

GUIDELINES FOR COMPLETING THE OFFER TO PURCHASE AND CONTRACT—VACANT LOT/LAND
(Standard Form No. 12-T)

INTRODUCTION: These guidelines are provided to assist agents and attorneys who are completing the Vacant Lot Offer to Purchase and Contract form on behalf of Buyers and Sellers. The Offer to Purchase and Contract is the most important document in any real estate sale and it is imperative that it accurately reflects the entire agreement of the Buyer and Seller. An improper contract may have substantial adverse effects on the rights and interests of the parties. These guidelines include general comments about contract completion as well as suggestions and explanations regarding selected contract provisions with which agents often have difficulty. However, situations will frequently arise that are not covered by these guidelines. Agents should always remember that an attorney should be consulted any time there is uncertainty regarding the proper completion of this important form.

USE OF FORM: The Offer to Purchase and Contract—Vacant Lot/Land is jointly approved by the NORTH CAROLINA ASSOCIATION OF REALTORS[®], INC. and the NORTH CAROLINA BAR ASSOCIATION, as Standard Form No. 12-T. The version of this form with the REALTOR[®] logo is produced by NCAR for use by its members, only as printed. The version of this form without the REALTOR[®] logo is produced for the NORTH CAROLINA BAR ASSOCIATION and may be used, only as printed, by attorneys and any real estate agent.

Review the “NOTE” at the top of the form to determine its intended use.

In any City or County that has a Subdivision Ordinance, it is a misdemeanor under the General Statutes of North Carolina to sell or transfer a lot in a subdivision prior to subdivision approval. It is also a misdemeanor to subdivide property in a manner not permitted by the Subdivision Ordinance. **Therefore, do NOT insert "within 30 days after subdivision approval" or similar language in the form.** If the sale involves the transfer of vacant land that the buyer contemplates dividing into lots for sale, then consult a NC real estate attorney for an appropriate form.

Also, if the sale involves the construction of a new single-family dwelling by the seller prior to closing, use the current standard Offer to Purchase and Contract (NCAR/NCBA Form 2-T) with the current standard New Construction Addendum (NCAR/NCBA Form 2A3-T) or consult a NC real estate attorney for an appropriate form.

Do not use this form as a substitute for an option contract, lease-option agreement, lease-purchase agreement or installment land contract.

GENERAL INSTRUCTIONS:

1. Type this form if possible; otherwise print or write legibly in ink.
2. Fill in all blank spaces. If any space is not used, enter “N/A” or “None” as appropriate.
3. Be precise. Avoid the use of abbreviations, acronyms, jargon, and other terminology that may not be clearly understood.
4. Every change, addition or deletion to an offer or contract must be initialed and should be dated by both Buyer and Seller.
5. If numerous changes are made or if the same item (such as the purchase price) is changed more than once, complete a new contract form to avoid possible confusion or disputes between the parties. If, *after the parties have entered into a valid contract*, you prepare a new form for the parties to sign because the existing contract contains so many changes that it is difficult to read, then do not discard the existing contract. Keep it with the new form.
6. Review with the parties all contract provisions. Advise the parties to consult their attorney if they have any question about the legal consequences of the contract or any particular provision.

NAMES OF BUYER AND SELLER: Fill in the complete name of each Buyer. If husband and wife, show the names of both (John A. Doe and wife, Mary B. Doe). Do not use “Mr. and Mrs. John A. Doe.” Fill in the complete name of each Seller. If husband and wife, show the names of both (John A. Doe and wife, Mary B. Doe). Do not use “Mr. and Mrs. John A. Doe,” “Owner of Record,” or last name only.

1. REAL PROPERTY: Fill in County and Street Address (NOT the mailing address, which may be different from the street address) CAUTION: A street address alone is generally not an adequate legal description. Do NOT reference any preliminary plat or a metes and bounds description of the lot created before final subdivision approval. If the lot is described in the contract by reference to a preliminary plat or by a metes and bounds description created before final subdivision approval, the lot may have completely different boundaries when the final subdivision plat is approved. Locations of roads, easements and landmarks of interest to the buyer may change as well. This may mean that the contract is no longer legally enforceable since the lot described in it may no longer exist, and the seller will therefore be unable to deliver title to it at closing.



