

GUIDELINES FOR COMPLETING THE OFFER TO PURCHASE AND CONTRACT—NEW CONSTRUCTION
(Standard Form No. 800-T)

INTRODUCTION: These guidelines are provided to assist Brokers and attorneys who are completing the Offer to Purchase and Contract—New Construction 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 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 Brokers often have difficulty. However, situations will frequently arise that are not covered by these Guidelines. **All Paragraph numbers and Subparagraph numbers and letters used in these Guidelines correspond to the paragraph numbers and subparagraph numbers and letters used in the Offer to Purchase and Contract—New Construction.** Brokers should always remember that a North Carolina real estate 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—New Construction form is jointly approved by the NORTH CAROLINA ASSOCIATION OF REALTORS[®], INC. and the NORTH CAROLINA BAR ASSOCIATION, as Standard Form No. 800-T. The version of this form with the REALTORS[®] logo is produced by NCAR for use by its members, only as printed. The version of this form without the REALTORS[®] logo is produced for the NORTH CAROLINA BAR ASSOCIATION and may be used, only as printed, by attorneys and Brokers.

This form was developed for use in the sale of “spec” or custom single-family dwellings that are being or will be constructed by a contractor on land owned or to be owned by the contractor, who will convey the improved land to the buyer. This form is not to be used in the sale of any condominium. If the sale involves the sale of land by a contractor who has completed construction of a single-family dwelling on the land, 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 respective attorneys if they have any questions about the legal consequences of the contract or any particular provision.

1. TERMS AND DEFINITIONS:

- (a) **NAME(S) OF SELLER AND BUYER:** Fill in the complete name of the Seller. If the Seller is organized as a legal entity (corporation, LLC, etc.), fill in the formal legal name. If there are individual sellers, fill in the complete names of each seller.
- (b) **NAME(S) OF BUYER:** 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” rather than “Mr. and Mrs. John A. Doe”).
- (c) **PROPERTY/LEGAL DESCRIPTION:** Fill in street address of the Property if there is one (**NOT** the mailing address, which may be different from the street address). In addition to a street address, include a legal description sufficient to identify and distinguish the Property from all other property. Fill in all applicable blanks as completely as possible.
 - (1) **Plat reference:** If the Property is a lot in a subdivision, include the lot number, the block or section number of the subdivision, the name of subdivision, and recording reference for the plat as recorded in the Register of Deeds office.
 - (2) **PIN/PID or other identification number:** **CAUTION:** Although helpful, reference to a **PIN/PID** alone is generally not an adequate legal description.
 - (3) **Other description:** A survey attached as an Exhibit or an abbreviated description such as 10+/- acres at the northeasterly quadrant of the intersection of Route 41 and Jackson Boulevard may be helpful. A copy of Seller’s deed may be attached as an Exhibit. Do not attempt to complete a metes and bound description as an Exhibit. A North Carolina real estate attorney should be consulted if a metes and bounds description is necessary or if the information available is inadequate to clearly describe the Property.
 - (4) **Reference to a recorded deed:** If known, insert the book number and page number of Seller’s deed as recorded in the



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North Carolina Bar Association
North Carolina Association of REALTORS[®], Inc.



