

2019 Contracts Review

GAR & RE Forms

#70329

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Georgia Real Estate Academy
GREC School #6915

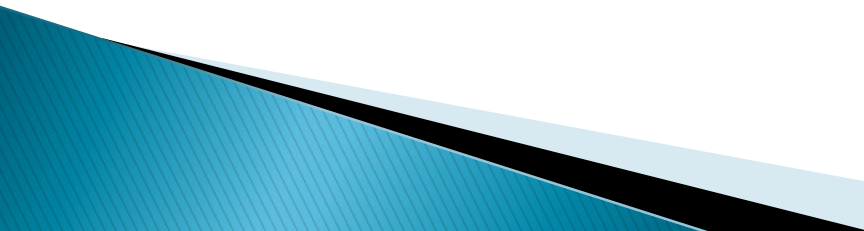
Essential Elements of a Real Estate Contract

- ▶ **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.
- ▶ **Notices**
 - GAR Purchase & Sale ¶ C1
 - RE Forms Standard Terms ¶ 11
- ▶ **Amendments**
 - GAR Purchase & Sale ¶ C4e

Essential Elements of a Real Estate Contract

- ▶ **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.
- ▶ **Notice**
 - GAR P&S ¶ C1
 - RE Standard Terms ¶ 11
- ▶ **No Authority to Bind – Parties to the Contract**
 - GAR P&S ¶ C4i
 - RE Standard Terms ¶ 12.9.10
- ▶ **Signature Page**

Essential Elements of a Real Estate Contract

- ▶ **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.
- 

Essential Elements of a Real Estate Contract

- ▶ **Mutual Agreement = Meeting of the Minds** – This is an essential element requiring an offer and an acceptance.
- ▶ Binding Agreement Date
- ▶ Closing Date
 - Do Not add “On or Before _____”
- ▶ “TBD”

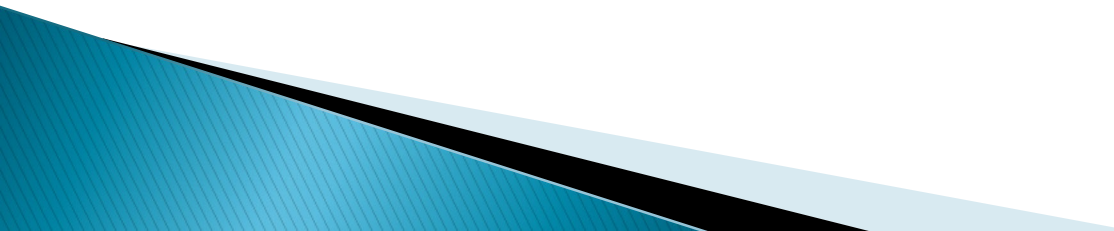
Essential Elements of a Real Estate Contract

- ▶ **Lawful Objective** – A contract must have a legal purpose to be enforceable.

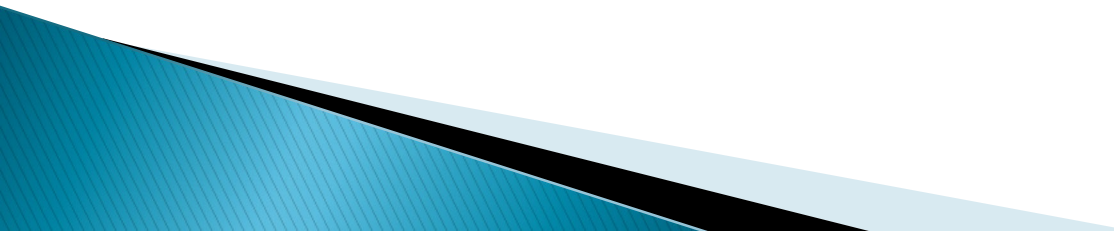
Essential Elements of a Real Estate Contract

