

SAMPLE ONLY--- TERMS SUBJECT TO CHANGE

Dear Client or Real Estate Agent – At least one borrower must sign this letter and fax or email it back to us. We have been asked to perform services for the borrower and wish to be sure that they are fully informed about our fees and services. However, in order to accommodate the closing date, we will not delay our work on this file. The borrower must CALL us if they do not wish for us to proceed.

PLEASE NOTE: WE WILL NOT PROFORM A CLOSING IF THE SELLER IS THE DEPARTMENT OF HUD. (Secretary of Housing Urban Development)

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TEL 704-439-2720
FAX 704-896-0275**

Date: _____

To: _____

ENGAGEMENT LETTER - PURCHASE OR REFINANCE

RE: _____

Closing Date: _____

******YOU MUST BRING TWO FORMS OF ID****

YOU MUST BRING A VALID (UNEXPIRED) PHOTO ID. We will not be able to conduct the closing without an unexpired government issued photo id. Primary form: driver license, State issued ID card, military ID card, passport, US alien registration card, Canadian driver license. Most lenders require a secondary form of ID. Secondary form: social security card, government issued visa, birth certificate, non-US/Canadian driver license, most recent signed tax returns, voter registration card, bank/investment/loan statements/paycheck stub with name/ most recent W-2, home/car/renter insurance papers, recent utility bill.

Buyers: Be sure you have read the restrictive covenants for this property! Obtain from seller or owners association. (For example, Crescent Communities and a few others have an option for the developer to buy a vacant lot back from you, to collect a marketing fee from you and to require you to use a particular builder).

Possession- The seller does not have to give possession of the property until the deed is recorded which cannot occur until we have your new lender’s funds in our trust account and have satisfied all of the lender’s conditions. This usually occurs the same day as a morning closing, but not always. We are under the lender’s control until they give the OK to record and disburse funds.

Dear Client:

We have been engaged by you or your agent in your behalf to assist with your purchase or refinance of the above-referenced real property. We look forward to working with you, and we will do our best to handle the transaction to your satisfaction within legal ethics.

PLEASE GIVE THE FOLLOWING MATTERS YOUR PROMPT AND CAREFUL ATTENTION:

CLOSING

If a time and date for your closing has not already been set, please contact us as soon as possible to arrange a closing date and time. Our office is located at Jetton Village Shopping Center, Exit 28 off I77, at the entrance to The Peninsula subdivision (behind Wachovia). Directions can be emailed to you.

OUR FEES - The *Charlotte Observer* (2009) says that NC has the lowest costs for settlement services in the nation.

(Note: If you are covered by the Hyatt or ARAG Legal Plan, see the fee information at the end of this letter for information. Also, commercial property closings are each unique, involve more work and have higher fees than those quoted.)

Our standard fees for a purchase or for a refinance are shown at the end of this letter. If your loan package does not arrive in our office by 3:00 pm the day before your scheduled closing, we reserve the right to charge a \$50 fee to expedite the closing. If we are required to perform additional services beyond those described herein, we will charge extra for them. Some examples of "additional services", would be preparation of a subordination agreement or release deed, power of attorney or other documents; contract preparation, review or advice prior to contracting for your purchase; cancellation, delay or postponement of the closing through no fault of ours after the closing documents have been prepared (even if the seller is at fault, you would still owe us our fees); the payoff of credit cards, judgments or other debts. Fees quoted are for standard residential closings and are higher for commercial or subdivision development closings.

Out-of-pocket expenses such as the survey fee, termite report fee, title insurance premium, homeowner's insurance premium and recording fees, are not included in our legal fee.

If the transaction fails to close through no fault of ours prior to receiving the loan package, we will charge a fee of between \$100 and \$350 depending on time and expense incurred for work performed. If the transaction fails to close through no fault of ours after the loan package has been received and closing documents have been prepared, we will charge up to \$550 as most of work will have been completed – including a charge for preparing the deed package which would have been paid by the seller if the transaction had closed. A redraw fee of \$100 per loan package may be required to prepare new packages after the first one if your lender sends a new package through no fault of ours.

2.

For "MAIL AWAY" closings, closings by Power of Attorney and closings where the seller is a relocation company, add between \$150-250 to our fee for the additional work involved in preparing the documents and "non-conforming document" fees we regularly incur when documents are not signed in our

office. Additional courier fees may apply.

