

GUIDELINES FOR COMPLETING THE OFFER TO PURCHASE AND CONTRACT
(Standard Form No. 2-T)

INTRODUCTION: These guidelines are provided to assist agents and attorneys who are completing the 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 form is jointly approved by the NORTH CAROLINA ASSOCIATION OF REALTORS[®], INC. and the NORTH CAROLINA BAR ASSOCIATION, as Standard Form No. 2-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.

This form may be used in a variety of real estate sales transactions, but it was developed primarily for use in the sale of existing single-family residential properties. Do not use this form as a substitute for a lease-option agreement, lease-purchase agreement or installment land contract. Also, if the sale involves the construction (or completion of construction) of a new single-family dwelling, use the current standard New Construction Addendum (NCAR/NCBA Form 2A3-T) or consult a NC real estate attorney for an appropriate form.

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 questions 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.

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 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.

2. FIXTURES: If the Seller wishes to *exclude* from the sale any items that are presently on the Property and are listed in the fixtures clause, or to *exclude* any items that are presently on the Property that may usually be considered to be real property ("fixtures") and are NOT listed in the fixtures clause, list such items. (EXAMPLES: Storage shed; mailboxes; wall/door mirrors; etc.) It is not necessary to cross out items that are listed in the fixtures clause but are not present on the Property. *NOTE: Care should be taken to ascertain that any fixtures included in the sale are owned by the Seller and are not merely rented or leased.* (EXAMPLE: Water treatment/conditioner equipment; gas tank) It is advisable to list any excluded item about which a dispute may arise.

3. PERSONAL PROPERTY: List all items of personal property that are to be included in the sale. (EXAMPLES: Curtains, draperies, etc.; free standing appliances such as a refrigerator or range; fireplace tools; window air conditioner; etc.) It is advisable to list any item included in the sale about which some dispute may arise. *NOTE: Care should be taken to ascertain that any personal property included in the sale is owned by the Seller and is not merely rented or leased.*

4. 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 16 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 4, 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.

5. LOAN CONDITION:

Subparagraph (a):

- (1) Check off or insert the type of loan the Buyer will be obtaining. If FHA or VA financing is being used, attach the current standard FHA/VA Financing Addendum (NCAR/NCBA Form 2A4-T).
- (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 17, 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."

6. 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.

7. OTHER CONDITIONS:

Subparagraph (a): Insert the *intended* use of the Property by the Buyer. Be specific. (EXAMPLES: Single-family residential; two-family residential; three-family residential; type of business or office use; type of commercial use.) 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* 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 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."

8. SPECIAL ASSESSMENTS: Regular owners' association dues are covered in Paragraph 9. 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.

9. 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.

10. EXPENSES: Insert the **fixed** dollar amount the Seller will pay. This amount may also be expressed as a percentage of the purchase price. **Include in this amount any FHA/VA lender and inspection costs (seller mandated fees) to be paid by Seller. 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. HOME WARRANTY: If a home warranty is to be paid for by Seller, check one of the two boxes, insert maximum cost to be paid and identify warranty company if applicable.

15. PROPERTY DISCLOSURE: Indicate the status of the Buyer's receipt of the required N.C. Residential Property Disclosure Statement by checking the appropriate box. If the transaction is exempt from the N. C. Residential Property Disclosure Act, then enter one of the following: (1) Court Ordered Transfer; (2) Borrower to Lender Transfer; (3) Fiduciary Transfer; (4) Co-owner to Co-

owner Transfer; (5) Within Family Transfer; (6) Spouse to Spouse Divorce Decree Transfer; (7) Tax Sale; (8) Governmental Transfer; (9) First Sale of Dwelling Never Inhabited; (10) Lease with Option to Purchase (where lessee occupies or intends to occupy the dwelling) (**Caution: See warning under “Use of Form”**); (11) Buyer and Seller Agreement; or (12) Property to be transferred consists of less than 1 or more than 4 residential units. *See North Carolina General Statutes Section 47E-2 for a complete description of exemptions.*

If the Property is residential property built prior to 1978, the current standard Lead-Based Paint or Lead-Based Paint Hazard Addendum (NCAR/NCBA Form 2A9-T) must be attached.

