



Real Property TOOLKIT



RISK MANAGEMENT PRACTICE
GUIDE OF LAWYERS MUTUAL

Real Property Traps

Real estate is a complicated area of practice.

Simple functions completed improperly can have major ethical and malpractice implications.

Real estate attorneys rely on paralegals and staff to assist them with many of the tasks they complete for a real estate transaction. They are often the ones who have the most day-to-day interaction with clients. They are the first point of public contact.

Paralegals often do the little – and big – things that make a real estate transaction close smoothly. Attorneys must oversee their activities to ensure proper compliance with laws and regulations as, ultimately, the attorney is responsible for the work.

Completing each transaction as a team is essential for a well-functioning real estate practice.

How to Use this Guide

This Lawyers Mutual Practice Guide will help you maximize the rewards and minimize the risks of practicing real estate law. It is designed as a tool for firms that currently engage in real estate practice as well as those looking to branch into this area of law.

Here are some suggested uses:

- To instruct attorneys and staff on legal ethics and risk management.
- To create job descriptions for real estate attorneys and paralegals.
- To develop hiring criteria.
- To help with staff orientation.
- To help with staff training.
- To use as a topic at a firm meeting or retreat.
- To use as curriculum for in-house continuing education.

This Guide offers general information that should benefit most practices. It is not intended as legal advice or opinion, nor does it purport to establish a specific standard of care for your practice.

Every law office is different. Your needs are unique. This Guide suggests ways to bring out the best in your real estate practice.

For more information – or if you have additional questions – please contact Lawyers Mutual's Client Services Team.

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DISCLAIMER: This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.



INTRODUCTION

Historically, thirty-five to forty percent of all claims reported to Lawyers Mutual each year originated as real estate matters. Most real estate claims are the result of simple clerical errors caused by doing too much, too fast.

The pitfalls discussed below can happen to the experienced and the inexperienced, the attorney and the paralegal, the big firm and the solo practitioner, the worst attorneys in the state and the best. In short, they happen to everyone.

THE CONTRACT

Get the contract, read it, and be on the lookout for issues involving restrictive covenants, property descriptions, septic tanks, mobile homes, short sales, and loan assumptions. For example, a contract for sale of the land may be conditioned upon the property being used for a mobile home. A title search is completed by a paralegal who is not given a copy of the purchase contract and is not informed about the condition. She then fails to note that the land restricts the use of mobile homes, resulting in a claim by the client who cannot use the property as anticipated.

Make sure that the contract is in writing. Lawyers Mutual receives a few claims each year where the attorney closes upon an oral contract.

PRACTICE POINTER

Review the contract carefully for any special requirements or provisions. Keep those terms in mind when searching title and at closing.



SURVEY/TITLE INSURANCE/FLOOD INSURANCE

A survey is generally not required for the lender's title insurance policy, and the buyer often hears from the realtor and lender that a survey is not necessary. However, a survey can reveal many issues that are extremely important to the owner, such as encroachments or boundary overlaps. If a survey is not obtained, the owner's title insurance policy will contain an exception for matters that "would be disclosed by a current inspection and accurate and complete land survey." If a problem arises and it is determined to be a matter of survey, the title insurance company will deny coverage based on the exception. The owner is left to handle the issue himself and may look to the closing attorney to recover damages.

PRACTICE POINTER



Always recommend in writing that clients obtain both a survey and title insurance. If a client chooses to disregard your advice, have her sign a form letter acknowledging that the advice was given and declined.

Because an owner's title insurance policy can be simultaneously issued along with the lender's policy, in most cases it is relatively inexpensive. Absent unusual circumstances, there is simply no reason not to recommend this protection to your client.

It is not uncommon for clients to "forget" that their attorney advised them to obtain a survey or insurance after they have suffered a loss. Such claims come down to the word of the lawyer versus the word of the client, leading to prolonged and costly litigation. These situations can be avoided entirely by documenting the recommendation and the client's decision.

We recommend that your engagement letter disclaim responsibility for determining if the property is located within a flood plain. The client should be advised to consult with a surveyor so that she can make a determination about the need for flood insurance.

RESTRICTIVE COVENANTS

Lawyers Mutual sees a few claims each year that arise when the purchaser learns that his intended use of the property is not permitted. Your engagement letter should specifically address restrictive covenants. Advise the client that copies of any applicable restrictive covenants should be obtained from the real estate agent or seller, and you will not provide, review, or discuss restrictive covenants unless the client requests in writing that you do so.

PRACTICE POINTER



If a client requests that you review restrictive covenants, make sure that the restrictive covenants are consistent with the terms of the purchase contract. If the contract requires that the property be suitable for a particular purpose, confirm that this use is allowed by the restrictive covenants.

TACKING

Carefully review RPC 99, which addresses the practice of tacking. This opinion provides that a lawyer may render a limited title opinion, “so long as the lawyer rendering the opinion fully discloses to his or her client the precise nature of the service being rendered and the full extent thereof.”

While RPC 99 states that the tacking disclosure need not be made in writing, having a written record will prevent future disputes about what was and was not discussed with the client.

Double-check your limited title opinion to make sure it clearly indicates the limited search period and does not mistakenly certify a full search.

PRACTICE POINTER



We **STRONGLY** recommend that the disclosure regarding tacking be made to the client in writing, in your engagement letter.

CLAIMS OF LIEN

The North Carolina General Assembly enacted statutory provisions governing claims of lien, which went into effect April 1, 2013. The new statutes create a lien agent system and substantially change the procedures a closing attorney must follow with respect to identifying and reporting potential mechanics’ liens. Carefully review these new provisions for any closing involving a construction project over \$30,000 commenced after April 1, 2013.

Become familiar with the LiensNC.com website and the new North Carolina Land Title Association (NCLTA) lien affidavit forms. Modify your office procedures and checklists to include searching and updating from the new website, and make sure all paralegals, support staff, title searchers, and outside vendors are aware of the new system. We strongly recommend searchers capture a screen shot of the search results to provide evidence should the website later experience technical problems.



