

**GUIDELINES FOR COMPLETING THE EXCLUSIVE BUYER AGENCY AGREEMENT
(Standard Form 201)**

INTRODUCTION: These guidelines are provided to assist an agent who is completing the Exclusive Buyer Agency Agreement ("Buyer Agency Agreement") form (standard form 201) on behalf of the firm with which the agent is affiliated. The rules of the North Carolina Real Estate Commission require agreements for brokerage services in real estate transactions to be in writing, among other things. These guidelines include general comments about completion of the form as well as suggestions and explanations regarding several provisions with which agents sometimes have difficulty. However, situations will frequently arise that are not covered by these guidelines. Agents should always remember that the firm's broker-in-charge should be consulted if there is uncertainty regarding the proper completion of the form.

USE OF FORM: The form is produced by the North Carolina Association of REALTORS® for use by its members, only as printed. The form was developed for use by firms wishing to establish exclusive agency relationships with prospective buyers who are interested in purchasing residential or commercial real property.

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 the agreement must be initialed and should be dated by both buyer and agent.
5. Both buyer and agent should initial those pages where indicated at the bottom in the spaces provided.
6. Advise the buyer to consult an attorney if they have any questions about the legal consequences of the agreement or any particular provision.

NAMES 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.

BUYER REPRESENTATION (bold type immediately above paragraph 1): This section of the form contains three very important representations by the buyer, each of which should be specifically brought to the buyer's attention. The first representation is set forth to assist the agent in discharging the ethical obligation imposed by Standard of Practice 16-9 of the *Code of Ethics* of the National Association of REALTORS®, which provides as follows: "REALTORS®, prior to entering into an agency agreement or other exclusive relationship, have an affirmative obligation to make reasonable efforts to determine whether the client is subject to a current, valid exclusive agreement to provide the same type of real estate service." The second representation relates to the agent's duty under the rules of the North Carolina Real Estate Commission to give the buyer a copy of the "Working with Real Estate Agents" brochure prescribed by the Commission and review it with the buyer. The third representation is designed to assist the agent in eliciting information from the buyer about any properties that the buyer may have been shown by other real estate agents, in order to alert the agent in advance to any potential for a commission dispute with another agent if the buyer ultimately contracts to purchase any such property.

1. **TYPE OF PROPERTY:** Check box(es) describing type of property buyer is interested in purchasing. In "General Location" blank, it is suggested that the description should not be either overly general (for example, "North Carolina") or too specific (for example, "Merry Acres Subdivision"). It is recommended in most cases that the name(s) of a county or counties within which the buyer will be looking be inserted here. In subparagraph (b), the "other" blank might be used in cases where the buyer and agent have agreed that the agent's representation will be limited to showing the buyer a single house, or perhaps several houses in a single subdivision. In such cases, the address of the property or the name of the subdivision should be inserted in the blank.

2. **DURATION OF AGENCY:** The rules of the NC Real Estate Commission require that any written agreement for brokerage services "shall provide for its existence for a definite period of time." Therefore, specific dates should be inserted in the two blanks in this section. 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 parties anticipate that the firm may represent the buyer in acquiring more than one property during the term of the agreement, the last clause following the expiration date blank should be deleted.

4. COMPENSATION OF FIRM:

Subparagraph (a). If a non-refundable retainer is to be collected, the amount should be inserted in the first blank in subparagraph (a), and the appropriate box should be checked to indicate whether the amount of the retainer will be credited toward the compensation due agent under subparagraph (b). 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.

Subparagraph (b). In subparagraph (b), agent should insert dollar amount, percentage of purchase price, or other method of determining Firm's compensation for each type of property the buyer may purchase (e.g., improved property, new construction, vacant land). Do NOT insert "per MLS," "N/A" or a zero in the blank. 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.

An agent is required by the rules of the NC Real Estate Commission to fully and timely disclose to the agent's client the expected receipt of any compensation, incentive, bonus, rebate, or other consideration of more than nominal value from another party or person (e.g., a listing firm or seller). According to the rule, "full" disclosure includes a description of the compensation, incentive, bonus, rebate or other consideration, including its value. If the Buyer Agency Agreement describes all the compensation to be received, including its value, no further disclosure is required. If compensation in addition to that described in the Buyer Agency Agreement is offered on a property the buyer client wants to see, the additional compensation should be disclosed orally before or at the time the agent shows the property and then confirmed in writing if the buyer decides to make an offer on that property. Form 770 was designed to satisfy the written confirmation requirement.

CAUTION FOR AGENTS WORKING WITH VETERAN-BUYERS: Per federal regulations (38 CFR 36.4312), fees or commissions charged by a real estate agent or broker in connection with a VA-guaranteed loan may not be charged to or paid by the veteran-buyer. While use of buyer agents is not precluded, veteran-buyers may not be charged a brokerage fee or commission in connection with the services of such individuals.

