



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Attorney Requirements for Conservation Easement Programs



Easement Award Grantee Responsibilities and Acknowledgements

It is the responsibility of the Grantee to provide these instructions to the closing attorney completing the title search and easement closing items. The closing attorney **MUST** complete the Closing Attorney Requirements for Conservation Easement Programs Form **AND** a State of North Carolina Substitute W-9 Form.

1. The Closing Attorney **MUST** complete the Closing Attorney Requirements for Conservation Easement Programs Form, State of North Carolina Substitute W-9 Form, at least **60 days** prior to a tentative conservation easement closing date.
 - **Due to the vendor registration requirements of the Office of State Controller, there are no exceptions to this 60-day policy.**
2. **The Grantee must ensure the following for an accurate and timely process:**
 - a. Discuss with the landowner any potential title issues that could affect the certification of the title **BEFORE** the execution of the grant contract. Use the NCDA&CS Title Prescreen document to facilitate the discussion.
 - b. Acknowledge that costs to clear title defects are the responsibility of the landowner.
 - c. Engage the closing attorney directly after the contract award.
 - d. Ensure the attorney has the necessary skills and schedule availability to complete a thorough review according to NCDA&CS standards, as described herein.
 - e. Maintain contact with the closing attorney throughout the process. The Grantee is responsible for ensuring the transaction meets contract requirements and is completed in a timely manner within the budget parameters.
 - f. Acknowledge Grantees need to fully understand the billing practices of the Closing Attorney before engagement.
 - g. Acknowledge the closing attorney must represent the Grantee only.
 - h. Acknowledge the closing attorney must be supplied with the most current information regarding ownership, easement area acreage, and parcel identification.
 - i. Acknowledge NCDA&CS legal will coordinate the closing date with the closing attorney and grantee upon approval of all required documents and closing check request.
 - i. The Request for Payment form, Easement Closing Check Request form, and all required documents must be submitted in one complete package to the NCDA&CS no later than 30 days before the proposed closing dates.
 1. Errors in the Grantee's forms and documents, or outdated State of North Carolina Substitute W-9 Form for the Grantee or Closing Agent may cause delays.



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Attorney Requirements for Conservation Easement Programs



For Agricultural Conservation Easement Program Agricultural Land Easements (ACEP-ALE) transactions, these requirements and instructions are in addition to any closing instructions provided by the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS).

The Parties to this transaction are as follows:

State of North Carolina:
N.C. Dept. of Agriculture & Consumer Services
NC ADFP Trust Fund
2 West Edenton Street
Raleigh, NC 27601

Landowner/Grantor (name & address below):

_____, _____

Eligible Entity/Grantee (name & address below):

_____, _____

Closing Agent (name & address below):

_____, _____



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Attorney Requirements for Conservation Easement Programs



Closing Attorney Qualification Acknowledgements

1. Acknowledge the closing attorney has up-to-date knowledge of the General Statutes of North Carolina and case law pertaining to conducting real estate transactions and obtaining title clearance.
2. Certify that the closing attorney is an attorney duly licensed to practice law in the State of North Carolina.

Preliminary and Closing Attorney Requirements

1. Certify that the title insurance company issuing the title commitment and final policy of title insurance is approved by the North Carolina Insurance Commissioner.
2. Provide all Parties evidence of liability insurance coverage or indemnification in an amount equal to or greater than the easement purchase value paid from State Funds for each NCADFPTF easement. Further, the closing agent agrees to provide reimbursement to NCAD&CS for any loss of State funds caused by errors, omissions, fraud, dishonesty, negligence, or failure by the attorneys, agents, or closing agent employees to comply with written closing instructions. An insured closing protection letter is satisfactory to meet this condition of responsibility.
3. Certify that he or she will not close on an easement purchase for his or her spouse, children, partners, or business associates, and that he or she does not have a financial interest in the real estate to be covered by the proposed easement.
4. The easement acquisition transition **MUST BE** completed within 30 calendar days of receipt of the State funds.
5. Return the easement funds and any accrued interest in accordance with NCDA&CS instructions if the conservation easement is not closed within 30 calendar days of receipt of the State funds.
6. Acknowledge that costs to clear title defects are the responsibility of the landowner.
7. Respond to requests for edits to documents.
8. Acknowledge receipt and agree to comply with the terms of these requirements by promptly signing and returning a signed copy of these closing agent requirements to NCDA&CS.



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Attorney Requirements for Conservation Easement Programs



9. Provide a complete State of North Carolina Substitute W-9 Form with this document. Per the Office of State Controller, the State of North Carolina Substitute W-9 Form must be dated within one year prior to transmitting funds to the closing agent's escrow account. Updated forms must be submitted before requesting funds.

