

2019 Contracts Review

GAR vs. RE Forms

Handout #1 of 3



Compliments of



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Georgia Real Estate Academy * 3 Hrs for CE Credit * GREC Course #70329

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Essential Elements of a Real Estate Contract

- **In Writing** - To be enforceable, real estate contracts must be in writing and contain all the essential elements to be valid. Short-term leases are often exceptions to this requirement.
- **Signatures** - The contract must be signed by all parties. In the case of corporations or partnerships, an authorized person may sign on behalf of the entity.
- **Legally Competent Parties** - A party to a contract should be of legal age when entering into the contract. A minor entering into a contract has the choice of either withdrawing or enforcing the contract. A party is incompetent if they are declared insane by a court. Those who have entered into contracts while “temporarily mentally incompetent” due to drugs or alcohol may also be considered incompetent.
- **Mutual Agreement = Meeting of the Minds** - This is an essential element requiring an offer and an acceptance.
- **Lawful Objective** - A contract must have a legal purpose to be enforceable.
- **Consideration** - All parties to a contract must offer consideration. Consideration is something of value and may take the form of money, real estate, personal property, or services.
- **Property Description** - A contract must identify the property being sold. While a street address is sufficient, the legal description should be used to clearly identify the property.
- **Price** - The purchase/sales price must be stated. The parties may also use some reasonably ascertainable figure such as the appraised value as of a specified date.

Legal Effect of a Contract

- **Valid** – An Agreement contains these essential elements. A contract agreed to by all parties and meets all the standards of contract law. It is legally binding and enforceable
- **Void** – An Agreement is missing one of the essential elements and has no legal effect. A contract that does not meet criteria for contract law because it may contain illegal intent and is unenforceable. A void contract is never valid from the beginning and cannot be enforced by either party
- **Voidable** – An Agreement that contains all the essential elements of a contract but from which because of a defect in one or more of the elements may be removed by the injured party. A contract which may appear legal but fails to meet some legal requirement. As a result, one or more parties have the right to rescind the agreement within a certain period of time. The contract is valid, but is also voidable or enforceable.
- **Validity** – An Agreement that once had validity but for which that validity has ceased
- **Enforceable** – A Contract that a court would allow and uphold. A contract which meets the requirements of contract law and offers legal remedies if not fulfilled.
- **Unenforceable** – a Contract that a court would not allow and not uphold. - A contract which appears to be valid but offers no legal remedies if not fulfilled. **Example:** *Joe Smith enters into a verbal agreement for the sale of Sally Gold’s property. This contract is unenforceable.*

GAR Contract vs. RE Forms Contract:

Issue	GAR	Paragraph	RE Forms	Paragraph
Date on Forms	Current Calendar Year – updated semi-annually January & May-ish		Dated the last year form was revised	
Fill In the Blanks	Page 1 of Contract		Throughout the Contract	
# of Pages	8		5 + 9 pages of “Standard Terms”	RE100 – Contract RE1 – Standard Terms
Forms	Specific Forms for Variety of Situations		Multi-Use Forms	i.e. Amendment to Contract may be used to Amend Brokerage, Purchase, Lease, etc.
Names of Parties	Signature Page		Front Page & Signature Page	
Signatures / Initials	Bottom of 1 st Page Signature Page		Initial Every Page Sign Signature Page	
Deed	Limited Warranty	F2011 - B1a	Limited Warranty	RE1 - 1
Title	Good & Marketable	F2011 - B1b	Good & Marketable	RE1 - 1
Earnest Money Deposit	5 Banking Days	F2011-B5	3 Banking Days	RE100 – 3.1
Buyer Default on EM – Time to Cure	3 Banking Days	F201 – B5	3 Calendar Days	RE1 – 3.3
Closing Cost – Amount	Specific Amount	F201 – A6	Amount OR Percentage of Sale Price	RE100 - 5
Closing Costs – Use by Buyer	Mortgage lender may not allow & unspent sums go back to Seller	F201 – 3a	Any purpose whatsoever – merely at the discretion of the Buyer	RE1 – 5.5
Contingencies in Purchase & Sale	Due Diligence Only	F201 – A8 & B8	Buyer’s Right to Terminate Appraisal Contingency Financing Contingency	RE100 – 6 & RE1 - 6
Utilities	Seller to turn on utilities	F201 – B8a	Buyer or Seller to turn on utilities.	RE100 - 7