- ▶ **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.
- ▶ **Consideration**
 - 1st paragraph – BOTH forms
- ▶ **Due Diligence / Buyer's Right to Terminate**
 - GAR A8b
 - RE 1 – Contract – ¶ 6.1

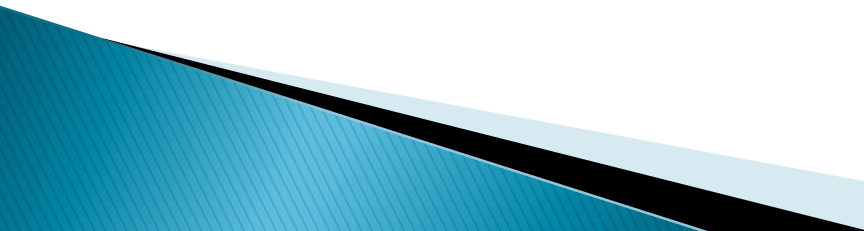
Essential Elements of a Real Estate Contract

- ▶ **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
 - ▶ Street Address is not sufficient in metro Atlanta
- 

Essential Elements of a Real Estate Contract

- ▶ **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.
 - ▶ GAR P&S ¶ A2
 - ▶ RE Contract ¶ 2
- 

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
- 

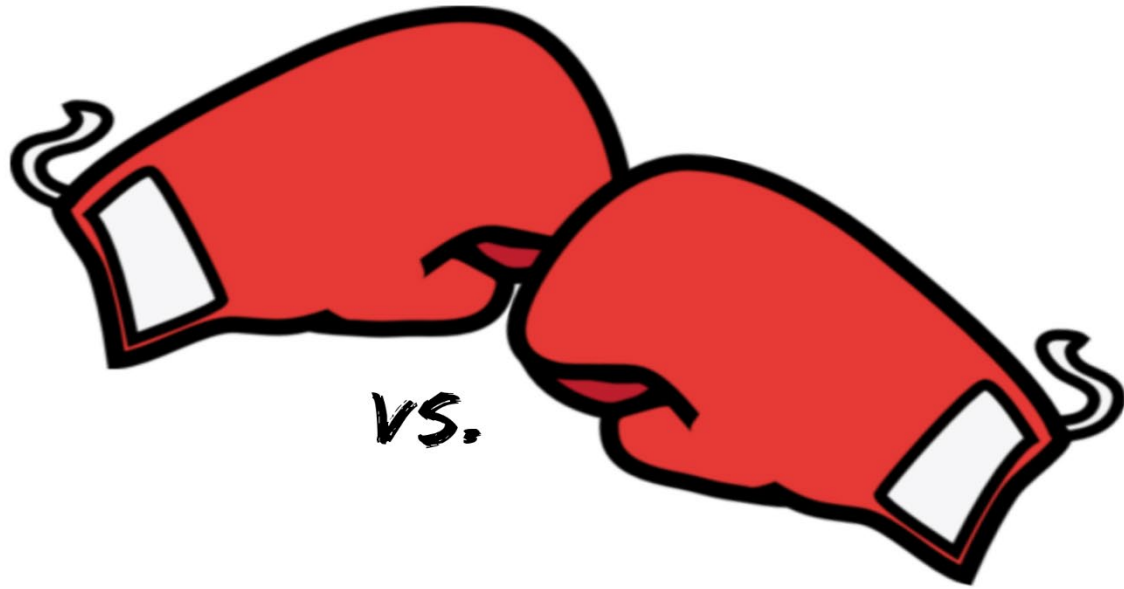
Legal Effect of a Contract

- ▶ **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

Legal Effect of a Contract

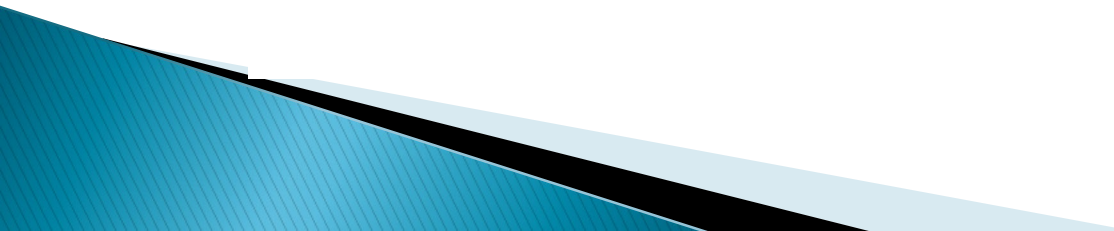
- ▶ **Enforceable** – A Contract that a court would allow and uphold. A contract which meets the requirements of contract law and offers legal remedies if not fulfilled.
- ▶ **Unenforceable** – a Contract that a court would not allow and not uphold. – A contract which appears to be valid but offers no legal remedies if not fulfilled. *Example: Joe Smith enters into an verbal agreement for the sale of Sally Gold's property. This contract is unenforceable.*

GAR CONTRACT



VS.

RE FORMS



Date on Forms

- ▶ GAR
 - Current Calendar Year – updated semi-annually
January & May-ish

- ▶ RE
 - Dated the last year form was revised

Fill In the Blanks & “Legalese”

▶ GAR