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(d) **PURCHASE PRICE:**

- (1) **Purchase Price:** Insert the total amount of the purchase price in dollars on the first line.
 - (2) **Initial Earnest Money Deposit:** Insert the amount of the Initial Earnest Money Deposit, if any, in dollars on the second line and check the appropriate box for method of payment. **NOTE:** Any Initial Earnest Money Deposit should be paid to the Escrow Agent designated in Paragraph 1(j) and delivered with the Contract.
 - (3) **Additional Earnest Money Deposit:** If an Additional Earnest Money deposit is to be given at a later date, insert the amount of that deposit in dollars and the due date on the third line. Any Additional Earnest Money Deposit should be paid in immediately available funds to the Escrow Agent designated in Paragraph 1(j) and delivered by the due date specified. **NOTE: A personal check is not immediately available funds. NOTE: Time is “of the essence” with respect to the payment of any additional earnest money deposit.**
 - (4) **Seller Financing:** Insert the dollar amount of the financing from Seller on the fourth line, and complete and attach the current standard Seller Financing Addendum (NCAR/NCBA Form 2A5-T).
 - (5) **Building Deposit:** If Buyer is paying Seller a building deposit in connection with improvements to be constructed on the Property by Seller, insert the amount of the Building Deposit on the fifth line. In determining whether and how much Building Deposit the Buyer may be willing to pay, the Buyer should heed the “Warning” at the end of Paragraph 1(l).
 - (6) **Balance of Purchase Price:** Insert the dollar amount of the balance due from Buyer on the sixth line. **NOTE: This amount should equal the purchase price minus any dollar amounts inserted in second through fifth lines. In the case of a counteroffer, which alters any figure in subparagraph (d), all altered figures must be initialed and should be dated by all parties. Care should be taken to be certain that the figures in the second through the sixth lines, when added, always equal the purchase price set forth in the first line.**
- (e) **Pre-Construction Evaluation Period:** The Pre-Construction Evaluation Period is an agreed-upon period of time, beginning on the Effective Date, during which the Buyer and Seller determine whether certain conditions described in paragraph 3 of the Contract can be fulfilled. The date that the Pre-Construction Evaluation Period will end should be inserted in the blank. **NOTE: Time is “of the essence” with respect to the expiration of the Pre-Construction Evaluation Period.**
- (h) **Plans and Specifications:** Great care should be taken in describing the Plans and Specifications as accurately as possible in order to help reduce potential disputes between the Buyer and Seller regarding the nature and extent of the improvements that will be constructed. This should be accomplished by both listing and attaching site plans, drawings, floor plans, etc. as exhibits to the Contract or, if attaching a document as an exhibit is not feasible, by describing any such document with specificity (title of document, date, number of pages, designer, etc.) so that the document can be readily identified. The Schedule of Allowances Addendum (NCAR/NCBA Form _____) may be used to describe the type and amount of any allowances.
- (i) **Earnest Money Deposit:** In the event of a breach of the Contract by Buyer, the Earnest Money Deposit is not forfeited and should not be immediately paid to Seller. If Buyer and Seller cannot agree upon the disbursement of the Earnest Money Deposit and Seller is able to prove damages resulting from such breach, the Earnest Money Deposit shall be applied as a credit against such damages, including any costs to which Seller may be entitled. Any balance of the Earnest Money Deposit remaining after application of such credit shall be refunded to Buyer. If Seller’s damages and costs exceed the Earnest Money Deposit and the Building Deposit, Buyer shall remain liable to Seller for such excess.
- (j) **Escrow Agent:** Insert the name of the firm designated to hold the Initial Earnest Money Deposit and/or the Additional Earnest Money Deposit, not the name of an individual Broker (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.**
- (l) **Building Deposit:** The improvements that the Seller has agreed to make in exchange for any Building Deposit that the Buyer has agreed to pay should be described in the blank. If any Building Deposit is to be payable in installments, the amount of each installment and the date the installment is due or other event triggering payment of the installment should be inserted in the installment schedule.
- (n) **Settlement Date:** Insert the date upon which Settlement, as defined in Paragraph 1(n), is to occur. **NOTE: Closing, as defined in Paragraph 1(o), may or may not be completed on the same day Settlement occurs.**

2. **CONDITIONS APPLICABLE DURING PRE-CONSTRUCTION EVALUATION PERIOD:** This paragraph of the Contract contains several important conditions which the Buyer or Seller is either entitled or obligated to determine may be fulfilled during the Pre-Construction Evaluation Period. It is important to note that the parties must agree on which of the conditions described in Paragraph 2 will apply. **It is also important to note that time is “of the essence” regarding a party’s right to terminate to terminate the Contract due to the non-fulfillment of any of the conditions which the parties agree will apply, and that the failure to properly terminate in timely fashion will be deemed to constitute a waiver of such condition.**

- (a) **Buyer Loan Condition:** If the Buyer will NOT obtain a loan, check the “Not Applicable” box and insert “N/A” in each of the blanks in this subparagraph. If the Buyer WILL obtain a loan, then complete each blank as follows:

- (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.”**

Note that time is “of the essence” with respect to Buyer’s written notification to Seller prior to the expiration of the Pre-Construction Examination Period of Buyer’s decision to terminate the contract if Buyer is not satisfied that the Loan will be approved and funded. Buyer should understand that it is possible or even likely Buyer will not know with certainty that the Loan will be approved prior to the end of the Pre-Construction Examination Period. In such case, Buyer should make a decision based on the information Buyer has from Buyer’s lender at that time whether to terminate or proceed with the transaction. If Buyer terminates the contract, Buyer receives the Earnest Money Deposit back. If Buyer proceeds with the transaction and Buyer is unable to close because the lender does not ultimately approve the Loan, this may constitute a breach of contract by Buyer, in which case Seller would be entitled to any damages that Seller is legally entitled to recover. By making the Loan qualification process a part of the Pre-Construction Examination Period, Buyer and Seller have the ability to fairly balance the risk that the Contract may not close due to Buyer’s Loan not being approved by shifting that risk to Buyer at a mutually agreeable date. The date that the risk shifts to Buyer is the date that the Pre-Construction Examination Period expires. Buyer should be advised to consult with Buyer’s lender prior to signing this offer to assure that the Pre-Construction Examination Period allows sufficient time for Buyer’s lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction. Note that if Buyer does not terminate the Contract under this condition, Buyer is obligated to provide documentary evidence to Seller that Buyer can obtain the Loan.

- (b) **Seller Loan Condition:** If the Seller will NOT obtain financing to perform the Seller’s obligations under the Contract, check the “Not Applicable” box. **Note that time is “of the essence” with respect to Seller’s written notification to Buyer prior to the expiration of the Pre-Construction Examination Period of Seller’s decision to terminate the contract if Seller is not satisfied that Seller will be able to obtain necessary financing.** If Seller does not terminate the contract and is unable to perform under the Contract based upon an inability to obtain necessary financing, this may constitute a breach of contract by Seller, in which case Buyer would be entitled to any damages that Buyer is legally entitled to recover. Note that if Seller does not terminate the Contract under this condition, Seller is obligated to provide documentary evidence to Buyer that Seller has the financial ability to construct the Dwelling.
- (c) **Reports:** With respect to each of the nine matters listed in (i) through (ix) of this subparagraph, check the “Applicable” or “Not Applicable” box. The Contract is contingent upon Seller obtaining reports with respect to each of the matters that the parties agree will be applicable. If any of the required Reports cannot be obtained by Seller prior to the expiration of the Pre-Construction Evaluation Period, note that *either* party may terminate the Contract within 3 days following the expiration of the Pre-Construction Evaluation Period. **Note also that time is “of the essence” with respect to a party’s decision to terminate if Seller is unable to obtain a required Report.**
 - (ii) **Utility Availability:** If applicable, insert in the blank the utilities that are available to the Property.
 - (vi) **Septic System:** If applicable, check the type of sewer system for which the Seller will be applying and insert the number of bedrooms in the blank.. If you check “other,” then insert the type of system. It is recommended that you consult with the local planning department to properly identify the type of system.
- (d) **Insurance Availability/Affordability Condition:** The Contract may be made contingent on Buyer’s ability to obtain either or both casualty insurance and flood insurance. **Note that time is “of the essence” with respect to Buyer’s written notification to Seller prior to the expiration of the Pre-Construction Examination Period of Buyer’s decision to terminate the contract if Buyer is not satisfied that Buyer will be able to obtain the insurance coverage(s) described in subparagraphs (d)(i) or (d)(2).**
 - (i) **Casualty Insurance:** If the Contract will be contingent on Buyer’s ability to obtain casualty insurance at a certain maximum rate, check the box. If the box is checked, then also check the appropriate box in (a) or (b), depending on whether Buyer will or will not occupy the Dwelling as Buyer’s primary residence.
 - (ii) **Flood Insurance:** If the Contract will be contingent on Buyer’s ability to obtain flood insurance, check the box.