Issue	GAR	Paragraph	RE Forms	Paragraph
Inspection	Right to Inspect Property Duty to Inspect Neighborhood	F201 – B8a & b	Duty to Inspect	RE100 – 7.1
Failure to Appraise: Conventional Loan	Buyer must submit amendment to Seller to sell for lower price or Buyer buys at contract price. If Seller accepts, Buyer must buy; if Seller rejects Buyer may buy or terminate –	F404 – 11 Specific Time Frames Involved	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	RE1 – 6.2
Failure to Appraise: FHA Loan	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	F407 – 11 Value – Specific \$ Amount	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	RE200 – 1 st paragraph Value – Specific \$ Amount
Failure to Appraise: VA Loan	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	F410 – 11 Value – Reasonable Value as established by VA	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	RE201 – 1 st paragraph Value – Reasonable Value as established by VA
Time Frames of Loan Contingencies	On the Loan Exhibits	F404 - Conv F407 - FHA F410 - VA	On the Purchase & Sale Agreement	RE 100 - 6
VA Loan Exhibit	Differences in itemization of what a Seller must pay	F410 - 14	Differences in itemization of what a Seller must pay	RE201 – “Seller Obligations” #2
Delay in Closing	8 Day Unilateral Right to Extend	F201 – B4a Extension Right by either party – specific issues	Must be Extended by Mutual Agreement UNLESS there is a Lender Delay or additional costs imposed upon Seller & Buyer sends Notice (then Seller	RE1 – 6.3.2 Termination Right by Seller – specific issues & procedures

			may terminate or continue)	
Issue	GAR	Paragraph	RE Forms	Paragraph
Damage to Property before Closing	Buyer or Seller may terminate. If no termination Seller has 1 year to restore property & transaction must close within that 1 year or within 7 days from property being restored	F201 – C3	Buyer may terminate OR Buyer may buy with all Insurance Proceeds being transferred to Buyer	RE1 – 7.4
Notice by Email	Receipt = When Sent	F201 – C1b	Email	RE1 - 11
Closing Attorney	Buyer Chooses	F201 – B6	Buyer or Seller Chooses	RE100 - 4
Attorney if No Loan	Attorney represents Buyer – CHECK with Attorney!	F201 – B6	Party to select is negotiated in contract	RE100 - 4
Binding Contract (same definition)	“Binding Agreement”	F201 – C4f	“Accepted Contract”	RE1 – 12.9.1
Survival of Closing	Commission Title Warranties of Seller Any obligation parties agree shall survive Seller’s interest in warranties, service contracts, etc. a Buyer’s acceptance & expense Condemnation of Property	F201 – C4b	“the provisions of the contract shall survive closing.”	RE1 – 12.7
Condition of Property	“substantially same condition” & “clean & free of trash & debris & personal property of Seller not identified as remaining”	F201 – C3	“same condition normal wear & tear excepted”	RE1 – 7.2 Says “New Construction Only” but applies to resales

Issue	GAR	Paragraph	RE Forms	Paragraph
Repairs	Good & workmanlike manner prior to closing	F201 – B8e	Good & workmanlike manner 3 days prior to closing	RE1 – 7.3
Seller’s Disclosure Form	No “Don’t Know” option No Year for systems age except for HVAC or when installed. Seller indicates what items are to be removed	F301	Has “Unknown” as an option Has year systems were installed & material defect Nothing regarding fixtures/items remaining with the property or Seller taking	RE130
Community Association Exhibit	Undisclosed fees or increases in fees to be paid by Seller at closing	F322 – 4a & 5	If any changes in fees, Seller has 3 days to disclose to Buyer; any initial fees NOT disclosed or changes in fees not disclosed to be paid by Seller at closing	RE136 - 5
Amendment During DD / Buyer’s Right to Terminate	Option to terminate Due Diligence upon agreement	F704 * Verbiage from RE Forms is available in GAR as SS 302 – “Amend to Address Concerns as Notice to Terminate”	Option to terminate contract if No agreement	RE262 * NOTE: If Seller writes a Counter Amendment & parties sign, Buyer must Withdraw first Amend RE 263 GAR F285
Temporary Occupancy Agreement for Seller After Closing	Only a Tenant at Sufferance per diem	F219 - 9	“Useage Fee” – Seller pays Buyer at Closing & Tenant at Sufferance per diem	RE255 - 2

Issue	GAR	Paragraph	RE Forms	Paragraph
Closing Attorney as Holder of Earnest Money	GAR Form F510 – “Closing Attorney Acting as Holder of Earnest Money” (signed by parties with Binding Agreement) & GAR Form F511 – “Agreement of Closing Attorney to Serve as Holder of Earnest Money” (signed by attorney within 3 business days of receipt of Binding Agreement)	F510 – Signed by Buyer & Seller with Binding Contract & F511 – Signed by Attorney within 3 business days of receipt of Binding Agreement & Buyer has 2 Business Days to get contract to Attorney	No Contractual Form	Concern: Closing Attorney does NOT sign contract to no obligation to perform responsibilities as “Holder” as outlined in the contracts
Remedy of Seller Upon Default by Buyer – as of 8/1/18	Seller's sole remedy shall be to retain the earnest money as full liquidated damages. Prior to this change, the Seller had the right to pursue "any lawful remedy" such as suing the breaching Buyer for specific performance and/or the losses Seller incurred, which could include the difference between what they could have sold the home for to the Buyer versus another person, Seller's legal fees, Seller's additional moving expenses, Seller's rent, etc. However, in most cases when a Buyer breached	F201 – Purchase & Sale – Paragraph C2a	Buyer’s default under any of the terms of the Contract may result in Seller’s termination of the Contract, together with Seller’s exercise of all rights and remedies available under the law, including, but not limited to, Buyer’s forfeiture of earnest money deposits and law suits for damages. Seller may either accept the Earnest Money as full liquidated damages or bring legal action for actual damages, it being agreed by the parties that the actual damages are impossible to calculate.	Standard Terms – paragraph 10.1