- Fill in the Blank – On first page of Purchase & Sale Agreement
- Legalese – In corresponding paragraphs

▶ RE

- Fill in the Blanks & Legalese – Throughout the Form
- Legalese – “Standard Terms”
- **HIGHLY ENCOURAGE AGENTS** to Reference the Standard Terms as an Exhibit & Attach to Contract!

Number of Pages

- ▶ GAR

- 8 pages

- ▶ RE

- $5 + 9 = 14$ Total
 - RE100 – Contract – 5 pages
 - RE1 – Standard Terms – 9 pages

Forms

- ▶ GAR

- Specific Forms for Variety of Situations

- ▶ RE

- Multi-Use Forms

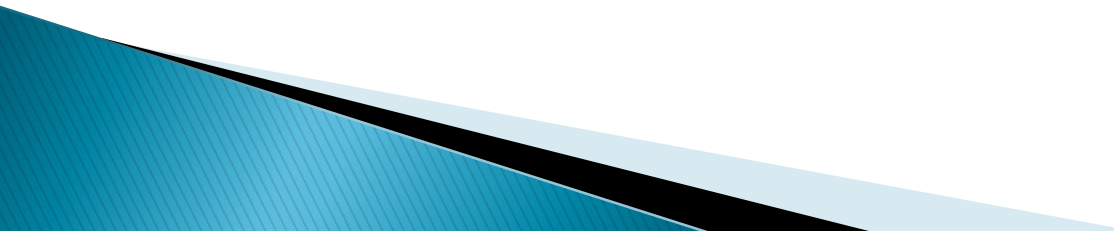
- i.e. Amendment to Contract may be used to Amend Brokerage, Purchase, Lease, etc.

Names of Parties & Signatures/Initials

▶ GAR

- Names – Signature Page
- Initials – Front Page
- Signatures – Signature Page

▶ RE

- Names – Front Page & Signature Page
 - Initials – Every Page
 - Signatures – Signature Page
- 

Deed & Title

▶ GAR

- Limited Warranty Deed
- “Good & Marketable” title

▶ RE

- Limited Warranty Deed
- “Good & Marketable” title

Earnest Money Deposit by Holder

- ▶ GAR
 - 5 Banking Days

- ▶ RE
 - 3 Banking Days

Timeframe to Cure Buyer Default on EM Remittance

- ▶ GAR
 - 3 Banking Days

- ▶ RE
 - 3 Calendar Days

Closing Costs

▶ GAR

- Amount – Specific Dollar Amount
- Use by Buyer – Up to Mortgage Lender & “unspent sums go back to the Seller”

▶ RE

- Amount – Specific Dollar Amount or % of Purchase Price
- Use by Buyer – Lender allowables & “Any purpose whatsoever – merely at the discretion of the Buyer”

