

GUIDELINES FOR COMPLETING THE REAL PROPERTY AUCTION PURCHASE AND SALE CONTRACT FORM
(Standard Form # 620-T)

INTRODUCTION: These guidelines are provided to assist agents and attorneys who are completing the Real Property Auction Purchase and Sale Contract (Form 620-T) ("the Form") on behalf of Buyers and Sellers. The purchase and sale 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 Form is approved by the NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. for use by its members, only as printed. You may wish to make a SAMPLE copy of the Form available to bidders in anticipation of the auction.

The Form was developed for use in voluntary real property auction sales transactions selected by the owner in lieu of other sales methods. **Do not use the Form in any other transaction, including judicial (State or federal court ordered) auction sales transactions, such as a foreclosure proceeding.**

GENERAL INSTRUCTIONS:

1. Type the 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 attorneys 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 and 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 names only.

NAME OF BROKER: Fill in the name of the Broker. The Broker is the listing *firm*, not the individual real estate broker (unless a sole proprietor) and not the individual auctioneer crying the sale.

1. REAL PROPERTY:

Indicate whether the Property will include a manufactured (mobile) home(s) by checking the appropriate box. If a manufactured home(s) will be included, the Manufactured (Mobile) Home provision in the Additional Provisions Addendum (Standard Form 2A11-T) should be attached.

Fill in City, County and Street Address. If any are not applicable, indicate by "None." 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. An adequate legal description includes any of the following:

- (1) **Reference to a recorded deed:** Determine whether the Property is all or a portion of the land described in the deed. Check the applicable box. Insert the book # and page # of the Deed Book as recorded in the Register of Deeds office and fill in the county. If the transaction involves the sale of multiple tracts (owned by the same seller) to one bidder, and there is a deed reference for each tract, then insert the Deed book #, page # and County for each tract. *If you check "a portion of" and the Property is located in a City or County with a subdivision ordinance, see (2) below. If you check "a portion of" and the Property is not located in a City or County with a subdivision ordinance or the Property is exempt from the subdivision ordinance, then insert the acreage taken from a current survey of the Property.*
2. **Reference to a recorded plat (map):** Include the lot #, block # and recording reference for the final plat as recorded in the Register of Deeds office and fill in the county. **CAUTION:** A reference to a tax map alone is generally not an adequate legal description. *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. A reference to a preliminary plat is not acceptable. Insert the acreage taken from the final recorded plat.

- (3) **Metes and bounds description:** Do not attempt to complete a metes and bounds exhibit. An attorney should be consulted prior to completing the Form if a metes and bounds description is necessary or if any of the above legal descriptions is not available.

CAUTION: Before applying a single lot/combination of lots sales method, you must determine whether there is a subdivision ordinance applicable to the proposed division of the property. 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 land in a subdivision by reference to, exhibition of, or any other use of a plat showing the subdivision prior to subdivision approval, or, except under limited circumstances, to enter into a contract to transfer land in a subdivision prior to subdivision approval. It is also a misdemeanor to subdivide property in a manner not permitted by the subdivision ordinance. If the sale involves the transfer of land that the buyer contemplates subdividing, or that the seller is in the process of subdividing, consult a NC real estate attorney for guidance.

Check the "Additional Parcels" box if applicable, and attach an exhibit to the Agreement that sufficiently describes the additional parcels.

Indicate whether timber rights and/or mineral rights are included in the sale. Identify the USDA Farm Service Agency crop allotments (for example, tobacco, soybeans, cotton, wheat, corn, etc.) included in the sale as well as those that are excluded from the sale. For information on allotments that apply to the Property, contact the local Farm Service Agency.

2. **FIXTURES:** It is not necessary to specifically describe items that are legally considered to be fixtures and thus part of the Property; however, if there is any doubt about whether a particular item that will be included in the sale is a fixture, it should be listed in the blank in subparagraph (a). If the Seller wishes to *exclude* from the sale any items that are presently on the Property that may usually be considered to be real property ("fixtures"), list such items in the blank in subsection (b). 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).

3. **PERSONAL PROPERTY:** List all items of personal property that are to be included in the sale. (EXAMPLES: Curtains, draperies; 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 in dollars the amount of the successful bid (plus the buyer's premium, if applicable) (the buyer must have agreed to the charge prior to bidding).
- Insert the amount of the earnest money deposit in dollars, check the appropriate boxes for method of payment and when the payment is to be delivered, and insert the name of the Escrow Agent who will hold the Earnest Money Deposit. NOTE: Any earnest money check should be made payable to the Escrow Agent. Note that if the parties agree the Initial Earnest Money Deposit will be paid by electronic or wire transfer, Seller agrees to cooperate in effecting the transfer, and Buyer is responsible for any costs associated with the transfer.
- Insert the dollar amount of the balance due from the Buyer. NOTE: This amount should equal the purchase price minus any earnest money deposits.

5. **NO FINANCING CONTINGENCIES OR INSPECTION RIGHTS:** The Form does not provide for any financing contingencies or inspections. Once the Buyer becomes the successful bidder for the Property, the Buyer must purchase the Property no matter whether the Buyer can obtain financing and without regard to the condition of the Property. Therefore, *before the Buyer bids on the Property*, the Buyer should be prepared to proceed on a cash basis and should satisfy himself or herself as to the condition of the Property. If the Buyer's intended use of the Property is unusual or different from the current allowable use, the Buyer should make an inquiry *prior to bidding on the Property* to determine if there are any zoning ordinances, governmental regulations or restrictive covenants that would prohibit such intended use. **CAUTION:** 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 bids on the Property*, 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. If such documents are not available from either the listing agent or the seller, then an attorney should be consulted *prior to bidding on the Property*.