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

ALTERNATIVE 1:

Subparagraph (a): Property Condition: Insert any permanent improvements on the Property that are excluded from the Property Condition contingency. Note that Buyer’s lender may not permit exclusions.

Subparagraph (b): Inspections/Repair Negotiations: Insert the date by which all Property inspections will be completed by the Buyer *and* written notice of necessary repairs given to Seller. It is strongly recommended that the Property inspections be completed within 14 days of formation of the contract unless there are extenuating circumstances that would prohibit such inspections being completed by such time. *In all cases, the inspections should be performed as soon as possible.* Also insert the number of days Seller has to provide Buyer a written response to Buyer’s notice of necessary repairs. **Note that time is “of the essence” with respect to the Seller’s written response. Note that time is also “of the essence” with respect to the number of days following the Seller’s written response within which the Buyer may terminate the contract if the Seller elects not to complete all necessary repairs.**

Subparagraph (c): Wood-Destroying Insects: Insert any structures on the Property that are excluded from the wood-destroying insect condition. Note that Buyer’s lender may not permit exclusions. Also note that any required treatment or necessary repairs are negotiated between the Seller and the Buyer in the same manner and within the same time limitations as other necessary repairs. Re-inspection may be necessary to meet lender time requirements for such inspections.

Subparagraph (e): Cost of Repair Contingency: In the event the parties agree that the Buyer will have the right to terminate the contract if a reasonable estimate of the cost of necessary repairs exceeds a certain dollar amount, insert that amount in the blank. In negotiating an acceptable amount, it should be kept in mind that the intended purpose of this provision is to give the Buyer an opportunity to terminate the contract in situations where significant unanticipated repairs are necessary and/or estimated repair costs are significantly greater than what might be expected, given the age, size and condition of the covered improvements. Note that only the cost of repairing items required under subparagraphs (a) and (c) are to be considered in the estimate, and that the estimated cost of wood-destroying insect treatment and radon remediation are not to be included in determining the cost-of-repair amount. **Also note that time is “of the essence” with respect to time within which the Buyer has to exercise any right to terminate the contract under the Cost of Repair Contingency.** If this provision is not to be part of the contract, it should be stricken and initialed and dated by the Buyer and the Seller.

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.

17. RIGHT OF ENTRY, RESTORATION AND INDEMNITY: The Buyer’s obligation to repair damage under this paragraph is not necessarily limited to circumstances where the damage is caused by the negligent or willful acts or omissions of Buyer or Buyer’s agents and contractors. For example, assume that during an inspection of the exterior siding of a house located on the Property, the Buyer’s home inspector falls from his ladder, resulting in gouge marks in the siding. Assume further that the fall was caused by an unforeseen failure in the ladder rather than the inspector’s negligence. The Buyer should still be obligated to repair the damaged siding. On the other hand, the Buyer should not be responsible for repairing pre-existing damage discovered during the inspection/investigation of the Property by Buyer and Buyer’s agents and contractors. Using the example set forth above, if during his inspection, the inspector probes the siding with a screwdriver and discovers underlying wood rot on a portion of the siding, the Buyer should not be obligated to repair the affected siding.

18. 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.

19. POSSESSION: The contract assumes possession will be delivered at closing. "Closing" is defined in Paragraph 18 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 Buyer prior to recording of the deed, then attach a Buyer Possession Before Closing Agreement (NCAR/NCBA Form 2A7-T) or consult a NC real estate attorney for an appropriate agreement. If the parties agree to permit Seller to remain in possession after recording of the deed, then attach a Seller Possession After Closing Agreement (NCAR/NCBA Form 2A8-T) or consult a NC real estate attorney for an appropriate agreement.

20. 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. 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.**

27. 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.

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 27, 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 4(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 4 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.