Document recording fees must be calculated and inserted as a line item on your settlement statement prior to closing. Occasionally we find, at or after closing, that the recording fees are short by several dollars or that there is a small overage. This is because we may not have had all the documents in hand until the time of closing. Also, documents may require an additional page or additional rider to be added at the last minute to accommodate the property description or other terms. Thus, we will pay on your behalf any shortage in recording fees that is \$12 or less; any overage that is \$12 or less will be retained as additional attorney's fees. This prevents collecting or remitting small dollar amounts after the closing.

FUNDS AT CLOSING

Pursuant to State Bar regulations, **all amounts due from you at closing must be in the form of certified funds (or cashiers check, bank check or wire)** with the exception of up to \$500 or so. Please obtain a certified/cashier's check made payable to Kimberly E. Fox, PLLC. **A MONEY ORDER IS NOT ACCEPTABLE FUNDS.** We will not know the amount of money you need to bring until the day before or even the day of your closing (lenders seldom send the loan package to us any sooner than that). In the meantime, **you should rely on your good faith estimate of closing costs provided to you by your new lender if you must arrange for your funds ahead of time.** You might wish to add from \$200 to \$1200 extra to be sure you are covered. (CREDIT UNIONS OFTEN ISSUE MONEY ORDERS, WHICH WE CANNOT ACCEPT, SO BEWARE IF YOU BANK AT A CREDIT UNION).

WHO WE REPRESENT

We represent you to the extent of ensuring that you acquire good and marketable title to the property. However, we can advise you only on legal questions concerning title to your property, title insurance and the covenants and conditions of your loan documentation. We represent the lender to the extent of assuring full compliance with its loan closing instructions. In the event of a dispute between you and the lender, we will not attempt to represent either party against the other.

We do not represent you to negotiate the terms of your loan agreement with your lender (i.e., your loan amount, interest rate, conditions for later conversion or refinancing, necessity or amount of mortgage insurance, etc.). We will explain these terms to you, but are not engaged to negotiate them for you.

WHAT SERVICES WE PERFORM

We are responsible for conducting the title examination of the property and ensuring the following: that the deed of conveyance and the loan documents have been properly prepared and executed, that the closing funds are properly received and disbursed pursuant to the HUD-1 Settlement Statement to be prepared by us and reviewed by you at closing, that the new survey (IF one is REQUESTED by you) is ordered and reviewed by us prior to closing, that the deed and deed of trust (mortgage) are duly recorded and that the owners' and lender's policies of title insurance are issued and delivered in proper form. We will transmit payoffs of the outstanding liens, along with cancellation of lien instructions to the proper creditors; however, in the event the creditor does not comply with our cancellation instructions we will not pursue the creditor without being further retained by the buyer or seller.

We will not act as escrow agent for the purpose of holding money for repairs or any other

problems which are to be resolved after the closing. It has been our experience that holding money in escrow for post-closing issues frequently leads to greater dispute and lawsuits. It also involves much work after closing to be sure the proper parties are paid the proper amounts at the proper time. Your best course of action is to resolve these issues prior to closing.

Unless otherwise agreed, our services do not include the following (by way of example only): Investigation into zoning or building code compliance; availability of municipal utilities; obtaining or investigating perk tests, building or septic permits or environmental inspections for the property; nor any determination of whether the property you are purchasing is buildable or may be subdivided or whether it is suitable for any particular purpose. As an accommodation only, if applicable, we will include in the deed the transfer of all of seller's right, title and interest in any boat slip if seller represents that he/she has rights to a slip; however, a boat slip is a mere license and not an interest in real property (even a so-called "deeded slip") and we do not make an exhaustive investigation into the rights and obligations pertaining to boat slips. These are issues for you, your agent and your property inspectors to investigate.

SERVICES PROVIDED TO YOUR SELLER

We will frequently be requested by the sellers or their realtor to prepare the deed of conveyance and lien affidavit for the seller. In addition, if there are title defects or old encumbrances which need to be resolved in order for you to receive marketable title to the property, we may assist the seller in clearing up these title matters. North Carolina law allows us to do this work if the buyers do not object. The buyer, however, is our client and the seller, generally, is not our client even though we might render some legal services to the seller as part of completing the transaction. The vast majority of residential real estate closings in this State involve one attorney.

Please let us know immediately if you object or have any questions about this.

