

SAMPLE—SUBJECT TO CHANGE

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Date: _____

**Letter to sellers of real estate re:
Providing legal services to you without establishing an attorney-client relationship.**

Dear Sir and/or Madam:

Please note— The procedures set out in this letter are required by law and by the NC Bar. They are not procedures special to our office. In order to provide for a smoother closing, we provide this letter to all sellers.

Sellers should read this letter, complete and fax back the last page as soon as possible.

Seller's name: _____

Will you attend closing? _____, if not, may we email you a deed package?
Please provide your email address:

RE: _____

Closing Date: _____

Some important items to note:

1. Wachovia equity line: Wachovia may take up to 2 weeks to send a final payoff statement. If you have a Wachovia equity line on this property, please call our office for instructions.
2. ID: Bring a valid, expired government photo ID. We will not be able to conduct the closing without it.
3. Equity line loans on the property: If you have an equity line, you must have your equity line lender fax us a letter at least 3 business days prior to closing stating that the line has been BLOCKED to further advances.
4. Restrictions: Be sure you have provided a copy of the restrictive covenants to the Buyer. To protect yourself, this is especially important if the property is in a neighborhood where developer can buy back a vacant lot, charge buyer a marketing fee or require buyer to use a particular builder.
5. NEW NC requirement re labor or materials supplied to you. Please see next paragraph for important information.

New requirement of NC title insurance companies--- Please note to prevent delay:

REPAIRS OR CONSTRUCTION: Due to the recent recession, title insurance companies now require that if ANY labor or materials have been supplied to the owner within 120 days prior to closing (except for work costing \$1000 or less), then each supplier must sign a lien waiver at or before the closing. If this applies in your case (for example: repairs requested by the buyer or if you are paying off a construction loan), you must call our office as soon as possible and we can email you the proper form.

This applies even if you are a developer/builder/general contractor if you are also the owner. (In such a case, every person you contract with is a “contractor” under the lien law.) Thank you.

BANKRUPTCY- If you have filed a bankruptcy petition, you must obtain the consent of the bankruptcy court or trustee for this sale. Please contact your bankruptcy attorney to obtain court approval and let our office know this. Thank you.

WHO WE REPRESENT - WHAT SERVICES WE MAY PROVIDE--- OUR FEES:

We have been retained by the buyer(s) of the above real property (Buyers), to perform the real estate closing. According to the North Carolina State Bar, our representation usually includes representing the buyer and also representing the buyer=s lender to insure that the lender obtains a valid first lien on the property. In addition, with the permission of the parties, we may also draw the seller=s deed and other documents necessary for closing. Unless your buyer objects to this or you have chosen another attorney to do this for you, we will draw the deed, lien affidavit and 1099 forms for you to sign at closing.

Our fee is \$175 for the standard deed package. In addition, we charge \$40 each for documents and courier service to transmit your mortgage payoff(s). We charge a wire fee or a UPS fee to send your proceeds if you ask us to do either. If you will not be present at closing and we must courier the documents to you, there will be a courier fee unless you can receive them by email. If you request to come in prior to the time set for closing to sign your documents, we may charge an additional \$50 for the early preparation and the additional appointment.

In order to prepare the closing statement and complete the transaction, we also will obtain written statements of payoff amounts from your mortgage lenders and will transmit those payoff funds to the lenders via overnight courier after the closing. We will pay the proceeds of sale over to the seller once the transaction is complete.

Our provision of these legal services to you does not create an attorney-client relationship between us. Our client is the buyer. If you need legal advice for this transaction, you should retain an attorney who will represent you. We will draw the type of deed called for in your contract. If the contract does not specify the type of deed to use, we will use the one that benefits the buyer.

If we perform additional services or draw additional documents for you (example, a power of attorney), there are additional fees as described herein.