Legal Description: Even if the Property has a street address, include a legal description sufficient to identify and distinguish the Property from all other property.

- (1) Reference to a recorded plat (map): Include the lot #, block #, name of subdivision, and recording reference for the plat as recorded in the Register of Deeds office. CAUTION: A reference to a tax map alone is generally not an adequate legal description.
- (2) Reference to a recorded deed: Insert the book # and page # of the Deed Book as recorded in the Register of Deeds office.
- (3) Metes and bounds description: Do not attempt to complete a metes and bounds exhibit. An attorney should be consulted prior to completing the Offer to Purchase and Contract—Vacant Lot/Land if a metes and bounds description is necessary or if any of the above legal descriptions is not available.

Covenants: Purchasers take title to property subject to the restrictive covenants and are bound to follow them, even if they did not actually know the property was subject to restrictive covenants. Once restrictions are properly imposed upon a property, they "run with the land" and are binding on the owner and all subsequent purchasers. No owner or purchaser can use the property for any purpose that violates the restrictions. Therefore, before the Buyer signs an offer to purchase for property which is located in a subdivision or development, the Buyer should review any document that may limit the use of the Property or govern the Property owner or obligate the Property owner to a financial payment other than the purchase price, taxes, and governmental assessments. If such documents are not available from either the listing agent or the seller, then an attorney should be consulted prior to completing the form.

If the Property is subject to an owners' association, it is recommended that the current standard Owners' Association Disclosure and Addendum (NCAR/NCBA Form 2A12-T) be provided to Buyer prior to any offer being made and incorporated as an addendum to the Offer to Purchase and Contract.

Roads: Unless the roads have been dedicated to public use and formally accepted by the appropriate government agency, neither the state nor any public agency owns legal title to the land over which a street runs. Until responsibility for road maintenance is lawfully transferred to a municipality or the North Carolina Department of Transportation, either the developer or the owners will be responsible for maintenance. Since October 1, 1975, developers and sellers of certain residential subdivision lots have been required by law to give the first purchaser of each property a Subdivision Street Disclosure Statement containing important information about road ownership and maintenance responsibility. However, the application of this law is quite limited, so it is recommended that prior to contract, you inquire into the status of roads in the subdivision and find out who is responsible for their maintenance.

For more information, see the North Carolina Real Estate Commission's publication, entitled *Questions and Answers on: Residential Subdivisions and Planned Communities*.

2. PURCHASE PRICE: Insert the amount of the purchase price in dollars.

Subparagraph (a): Insert the amount of the earnest money deposit in dollars, check the appropriate box for method of payment, and insert the name of the Escrow Agent designated to hold the earnest money (usually the listing firm), not the name of an individual agent (unless it is to be held by a broker who is a sole practitioner). Note that the name indicated here should also be indicated on the "Firm" line at the bottom of the form under the acknowledgment of receipt of the earnest money. NOTE: Any earnest money check should be made payable to the designated Escrow Agent.

Subparagraph (b): If the initial earnest money deposit or an additional earnest money deposit is to be given at a later date, insert the amount of the deposit in dollars and insert the due date. NOTE: Time is "of the essence" with respect to the payment of any additional earnest money deposit.

Subparagraph (c): If Alternative 2 of paragraph 13 applies, insert the amount of the Option Fee. Do not insert \$0, N/A or leave blank if Alternative 2 applies, as this may create a question about the legal enforceability of any resulting contract.

Subparagraph (d): Insert the dollar amount of the existing loan on the Property; complete and attach the current standard Loan Assumption Addendum (NCBA/NCAR Form 2A6-T).

Subparagraph (e): Insert the dollar amount of the financing from the Seller; complete and attach the current standard Seller Financing Addendum (NCAR/NCBA Form 2A5-T).

Subparagraph (f): Insert the dollar amount of the balance due from the Buyer. NOTE: This amount should equal the purchase price minus any dollar amounts inserted in subparagraphs (a), (b), (c), (d) or (e). In the case of a counteroffer, which alters any figure in Paragraph 2, all altered figures must be initialed and dated by all parties. Care should be taken to be certain that the figures in subparagraphs (a) through (f), when added, always equal the purchase price.