PRACTICE POINTER. Pay careful attention to the requirements of the title commitment regarding claims of lien. A search five days prior to closing may comply with N.C. Gen. Stat. §44A-11.1(f) but will likely not be sufficient to meet the requirements of the commitment.

DOCUMENT PREPARATION AND TIMELINESS

Proofread! Proofread! Proofread! Make sure the legal description is exactly right. A one-letter typo in a lot/block/plat description can describe a non-existent parcel. Double-check the spelling of names. Make sure the grantor on the deed of trust is owner of the property. One of the most common real estate errors we see is a deed of trust in the name of an entity while the property is held by an individual (or vice versa). Pay particular attention to deeds of trust prepared by the lender, especially as to the named trustors and the legal description. Check the notary block to confirm correct names and dates. If possible, get a second set of eyes to review the documents before recording.

PRACTICE POINTER



If the parties have contracted for a general warranty deed without exceptions, do not include exceptions when drafting the deed. The common language excepting “all conditions, covenants, easements and rights-of-way of record” essentially creates a special warranty deed and eliminates protections for the buyer.

If you discover a drafting error in a recorded instrument, do not attempt to correct it without consulting your title insurance carrier. Any fix should be approved by the title insurance company to preserve coverage under the policy. You should also contact Lawyers Mutual before undertaking a repair. We can advise you regarding potential pitfalls, as well as defenses (such as the statute of limitations), that may impact the handling of the repair.

CLOSING INSTRUCTIONS

Read and follow the closing instructions carefully every time.

In *North Carolina Fed. Sav. & Loan v. Ray*, 95 N.C. App. 317, 382 S.E. 2d 851 (1989), the Court of Appeals held that the attorney had a duty to obtain clarification from the lender where the closing instructions were ambiguous. Therefore, despite the unclear instructions, the attorney was liable for failing to handle a loan payoff as intended by the new lender.

Document clarifications given over the telephone with a follow up letter. Do not rely on any verbal changes to the closing instructions. Always require that all changes be made in writing. See *Title Ins. Co. of Minnesota v. Debnam, Hibbert & Pahl*, 119 N.C. App. 608, 613-17, 459 S.E. 2d 801, 805-06 (1995) (attorney held liable to title insurer for error certifying title because there was no written documentation of lender’s agreement to not pay liens).

SELLER FINANCING

Some of the most dangerous transactions for real estate attorneys involve purchase money financing by the seller. Carefully consider the following practice pointers for seller financing transactions:

- Disclose in writing to all parties the nature of non-recourse financing as a result of N.C. Gen. Stat. § 45-21.38. Under this Anti-Deficiency Statute, the seller may foreclose in the event of a default but may not sue the borrower on the note (either in lieu of a foreclosure or in the event there is a deficiency still owed after the foreclosure sale). Accordingly, the seller must assess whether the buyer is an acceptable credit risk before accepting a purchase money deed of trust.

PRACTICE POINTER



If the instructions are unclear, make sure you receive clarification from the lender prior to closing the transaction.

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- Disclose in writing to the seller the legal ramifications of subordination requests.
- Clearly inform all parties in writing who you will and will not be representing in the transaction.
- Do not attempt to use third-party guarantees to avoid the Anti-Deficiency Statute. They will not work.
- Do not incorporate extra land into the deed of trust as additional collateral (beyond what is being sold) and do not add personal property (such as stock) as additional collateral.
- Mark the note and deed of trust as “purchase money” on the face of the instruments. See N.C. Gen. Stat. § 45-21.38.
- Disclose the seller financing to other institutional lenders involved and clarify the lien priorities in writing.
- Do not allow the parties to split your fee as this can lead to an argument that you represented both parties in the closing.

SHORT SALES

Be aware that short sale procedures and approval standards vary substantially from bank to bank. Clients should be prepared to wait several months for approval, and that time may be extended due to miscommunications between a bank’s foreclosure department and short sale or loss mitigation department. A foreclosure hearing may be scheduled prior to receiving a decision regarding short sale eligibility, and it will be necessary to seek an extension. In some cases, the scheduled foreclosure hearing will not be cancelled even after a short sale is approved.

When negotiating with junior lien holders, it is important to determine whether the amount negotiated will fully release the borrower from liability or just release the lien from the property to allow the short sale to take place. Make sure to get a separate payoff statement from the second lien holder (even if the same lender also holds the first mortgage) before closing the transaction.

CLOSING STATEMENTS

In recent years, we have seen several lawyers face criminal charges because of inaccurate information on the HUD-1 closing statement.

The Consumer Financial Protection Bureau issued a rule that changed the closing statement, replacing the former HUD-1 with a new Closing Disclosure Form. Visit www.consumerfinance.gov/knowbeforeyouowe and

PRACTICE POINTER



Resist the temptation to represent both the buyer and seller where purchase money financing is involved. Send a non-engagement letter to the party you do not represent and advise that party to seek separate counsel for legal advice.



PRACTICE POINTER. If a foreclosure has been initiated, contact the substitute trustee once a short sale is approved so that the foreclosure hearing or sale can be continued or cancelled. Verify that the substitute trustee has followed through with the continuance or cancellation.

www.ncclosingattorneybestpractices.org for more information. Make sure you are in compliance with CFPB rules and ALTA Best Practices.

THE CLOSING CEREMONY

Attend it! Authorized Practice Advisory Opinion 2002-1, as restated by the North Carolina State Bar in January 2012, explains that most functions comprising a real estate closing involve the practice of law and can only be performed by a licensed attorney. This includes the preparation of legal documents and title opinions, the explanation or interpretation of legal documents, and the provision of legal advice. As the Opinion explains:

[A]t the time documents are presented to the parties for execution, a lawyer who is present may identify or be asked about important issues affecting the legal rights or obligations of the parties. A lawyer may provide important legal guidance about such issues, but a nonlawyer is not permitted to do so.