WHAT OUR LEGAL SERVICES GENERALLY DO NOT INCLUDE: The provision of these limited legal services to you are to enable us to complete the transaction for our client, the buyer. As the seller, you are obligated to convey marketable title free of most liens. The following are only examples of legal services that we do not generally provide to sellers but we may provide them if you agree to compensate us for doing so:

A seller must clear up liens or other title defects against the property. For example, there might be mortgage liens that are paid in full but which have not been canceled from the public records at the county courthouse. You must clear from the public records any such liens or other defects prior to closing. They will be discovered, if there are any, when we perform our title examination. We will contact you if we find any title defects.

We do not represent a seller to advise him or her in advance if there is a prepayment penalty on his or her mortgage loan increasing the amount needed to pay the lender off. It is the seller=s responsibility to know

the amount and terms of loan payoffs. FHA loan payoffs require that interest be paid through the end of the month. If we cannot be sure that the FHA payoff will arrive by at your lender's office by the end of the month, we will add another month's interest to the payoff and the lender will refund it to you if it turns out the payoff arrives by the end of the month. We will not change our regular (and legally mandated) practices for closing and recording the new documents or take short cuts on the ethical requirements set forth by the North Carolina Bar in order to save a seller additional interest or other costs to payoff his or her loan. The closing will be completed in a timely fashion within the ethical requirements we must adhere to in order to assure the buyer of clear title.

ADDITIONAL SERVICES TO SELLER: Although as set forth above, we are not required to assist the seller in clearing up title defects and liens prior to closing, we may agree to assist a seller in doing so. However, those services are at an additional cost at approximately \$195 per hour spent. Examples would be assisting you in getting an old, paid-in-full deed of trust (mortgage) canceled as a lien on the property, obtaining proper documentation to show rights to your boat slip, obtaining pay off figures for debts or liens other than your mortgage loans (tax liens, judgments, etc.).

CONFLICT BETWEEN BUYER AND SELLER: If there is a conflict between the parties before, at or after the closing, the buyer is our client. Depending upon what additional services we have provided to you as seller, if any, we may or may not be able to represent the buyer in such a conflict but we cannot represent you in that conflict.

WHEN WILL YOUR PROCEEDS BE AVAILABLE? This provision sets out what is required in NC by law and also by the new lender's strict instructions: We must receive the new lender's funds into our trust account before we can record your deed conveying title to the new buyer. In order to record in North Carolina, after the closing, we are required to check the public records again for any new, adverse matters affecting title since the last time we checked. Then, assuming no new adverse matters are found (new loans or judgments affecting title, for example) we will record the deed to your new buyer. **Only then may we pay the proceeds to you.** Correspondingly, you are not required to give possession until the deed is on record and your proceeds are available. If we close prior to noon, we can usually get the deed on record the same day. Due to the fact that we have to email documents back to the buyer's new lender after the signing and then wait until the loan proceeds wire has posted into our trust account, the recording may not take place until the next day. If you have another closing to buy property, you should schedule it (at the earliest) for the next afternoon on the day after your sale. Closing back-to-back sale-then-purchase transactions are best done in the same law office. Otherwise, contact your closing agent for your purchase if you have concerns about getting the funds to them on time. We can wire funds to the closing agent on your purchase, but wires can take several hours to post on the receiving end and again, your proceeds from the sale will not be available to be sent until late in the afternoon on the day of closing on the sale of your property AT THE EARLIEST or sometime on the following day.

RISK OF LOSS: According to your contract, the risk of loss to the real estate and improvements from fire or other hazard remains with the seller until the new deed is on record to your buyer. You should **keep your homeowners insurance in place** until you have received your proceeds or heard from us that the deed is on record.

FUNDS REQUIRED AT CLOSING: Your closing costs (commission, deed preparation, tax stamps, etc.) will be deducted from the gross amount due you at closing. However, if you will not be receiving any net funds but instead must bring money to closing, we require certified funds (cashiers check, bank check, wire) payable to Kimberly E. Fox, PLLC. Per NC Bar rules, a **money order is NOT acceptable funds.**

PAYOFF OF MORTGAGE LOANS: We will obtain payoff statements from your mortgage lenders for paying off those loans at closing. After closing, we will transmit the funds in payment of such loans via wire or UPS along with documents to enable the mortgage lender(s) to cancel the lien(s) on the property from the county records. However, if the lender does not properly complete and process the paperwork necessary to obtain such cancellation, we will not take further steps to pursue such lender for proper cancellation unless you retain us to do so. The contract you have signed with the buyer might include your agreement to obtain the cancellation of such liens if called upon.