3. LOAN CONDITION:

Subparagraph (a):

- (1) Check off or insert the type of loan the Buyer will be obtaining.
- (2) The principal amount may be either a specific loan amount expressed as a dollar figure or as a percentage of the purchase price (EXAMPLE: 95% of purchase price).
- (3) Insert the specific term of the desired loan.
- (4) Insert a specific maximum interest rate and a specific maximum percentage for discount points and loan origination fee. **Do NOT use “market” or “prevailing.”**

Subparagraph (b): Insert the number of days the Buyer has to make written application for the loan, authorize any required appraisal, and pay any necessary fees. Note that Buyer must promptly furnish Seller written confirmation from the lender of having applied for the Loan, and that Seller may terminate the Contract and retain any earnest money deposit if Buyer fails to provide such confirmation within 5 days of Seller’s written demand.

Subparagraph (c): Insert the number of days that Buyer will have to terminate the contract if Buyer is not satisfied that the Loan will be approved and funded. Note that such right to terminate arises only if the Buyer has complied with the Loan Obligations in subsection (b). Buyer should consult with Buyer’s lender to assure that the number of days allowed for Buyer to obtain the Loan is sufficient to allow Buyer’s lender time to take all reasonable steps necessary to provide reliable loan approval. **Note that time is “of the essence” with respect to the date by which Buyer must notify the Seller in writing of Buyer’s decision to terminate the contract if Buyer is not satisfied that the Loan will be approved and funded.** Note also that if Buyer does not terminate the contract and is unable to close based upon an inability to obtain the loan, any earnest money deposit is forfeited to the Seller. If Buyer provides reasonable third-party documentation confirming Buyer’s inability to obtain the Loan, and assuming that Buyer has not damaged the Property as set forth in paragraph 14, Seller’s damages will be limited to any earnest money deposit. A letter from Buyer’s lender confirming that Buyer’s loan application had been denied would be an example of “reasonable third-party documentation.”

4. FLOOD HAZARD DISCLOSURE/CONDITION: The appropriate box should be selected based upon Seller’s instructions. In making a selection, the Seller should understand that if the second box is selected, the Buyer has the right to terminate the contract and to a refund of their earnest money if it is later determined that any permanent improvements on the Property are in fact located in a Special Flood Hazard Area or if the Buyer’s lender requires the Buyer to obtain flood insurance. Since the Buyer does not have this right if the first box is selected, it is to the Seller’s advantage to select the first box if the Property is located partly or entirely in a Special Flood Hazard Area. A definition of the term “Special Flood Hazard Area” can be obtained from the website of the Federal Emergency Management Agency at www.fema.gov. Information about the state of North Carolina’s Floodplain Mapping Program is available online at www.ncfloodmaps.com.

5. OTHER CONDITIONS:

Subparagraph (a): Insert the *intended* use of the Property by the Buyer. Be specific. Reference and attach a copy of the Buyer’s blueprints, if available. If the intended use is unusual or different from the current allowable use, the Buyer should make an inquiry **prior to completing the Offer to Purchase and Contract—Vacant Lot/Land** to determine if there are any zoning ordinances, governmental regulations or restrictive covenants that would prohibit such intended use. If the Buyer indicates that there is more than one intended use of the Property, consult an attorney prior to completing the Vacant Lot Offer to Purchase and Contract.

Subparagraph (c): If the contract is NOT subject to a financing contingency requiring an appraisal, insert the completion date for any appraisal Buyer may choose to have performed. If the contract is subject to a financing contingency requiring an appraisal, DO NOT insert a date in the blank. Instead, insert “N/A.”

6. SPECIAL ASSESSMENTS: *Regular owners’ association dues are covered in Paragraph 7.* Listing Agent should consult with Seller, as Seller must identify any pending or confirmed assessments in the blank. If there are no such assessments, insert “None.” Note that unless otherwise agreed, Seller is responsible for any assessments that are *confirmed* through the time of Closing, and Buyer is responsible for any assessments disclosed by Seller that are *pending* at the time of Closing.