Attorney Requirements for Title Search

Certify that he or she will:

10. Examine the real estate records and certify title for a period of sixty years or more. There are **NO EXCEPTIONS** to the sixty-year title search period.
 - a. The search period must show a beginning date and an ending date.
 - b. Updated title opinion search periods must be accompanied by new title commitments that reflect those search periods.
11. Provides a duly signed title opinion along with vesting deeds, exceptions, recorded plats and a copy of the tax parcel card.
 - a. A list of all title exceptions must be included in the title opinion.
 - b. If any exceptions are discovered after submission to NCDA&CS, the title opinion must be revised to include those exceptions.
12. Secure the title commitment including an Insured Closing Protection Letter.
13. Comply with any listed title commitment requirements. NCDA&CS requires the Grantee and NCDA&CS to be listed on the insured and the amount of title insurance is equal to the cash value of the easement purchase price (does not include landowner donation).
14. Obtain and record as instructed the properly executed curative documents for any exceptions noted on the title commitment required to be removed, released, subordinated, cancelled, waived, or otherwise addressed as required by the title commitment or proforma policy and closing instructions.

Attorney Requirements for Settlement Statement

15. Prepare settlement statement.
 - a. The following language must be included, which describes the 10% of amount of NCDA&CS easement purchase contribution to be held in escrow:



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Attorney Requirements for Conservation Easement Programs



- i. “A check in the sum of \$ _____ which is a portion of the grant award is being paid to _____, Settlement Agent, which represents the easement purchase price pursuant to the North Carolina Agricultural Development Farmland Preservation Trust Fund “NCADFPTF” grant. Pursuant to program guidelines, the Settlement Agent named herein will hold 10% of the easement purchase price or \$ _____ in escrow until such time as the recorded easement, recorded plat, signed settlement statement, final title policy and budget reports are received and approved by NCADFPTF. The NCADFPTF shall, upon receipt of the recorded easement, recorded plat, signed settlement statement, final title policy and approval of all budget reports authorize the Settlement Agent to release all remaining grant funds, if any, to the Seller or Seller’s designated payee. “

Attorney Requirements for Closing

1. Immediately following closing, provide policies of title insurance free and clear of all encumbrances (exceptions) to the title except those that NCDA&CS, has determined to be acceptable.
2. Certify that the following package will be delivered within 28 business days of receipt of recorded documents from the local land records office to NCDA&CS:
 - a. Policy of title insurance (original and one copy) on the appropriate form.
 - b. Recorder’s certified copy of the recorded conservation easement deed and a recording receipt.
 - c. Recorder’s certified copies of any curative documents, including subordination agreements.
 - d. Original and one copy of executed settlement statements.
3. Record of disbursement of funds to the landowner.
4. Immediately prior to closing, examine the real estate records covering the time from the effective date of the title commitment to the date of closing to determine that no new encumbrances have been recorded against the subject property, no adverse change in title has occurred, and that there are no intervening matters affecting the title that might result in a new title exception on the policy. Notify NC ADFPTF of any such changes or matters that are discovered, and delay the closing, the recording of the deed, and the disbursement of funds pending consultation with NCDAFPTF.



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Attorney Requirements for Conservation Easement Programs



5. Ensure all taxes, homeowners' assessments, etc., are current as of the date the conservation easement deed is recorded.
6. Obtain the properly executed conservation easement deed from the landowner and any other required signatory parties.
7. Record the conservation easement deed within two business days of execution.
8. Complete Internal Review Service (IRS) tax reporting Form 1099 for the full easement compensation amount, as identified in the conservation easement deed.

By signing this "Closing Attorney Requirements for Conservation Easement Programs," I certify that I meet all specified requirements and agree to complete all required deliverables and outputs in accordance with the prescribed standards in this contract. I further acknowledge that my execution of these obligations ensures that State funds received for services provided are utilized in a manner that safeguards the interests of the State of North Carolina. If any certification of qualifications is found to be false, or if the deliverables or outputs are incomplete or fail to meet the prescribed standards, the State of North Carolina reserves the right to withhold grant payments until such deficiencies are corrected to the State's satisfaction.

Signature of Closing Agent

Date

Name of Closing Agent

By signing this "Closing Attorney Requirements for Conservation Easement Programs", I concur with the closing agent's qualifications.

Signature of Grantee Representative

Date

Name and Title of Grantee Representative



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Closing Attorney Requirements for Conservation Easement Programs



REQUEST TO ADFP TRUST FUND FOR APPROVAL OF SUBCONTRACTING

This form is required.

Grantee:

Contract Number:

Pursuant to the General Terms and Conditions of the Contract* between the Grantee and the Agency, Grantee hereby requests approval of the Subcontractor, _____, to assist in carrying out the purposes of the above-referenced contract.

Signature of Grantee

Name of Grantee

Date

☐ Subcontracting Approved

☐ Subcontracting Denied

Signature of Director

Name of Director

Date

***Subcontracting:** The Grantee shall not subcontract any of the work contemplated under this Contract without prior written approval from the Agency. Any approved subcontract shall be subject to all conditions of this Contract. Only the subcontractors or subgrantees specified in the contract documents are to be considered approved upon award of the contract. The Agency shall not be obligated to pay for any work performed by any unapproved subcontractor or subgrantee. The Grantee shall be responsible for the performance of all of its subgrantees and shall not be relieved of any of the duties and responsibilities of this Contract.