Although a residential closing may seem routine to the attorney, always remember you are assisting your clients in making what is probably the biggest financial transaction of their lives. Treat the transaction and your client accordingly.

DISBURSEMENT

The Good Funds Settlement Act, N.C. Gen. Stat. § 45A-4, states the general rule that the closing attorney is prohibited from disbursing funds deposited in the attorney trust account until those funds have been collected. Notwithstanding the general rule, the Act sets out certain exceptions under which the attorney may disburse uncollected funds, including a check issued by a lender who is approved by the U.S. Department of Housing and Urban Development.

PRACTICE POINTER. Educate your staff regarding what tasks they can and cannot perform and what questions they can and cannot answer at closing.

Even where the closing attorney disburses in reliance on provisional credit in compliance with the Good Funds Settlement Act, danger can arise where the lender stops payment on the check or the check is dishonored. The State Bar mandates that under these circumstances the closing attorney must personally pay the amount of the failed deposit by either using personal funds or by obtaining sufficient credit to cover the shortfall in the trust account. The attorney may not use the trust account funds of other clients to cover the deposit. Failure to cover the lost funds constitutes professional misconduct. (See RPC 191, with a limited exception in 2015FEO6)

To avoid this nightmare, always insist on wired funds over a de minimis amount. Notify clients of this requirement in your engagement letter.

PRACTICE POINTER

Make sure the information on the closing statement exactly reflects what occurred in the transaction.



This warning is especially important in light of the increase in real estate related email scams in recent years. These scams often involve counterfeit certified checks or cashier's checks.

Note that Exclusion (r) to the Lawyers Mutual policy excludes coverage for "any claim, or any theory of liability asserted in a suit, based in whole or in any part upon disbursement by any Insured, or any employee or agent of any Insured, of funds, checks or other similar instruments deposited to a trust, escrow or other similar account unless such deposit is irrevocably credited to such account."



PRACTICE POINTER. Never disburse funds before they are irrevocably credited to your account.

LOAN PAYOFFS

The most common preventable real estate error we see at Lawyers Mutual involves the failure to properly cancel a deed of trust securing an equity line of credit after a sale or refinance. To avoid this and other loan payoff traps, consider the following:

- New statutory provisions took effect on October 1, 2011, making it easier to terminate an equity line of credit. Upon receipt of a request to terminate from an "authorized person," a lender is required to: (1) terminate the borrower's right to obtain further advances under the equity line of credit; (2) apply all sums subsequently paid toward the payoff of the equity line of credit; and (3) cancel the equity line of credit when the outstanding balance is reduced to zero. The definition of "authorized person" includes an attorney for the borrower, a title insurance company, and the new lender.
- Take advantage of credit suspension directives under N.C. Gen. Stat. §§ 45-36.4(1b) and 45.36.7A. This notice directs the existing lender to temporarily suspend a borrower's ability to obtain additional credit advances on an equity line of credit in anticipation of an imminent sale or refinance.
- Beware of future advance deeds of trust. Unlike equity lines, future advance deeds of trust have the ability to collateralize many notes or obligations, including obligations which are not in existence (nor even contemplated) at the time of recording of the future advance deed of trust. Even if the original secured note is paid off and satisfied, additional debts can be secured by the deed of trust, unless it is properly cancelled. The procedure for cancelling a future advance deed of trust is set forth in N.C. Gen. Stat. § 45-71, and requires: (1) a zero balance and (2) a written demand from the borrower to cancel.
- In some cases, it can be difficult to determine from the record whether a deed of trust secures an equity line or future advance deed of trust. To make sure you are covered, use a universal payoff letter for all closings that complies with the requirements of Article 7 and Article 9 of Chapter 45.
- If you submit a final title opinion before the prior deed of trust has been cancelled, do not certify that all conditions of the title commitment have been met. You are not the title insurance company and should not assume this risk. Instead, state that the deed of trust has been paid but not yet cancelled of record.
- Make a calendar entry for about six weeks after the closing to see if the cancellation has been recorded. If the deed of trust has not been cancelled, send a follow-up letter to the prior lender. See N.C. Gen. Stat.

§ 45-36.3. If in a few weeks there is still no cancellation, notify the title insurer to determine your next step. If the seller happens to be drawing down on a still open equity line of credit that the prior lender has failed to close, it might be caught before the line is exhausted.

CONCLUSION

A real estate practice is competitive and usually only profitable if done in volume. However, recognize when you take a little extra time in preventing an error, it helps your profit margin in the long run when compared to the lost billable time, stress, and deductible liability you will incur if a claim arises.

If you do have a claim or potential claim, call Lawyers Mutual as soon as possible. Don't try to fix it yourself first. If there's a way to correct the problem for your client, Lawyers Mutual will work with you through our claims repair program. Our experienced North Carolina claims attorneys have likely dealt with the issue before and are available to help.

PRACTICE POINTER



Always send a written request to terminate an equity line of credit, and keep a copy of this letter in your file.

Consider sending an extra copy to the lender to be acknowledged and returned upon receipt. This written termination letter should be provided even if the payoff is hand-delivered to the local lender.