Contingencies Included in Purchase & Sale

▶ GAR

- Due Diligence Only

▶ RE

- Buyer's Right to Terminate (= Due Diligence)
- Financing Contingency
- Appraisal Contingency

▶ NOTE

- Separate Financing & Appraisal Exhibits in RE Forms are ONLY to be used if agent gets a contract or counteroffer on a GAR form & the Exhibits are not included & agent doesn't have access to GAR Forms, the Agent may counter back with thee separate Exhibits
- If parties go Binding solely on RE Forms, do NOT use the separate "Financing" & "Appraisal" Contingency Exhibits - the verbiage is ALREADY contained in the Contract + Standard Terms
- Would ONLY need separate FHA or VA Exhibits

Utilities & Inspection

▶ GAR

- Utilities – Seller responsibility
- “Right” to Inspect property & “Duty” to inspect neighborhood

▶ RE

- Utilities – Negotiated for Buyer or Seller to turn on utilities
- “Duty” to inspect

Failure to Appraise: Conventional Loan

▶ GAR

- Buyer MUST submit amendment (prior to expiration of Appraisal Contingency) to Seller requesting Seller to sell for lower price or Buyer buys at contract price (despite low appraisal)
- If Seller accepts Amendment, Buyer must buy
- If Seller rejects Amendment, Buyer may buy or may terminate
- Specific time frames involved for negotiations after initial Amendment to Reduce Sale Price is sent

▶ RE


- Buyer may terminate at sole discretion – (Must do so prior to expiration of Appraisal Contingency)
- Either party may propose Amendment to other party to re-negotiate Sale Price

Failure to Appraise: FHA Loan

▶ GAR

- Buyer may terminate at sole discretion
- Either party may propose Amendment to other party to re-negotiate Sale Price
- Buyer termination rights through Day of Closing

▶ RE

- Buyer may terminate at sole discretion
 - Either party may propose Amendment to other party to re-negotiate Sale Price
 - Buyer termination rights through Day of Closing
- 

Failure to Appraise: VA Loan

▶ GAR

- Buyer may terminate at sole discretion
- Either party may propose Amendment to other party to re-negotiate Sale Price
- Buyer termination rights through Day of Closing

▶ RE

- Buyer may terminate at sole discretion
- Either party may propose Amendment to other party to re-negotiate Sale Price
- Buyer termination rights through Day of Closing

▶ Note: Differences in itemization of what Seller must pay for VA Buyer

Time Frames for Loan Contingencies

- ▶ GAR
 - On Loan Exhibits

- ▶ RE
 - On Purchase & Sale Agreement

Delay in Closing

▶ GAR

- By Amendment
- 8 Day Unilateral Right to Extend
 - By either party
 - Specific Lender &/or Attorney reasons as long as delay is not caused by Buyer

▶ RE

- By Amendment
- If Lender Delay or Additional costs imposed upon Seller
 - Buyer MUST send Notice of potential new closing date
 - Seller may terminate or continue through new closing date per Buyer's Notice

Damage to Property Prior to Closing

▶ GAR

- 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

▶ RE

- Buyer may terminate OR Buyer may buy with all Insurance Proceeds being transferred to Buyer

Closing Attorney

▶ GAR

- Buyer chooses
- If no lender, Attorney represents Buyer
 - **NOTE:** Not actual legal representation (i.e. if any disputes arise) but represent Buyer interest when preparing closing documents since there is no “lender package” directing Closing Attorney

▶ RE

- Buyer or Seller chooses
- No verbiage about no lender involvement, simply negotiated which party selects Attorney

Binding Contract – SAME Definition

- ▶ GAR
 - “Binding Agreement”

- ▶ RE
 - “Accepted Contract”

Note: Binding Agreement (despite the terminology) may be clearly determined based on the definition & terms of Notice in the contract.

Definition: Notice of Acceptance – i.e. when all parties KNOW (via received Notice) there is an accepted contract

Survival of Closing

▶ GAR

- 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
- NOTE: Use this phrase – “This provision shall survive closing.”