SPOUSE MUST SIGN: In North Carolina, even a spouse who is not on title (on the existing deed) to the property must sign the new deed to convey the property to the buyer. This is true unless you and your spouse have either a prenuptial agreement, separation agreement or a “free trader@agreement recorded in the county where the property lies-- these agreements must have proper language allowing the selling spouse to deal with his or her separate property without the consent and joinder of the other spouse. If you are married, separated or re-married, your spouse will have to sign the deed unless you have one of these agreements on record or one in recordable form that we can record for you.

SELLERS WHO ARE PROVIDING FINANCING FOR THE BUYER: **If you are providing seller financing (taking back a note for part of the purchase price), please be aware:** (This does not pertain to a seller who is merely paying some of the buyer=s closing costs.) In North Carolina, a seller who provides financing for purchase money for his or her buyer may NOT be allowed to sue the buyer later to force the buyer to repay the money if the buyer defaults. **If you will provide financing for your buyer, you are urged to seek separate legal counsel about this point. Our office does not represent you to advise you regarding any legal matter.**

INFORMATION REQUIRED FROM YOU:

Please fax or email the next page with the information requested as soon as possible. If you have an equity line mortgage, you also must have your equity line lender fax us a letter stating that the equity line has been blocked to further advances at least 3 business days prior to closing.

If you have any questions, please call our office. Thank you.

Sincerely,

Kimberly E. Fox
Attorney

KIMBERLY E. FOX, PLLC
ATTORNEY AT LAW
19826 NORTH COVE ROAD, SUITE E
CORNELIUS, NC 28031
TEL: (704) 439-2720
FAX: (704)896-0275

TO: Kimberly E. Fox, PLLC AND ANY MORTGAGE LENDER

From: _____, Seller

Social Sec No.: His _____ Hers _____

Property Address: _____

Buyer's Name(s): _____

Seller Tel. No.: Day: _____ Eve: _____ Email: _____

*Must have Seller's forwarding address: _____

Will you attend closing? _____, if not, may we email you a deed package?
Please provide your email address: _____

Your firm _____ should, _____ should not prepare my deed.

My homeowners association management company is _____, Phone No. _____.

Marital Status: SINGLE MARRIED
DIVORCED (If any owner is re-married your new spouse must also sign the deed as they now have a marital interest in the property.)
SEPARATED (if separated, need copy orded separation agreement).

My mortgage loans are:

1st Mortgage:
Lenders Name: _____ **Loan No.:** _____
Lender Tel. No. _____

2nd or Equity Line:
Lenders Name: _____ **Loan No.:** _____
Lender Tel. No. from statement _____

This lender is hereby directed to **block this account from further advances** effectively immediately. However, I understand that it is my responsibility to have this lender fax to Kimberly E. Fox PLLC at 704 896-0275 a letter stating that this account has, in fact, been blocked to further advances at least 10 business days prior to closing. I have not recently used this line and will not write checks or use a credit card tied to this line again. **All checks and charges I have made on this line have cleared** and I will be liable to

Kimberly E. Fox, PLLC for any further use of this line which causes the payoff to be short.

If any payoff of a mortgage loan made by Kimberly E. Fox, PLLC is short of the amount actually needed to pay the loan in full, I will immediately upon demand pay the shortage as directed by Kimberly E. Fox, PLLC.

AUTHORIZATION:

My mortgage lenders are hereby directed and authorized to provide payoff statements and any other requested information to Kimberly E. Fox, PLLC for the closing of the sale of this property. Kimberly E. Fox, PLLC and any of its employees are my authorized agents for purposes of obtaining payoff information, blocking and closing equity lines on this property and for executing and filing documents in the County land records to cancel any paid in full deeds of trust.

Printed Name: _____

Printed Name: _____