THE TEN COMMANDMENTS OF CLOSINGS

- I. Thou shalt not walk into the deed vault nor close a real estate transaction unless thou knowest what thou art doing or thou has learned brethren or sistren to lend a helping hand. The days when “anyone can close a loan” are gone.
- II. Thou art not a title insurance company nor is thy malpractice carrier. Many are those, both owners and lenders, who are using the attorney as their title insurance company.
- III. Thou shalt document the substance of every telephone conversation involved in the transaction. Thou shalt cover thine hind parts.
- IV. Thou shalt have a working knowledge of environmental law. And lo, there shall one day be pestilence upon the entire face of the earth and environmental law will touch every transaction.
- V. Verily, verily I say unto you that the closing attorney is as the hub of a wheel and each party to the transaction a spoke. If in the future any of the spokes is broken economically, ye whose name was blessed at closing shall be called “Oh cursed one.” Beware of the potential conflicts of interest that could be alleged in the future and proceed cautiously.
- VI. Thou shalt not disburse loan proceeds before updating and recording title. “Tis better to suffer the wrath of an angry realtor or property owner than to bury thy law license in the sand.”
- VII. Thou shalt uncover thine eyes and proofread carefully the work of those thou superviseth. If thy support staff has erred and thou hast not reviewed their work, then two errors have occurred. Many are the attorneys who have suffered a claim because of a typo the size of a mustard seed.
- VIII. Thou shalt say “Get thee behind me Satan” if thou art pressured to perform a transaction in a way that thou thinks is improper. Do not succumb to the almighty dollar. Tis better to lose a closing fee than to suffer the slings of multiple claims resulting from a system breakdown because one has worshipped at the altar of the “Cash Cow” client.
- IX. Thou shalt always review each instrument within the title search in its entirety. Beware the deed of trust that encumbers the property in the hidden “Attached Schedule A.”
- X. Thou shalt never forget this real estate transaction is the biggest transaction of thy client’s life. Communicate, communicate, communicate.

CLOSING CHECKLIST FOR THE BUYER

The following guidelines are provided to help assure a smooth closing:

- ☐ **Repairs.** Several weeks before closing, check to see if the seller is making the repairs to which you both agreed. Don't wait until the week of closing to begin inspecting repairs, as this may be too late for you to cause the seller to make the changes you require.
- ☐ **Building Inspector.** If you are building a house, it is a good idea to retain the services of a professional engineer or licensed general contractor to work for you as a home inspector. This person should be in a neutral position (i.e., not affiliated with your builder) and periodically inspect the construction and advise you of the quality and the progress of the work.
- ☐ **Lender's Conditions.** Obtain a written list of all conditions your lender will require from you for loan approval. Promptly comply with all of your lender's requirements and hand-deliver all documentation to your loan officer. Keep copies for your files with a record of the date and time the originals were delivered.
- ☐ **Termite Report.** If you are buying an existing house, order a termite report of the subject property within three to four weeks of closing. Immediately after you receive the report, give a copy to this office and to your lender. If you are buying property in a rural area, your lender will probably require a well/septic report or a community water report.
- ☐ **Homeowner's Insurance.** One week before closing have your insurance agent deliver a homeowner's (also known as hazard insurance) policy to this office. Ask your lender/loan officer how much coverage your loan will require and how the mortgage clause of your policy should read.
- ☐ **Attendance at Closing.** If you, or any of your co-borrowers or buyers cannot attend the closing, please advise this office and your lender at least one week prior to closing. The buyers who cannot attend a closing will be required to execute a power of attorney which designates someone who can attend the closing to sign on the absent buyer's behalf.
- ☐ **Scheduling the Closing.** Please be aware that most closings are, by popular demand, scheduled for the end of the month. Please be advised that if your closing is scheduled for the end of the month, our ability to serve you is inhibited by the high volume of demand made by all of those wishing to close at that time. We ask your patience and consideration of others at this peak time. We would be delighted if you would prefer to close at another time in the month. Please notify us if you would like to reschedule for another time.
- ☐ **Funds at Closing.** The firm requires any funds payable by the Buyer at Closing to be wired funds. Please make the appropriate arrangements prior to closing regarding any funds payable at closing.

SAMPLE LETTER TO CLIENT-SELLER

Dear [Client Seller]:

Thank you for selecting this firm to represent you in connection with the sale of your real property located at _____ to _____.

OPTION A: DISCLOSURE RE LIMITS ON SELLER FINANCING

As I explained to you by telephone, North Carolina has an unusual statute which limits the remedies available in the event a seller takes back a note and deed of trust as part of the purchase price in the sale of real property. This type of financing is called “seller financing” or “purchase money financing”. In particular, the statute provides that the seller may foreclose in the event of default, but a seller may not sue the borrower on the note (either in lieu of a foreclosure or in the event there is still a deficiency owed to you after the foreclosure sale). Likewise, you may not sue to recover your attorney fees. In light of these limitations on your remedies, you need to be certain your buyer is an acceptable credit risk. You can best protect yourself with a larger deposit than you might otherwise see in this size transaction. Also, you can refuse to subordinate your debt. Another consideration would be to require a “due on sale” clause when in the event the buyer transfers the property, so you can be paid off at that time. It will not be possible to avoid this statute by obtaining guarantees or other collateral.

OPTION B: DISCLOSURE OF RISKS RE SUBORDINATION

If you consider subordination, you must be very careful because your risk is greatly increased. In other words, if the buyer requests that you subordinate your deed of trust to another lender so that the buyer can more easily obtain additional financing, your deed of trust becomes a “second” or “junior” deed of trust and is not paid off at a foreclosure sale until the first deed of trust is paid in full. That means a second deed of trust may not be paid off in full or may not be paid any funds at all if the foreclosure sale does not generate sufficient funds to pay off even the first deed of trust. If you agree to subordinate for business reasons, the buyer must commit to the maximum amount of the new loan and the maximum interest rate in the subordination agreement. Please have the subordination agreement reviewed by counsel before you sign it.

Sincerely yours,

(FIRM NAME)

(Closing Attorney Name)

RECEIPT ACKNOWLEDGE: Received this _____ day of _____, 20____.

By: _____

SAMPLE LETTER TO NON-CLIENT SELLER

Dear [Non-Client Seller]:

You have asked this firm to represent you in connection with the preparation of certain documents for the sale of real property located at _____ to _____.

OPTION A (DISCLOSE CONFLICT/DISCLOSE LIMITATION ON REMEDY):

Unfortunately, I cannot represent you as I represent the buyer. You will need separate counsel, particularly since a portion of your purchase price will be in the form of a note and deed of trust. This type of financing is called “seller financing” or “purchase money financing”. A seller who accepts this type of payment from a buyer is limited in the remedies available upon default. For example, a seller may institute a foreclosure proceeding if there is a default, but may not institute a suit on the note. These limitations and others should be explained to you by your attorney as I represent only the buyer.

