



Legal Q&As

Summary of October 2024 Changes to NC REALTORS® Residential Forms

The following forms have been revised effective October 2024. Click on the hyperlinks below to see all changes.

1. **RE-DRAFTED Form 201 – Exclusive Buyer Agency Agreement**

1.1. Due to member and consumer demand, this form has been completely re-drafted. Great care was taken to balance several competing interests in the re-write of this form: (1) ease of reading and consumer comprehension; (2) form length; and (3) preserving important duties and obligations that were in the old form. NCR believes this re-draft balances all these interests in a way that provides significant member and consumer benefit.

1.2. *Interim Guidelines for New Form 201.*

Name of Buyer and Firm – 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 the agent’s firm, NOT the agent’s name, since the agreement is between the buyer and the agent’s firm. If the Buyer is a corporation, limited liability company, trust or other legal entity, the entity should be named as Buyer and a duly authorized officer, manager, trustee, or other legal representative of the entity should sign this Agreement on the entity’s behalf.

¶ 1 – Insert the type and location of property being sought by the buyer. Make sure the geographic area accurately reflects the area that the buyer is exploring with your firm, and agents should carefully list which types of properties the buyer is seeking to purchase. Properties not described or within the geographic area specified will not be subject to exclusive agency by the firm. The description should not be either overly general (for example, “North Carolina”) or too specific (for example, “Merry Acres Subdivision”), unless either one is truly an accurate statement of the scope of representation. In most cases, the name(s) of a county or counties within which the buyer will be looking should be inserted along with the property type.

¶ 2 – Discuss the buyer’s disclosures and mark the appropriate boxes. Make sure to provide the buyer with sample copies of the appropriate purchase contract (Form 2-T or Form 12-T for vacant land) and the Professional Services Disclosure and Election Form (Form 760).

¶ 3 – Insert the date the agency agreement will expire in the blank. A specific date is required under the License Law. If the buyer is buying multiple properties, then the firm will need to attach a custom addendum or insert the term of agency for multiple properties on the lines provided in ¶ 11.

The Real Estate Commission requires that any written agreement for brokerage services “shall provide for its existence for a definite period of time.” Although there is no rule which limits the period of time that the agreement can be in effect, the period of time should be reasonable, taking into account the period of time within which the objective of the agreement—acquisition by the buyer of the type of real property described in the agreement—can probably be accomplished. The Real Estate Commission rules also provide that an agreement for brokerage services cannot contain a provision that would require notice prior to termination. Although the form does not contain any such provision, agents are cautioned against inserting any “prior notice” or “automatic renewal” provision in the form.

If the buyer is under contract when this agency agreement is set to expire, every effort should be made to extend the agency agreement to complete the transaction. If a buyer refuses to extend, the firm still has a right to be paid so long as section 4 is satisfied. However, in order for an agent to have a clear right to assist the buyer all the way to the end of the transaction, a written agency agreement should be in effect.

¶ 4 – Check the appropriate boxes regarding how the firm will be paid. This section operates similarly to the previous form and indicates when the fee will be earned and then due and payable. Both MLS rules and the License Law require that compensation be specific and not dependent on what a seller or listing firm may be offering as cooperative compensation. Do NOT insert N/A, \$0, or a range of compensation. Insert a specific dollar amount, specific percentage of purchase price, or other method of determining Firm’s compensation for each type of property the Buyer may purchase, such as resale, new construction, land/lot, and/or unrepresented seller.

A non-refundable retainer collected pursuant to this agreement is not trust money, because a firm is not receiving those funds as an agent for another, but rather on its own behalf. Therefore, do NOT place a non-refundable retainer in a brokerage trust account, as to do so would constitute commingling.

If the firm expects to receive a fee for assisting the buyer in obtaining a home warranty, the Real Estate Commission’s compensation disclosure rule and MLS rules require the agent to disclose the expected fee to the buyer, which can be done in the “Other Specific Amount” line or with a custom addendum.

If the firm will be paid a different amount for dual agency, then this amount should be indicated on the “Other Specific Amount” line.

An agent is not relieved from assisting a buyer client in acquiring property merely because there is no offer of compensation made to the agent by the listing agent or seller; consequently, if an agent does not insert specific compensation in the blank, he or she may become obligated to assist their buyer client in acquiring property without the benefit of being compensated for their work. If an agent desires to relieve a buyer client from any obligation to pay the firm a fee if there is no offer of compensation from the listing firm or seller, consideration should be given to using the Non-Exclusive Buyer Agency Agreement (Form 203) instead.