7. PRORATIONS AND ADJUSTMENTS: Insert the dollar amount and time period covered by payment of the regular owners’ association dues. If the Property is subject to regulation by an owners’ association, it is recommended that the current standard Owners’ Association Disclosure and Addendum (NCAR/NCBA Form 2A12-T) be attached.

8. EXPENSES: Insert the **fixed** dollar amount the Seller will pay. This amount may also be expressed as a percentage of the purchase price. **Do NOT use “expenses not to exceed” or “a maximum of” or similar language.** Examples of Buyer’s expenses associated with the purchase of the property may include, but are not limited to, discount points, loan origination fees, appraisal fees, attorney’s fees, inspection fees and loan “pre-pays” (taxes, insurance, etc.). If the Seller will not pay any such expenses, insert “0” in the blank. Note that Seller’s payment of any such amount is subject to approval by Buyer’s lender.

11. CLOSING: Insert the desired closing date. The closing date established should provide a reasonable period of time for obtaining inspections, obtaining loan approval, satisfying contract conditions and preparing closing documents. Also, provide the full name of each grantee in the deed.

12. POSSESSION: The contract assumes possession will be delivered at closing. “Closing” is defined in Paragraph 11 as the date and time of recording of the deed. In selecting the place and time of Closing, Buyer should consider that recording is necessary before possession may be delivered unless the parties otherwise agree. If the parties agree to transfer possession to the Buyer prior to recording of the deed or if the parties agree to permit the Seller to remain in possession after recording of the deed, then, in either event, consult a NC real estate attorney for an appropriate possession agreement.

13. PROPERTY INSPECTION, INVESTIGATION: Check *either* ALTERNATIVE 1 *or* ALTERNATIVE 2.

ALTERNATIVE 1:

Subparagraph (a) Soil, Utilities and Environmental Contingency: Insert the date by which the Buyer must provide written notice to the Seller that the condition cannot be satisfied, **time being of the essence as to this date.** If the Buyer fails to provide such notice by the date specified, then the condition is waived, and the Buyer must perform under the contract whether or not he or she obtains the Reports.

Subparagraph (b) Septic/Sewer System: Check only one (1) of the four (4) options. If you choose the first or second option, attach Exhibit A. If you choose the second option, insert the date by which the Buyer must provide written notice to the Seller that this condition cannot be satisfied, **time being of the essence as to this date.** If the Buyer fails to provide such notice by the date specified, then the condition is waived, and the Buyer must perform whether or not the system is performing or is in need of repair.

If you choose the third option, check which party will be responsible for obtaining the improvement permit or written evaluation, and the type of sewer system for which the Responsible Party will be applying. If you check “other,” then insert the type of system. It is recommended that you consult with the local planning department to properly identify the type of system. Insert the date by which Seller is responsible for clearing that portion of the Property required by the County to perform its tests and/or inspections. In the last blank in the third option, insert the date after which either party may terminate the contract if the Improvement Permit or written evaluation from the County cannot be obtained.

NOTE: The third option is identical to the SEWER SYSTEM provision in the current standard form Additional Provisions Addendum (NCAR/NCBA Form 2A11-T). Therefore, if you choose the third option here and also attach the Additional Provisions Addendum for any reason (*e.g.*, for the expiration of offer provision), then be sure to check the SEWER SYSTEM provision in the Additional Provisions Addendum, completing it exactly the same way as you have completed the third option here.

Subparagraph (c) Water: Check only one (1) of the four (4) options. If you choose the second or third option, attach Exhibit A. If you choose the third option, insert the date by which the Buyer must provide written notice to the Seller that this condition cannot be satisfied, time being of the essence as to this date. If the Buyer fails to provide such notice by the date specified, then the condition is waived, and the Buyer must perform whether or not the well is performing or is in need of repair. If you choose the fourth option, check which party will be responsible for obtaining the construction permit. Insert the date by which Seller is responsible for clearing that portion of the Property required by the County to perform its field investigation. In the last blank in the fourth option, insert the date after which either party may terminate the contract if the construction permit from the County cannot be obtained.