OPTION B (DISCLOSE CONFLICT/DISCLOSE LIMITATION ON REMEDY/AGREE TO PREPARE ALL DOCUMENTS ON BEHALF OF THE BUYER)

Unfortunately, I cannot represent you as I represent the buyer. You will need separate counsel, particularly since a portion of your purchase price will be in the form of a note and deed of trust. This type of financing is called “seller financing” or “purchase money” financing. A seller who accepts this type of payment from a buyer is limited in the remedies available upon default. For example, a seller may institute a foreclosure proceeding if there is a default, but may not institute a suit on the note. These limitations and others should be explained to you by your attorney as I represent only the buyer.

The buyer has agreed, however, to employ me to prepare all the documents for the closing, including the documents normally prepared by the seller (including the deed, lien affidavit, note and deed of trust). While I am pleased to prepare these documents for the buyer and at the expense of the buyer, I will not be able to give you legal advice about their terms as I only represent the buyer.

Sincerely yours,

(FIRM NAME)

(Closing Attorney Name)

RECEIPT ACKNOWLEDGE: Received this _____ day of _____, 20____.

By: _____

REQUEST TO TERMINATE AN EQUITY LINE OF CREDIT - (G.S. 45-82.2)

To: _____

This is a request to terminate an equity line of credit submitted pursuant to G.S. 45-82.2. For purposes of this request:

1. The borrower(s) is/are: _____
2. The account number of the equity line of credit is: _____
3. The street address of the property is: _____
4. The equity line of credit is secured by the security instrument identified as follows:

Type of Security Instrument: _____

Original Grantor(s): _____

Original Secured Party(ies): _____

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the Office of the Register of Deeds for _____ County, North Carolina.

I request and direct that you (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related security instrument; and (iii) when the balance of all outstanding sums secured by the related security instrument becomes zero, satisfy the security instrument identified above as a matter of public record pursuant to G.S. 45-37.

I certify that (i) I am an attorney licensed to practice law in the State of North Carolina who satisfies the requirements of G.S. 45-81(1), and (ii) I gave a copy of this request and a "Notice to Borrower" to the borrower(s) in accordance with G.S. 45-82.2(d).

Date: _____	_____
Phone: _____	<i>Signature</i>
Address: _____	Print/Type Name: _____

NOTICE TO BORROWER CONCERNING REQUEST TO TERMINATE EQUITY LINE OF CREDIT - (G.S. 45-82.2)

To: _____

You have an equity line of credit with _____ secured by a mortgage or deed of trust on real property located at _____
_____.

We were responsible for disbursing funds in connection with the sale of the property or a new loan secured by the property. A requirement of the sale or new loan transaction was that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your equity line of credit.

As permitted by North Carolina law, we are sending the enclosed request to your lender asking that your equity line of credit be terminated. Our reason for making this request is to ensure that the mortgage or deed of trust on the property will be cancelled once your equity line of credit is paid in full.

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we send to your lender in connection with the closing of the sale of the property or the new loan) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact _____ by calling _____
or by writing to the following address: _____
_____.

[NAME]

***Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*

ENGAGEMENT LETTER: RESIDENTIAL REAL ESTATE TRANSACTION - FULL TITLE SEARCH

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Purchase of [Property Address], [Property County]

File ID:

Dear [Client's Name]:

Thank you for selecting our firm to represent you in closing the purchase of your Property in [County]. Upon receipt of the necessary information from your lender, we will proceed to search the title of the Property and prepare all necessary documents for closing.

To give you some idea of what to expect, typical categories for which costs will be incurred, associated with the purchase of the Property include:

- (a) Survey;
- (b) Title insurance;
- (c) Recording fees;
- (d) Bank fees;
- (e) Escrows;
- (f) Attorney fees;
- (g) Copy charges;
- (h) Express mail charges.

You will not need a hazard insurance policy for closing, given your lot is vacant. You will, however, need hazard insurance coverage in place prior to placing any improvements on the Property. We will order the survey and title insurance commitment.

In preparation for closing, we will perform a title search. The nature of that search may take one of two forms, depending upon whether or not the title has previously been insured. If the title has not been previously insured, a search of the public records for a period of time satisfactory to the title insurance company will be required. If the title has previously been insured, we can obtain affirmative coverage for you and your lender by having the title inspected from the effective date of that coverage to the present. Therefore, absent your objection, we will determine if title insurance coverage exists on the Property and, if so, have the public records examined from the date of that coverage. This procedure will enable us to keep your cost to a minimum while, at the same time, providing full title insurance coverage for you and satisfying your lender's requirements.

We, as closing attorneys, make no representation as to the structural integrity of any improvements on the Property (if any), nor do we provide any opinion as to the environmental condition of the Property. In addition, the survey should

reveal whether or not the Property lies within a flood plain. As we are not surveyors nor are we engineers, we make no representations as to whether or not the property lies within a flood plain. Our ability to provide you with flood plain information is limited by what is disclosed to us by the surveyor's report and by what, if anything, we may find on the public record.

A survey of the Property may reveal the existence of boundary overlaps, gaps, gores or encroachments affecting the Property. If you do not want us to order a survey of your property, please advise us of that in writing within 48 hours of your receipt of this letter. For your reference, if you elect not to have a survey performed, your title insurance policy will contain an exception as to matters of survey which could prove problematic for you in the future.

Presumably you have been provided copies of restrictive covenants applicable to the Property by your real estate agent or the Seller. If you have not, you should obtain a copy of such covenants to be certain your proposed use of the Property to be consistent with those restrictions. In that we have not yet searched the title to the Property, we do not have copies of any such restrictions. If you want us to obtain copies of such restrictions for you, we will be glad to do so in the course of our title search. Please let us know if you want us to provide them to you.

