



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



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/Award Grantee (name & address below):

_____, ____

Subcontractor (name, company, company address below):

_____, ____

Project Identification:

Project Name

ADFP Tracking Number

Contract Number



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Closing Attorney Qualifications

- ☐ The closing attorney must be duly licensed to practice law in the State of North Carolina.
- ☐ The closing attorney must have up-to-date knowledge of the General Statutes of North Carolina and case law pertaining to conducting real estate transactions and obtaining marketable title.

Closing Attorney Responsibilities

- ☐ Prepare the preliminary title opinion and provide related documents, i.e., vesting deed, exceptions on title, maps, parcel cards, etc.
- ☐ Prepare, obtain, and provide documents necessary to satisfy the requirements of the title commitment.
- ☐ Request and review title insurance commitment binders.
- ☐ Ensure the removal of exceptions that do not impact the insured project area.
- ☐ Procure subordination agreements or cancellations for outstanding deeds of trust, judgments, leases, etc.
- ☐ Prepare settlement statements for all pending closings.
- ☐ Record the approved documents once approval to close has been issued by NCDA&CS legal staff and other funding partners when appropriate.
- ☐ Complete final disbursements as well as complete final title opinion and secure the final commitment.

By signing this "Closing Attorney Requirements for Conservation Easement Award Programs I certify that I meet all specified requirements and agree to complete all required deliverables and outputs in accordance with the prescribed standards. I certify that I am licensed to practice law in the State of North Carolina and I am in good standing with the North Carolina State Bar. 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.

Attorney Name

Law Firm

Date

Signature



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Easement Award Grantee Responsibilities

- ☐ **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.
 - b. Use the NCDA&CS Title Prescreen document to facilitate the discussion.
- ☐ Educate the landowner on the possibility of subordination on deeds of trust, mortgages, leases, etc.
- ☐ Engage the closing attorney directly after the contract award execution.
- ☐ Ensure the attorney has the necessary skills and schedule availability to complete a thorough review according to NCDA&CS standards, as described herein.
- ☐ Provide the attorney with NCDA&CS Closing Attorney Requirements for Conservation Easement Program Awards.
- ☐ Ensure all legal-related expenditures align directly with the approved contract budget.
- ☐ Manage project timelines to ensure timely document submission and revision.
- ☐ Review title documents prior to submission to ensure documents meet contract requirements.
- ☐ 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.
 - a. **Due to the vendor registration requirements of the Office of State Controller, there are no exceptions to this 60-day policy.**

Award Grantee Acknowledgments

- ☐ Costs to clear title defects are the responsibility of the landowner.
- ☐ Billing practices of the Closing Attorney should be reviewed and negotiated **before** engagement.
- ☐ The closing attorney must represent the Grantee only.
- ☐ The closing attorney must be supplied with the most current information regarding ownership, easement area acreage, and parcel identification.
- ☐ NCDA&CS legal staff will coordinate the closing date with the closing attorney and grantee upon approval of all required documents and the closing check request.
- ☐ 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.
- ☐ Errors in the Grantee's forms and documents, or an outdated State of North Carolina Substitute W-9 Form for the Grantee or Closing Agent may cause delays.



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By signing this “Closing Attorney for Conservation Easement Award Programs I have read and understand the attorney qualifications and responsibilities as well as the grantee responsibilities. I certify that I have reviewed the specified requirements and certify that the attorney can complete all required deliverables and outputs in accordance with the prescribed standards. 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.

Name and Title of Award Grantee Representative

Date

Signature of Award Grantee Representative



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Closing Attorney General Requirements

- ☐ 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.
- ☐ Acknowledge that costs to clear title defects are the responsibility of the landowner.
- ☐ Certify that the title insurance company issuing the title commitment and final policy of title insurance is approved by the North Carolina Insurance Commissioner.
- ☐ Verification for LLCs, corporations, and trusts:
 - Certificate of good standing
 - Certification of member/manager consent of Member/Managers authorizing the transaction and authorizing the signatory party.
 - Certification of Trust to be recorded in the County Registry
- ☐ 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.
 - **An insured closing protection letter is satisfactory to meet this condition of responsibility.**
- ☐ 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.
- ☐ Certify that he or she will not close on a conservation 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.
- ☐ Work with the contract holding entity and NCDA&CS legal to complete revision requests in a timely manner.
- ☐ Provide a complete State of North Carolina Substitute W-9 Form with this document. Per the Office of the 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. Submit updated forms before requesting funds.
- ☐ The easement acquisition **MUST BE** completed within 30 calendar days of receipt of the State funds.
- ☐ Return the easement funds in accordance with NCDA&CS instructions if the conservation easement is not closed within 30 calendar days of receipt of the State funds.



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Title Opinion and Commitment Requirements

Certify that he or she will:

- ☐ 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.
 - The search period must show a beginning date and an ending date.
- ☐ Updated title opinion search periods must be accompanied by new title commitments that reflect those search periods.
- ☐ Provide a duly signed title opinion along with vesting deeds, exceptions, recorded plats, and a copy of the tax parcel card.
 - A list of all title exceptions must be included in the title opinion.
- ☐ If any exceptions are discovered after submission to NCDA&CS, the title opinion must be revised to include those exceptions.
- ☐ If access is over a private easement, a title search of adjoining property upon which the easement crosses must be conducted.
- ☐ Comply with any listed title commitment requirements.
 - NCDA&CS requires the Grantee and NCDA&CS to be listed on the insured,
 - The amount of title insurance is equal to the cash value of the easement purchase price (does not include landowner donation),
 - Do not include unrestricted or ambiguous exceptions to coverage or “all easements and rights-of-way” statements,
- ☐ Obtain and record, as instructed, the properly executed curative documents for any exceptions noted on the title commitment required to be removed, released, subordinated, canceled, waived, or otherwise addressed as required by the title commitment or pro forma policy and closing instructions.
- ☐ Secure the title commitment, including an Insured Closing Protection Letter.

Attorney Requirements for Settlement Statement

- ☐ Prepare a settlement statement either on HUD forms or another format.
- ☐ The following language must be included, which explains that 10% of the amount paid by NCDA&CS for the easement purchase is to be held in escrow:
 - “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.”



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Attorney Requirements for Closing

- ☐ Immediately prior to recording documents in the County Registry, the closing attorney shall examine the real estate records from the last certification date listed on the preliminary title opinion to the date of recording to determine that no new encumbrances have been recorded against the subject property, no 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.
 - **If new matters affecting title are discovered, notify NCDA&CS immediately. The scheduled closing will be terminated, and no documents will be recorded or funds disbursed until all title issues are resolved.**
- ☐ Obtain the properly executed conservation easement deed from the landowner and any other required signatory parties.
- ☐ Record the conservation easement deed within two business days of execution.
- ☐ 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.
- ☐ Ensure all ad valorem taxes and assessments, etc., are current as of the date the conservation easement deed is recorded.
- ☐ 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:
 - Policy of title insurance.
 - A recorded conservation easement deed
 - Recorded copies of any curative documents, including but not limited to subordination agreements.
 - A copy of executed settlement statements.