The Protection Period in section 4(d) operates the same as the previous version. Agents should remember that if the buyer signs another agency agreement with another firm during the Protection Period, the then the Protection Period no longer applies and will no longer be enforceable.

¶ 5 – This language is required by the new MLS rules.

¶ 6 – Though the dual agency section is significantly shorter than the old version, it contains the same principles and operates similarly to the old form. The beginning paragraph is meant to provide a consumer-accessible primer on dual agency, but agents should have a more in-depth discussion as necessary.

The initial lines operate much like the old version. The first initial line authorizes dual agency. If dual agency is permitted, then the second line authorizes the same agent to represent both the buyer and the seller. The buyer has no duty to authorize this type of dual agency, and, the second line should not be initialed if the third line is initialed. If the third line is initialed, the firm must practice designated dual agency, which requires the buyer and seller to be represented by two separate agents with a firewall between them.

¶ 7 – This language has been transferred and modified from the old form to read easier. Agents should cover this information with their buyers.

¶ 8 – See ¶ 7.

¶ 9 – See ¶ 7.

¶ 10 – See ¶ 7. Standard of Practice 1-13 of the Code of Ethics requires REALTORS® who enter into buyer agency agreements to advise potential clients of “the possibility that sellers or sellers’ representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.” Since confidentiality of the material terms of offers is required by the Real Estate Commission rule, a REALTOR® will not be required to advise his/her buyer clients of the possibility that listing agents may “shop” the buyer’s offer. However, since the new Real Estate Commission rule does not prohibit sellers themselves from “shopping” offers, REALTORS® will still be required to advise their buyer clients of that possibility. Additionally, Standard of Practice 1-15 of the Code of Ethics requires REALTORS® to disclose the existence of other offers on a listed property only with the seller’s approval and only in response to inquiries from buyers or cooperating brokers. The last sentence of this paragraph advises the buyer that a seller may not authorize the listing agent to disclose the existence of other offers.

¶ 11 – See ¶ 7.

¶ 12 – This section will be used more often than it was in the old form. Firms are encouraged to use custom addenda as necessary to customize this agency agreement. To reduce length and preserve readability, many unnecessary parts of the old form were eliminated, such as: a term of agency for multiple properties (page 1); the warning on buyer letters (page 3); specific buyer duties (page 3); home warranty fees (page 4); and required mediation (page 5). Firms may draft their own custom addenda to modify this form to accommodate these and other contract terms so long as such addenda comply with NC law, the Code of Ethics, and MLS rules. Firms should consult with their own legal counsel regarding any such custom addenda.

¶ 13 – See ¶ 7.

¶ 14 – This language is required by the License Law and the Code of Ethics. Agents may discuss with clients that personal letters to sellers expressing why a buyer wishes to purchase a seller’s property is a tactic sometimes used to attempt to make a buyer’s offer stand out to the seller. However, such letters often contain personal information and reveal characteristics of the buyer which could be used, knowingly or through unconscious bias, as a basis for the seller’s decision to accept or reject an offer that may violate State and Federal Fair Housing laws. In order to avoid potential liability for unlawful discrimination as well as the appearance of impropriety, a buyer should discuss with the firm how any such letters will be handled.

Signature Lines – Though the lines look a little different, they operate the same as the old form. All parties named as “Buyer” must sign as buyer. A married buyer’s spouse should join in the execution of the Agreement and any subsequent purchase agreement, even if the married buyer might be taking title to the property in

his/her name alone. Failure to do so may result in any earned fee not becoming due and payable due to a spouse's refusal to be part of the loan but not be on the deed.

2. **NEW Form 202 – Property Showing Agreement** – Many firms in the industry have created their own one-page showing or touring agreement. This form has been created to fill that need for other members and firms. It is meant to be a simple agreement to allow a buyer to tour a property, either in person or virtually, with a buyer agent. It meets the minimum requirements for both the License Law in North Carolina, the new MLS rules, and the Code of Ethics.
3. **Form 220 – Cooperative Compensation Agreement** – Technical edits to this form are highlighted and correlate to new Form 220G.
4. **RE-DRAFTED Form 220G – Cooperative Compensation Agreement (Form 220) Flowchart & Information Guide** – This guide was discontinued when the new Form 220 was released this past July. The new flowchart is meant to help agents navigate cooperative compensation issues with the form. The second page addresses many important issues surrounding the form.

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 **Filed Under:** [Buyer Initiated Forms - 200 Series, Forms, Summary of Forms Changes](#)