[Conform as Applicable to Facts: It is our understanding from you that the Property is not served by public water and sewer services. Accordingly, you should make arrangements to have the Property evaluated by the appropriate governmental agencies to determine if there is adequate percolation to support a septic system and to determine if the location of such percolation site in anyway conflicts with the location on the Property you have selected to place your house. We recommend that prior to closing you actually obtain a septic permit for the Property. Be mindful of the number of bedrooms allowed by the septic permit as septic systems are permitted based upon the number of bedrooms (not bathrooms) that you will have in your house. Also be mindful of any requirements such as the installation of low pressure pumping systems as they can prove costly and require maintenance. As for lack of public water, we recommend that you determine prior to closing that adequate water is present on the Property to support a residential dwelling.]

We will be in touch with you to confirm your closing date and time. No time of yet has been set. In the event either of you are unable to attend the closing, please let us know immediately. It is possible to close by Power of Attorney if necessary, but your lender must approve that procedure in advance of closing, and necessary document preparation must be completed prior to the date of closing.

Our fee for the above service is \$_____. In addition to the foregoing flat fee, you will also be responsible for payment of any expenses incurred by our firm in connection with your closing such as copy charges, express mail charges, fax and long distance telephone charges, each and all of which will be set out on the Settlement Statement at closing.

Upon receipt of your closing package, a closing statement will be prepared by our office. Until that time, we will be unable to provide you with the dollar amount of funds needed to close. When that number is available, we will let you know immediately. Please note that you will need to bring those funds to closing in the form of a certified or cashier's Check Made Payable to [Law Firm] Trust Account in order for us to comply with State Bar requirements.

Pursuant to the N.C. Gen. Stat. §45, ALTA Best Practices, State Bar Rules and in order to protect your funds, all funds in excess of \$500 must be received by wire to XYZ Law Office. For this transaction, the only bank account we will be using is our IOLTA Trust Account, described and partially redacted below:

YYZ Law Office IOLTA Trust Account
Bank of America
123 Main Street
Raleigh, NC 27603
Partial ABA # *****72
Partial Account # *****184

BEFORE SENDING ANY WIRE, CALL OUR OFFICE AT (919)555-5309 TO VERIFY THE INSTRUCTIONS. WE WILL NOT CHANGE WIRING INSTRUCTIONS. IF YOU RECEIVE WIRING INSTRUCTIONS FOR A DIFFERENT BANK, BRANCH LOCATION, ACCOUNT NAME OR ACCOUNT NUMBER, THEY SHOULD BE PRESUMED FRAUDULENT. DO NOT SEND ANY FUNDS AND CONTACT OUR OFFICE IMMEDIATELY.

FAILURE TO FOLLOW THIS PROCEDURE ENDANGERS YOUR FUNDS.

Also, please remember to bring your drivers license or some other form of picture I.D., as many of the documents need to be notarized.

Should you have any questions regarding your closing at any time, please do not hesitate to contact us. We will be glad to answer any questions you may have.

With kindest personal regards, we remain

Sincerely,

[Attorney Name]

[Law Firm Name]

[Date]

***Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*

ENGAGEMENT LETTER: RESIDENTIAL REAL ESTATE TRANSACTION — LIMITED TITLE SEARCH

Re: Purchase of _____ (the “Property”)

Dear _____:

Thank you for selecting our firm to represent you in closing the purchase of your Property in _____ County. Upon receipt of the necessary information from your lender, we will proceed to search the title to the Property and prepare all necessary documents for closing.

To give you some idea of what to expect, typical categories for which costs will be incurred, associated with the purchase of the Property include:

- (a) Survey;
- (b) Title insurance;
- (c) Recording fees;
- (d) Bank fees;
- (e) Escrow;
- (f) Attorney fees;
- (g) Copy charges;
- (h) Express mail charges;
- (i) Hazard Insurance policy.

We will obtain the title insurance commitment and title insurance policy.

In preparation for closing, we will perform a title search. The nature of that search may take on many one of two forms, depending upon whether or not the title has previously been insured. If the title has not been previously insured, a search of the public records for a period of time satisfactory to the title insurance company will be required. If the title has previously been insured, we can obtain coverage for you and your lender by having the title examined from the effective date of that coverage to the present. The process of performing only a limited title search is what is known as “tacking”. If we tack to an existing title insurance policy, you will be relying on your policy of title insurance and not our having actually examined the public records for any matter affecting your title prior to the date of the existing policy of title insurance to which we tacked. Therefore, absent your timely objection, we will determine if title insurance coverage exists on the Property and, if so, have the public records examined only from the date of that coverage to the present. In other words absent your timely objection, we will “tack” to that existing policy of title insurance. This procedure will enable us to keep your costs to a minimum while, at the same time, providing full title insurance coverage for you and satisfying your lender’s requirements.

You should be advised that title insurance, while a valuable insurance coverage, does not cover any and all damage that may arise from a title defect. Title insurance also does not necessarily provide immediate relief in the form of the payment of a claim given title insurers have a reasonable time to correct defects in title which the insurer reasonably believes can be corrected. What constitutes a “reasonable time” depends upon the nature of the defect.

We, as closing attorneys, make no representation as to the structural integrity of any improvements on the Property (if any), nor do we provide any opinion as to the environmental condition of the Property. In addition, the survey should reveal whether or not the Property lies within a flood plain. As we are not surveyors nor are we engineers, we make no representations as to whether or not the Property lies within a flood plain. Our ability to provide you with flood plain information is limited by what is disclosed to us by the surveyor's report and by what, if anything, we may find on the public record.

A survey of the Property may reveal the existence of boundary overlaps, gaps, gores or encroachments affecting the Property. We recommend you have the Property surveyed prior to closing. If a new survey is not performed, you will not be insured by the title insurer for any matters that a new survey would have revealed. We will have the property surveyed absent hearing from you within the next five (5) days to the contrary.