3. **CONSTRUCTION OF DWELLING:**

- (e) **Building Permit:** Insert the number of days within which Seller must obtain a building permit to construct the Dwelling after the end of the Pre-Construction Evaluation Period. Also check the appropriate box whether time will or will not be “of the essence” with respect to this deadline.

5. **WARRANTIES:** If Seller will provide a written warranty other than the Limited Warranty described in subparagraph (a), check the box in subparagraph (a) and attach Seller’s written warranty to the Contract.

6. **INSULATION OF DWELLING:** Federal Trade Commission rules specify disclosure requirements for thermal insulation products used in residential construction. Insert type, thickness and R-Value for insulation that will be installed in walls, ceilings and floors.
7. **BUYER REPRESENTATIONS:**
- (a) **Other Property:** Check the box indicating whether Buyer does or does not have to sell or lease other real property in order to qualify for a new loan or to complete the purchase. If a Broker working with Buyer knows or reasonably should know under the circumstances that Buyer must sell other property in order to purchase the Property, it is a material fact under the real estate licensing law that must be disclosed by the Broker because it is a fact relating directly to the ability of Buyer to complete the transaction with Seller. **If Buyer does need to sell in order to qualify for a new loan or to complete the purchase, it should be noted that this subparagraph does NOT condition Buyer's performance under the Contract on the ability to sell or lease other property.** Buyer may have the right to terminate the Contract during the Pre-Construction Evaluation Period under paragraph 2(a) if Buyer's inability to sell or lease other property affects Buyer's ability to obtain the Loan. Otherwise, Buyer may be in breach of the Contract if Buyer is unable to complete the transaction as a result of Buyer's inability to sell or lease other property. The Contingent Sale Addendum (Form 2A2-T) should not be used with the Contract. A Buyer who must sell or lease other property should be advised to consult a North Carolina real estate attorney prior to entering into the Contract for advice on Buyer's rights and responsibilities under the Contract if Buyer is unable to sell or lease other property.
9. **SELLER REPRESENTATIONS:**
- (a) **Ownership:** Check the applicable box disclosing how long Seller has owned the Property or whether Seller owns the Property at the time Seller executes the Contract. Seller's term of ownership may affect Buyer's ability to obtain mortgage financing. Some mortgage lenders require proof that the property is not being *flipped* from one purchaser at a lower price to another purchaser at a higher price within a short period of time. Any lender issues concerning Seller's term of ownership should be resolved during the Pre-Construction Evaluation Period.
- (b) **Assessments:** Prior to accepting the Contract or making a counteroffer to Buyer, Seller should disclose any Proposed Special Assessments under consideration for the Property by any owners' association or municipal authority with the power to levy assessments, if any, of which Seller is aware. If Seller is unaware of any *Proposed* Special Assessments which are under such consideration and which may affect the Property, or if Seller is unable to obtain any information regarding same from any owners' association (or its managing agent) or municipal authority with the power to levy assessments, insert none. Pursuant to Paragraph 8(b) of the Contract, Buyer shall take title to the Property subject to any Proposed Special Assessments disclosed by Seller. Seller's representations in Paragraph 9(b) about *Confirmed* Special Assessments contain a warranty that the facts represented are accurate and may be relied on as such. A warranty may give rise to a claim by Buyer against Seller for breach of warranty in the event the facts warranted turn out to be untrue at the time they were made. Therefore, prior to accepting the Contract or making a counteroffer to Buyer, Seller should determine if there are any Confirmed Special Assessments, and insert a description of such Confirmed Special Assessment(s) in the blank. If there are no Confirmed Special Assessments affecting the Property, enter "None".
- (e) **Owners' Association(s) and Dues:** Prior to accepting the Contract or making a counteroffer to Buyer, Seller should check the box indicating whether ownership of the Property subjects or does not subject Buyer to regulation by one or more owners' associations and governing documents containing covenants, conditions and restrictions which may limit Buyer's use of the Property and which may subject Buyer to the obligation to pay regular assessments (dues) and Special Assessments. If there is such an owners' association, Seller should complete, at Seller's sole expense, and attach an Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement (Standard Form 2A12-T) as an addendum to the Contract.
10. **SELLER OBLIGATIONS:** The Contract imposes numerous obligations upon Seller with respect to the transaction. If Seller fails to materially comply with such obligations or materially breaches the Contract, Buyer may terminate the Contract and receive a refund of any Earnest Money Deposit and Building Deposit paid, obtain reimbursement from Seller for Buyer's reasonable costs incurred in connection with loan qualification and the conduct of tests, etc., without affecting any other remedies available to Buyer.
- (g) **Deed, Excise Taxes:** Insert the exact, legal name(s) of Buyer(s) as will appear in the deed. Buyer and Seller should note that using phrases such as "*as directed by Buyer*" or "*Buyer(s), or assigns*" may conflict with the restrictions on assignment of the Contract set forth in Paragraph 16. If the parties wish to permit assignment of the Contract, consultation with a North Carolina real estate attorney is recommended.
- (h) **Agreement to Pay Buyer Expenses:** Insert the **fixed** dollar amount 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.** 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 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.