	the contract, the Seller would accept the Earnest Money and move on, selling the home to another buyer.			
Issue	GAR	Paragraph	RE Forms	Paragraph
Remedy of Buyer Upon Default by Seller – as of 8/1/18	1) to sue for specific performance or 2) terminate the contract with the return of Earnest Money. In the past, the Buyer could seek all lawful remedies which could have included consequential damages, attorney's fees, extra moving expenses, rent during holdover, etc	F201 – Purchase & Sale – Paragraph C2b	If this transaction shall not be closed because of default of Seller, the Earnest Money shall, at Buyer's election, be refunded to Buyer, and, after repayment of the Earnest Money to Buyer, the Contract shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder; or Buyer shall have the right to sue for specific performance of the Contract, provided that such specific performance remedy shall be available to Buyer only upon Buyer's full satisfaction of each of Buyer's obligations under the Contract, including without limitation Buyer's obligation to deliver the Earnest Money and delivering sufficient proof to the Closing Attorney and Seller that Buyer is ready, willing and able to close this	Standard Terms – Paragraph 10.2

			transaction. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages.	
Contract Designed to Protect	Quiz: ??????		Quiz: ??????	

General Differences

Purchase & Sale Agreements

- **GAR Purchase & Sale – Fill-In the Blanks & “Legal-ese”**
 - “A” – Key Terms & Conditions
 - “B” – Corresponding Paragraphs for Section A
 - “C” – Other Terms & Conditions
- **RE Forms**
 - Contract for Purchase – Fill in the Blanks
 - Standard Terms – “Legal-ese”

Financing & Cash Exhibits (Appraisal Contingency)

- GAR – separate Financing Exhibits: Conventional / FHA / VA / Cash
- RE – Financing Exhibit in P&S and Additional Forms for FHA & VA
- Appraisal Contingency included in all Financing (& Cash) Exhibits in GAR
- Appraisal Contingency included in P&S of RE Forms
- Buyer & Seller Rights / Responsibilities / Time-Frames if Property does NOT appraise for Sale Price
- FHA & VA – Appraisal Contingency
 - Time Frames
 - What if property does not appraise

Amendments

- During Due Diligence / Buyer’s Right to Terminate
 - “Shall or Shall Not” checkboxes
 - Shorten Due Diligence in GAR
 - Terminate Contract in RE
- Extend Closing & Possession
 - GAR Amendment (F716) – references “8 Day Unilateral Right to Extend”

General Contract Reminders

- ▶ Legal Description is required – Street Address alone is not a sufficient legal description (per License Law)
- ▶ Parties must get a copy of everything they sign (per License Law)
- ▶ Make sure Closing Attorneys get copies of ALL Exhibits & Amendments
- ▶ Do not leave any blanks
- ▶ Use “N/A” or “\$0” or “N/C” on Counter Offer
- ▶ Do NOT use “TBD” – does not reflect “Meeting of the Minds” which is required for enforceability
- ▶ If contract is subject to financing, all the terms of the financing MUST be completed (per License Law)
- ▶ As an Agent, do not hold Earnest Money – must get to Broker “as soon after receipt as practically possible” (per License Law)
- ▶ Complete Brokerage address on signature page – may be your Branch Office vs. Corporate Address
- ▶ Complete your license number & Firm License Number (per License Law)
- ▶ Complete Agency Representation Disclosures in contract (per License Law)
- ▶ Follow up on Earnest Money DEPOSIT – request proof of deposit – regardless of who named Holder is in the contract
- ▶ All Buyer & Seller Signatures Required
- ▶ Do not miss any initial spaces
- ▶ Contact Information Required for Customers (Email OR Fax OR Address – for Notice Purposes)
- ▶ Limit Special Stipulations
- ▶ Use the pre-printed Stipulations available from GAR in the Special Stipulation library
- ▶ Consult with the Special Stipulation Library in the RE Forms contract package as well
- ▶ Do Not write/use a Special Stipulation for an issue already addressed elsewhere in the contract
- ▶ Consult with your Broker &/or an Attorney before writing any Special Stipulations on your own
- ▶ Peruse the GAR & RE Forms Libraries for Other Useful Forms & Special Stipulations

Thank you!

- ▶ Remember to Confirm all Contract Questions with your Broker!
- ▶ Please refer any legal questions to the GAR Legal Helpline or an Attorney
- ▶ Please attend Additional Courses: www.eAGENTweb.com Click “Calendar”
- ▶ Course Offered through: Georgia Real Estate Academy (*GREC School #6915*)
- ▶ Hosted by: Maximum One Realty & Maximum One Realtor Companies
- ▶ Have a joyous & prosperous year helping others with their real estate needs!
- ▶
- ▶ **Weekly Videos on Contract Tips: “[Real Estate Made Crystal Clear](#)” – on YouTube**

Have a joyous & prosperous year helping others with their real estate needs!