If the Property is a condominium unit, no survey be performed. Therefore at or prior to closing, you should review the recorded condominium plats and plans to be sure the condominium unit you think you are purchasing is actually the condominium unit you have contracted to purchase.

Presumably you have been provided copies of restrictive covenants applicable to the Property by your real estate agent or the Seller. If you have not, you should obtain those covenants to be certain your proposed use of the Property is consistent with those restrictions. In that we have not yet searched title to the Property we do not have copies of any such restrictions. If you want us to obtain copies of such restrictions for you we will be glad to do so in the course of our title search. Please let us know if you want us to provide them to you.

We will be in touch with you to discuss your closing date and time. In the event either of you are unable to attend the closing, please let us know immediately. It may be possible to close by Power of Attorney, if necessary, but your lender must approve that procedure in advance of closing and necessary document preparation must be completed prior to the date of closing.

Our fee for the above service is \$_____. In addition to the foregoing flat fee, you will be responsible for payment of any expenses incurred by our firm in connection with your closing such as copy charges, express mail charges, fax and long distance telephone charges each and all of which will be set out on the Settlement Statement at closing.

Upon receipt of your closing package, a closing statement will be prepared by our office. Until that time we will be unable to provide you with the dollar amount of funds needed to close. When that number is available we will let you know immediately. Please note that you will need to bring those funds to closing IN THE FORM OF A CERTIFIED OR CASHIER'S CHECK MADE PAYABLE TO "_____LAW FIRM TRUST ACCOUNT" or wire the funds to us in order for us to comply with State Bar requirements.

Pursuant to the N.C. Gen. Stat. §45, ALTA Best Practices, State Bar Rules and in order to protect your funds, all funds in excess of \$500 must be received by wire to XYZ Law Office. For this transaction, the only bank account we will be using is our IOLTA Trust Account, described and partially redacted below:

XYZ Law Office IOLTA Trust Account
Bank of America
123 Main Street
Raleigh, NC 27603
Partial ABA # *****72
Partial Account # *****184

BEFORE SENDING ANY WIRE, CALL OUR OFFICE AT (919)555-5309 TO VERIFY THE INSTRUCTIONS. WE WILL NOT CHANGE WIRING INSTRUCTIONS. IF YOU RECEIVE WIRING INSTRUCTIONS FOR A DIFFERENT BANK, BRANCH LOCATION, ACCOUNT NAME OR ACCOUNT NUMBER, THEY SHOULD BE PRESUMED FRAUDULENT. DO NOT SEND ANY FUNDS AND CONTACT OUR OFFICE IMMEDIATELY.

FAILURE TO FOLLOW THIS PROCEDURE ENDANGERS YOUR FUNDS.

ALSO, PLEASE REMEMBER TO BRING YOUR DRIVERS LICENSE OR SOME OTHER FORM OF PICTURE I.D. to closing.

Should you have any questions regarding your closing at any time, please do not hesitate to contact us. We will be glad to answer any question you may have.

With best regards I am,

Sincerely,

_____ LAW FIRM

By: _____

DUAL REPRESENTATION DISCLOSURE AND ACKNOWLEDGMENT

STATE OF NORTH CAROLINA

COUNTY OF _____

DUAL REPRESENTATION DISCLOSURE AND ACKNOWLEDGMENT

RE: Lot _____, _____ Subdivision as shown and more fully described on that certain plat recorded in Book of Maps _____, Page _____, _____ County Registry (hereinafter referred to as the "Property").

Buyer: _____ (hereinafter referred to as the Buyer")

Seller: _____ (hereinafter referred to as the Seller")

Closing Attorney: _____, Attorneys at Law (hereinafter referred to as the "Closing Attorneys")

THE UNDERSIGNED Closing Attorneys, in connection with the purchase and sale of the above Property, do hereby make the following disclosures to both Buyer and Seller:

1. That the Closing Attorneys have had for _____ years, and continue to have, an attorney-client relationship with the Seller whereby the Closing Attorneys regularly represent the Seller in connection with the following matters:
 - a) Acquisition of raw land for development, including but not limited to, contract negotiation, zoning and land use, permitting, legal aspects of infrastructure improvements, restrictive covenants and homeowners association formation; and
 - b) Such other legal matters as may arise involving the Seller.
2. That specifically, the Closing Attorneys represented the Seller at the time it acquired the base acreage of which the above referenced Lot ____ is a part.
3. That at the time the Seller acquired the base acreage, inclusive of what is now Lot ____, the Closing Attorneys certified title to the base acreage and obtained for the Seller an owner's policy of title insurance.
4. That there are no unusual adverse conditions affecting title to Lot ____, however, there are the typical easements for utilities benefitting Lot ____ as well as a Declaration of Covenants, Conditions and Restrictions which we prepared and caused to be recorded against the base acreage, inclusive of Lot ____.
5. That we neither prepared nor negotiated the Offer to Purchase and Contract (the "Contract") between the Buyer and Seller; however, we have examined the same and do not find the Buyer's intended uses for Lot ____ to be inconsistent with the Declaration of Covenants, Conditions and Restrictions. Accordingly, we know of no issue pertaining to Lot ____ that would lead us to reasonably believe that our acting as counsel to both Buyer and Seller in this transaction will be adverse to the interests of either Buyer or Seller.
6. That based upon all of the information we presently have, it is our conclusion that the interests of the Buyer and Seller in connection with Lot ____ are aligned and that we can manage the potential conflict of interest between Buyer and Seller in connection with Buyer's purchase of Lot ____ from Seller.
7. That we have considered whether there is any obstacle to our representation of Buyer and Seller in the closing of Lot ____ and we do not believe that there is.

