Agreements.**

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In the "Seller's Duties" paragraph in both form #101 and #103, the seller represents that "there are cur-

rently no circumstances that would prohibit the seller from conveying fee simple marketable title ..."

In a short sale situation, that representation would not be accurate. Thus, additional wording and several blank lines have been added where the seller may summarize the circumstances that would cause the seller to be unable to convey fee simple marketable title. Wording has been added to encourage use of the new short sale addendum to the listing agreement if the seller's inability to convey fee simple marketable title is due to the fact that the lienholder approval of the sale may be required.

Additionally, new wording has been added creating a specific duty on the seller's part to provide the listing firm in a timely manner sufficient information to enable the firm to estimate the seller's net proceeds.

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### **MLS rule changes.**

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The lawsuit brought several years ago by the United States Department of Justice against the National Association of REALTORS® challenging NAR's rules

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regarding virtual office websites, or “VOWs,” was recently settled.

The terms of the settlement, among other things, required board MLSs to adopt certain rules pertaining to VOWs by February 15, 2009. Under the new rules, listing firms may not “opt out” of having their listings displayed on the VOW sites of other MLS participants.

A seller may choose not to authorize Internet advertising of their listing, in which case the new rules require the listing agent to obtain from the seller a signed opt-out document containing certain information. A seller may also authorize the listing firm to display the listing only on the listing firm’s Internet site, but in such a case, the listing would not be eligible for inclusion in the MLS.

Sellers who do authorize Internet advertising may prohibit MLS participants from displaying the property’s address on the Internet, and may also prohibit the display of third-party comments about the property and automated estimates of the market value of the property in connection with their listing.

The “marketing” paragraphs of the listing agreements (forms 101 and 103) have thus been modified to be consistent with these new MLS rules.

Note that sellers who elect to prohibit display of either the property address, third-party comments and/or automated estimates of value should indicate their choice by not checking the corresponding check box(es). Since the new rules also appear to apply to listings of rental property, the **Exclusive Property Management Agreement (Long-term Rentals)** has been revised accordingly.

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### **Internet Advertising Addendum.**

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This new addendum may be used by listing firms to meet the new MLS requirement that a participant must obtain a written opt-out from a seller who desires to prohibit Internet advertising. The form also addresses the situation where the seller chooses to authorize Internet advertising only by the listing firm. It is to be used as an addendum to the listing agreements or property management agreement, not the Offer to Purchase and Contract.

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### **More on compensation disclosure.**

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It has been determined that a firm or agent’s receipt of a fee from a home warranty company is

covered under the N.C. Real Estate Commission’s compensation disclosure rule referred to at the beginning of this article. As a result, new wording has been added to the existing “Home Warranty” paragraphs of the Exclusive Right To Sell Listing Agreements (#101 and #103) and the Exclusive Right To Represent Buyer Agreement (#201) to allow the firm/agent to disclose the existence of the fee, if applicable, including the amount.

This will allow the firm/agent to fully comply with all requirements of the rule when the agency agreement is signed, thereby avoiding the necessity of having to separately confirm the expected receipt of the fee in writing at a later time. ■

## **AVAILABILITY OF FORMS**

Copies of the updated forms are available on NCAR’s Web site. To access the forms, go to [www.ncrealtors.org](http://www.ncrealtors.org) and enter your user name and password. Your user name is the e-mail address that you have on file with NCAR and your default password is your nine-digit NRDS number, conveniently located on the cover of this publication. Next, click on “Forms and Contracts” on the top toolbar then click on the blue and white “Forms and Contracts Library” logo.

Updated versions of the forms have been sent to all of the state association’s approved forms software vendors. You should contact your vendor regarding the anticipated “roll-out” date of an update to your forms software program.

The NC Association of 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 March. 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 our grace period.

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