TITLE EXAMINATION

This section applies only to a purchase transaction and is of no concern to you if you are merely refinancing --- unless you will be paying off a construction loan at your closing or obtaining a "one-time-close" construction-to-perm loan. If you have owner's title insurance already, then you still have it after you refinance. If we are paying off a construction loan, however, we do need to know (1) which title company wrote your owners title insurance and (2) what the final appraised value of the home is expected to be so that we may obtain increased coverage for you now that a new dwelling has been or will be placed on the property.

If you are purchasing property: The traditional text book title search would involve a full examination of the public records regarding the property in compliance with the North Carolina Marketable Title Act. This means that we would search the title for a period of no less than thirty years prior to closing. However, if we find an existing policy of title insurance on the property, we will, unless you object, "tack" to that policy. This means that our title examination would begin with the date and time of issuance of that policy and that we will not certify the status of the title to the property prior to that date. While defects in the title occurring prior to the search period would not be found and reported by us if we "tack", they should be covered by the existing title policy, so you should receive the same title insurance coverage as if we had conducted a full title examination. In the experience of this attorney it is believed that most (more than 90%) of residential real estate closings in this vicinity (Mecklenburg and surrounding

counties) are closed based on “tacking”, thus it is considered the standard and accepted practice.

Obviously, "tacking" enables us to conduct the title examination more expeditiously, and it should not expose you to any increased liability. A full 30 to 40 year search could result in additional fees to you up to several hundred dollars more for title abstracting services plus the standard cost of \$2 per thousand for title insurance instead of the lower “re-issue” rate given by title companies when we “tack”. In addition, a full search cannot be performed quickly and could require up to a month’s advance notice.

Unless you immediately instruct us otherwise, we will either "tack" or conduct a full title examination in our discretion.

SURVEY -

Pertains to purchases only and not to refinances. Also, a survey is not needed on a condominium.

Your lender most likely will NOT require a current survey, the cost of which would be borne by you and paid at closing. It is important that you understand the consequences of not ordering a survey. Lenders will almost always allow you not to procure a survey because the lender's policy of title insurance will offer the lender coverage from loss or damage resulting from a condition which would have been reflected on an accurate survey. **Your owner’s title policy will not offer this coverage to you as the owner unless you provide the title company with a new survey.** This means that, should you decline to request us to order a survey for you, any problem which would have been revealed on a survey will become your responsibility and liability. Because a survey typically costs \$375 or more, **it is our custom not to order a survey unless you request us to do so.**

In the event you elect not to order a survey, we will have you sign a survey waiver holding us harmless from any problems an accurate survey may have revealed. Those problems could include: encroachments of the dwelling or other improvements onto building setback lines or onto neighboring property, the failure of “waterfront” property to reach the high water mark of the lake, easements for others to use or enter the property, a building envelope that is too small to permit you to build a pool or add an addition, setback lines that are violated by the structures, less than the number of acres believed or a faulty legal description if the property is described by metes and bounds instead of Lot/Block/Subdivision. These are just some examples and not an exhaustive list. If you ask us to order a survey, we will use care in selecting the surveyor but we order it as an accommodation to you only. We are not liable for any errors or omissions on the survey nor for the cost of the survey if you fail to close.

In lieu of a new survey, an enhanced title policy providing similar but not exact survey protection without a survey might be available for approx. 20% additional premium in a neighborhood that has a recorded plat on record. You must call our office as soon as possible if you want either a survey or an enhanced title policy.

WHO MUST ATTEND CLOSING – VERY IMPORTANT REGARDING SPOUSES AND BUILDERS

In the case of a purchase, all Borrowers must attend closing if there will be a loan. Also, any person wishing to have his or her name on the deed (on title) to the property must attend (your spouse, for example, if he or she will be on title with you.) Also, if you will be closing an equity line second mortgage as part of the transaction, your spouse **MUST** attend to sign some documents even if he or she

will NOT be on the deed with you and will NOT be a borrower. A married person in North Carolina cannot take out an equity line nor a construction loan without his/her spouse's signature on some documents.

In the case of a refinance, all borrowers must attend. Also, all persons who are owners on the deed to the property must attend even if they will not be a borrower. Also, in North Carolina the spouse of every owner must attend to sign the document giving the lender a lien on the property even if the spouse is not an owner and not a borrower.