ALTERNATIVE 2:

Subparagraph (a), Property Investigation with Option to Terminate: The Option Fee represents the money paid by Buyer for the exclusive right to purchase the Property during the option period. Upon acceptance of the offer, the Option Fee must be paid directly to Seller. The rules of the NC Real Estate Commission prohibit the retention by a real estate agent/firm of an Option Fee check or other negotiable instrument for more than 3 business days after acceptance of the offer. Insert the date for termination of the option. During this time, Seller may entertain other offers only in a back-up position. **Note that time is “of the essence” with regard to the Option Termination Date.**

Subparagraph (b), Exercise of Option: The Option Fee cannot be refundable. Do *not* alter this provision to make the Option Fee refundable.

15. OTHER PROVISIONS AND CONDITIONS: Check any standard addenda that may be attached to the contract, and indicate by name any other attached addenda. Any addenda referred to here should be properly identified, signed under seal by the parties, and attached to each original of the contract. Any copy of the contract must always have all addenda attached. Only those standard form NCAR/NCBA addenda listed are recommended for use with this form (see also USE OF FORM and POSSESSION in these Guidelines). Additional provisions or conditions may be added in this space if necessary. Identify each such provision or condition as (a), (b), etc. If any added provision conflicts with another provision of the contract, clarify which provision is to govern. **CAUTION: Agents must be extremely careful when adding contract provisions. The drafting of such provisions could constitute the unauthorized practice of law and could result in disciplinary action against an agent by the North Carolina Real Estate Commission, as could the inclusion of an inadequate or improper provision.**

22. NOTICE AND EXECUTION: Two originals of the completed and signed contract are normally sufficient, one each for Buyer and Seller, with copies for the real estate firms involved, the closing attorney and the lender.

ON-SITE EXAMINATION: Check appropriate box.

SIGNATURES AND DATES: All parties with an ownership interest must sign as Seller and all parties named as Buyer must sign as Buyer.

(1) If a married Buyer is taking title as sole owner, and if the contract contains a financing contingency provision, it is advisable to have the Buyer's spouse join in signing the contract so that the spouse will be obligated to join in signing any deed of trust that may be required by the lender to secure the Buyer's loan. Otherwise, the Buyer may be able to avoid performance of the contract if the spouse refuses to sign the deed of trust.

(2) *If the Seller(s) is married, both the husband and wife always must sign the contract.* This is true even if the Property is owned by only one spouse. The non-owner spouse holds a potential "marital life estate" under North Carolina law and must sign the deed in order for the other spouse to convey clear title. The signature of the non-owner spouse on the contract will obligate that spouse to join in signing the deed.

(3) Indicate the dates that the parties actually sign the Offer to Purchase and Contract—Vacant Lot/Land.

NOTICE INFORMATION: Insert the notice addresses for the Buyer and Seller, including current mailing and e-mail addresses and fax numbers. Note that in accordance with paragraph 22, the parties agree that any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the contract which they select. Thus, it is very important that correct contact information be inserted. If a party does not have an e-mail address or fax machine, or if a party does not desire written notice or communication to be transmitted to the party's e-mail address and/or fax machine, insert "N/A" or "None" in the relevant blank. REALTORS® representing a party to a transaction are reminded that if the other party to the transaction is exclusively represented, REALTORS® generally must conduct all dealings concerning the transaction with the other party's agent and not the other party (see Standard of Practice 16-13 of the REALTOR® Code of Ethics).

Enter the names of the individual selling and listing agents, their respective individual license numbers and firm names, and check the appropriate agency representation box for each. Note that this procedure is *confirmation* of a prior disclosure of the agency relationship and in no way should be considered as an initial disclosure of agency relationship. Signatures are not necessary. Also enter the notice addresses for the selling and listing agents, including current mailing and e-mail addresses and fax numbers.

EARNEST MONEY ACKNOWLEDGEMENT: The "Firm" should be the same as the firm indicated as Escrow Agent (usually the listing firm) in Paragraph 2(a). The agent signing for the firm serving as Escrow Agent on the "By:" line must be associated with that firm. Usually, this will be the individual listing agent. Although the contract states that the Earnest Money Acknowledgment section is not a material part of the Offer to Purchase and Contract, if the Escrow Agent named in paragraph 2 of the contract is unable or unwilling to serve in such capacity, the Escrow Agent's name should be replaced with the name of a substitute Escrow Agent agreeable to the Buyer and Seller, and the change initialed and dated by both parties.