▶ RE

- “the provisions of the contract shall survive closing.”

Condition of Property at Closing

▶ GAR

- “substantially same condition”
- “clean & free of trash & debris & personal property of Seller not identified as remaining”

▶ RE

- “same condition normal wear & tear excepted”

Repairs

▶ GAR

- Good & workmanlike manner
- prior to closing

▶ RE

- Good & workmanlike manner
- 3 days prior to closing

▶ NOTE

- NO verbiage in contracts about Buyer termination rights if Seller doesn't complete
- NO survival language in GAR contract
- When negotiating for repairs, Buyers **MUST** address (as a special stipulation) consequences & solutions & options if Seller does not complete

Seller's Disclosure Form

▶ GAR

- No “Don't Know” option
- No Year for systems age except for HVAC or when installed.
- Seller indicates what items are to be removed

▶ RE

- Has “Unknown” as an option
- Has year systems were installed & material defect
- Nothing regarding fixtures/items remaining with the property or Seller taking

Community Association Exhibit

▶ GAR

- Undisclosed fees or increases in fees to be paid by Seller at closing

▶ RE

- 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

Amendment During Due Diligence / Buyer's Right to Terminate

▶ GAR

- Option to terminate Due Diligence upon agreement
- * Verbiage from RE Forms is available in GAR as SS 302 – “Amend to Address Concerns as Notice to Terminate”

▶ RE

- Option to terminate contract if No agreement

▶ Note if Seller Writes a Counter Amendment

- Buyer should withdraw first Amendment
- Seller should withdraw counter amendment if not signed & returned prior to end of DD
- There are NO time limits on these Amendments – the Due Diligence Period is NOT a time limit on these Amendments

Temporary Occupancy for Seller After Closing

- ▶ GAR

- Only Tenant at Sufferance per diem

- ▶ RE

- “Useage Fee” – Seller pays Buyer at Closing
- Tenant at Sufferance per diem

Closing Attorney as Holder of EM

- ▶ 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 &
 - Buyer has 2 Business Days to get contract to Attorney
 - In GAR Forms, Earnest Money MUST be Wired to Attorney
- ▶ RE
 - 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 if Default by Buyer

▶ GAR

- 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 the contract, the Seller would accept the Earnest Money and move on, selling the home to another buyer

Remedy of Seller if Default by Buyer – cont'd

▶ RE

- 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.

Remedy of Buyer if Default by Seller

▶ GAR

- To sue for specific performance or
- 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

Remedy of Buyer if Default by Seller – Cont'd

▶ RE

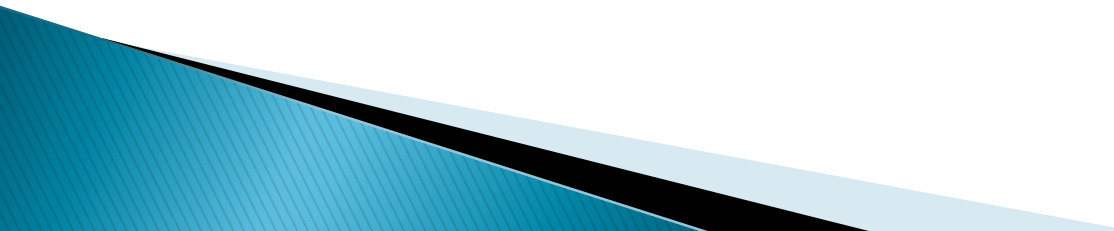
- ▶ If this transaction shall not be closed because of default of Seller, the Earnest Money shall, at Buyer's election, be refunded to Buyer, and, after repayment of the Earnest Money to Buyer, the Contract shall be null and void and neither Seller nor Buyer shall have any further rights or obligations 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 transaction.
- ▶ The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages

Fill In the Blanks & Legal-ese

▶ GAR

- “A” – Key Terms & Conditions
- “B” – Corresponding Paragraphs for Section A
- “C” – Other Terms & Conditions

▶ RE

- Contract for Purchase – Fill in the Blanks
 - Standard Terms – “Legal-ese”
- 

Contract Designed to Protect...

