

# GAR COVID-19 Special Stipulation & Explanation

## 3/17/20

### COVID-19 SPECIAL STIPULATION

Notwithstanding any provision to the contrary contained herein, in the event the Closing cannot occur when scheduled due to a COVID-19 related event (“CRE”) resulting in the closing attorney, the mortgage lender and/or the Buyer and/or Seller being unable to perform their respective obligations, then the Closing shall be postponed until 7 days after the specific event delaying the Closing has been resolved. If the Buyer or Seller is unable to perform due to a CRE, the affected party shall promptly notify the other party both of the CRE and of its resolution.

Buyer or Seller having concerns about attending the Closing or self-quarantining (in the absence of a quarantine or government ordered lockdown that specifically applies to Buyer and/or Seller) shall not excuse Buyer or Seller from attending the Closing either in-person or through a power of attorney. Buyer or Seller presently having COVID-19 shall excuse Buyer and/or Seller from attending the Closing until the party is no longer at risk of infecting others. However, in all situations where Buyer and/or Seller cannot physically attend the Closing, Buyer and or Seller shall use their best efforts to fulfill their contractual obligations through a power of attorney.

If the CRE causing the delay results in the Closing being delayed by more than \_\_\_\_\_ days from the original Closing date, then either Buyer or Seller may terminate this Agreement without penalty upon notice to the other party.

### GAR EXPLANATION OF COVID-19 SPECIAL STIPULATION

As you are aware, on Tuesday, March 17, Georgia REALTORS® (“GAR”) released a special stipulation that real estate licensees could insert into their contracts addressing closings that may be delayed due to COVID-19.

The [COVID-19 Special Stipulation](#) was released to our members and forms purchasers in response to the growing number of concerns we received about the impact of COVID-19 in real estate transactions. This special stipulation can be inserted into contracts that are executed moving forward or into already executed contracts by using an amendment to agreement. Please remember that amendments to an agreement must be signed by all parties.

The COVID-19 Special Stipulation has **three main components**. The **first component** addresses when there is a COVID-19 related event (“CRE”) that results in the closing attorney, the mortgage lender, the buyer and/or the seller being unable to perform their obligations. While



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there is no specific list of events that would fall under CRE, such a list is not needed. An event related to COVID-19 that prevents one of the above-mentioned parties to the transaction from fulfilling their obligations would be a CRE.

The first section goes on to say that the closing will take place seven (7) days after the CRE has been resolved. It concludes with the requirement that a buyer or seller that is affected by a CRE and is thus unable to perform their contractual obligations must promptly notify the other party of both the CRE and when the CRE has been resolved so that the parties can move forward. In a perfect world, the lender, closing attorney, buyer and/or seller would provide notice to everyone involved in the transaction that they are unable to perform their contractual obligations because of a CRE. However, a real estate contract is between a buyer and seller and cannot obligate third-parties such as the lender and closing attorney to act.

The **second component** of the COVID-19 Special Stipulation addresses what happens if no one's obligations are hindered by a CRE, but the buyer and/or seller has apprehensions about attending the closing. In the instances where the buyer and/or seller is self-quarantining or concerned about attending the closing in-person, this does not relieve said party of their obligation to close. If a party does not want to attend the closing in-person, that party can utilize a power of attorney to attend the closing on their behalf. A party to the transaction that has been infected with COVID-19 would be permitted to delay the closing until the affected party is no longer at risk of spreading COVID-19 to others. The second section concludes with the parties agreeing to use their best efforts to close the transaction through a power of attorney if they are unable to be physically present at the closing.

The **last component** of the special stipulation put in place a negotiated period of time in which the closing can be delayed due to a CRE. The Forms Committee felt that it was important to allow the parties to determine the appropriate length of delay for their transaction rather than be given a pre-determined length. However, the Forms Committee did indicate that the intent behind the negotiated length of time was to allow the parties to fill in a long enough period of time in which they might be able to close if circumstances settle down (such as 60, 90 or even 120 days) without the parties being bound by the contract for an unknown length of time. After the negotiated time period has passed, either party may opt to terminate the contract without penalty.

Please remember that this special stipulation is completely optional. While this language has been released from GAR, you are welcome to modify (with your broker's guidance and approval) as you see fit for your transactions. Alternatively, there are brokers who have already had their attorneys draft language for their companies to address COVID-19 and delayed closings, and they may direct you to use that language. Should you have questions as to whether or not you should use this special stipulation in your contracts moving forward, please speak with your broker.



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Lastly, the COVID-19 Special Stipulation is GAR's response to a number of requests from our members who have transactions in place or are about to enter into transactions. While we hope that there are no individuals who want to capitalize on the unknown of this time, no special stipulation will be able to completely prevent the actions of bad actors. The intent of this special stipulation is to keep as many transactions intact while not forcing the parties to remain under contract for an unknown length of time.

The Forms Committee recognizes that this special stipulation is specific to delayed closings due to COVID-19, but there may be a number of other questions that are arising during this time. If you have general questions, concerns or suggestions about COVID-19 and your real estate transaction, please send those to [COVID-19@garealtor.com](mailto:COVID-19@garealtor.com). At this time, given the unknown of the next few weeks, or even months, we may not be able to answer specific questions about your particular real estate transaction.

We appreciate your patience and understanding that we are all navigating the uncertainty together. As GAR receives your questions and requests, we will do our best to address those that we can and provide resources and responses as they become available.

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