8. That while we have represented the Seller for many years as aforementioned, and while we have a financial interest in continuing to represent the Seller, after careful and thoughtful evaluation, we have determined we will be able to act impartially in closing the purchase of Lot ____ by the Buyer. Accordingly, we do not reasonably believe that our loyalty to the Seller will interfere with our responsibilities to the Buyer.
9. That we believe there is little likelihood that an actual conflict will arise from our representing both Buyer and Seller in the closing of Lot ____; however, should a conflict arise, the potential prejudice to Buyer and Seller will be minimal.
10. That while we believe we can manage the common representation of Buyer and Seller in connection with Buyer's purchase of Lot ____, there are advantages and risks associated with common representation. The advantages of common representation are: _____

The risks of common representation are: _____

11. That as Closing Attorneys, we have an equal responsibility to the Buyer and Seller, regardless of our prior and ongoing representation of the Seller and we cannot prefer the interests of the Seller over the interests of the Buyer.
12. That the scope of our representation of the Seller in this transaction is to perform the following tasks for the Seller:
 - a) Prepare Deed, Lien Affidavit and Waiver and Taxpayer Identification Certification; and
 - b) Take appropriate steps to cause Lot ____ to be released from the lien and operation of any deed of trust or other lien encumbering such lot.
 - c) _____
 - d) _____
13. That the scope of our representation of the Buyer in this transaction is to perform the following tasks for the benefit of the Buyer:
 - a) Examine title to Lot ____;
 - b) Issue an opinion on title (both Preliminary and Final) to a title insurance company to obtain a policy of title insurance in favor of Buyer and Buyer's lender;
 - c) Be sure the conditions of the Contract have been satisfied at or prior to closing; and
 - d) Comply in all respects with Buyer's lender's closing instructions.
 - e) _____
 - f) _____

14. That in the event a conflict should arise between Seller and Buyer, we will have to withdraw from representing all parties to the transaction.

The disclosures contained herein are intended to meet our exceed obligations imposed by RPC 210 and 97 FEO 8 promulgated by The North Carolina State Bar.

CLOSING ATTORNEYS:

By: _____

The Undersigned Seller acknowledges receipt of this Dual Representation Disclosure and Acknowledgment this _____ day of _____, 2011.

SELLER:

By: _____

The undersigned Buyer acknowledges receipt of this Dual Representation Disclosure and Acknowledgment this _____ day of _____, 2011.

BUYER:

BUYER

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid; certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal this the _____ day of _____.

Notary Public

Printed Name

My Commission Expires: _____

BUYER

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid; certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal this the _____ day of _____.

Notary Public

Printed Name

My Commission Expires: _____

Disbursement Authorization and Directive for <<Insert Firm Name Here>>

Recipient(s)/Payee(s):		Type: <input type="checkbox"/> Seller Proceeds <input type="checkbox"/> Lender Payoff <input type="checkbox"/> Other	
Closing for: (Purchaser/Borrower)		Closing on: (Property/Address)	
Target Closing Date:			

IMPORTANT NOTE: It is our goal to make disbursements to the appropriate Recipients as soon as practically possible following closing. We will not disburse prior to: (1) receiving authorization from the buyer's lender, (2) updating the title examination and (3) recording the required documents. Disbursements over \$ <<Insert\$>> will not be sent without the completion of this document.

I AUTHORIZE AND DIRECT THE ABOVE DESIGNATED SETTLEMENT AGENT OR LAW FIRM TO DISBURSE MY FUNDS FROM THE SETTLEMENT PROCEEDS AS FOLLOWS AND AGREE TO PAY THE CHARGE (IF ANY) ASSOCIATED WITH THE METHOD OF DELIVERY THAT IS CHOSEN:

1) IN PERSON PICKUP (Government Issued Valid Photo ID Required)		Additional Charge	
<input type="checkbox"/>	I will pick-up the check in person. I understand that I will be required to show a government issued valid photo ID.	\$0	
<input type="checkbox"/>	I authorize _____ to pick-up the check in person. I understand the recipient will be required to show a government issued valid photo ID.	\$0	
2) USPS MAIL OR FEDEX/UPS/OVERNIGHT CARRIER DELIVERY (Must Be Inside the United States)		Additional Charge	
<input type="checkbox"/>	I authorize, direct and request the check be mailed USPS first class mail service to the following address:	\$0	
<input type="checkbox"/>	I authorize, direct and request the check be overnighted to the following address:	\$ <<Insert\$>>	
Address for USPS Mail or FedEx/UPS/Overnight Carrier		Street _____	
		City: _____ State _____ Zip _____	
3) WIRE (Must Be Bank Located in the United States)		Additional Charge	
<input type="checkbox"/>	I authorize, direct and request the funds to be wired to the account indicated below. I understand: 1) I CANNOT CHANGE THESE WIRING INSTRUCTIONS and any request to change instructions will be assumed to be fraudulent and automatically trigger a requirement for the issuance of a check. 2) I CANNOT direct a wire to be sent outside of the United States. 3) I will be contacted via a previously provided telephone number or the phone number provided below to verify wiring instructions and funds will not be sent until the verification is completed. 4) I will monitor my bank account and confirm receipt of the funds as soon as they are received. 5) My Wiring Instructions are below and will not change them:	\$ <<Insert\$>>	
Bank ABA Number:	_____	Bank Account Number:	_____
Bank Name:	_____	Bank Location:	City: _____ State _____
Beneficiary Name(s): (Should match a Recipient on Settlement Statement)	_____	Beneficiary Address:	_____
Call Back Phone Number: (Should match a previously provided #)	_____	Password/Phrase (NOT your email password or bank pin)	(To only be used for this transaction)

Recipient(s)/Affiant(s) Signatures:_____
(SEAL)

Print Name: _____

Print Title (if any) _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this day by _____ (name of recipient(s)).

Date: _____

My commission expires: _____

Notary's printed Name: _____

IMPORTANT NOTE: DO NOT SEND BY EMAIL. THE ORIGINAL OF THIS DOCUMENT SHOULD BE DELIVERED WITH THE ORIGINAL DOCUMENTS (E.G. DEED OR INVOICE THAT YOU SUPPLY FOR CLOSING)