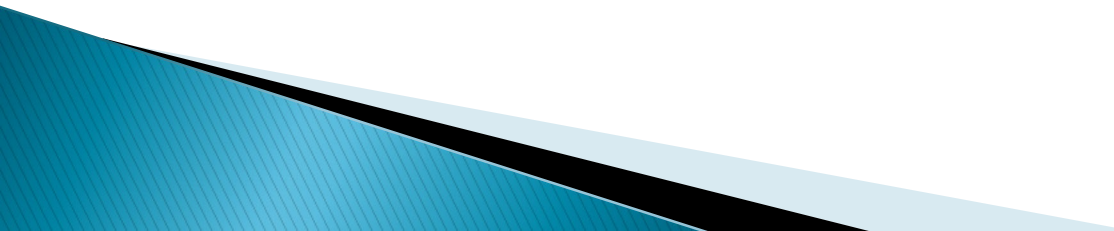
- ▶ GAR

- ?????

- ▶ RE

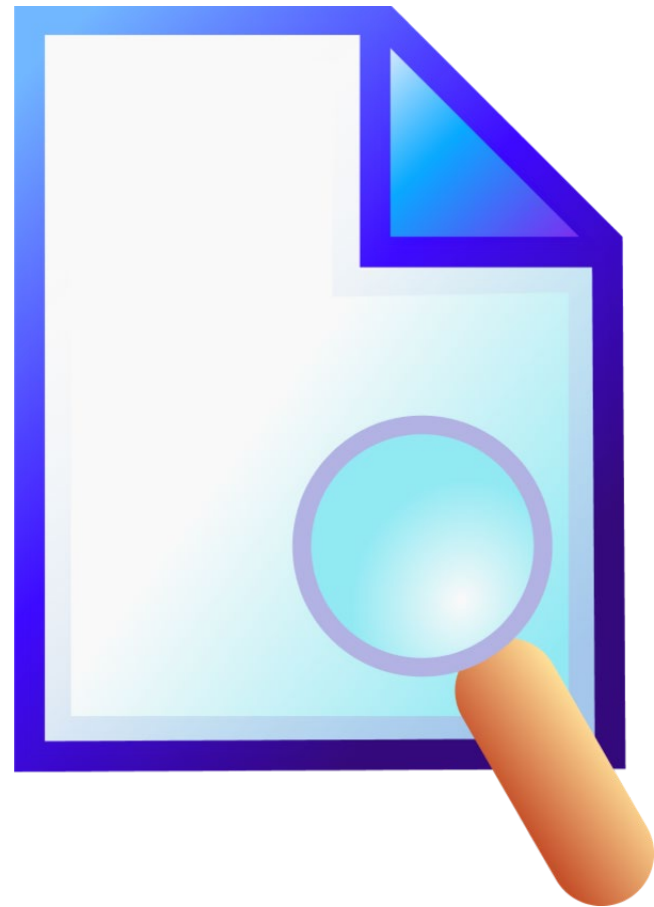
- ?????

- ▶ ANSWER:

- The Agents & Brokers!
 - TONS of verbiage to keep you in compliance with License Law!
- 

Instructor Evaluation

- ▶ Please complete & leave with instructor



Thank you!

- ▶ Remember to Confirm all Contract Questions with your Broker!
 - ▶ Please attend Additional Courses:
www.eAGENTweb.com Click “Calendar”
 - ▶ Course Offered through: Georgia Real Estate Academy (*GREC School #6915*)
 - ▶ Hosted by: Maximum One Realtors
 - ▶ Credits to be recorded within 3 Business Days

 - ▶ Weekly Contract Tips: YouTube Channel: “Real Estate Made Crystal Clear”

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