Purchase or refinance: If you are separated, and have a written and recorded or recordable separation agreement, there may be an exception to the foregoing. If you are married and not separated and have a so-called "free trader" agreement that is recorded or recordable there might be an exception for you. You must contact our office to discuss these matters with the attorney.

In the case of a new construction loan or if we are paying off an existing construction loan, your contractor will have to sign a lien waiver and perhaps some other documents. The contractor must attend the closing or at a minimum, must be available in the area at the time of the closing to sign these documents in front of a notary. We encourage you to ask your lender what documents the contractor might have to sign in the lender's loan package and whether you could give those to the contractor in advance to be sure there will not be anything objectionable in them. **Please note: Anyone with whom you have contracted to perform work in the future and/or anyone who has provided labor or materials directly to you in the last 120 days prior to closing must sign the lien affidavit except for very minor repairs.**

If you or your spouse cannot attend closing, a power of attorney can be arranged if you have someone who can sign for you and IF your lender consents to it in advance. A mail away closing might also be possible but several weeks advance notice to your lender and to our office is required. An additional fee of up to \$175 may apply in either case.

ETHICAL REQUIREMENTS AND LOAN FRAUD

We must follow the lender's instructions and they are also considered to be our client. In addition, you must be careful to protect yourself from violations of federal civil and criminal laws. Your loan papers at the closing might include sworn statements to be signed by you that you intend to occupy the property either as your primary or secondary residence. Please be sure you have accurately represented your intended use of the property to your loan officer or mortgage broker and that he or she has accurately conveyed this information to the lender. (If you intend to lease property within the first year of the loan, this fact must be told to the lender. It results in a higher interest rate than owner occupied loans.) It is a **crime** to sign loan papers with untrue statements in them as to occupancy, income, debts, employment status, etc.

HOMEOWNERS INSURANCE^B PAYOFF INFORMATION

You should ensure that the improvements on the property will be insured against fire and other casualties with a reputable company and that the insurance will be in place as of the date and time of closing. You should order the policy and see that we have your insurance agent's name and phone number well in advance of closing. **If you are refinancing, we also need the social security number of the primary borrower, the loan number and customer service telephone number for each of your existing mortgage loans including equity lines. Please call us with this information immediately.** If you are refinancing and we are paying off existing mortgage loans at the closings, by signing below, you authorize us to act as your authorized agent for purposes of obtaining your payoff information from your mortgage lenders and (even though we are not required to do so) for canceling their liens from the public records.

Please let us know if you have any questions about this transaction. Thank you for the opportunity to serve you.

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Our fees for RESIDENTIAL real estate closings are as follows. If you are shopping around, be sure to ask any other attorney's office to quote ALL of their fees associated with your closing. **

Please note Commercial fees are higher (usually on an hourly basis except for those which are closely similar to a home closing):

Attorney fee /Settlement Fee \$645

**Second mortgage/equity line
(same time as first mortgage) \$220**

Power of attorney, mail away loan package, subordination agreement, easements, free trader agreements, clearing title problems, etc., and late or redrawn packages are some examples of "changed circumstances" which include additional fees

** Please note for comparison-shopping:

Starting in 2010, new government rules require settlement agents to combine all their various fees into one total fee and show it on the good faith estimate and on line 1101 of the new settlement statement.

This includes fees such as the following:

- Attorney fee
- Settlement fee
- Title search
- Courier fee - loan package
- Courier fee - recording at courthouse
- Download/print loan package (if appl.)

Our fee quoted above includes all these fees. Be sure anyone who quotes you settlement services or attorney's fees is combining them into one or disclosing them all to you.

Note: Hyatt and ARAG Legal Plans: Your legal plan will save you \$425 off our \$645 fee. We will charge you \$220 representing the portion of our fee which covers title search, UPS, and other costs we absorb for you.

Fee Agreement:

IF YOU OR YOUR AGENT OR LENDER ADVISES US TO GO FORWARD WITH OUR WORK FOR YOU AND WE DO SO IN GOOD FAITH, YOUR RECEIPT OF THIS LETTER CONSTITUTES YOUR ACCEPTANCE OF OUR FEES AS SHOWN ABOVE AND AS FURTHER DESCRIBED IN THE "OUR FEES" SECTION OF THIS LETTER.:

****At least one borrower or buyer must sign and fax the entire letter to 704-896-0275****

I HAVE READ THIS LETTER AND I ACCEPT IT'S TERMS:

_____ **Date:** _____

Buyer's printed name: _____