10. **OTHER PROFESSIONAL ADVICE:** If the buyer contracts to purchase property during the term of the agreement, it is recommended that the individual agent utilize the Professional Services Disclosure and Election form (Standard form # 760) to assist the buyer in determining which professional services the buyer will obtain in completing the transaction. Although not required, it is strongly recommended that the buyer be given a sample copy of the Offer to Purchase and Contract form at the time the Buyer Agency Agreement is entered into, as well as the Real Estate Commission's brochure "Questions and Answers on: Home Inspections." Copies of the brochure may be obtained from the Commission's website at www.ncrec.gov The check boxes in paragraph 10 should be checked to confirm that the buyer has been given copies of the contract form and the brochure.

11. **HOME WARRANTY:** 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 referenced in paragraph 4 above would require the agent to disclose the expected fee to the buyer. Disclosing such fee in the blank in paragraph 11 satisfies the required disclosure/confirmation.)

15. **CONFIDENTIALITY OF OFFERS:** 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 referred to in paragraph 12 of the Form, 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 paragraph 12 of the form advises the buyer that a seller may not authorize the listing agent to disclose the existence of other offers.

13. ADDITIONAL PROVISIONS: Additional provisions may be added in this space if necessary. For example, if agent will not have permission to disclose a buyer's name, paragraph 7 of the Agreement states that a provision to that effect will be inserted in this space. Identify each additional provision as (a), (b), etc. If any additional provision conflicts with another provision of the Agreement, clarify which provision is to govern. **NOTE:** Since the brokerage firm is a party to the Agreement, the drafting of additional provisions would not constitute the unauthorized practice of law. However, in order to insure that the contractual relationship between the firm and the buyer is clear and unambiguous, great care should be taken in drafting any additional provisions.

14. DUAL AGENCY: A firm is not required to offer dual agency to its clients. However, if the agent's firm does offer dual agency, the agent should review subsections (a), (b) and (c) with the buyer in order to help insure that any decision by the buyer to authorize dual agency is an informed one. The buyer should indicate whether the buyer will authorize the firm to engage in dual agency if the buyer becomes interested in one of the firm's listings by initialing *one* of the two blanks in subsection (d). If the Buyer authorizes dual agency, it permits, but does not require, the Firm to engage in dual agency. Typically, this authority is given at the time the agency agreement is first completed.

When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. This option may allow each "designated agent" to more fully represent each party.

An individual broker shall not be so designated and shall not undertake to represent only the interests of one party if the broker has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated broker for another party with a competing interest.

If the Buyer authorizes dual agency and the firm also offers designated agency, the agent should at this point review subsection (e) with the buyer in order to determine whether the buyer will authorize the firm to engage in designated agency. The buyer should initial the blank provided in subsection (e) in order to authorize designated agency. If the Buyer authorizes designated agency, it permits, but does not require, the Firm to engage in designated agency. Typically, this authority is given at the time the agency agreement is first completed.

Dual Agency Compensation: The Real Estate Commission's compensation disclosure rule referenced in paragraph 4 above requires disclosure of the total compensation a firm will receive when the firm is acting as a dual agent. If the firm practices dual agency, it is recommended that the total fee the firm expects to receive if the buyer purchases a property listed with the firm be inserted in the blank in subparagraph 14(f). If the buyer is interested in purchasing property listed with the firm and the firm's total compensation for selling the property equals the amount inserted in the blank, the agent would not be required to make further disclosure regarding the fee the firm would receive if buyer purchases the property. If the total fee the firm will receive is different from the amount inserted in the blank, the agent should timely disclose the actual fee to the buyer client and confirm the disclosure in writing.

SIGNATURES: 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. This is important because although the firm's compensation is usually "earned" according to paragraph 4(c)(i) of the Agreement when the buyer enters into a purchase agreement for property of the type described in the Agreement, the compensation is not due and payable according to paragraph 4(d) of the Agreement until closing *or* buyer's default of any purchase agreement. Therefore, if a married buyer's spouse does not sign the purchase agreement and the purchase agreement contains a loan contingency, the spouse might then refuse to join in signing the deed of trust required to secure the loan, as the spouse has no contractual obligation to do so. In that event, the married buyer's inability to satisfy the financing contingency probably would not constitute a default according to the terms of the purchase agreement, and in the absence of the married buyer's default, the compensation is not due and payable. On the other hand, if the spouse did sign the purchase agreement, the spouse's refusal to sign the deed of trust probably would constitute a default according to the terms of the purchase agreement, and the compensation would be due and payable. **NOTE:** Although paragraph 2 of the Agreement provides that the buyer "intends" to acquire real property, this does not obligate any person who signs the Agreement to sign a purchase agreement. The spouse's signature on the Agreement is thus no guarantee that the spouse will join in the signing of a purchase agreement; however, the spouse's willingness to sign the Agreement may be some indication that the spouse will also be willing to sign a purchase agreement.