12. **HOME WARRANTY:** If a home warranty is to be paid for by Seller, check one of the two boxes, insert warranty duration, maximum cost to be paid and, if the second box is checked, the identity of the warranty company.
13. **RISK OF LOSS:** Since the risk of loss does not pass to Buyer until Closing occurs, Seller should consult with an attorney and Seller's insurance carrier before agreeing to allow Buyer to take possession at Settlement or any other time prior to the recordation of the deed.
14. **POSSESSION:** The contract assumes possession will be delivered at Closing. "Closing" is defined in Paragraph 1(m) and requires that Settlement and all steps included in the process of Closing, including recording of the deed, be completed. Closing will not occur at the same time, and may not even occur on the same date as Settlement. In selecting the place and time of Settlement, Buyer should consider that completion of Closing, including recording, is necessary before possession may be delivered unless the parties otherwise agree. If possession by a certain date is critical, Settlement should be scheduled on a date and at a time that will allow sufficient time for Closing to be completed on or before that date. 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.
15. **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 the "OTHER" space, or in a separate addendum prepared by a North Carolina real estate attorney 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: Brokers 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 a Broker by the North Carolina Real Estate Commission, as could the inclusion of an inadequate or improper provision.**
17. **TAX DEFERRED EXCHANGE:** If either or both of the parties may be considering entering into a tax free exchange of like kind property in connection with the transaction, consultation with qualified attorneys or tax advisors is recommended.
20. **ENTIRE AGREEMENT:** The parties should make sure that all essential elements of the contemplated Contract are embodied in the Contract and all addenda attached thereto and made a part thereof.
22. **EXECUTION:** It is recommended that multiple originals or counterparts be executed and that each party receive an original or counterpart with original signatures. A fully executed copy of the complete contract and all addenda should be delivered to Buyer's prospective lender(s).

SIGNATURES AND DATES: All parties with an ownership interest must sign as Seller and all parties named as Buyer must sign as Buyer. ***If individual Seller(s) are 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" and a "right to dissent from the will" 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. If the married Sellers have executed and recorded a pre-nuptial agreement, post-nuptial agreement, or a free trader agreement consult a North Carolina real estate attorney to determine who must sign. If Seller is a business entity, the formal legal name of the entity should appear on the "Print Entity Name" line, an authorized representative of the entity should sign his/her name on the "Signature" line, and the representative's official title ("President," "Manager," etc.) should be inserted on the "Title" line.

(1) Indicate the dates that the parties actually sign the Offer to Purchase and Contract.

NOTICE INFORMATION: Insert the notice addresses for Buyer and Seller, including current mailing and e-mail addresses and fax numbers. Note that in accordance with Paragraph 21, 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 Broker 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 Brokers, 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 Brokers, including current mailing and e-mail addresses and fax numbers.

ESCROW ACKNOWLEDGMENT OR INITIAL EARNEST MONEY DEPOSIT: The "Firm" should be the same as the firm indicated as Escrow Agent in Paragraph 1(j). The individual 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 Broker. 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 1(j) 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 Buyer and Seller, and the change initialed and dated by both parties.