7. SPECIAL ASSESSMENTS: This section deals only with *special* assessments levied by a governmental agency or an owners' association for the purpose(s) stated. A governmental agency may include a special purpose agency, such as a local water and sewer authority or district.

8. CLOSING: Insert the desired closing date in the first blank. The closing date established should provide a reasonable period of time for preparing closing documents. Insert the exact, legal name(s) of Buyer(s) as will appear in the deed in the second blank.

9. POSSESSION: Check the appropriate box for the date that possession will be delivered. "Closing" is defined as the date and time of recording of the deed. 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 agreement. Remember, if the property is presently subject to a lease (for example, a tenant farmer's right to farm a crop until the end of the season), then the sale is subject to the lease, whether or not the lease has been recorded.

10. PRORATIONS AND PAYMENT OF CLOSING EXPENSES: Check the appropriate boxes regarding rental income for agricultural tenancies. In some cases where a property is being used for a purpose other the highest and best use for which it is assessed (for example, it is assessed as residential property but is being used for farming), the County/City may defer a portion of the property taxes. Deferred taxes are generally due and payable when the seller transfers seller's interest in the property. Contact the County/City tax assessor to determine whether the Property is subject to a deferral and the amount thereof.

11. SELLER OBLIGATIONS:

Subparagraph (c). Check the appropriate box to indicate the type of deed seller will deliver at Closing. NOTE: If the seller will deliver any other type of deed, such as a Quit Claim Deed, then consult a NC real estate attorney to complete this provision.

13. OTHER PROVISIONS AND DISCLOSURES:

Subparagraph (a). Indicate the status of Buyer's receipt of the required N.C. Residential Property and Owners' Association 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.*

Subparagraph (b). Indicate the status of Buyer's receipt of the required N.C. Mineral and Oil and Gas Rights Mandatory 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; or (9) 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.*

Subparagraph (c). If the Property is residential property built prior to 1978, you must attach a current Lead-Based Paint and/or Lead-Based Paint Hazards Disclosure to the contract, available on the EPA's Web site at

https://www.epa.gov/sites/default/files/documents/selr_eng.pdf. Do *not* attach NCAR/NCBA Lead-Based Paint Or Lead-Based Paint Hazard Addendum (Form 2A9-T) to the contract. EPA and HUD have determined that during the due diligence period typically afforded prior to the auction for potential buyers to inspect the property, the seller may give potential buyers any information on lead-based paint, allow lead-based paint inspections, and otherwise comply with the federal lead-based paint regulations.

Subparagraph (d). Indicate by name any 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. (NOTE: **None of the standard form NCAR/NCBA Addenda are designed for use with the Form** and they are *not* recommended for use with the Form. For example, if the need arises for provision(s) addressing percolation tests or septic system representations or guarantees, then consult a NC real estate attorney; do *not* use the "SEWER SYSTEM" provision in the NCAR/NCBA Additional Provisions Addendum (Form 2A11-T)).

Subparagraph (e). Owners' Association(s) and Dues: If the Property is subject to regulation by one or more owners' associations, check the box(es) and insert the name, address and telephone number of the president of the association or the association manager and the association's web site address in the blank spaces provided. The amount of the association's regular assessments (dues) and the period of time they cover (monthly, quarterly, etc.) should also be inserted in the blank spaces provided.

Subparagraph (f). Additional provisions or conditions may be added in this space if necessary. Identify each such provision or condition as (i), (ii), 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. **Do not attach or otherwise refer to the terms and conditions of auction prepared by you.** The incorporation of such terms and conditions could constitute the unauthorized practice of law and could result in disciplinary action against you by the North Carolina Real Estate Commission, as could the inclusion of an inadequate or improper provision.

16. TAX-DEFERRED EXCHANGE: This provision does not render the property eligible for a tax-deferred exchange. The party that desires the exchange should **contact a tax or real estate attorney as soon as possible** to structure the exchange and advise the exchanging party on issues such as proper documentation, including the provision of specific contract language for any relinquished or replacement property.

18. ASSIGNMENT: If one of the parties wishes to assign the contract, then that party should consult a NC real estate attorney.

EXECUTION: Usually, at least five originals of the completed and signed contract are needed: one each for the Buyer and Seller, the real estate firm(s) involved, and the closing attorney.

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 the Seller(s) is married, both the husband and wife always must sign the contract.* This is true even if only one spouse owns the Property. The non-owner spouse holds a potential "marital life estate" under NC 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. Note, however, that the non-owner spouse cannot legally be forced to sign the contract.
- (2) Indicate the dates that the parties actually sign the Real Property Auction Purchase and Sale Contract. CAUTION: Do *not* have the Seller sign the contract prior to the auction sale.

EARNEST MONEY ACKNOWLEDGEMENT: The representative signing on the "By:" line for the Escrow Agent identified in paragraph 4 must be associated with the Escrow Agent. Usually, this will be the individual listing agent if his or her firm is the Escrow Agent.

AGENT/FIRM NAMES AND CONFIRMATION OF AGENCY RELATIONSHIP: Enter the names of the individual selling and listing agents, their real estate license numbers and contact information, and check the appropriate agency representation box for each. Signatures are not necessary. Also enter the names and addresses of the selling and listing firms and their NCAL firm license numbers. In an auction sales transaction, dual agency is not permitted.