



From The Home Inspector

Revised NCAR Offer to Purchase and Contract and Due Diligence (Including Home Inspections)

The NC Association of REALTORS® Forms Committee has worked with the NC Bar Association over the past few years to create a “new and improved” residential Offer to Purchase & Contract (OTP&C) form for use by NC REALTORS®. The implementation date for the revised OTP&C form, along with its related addenda and other residential forms, is Jan. 1, 2011.

One of the most significant modifications is the elimination of both Alternative 1 and Alternative 2, including the concepts of “Repair Notice Date,” “Cost of Repair Contingency” and the phrase “shall be performing the function for which intended and shall not in need of immediate repair.” These ‘Alternatives’ and concepts have been replaced with a period of time in which the buyer may perform any due diligence they desire, including a home inspection (as well as other inspections). The OTP&C form has been reorganized so as to “group-related” provisions in a more logical presentation.

Replacing Alternative 1 is a “Buyer’s Due Diligence Process.” During this “Due Diligence Period,” the buyer will have the opportunity to investigate the property and the transaction to decide whether the buyer will proceed with or terminate the contract. This new process will allow the buyer to do “due diligence,” meaning inspections, loans, appraisals, etc. all by a single date. The period of time in which the buyer may perform any due diligence is a negotiated period as between buyer and seller, and ends at 5:00 PM on the negotiated date. Of course, buyer and seller may negotiate to extend this date (and NCAR’s “Agreement to Amend Contract” form has been revised to accommodate this).

During the due diligence period buyer may inspect, investigate or otherwise “check-out” or hire a person or any number of persons to “check-out” the property. Upon the conclusion of such inspections and investigations buyer may either (1) proceed with the purchase, (2) terminate the OTP&C and have the earnest money deposit (if any) refunded, or (3) engage in negotiations with seller about any aspect of buyer’s findings, e.g., repairs. Provision also has been made (in a revised form) to allow buyer and seller to engage in renegotiating the purchase price of the property rather than engage in negotiation of seller making repairs – where permitted by buyer loan type (if any).

The new due diligence paragraph is similar to Alternative 2 but differs in some important respects. The most significant difference between the two lies in the description of the due diligence process. In the revised form, a significant amount of guidance in understanding the things that need to be considered during the due diligence period is provided.

Payment of a due diligence fee is not mandatory under the revised version of the OTP&C – the second significant difference between Alternative 2 and the new “Buyer’s Due Diligence Process.”

For the REALTOR and the parties to the OTP&C, the process of negotiating those items that are discovered “to be wrong” with the property should be much simpler than in recent years as there are fewer restrictions upon the buyer and seller as to (1) what is a negotiable repair, (2) whether something is or is not “properly functioning” or (3) needs to be replaced.

A buyer that chooses to have a home inspection should consult with a licensed home inspector in a time period that allows the inspector to perform the inspection and to render the inspection report in a timely manner so buyer can review said report and make a decision regarding whether to proceed with the transaction, attempt to [re]negotiate any items with seller or to terminate the transaction.

A home inspector should be aware of the expiration of the Due Diligence Period in any buyer’s OTP&C so as to make sure he/she has adequate time to perform said inspection and to render the inspection report to buyer in a manner that permits buyer to make a timely decision regarding his options to proceed, [re]negotiate or terminate the contract.

Note that the home inspection is only one of the ‘inspections or investigations’ that buyer likely will need/want to consider during the Due Diligence Period. Other due diligence aspects may include, but are not limited to, pest inspections, radon tests, survey, appraisal, loan application and approval, review of documents, etc.