

2020 GAR Contract Changes #71203

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CE Credit Offered Through:
Georgia Real Estate Academy
GREC School #6915

GAR Licensing Agreement

- ▶ 2020 Cost for Non-Realtors – \$244
- ▶ Available online January 1, 2020
- ▶ Once 2020 forms are released, it is a GAR licensing violation to use GAR forms with any previous dates
 - Penalty: GAR may revoke yours (or your Broker's) license to use the GAR forms for the year or a specified period of time

Who Is Authorized to Use GAR Forms?

- ▶ Are you a Realtor?
 - Are your Local Board Dues paid?
 - Have you fulfilled the National Association of Realtors (NAR) Code of Ethics Course
 - NAR new 3 year cycle 1/1/19 – 12/31/21
- ▶ Have You Paid GAR to become an Authorized User? You'll receive an FPID Number to then use with FMLS or GMLS – contact your MLS for assistance accessing the GAR Forms package through their systems

Who Is Authorized to Use GAR Forms?

- ▶ Are there any Alternatives?
 - Co-op Agent in a transaction
 - Broker may not give you blank forms to use but you may use a Broker's form IF it has the Broker's signature on the signature line
 - RE Forms available at no cost
- ▶ GAR Website: <http://www.GARealtor.com>
- ▶ NAR Website: <http://www.Realtor.org>

GAR Legal Helpline

- ▶ <http://garealtor.com/LawEthics/LegalHelpline/tabid/569/Default.aspx>
- ▶ Will need your NRDS number
- ▶ Access this link from GAR website

GAR Forms – Other Changes

- ▶ Refer to “2020 GAR Form Changes”
- ▶ Remember to check GAR Mid-Year Changes in May or June of each year
- ▶ This CE class will cover BOTH 2019 Midyear changes (major changes) along with 2020 changes to the GAR contract package forms

F201 – Purchase & Sale Agreement

- ▶ Title / Survey Issue Clarification
 - ¶ B1a: **Warranty:** Seller warrants that at any time if closing Seller will convey good and marketable title to said Property by limited warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements (**other than any driveway or walkway**) do not encroach; (3) declarations of condominium and declarations of covenants, conditions and restrictions of record on the Binding Agreement date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement.

F201 – Purchase & Sale Agreement

- ▶ **Disclaimer – Broker Relying on Seller Information (Mid 2019)**
- ▶ ¶ B 10 c – at the end of the Brokerage Relationship Disclaimer paragraph, added,
- ▶ **“Buyer acknowledges that when and if Broker answers a question of the Buyer or otherwise describes some aspect of the Property or the transaction, Broker is doing so based upon information provided by Seller rather than the independent knowledge of Broker (unless Broker makes an independent written disclosure to the contrary.)”**
- ▶ Contract Tip: Use GAR F325 “Broker’s Information Disclosure”
Fill in the Question & Answer & SOURCE of the answer

F201 Purchase & Sale Agreement

- ▶ **¶ C 2 c Default: Rights of Broker** - Changed verbiage regarding Broker Commission
- ▶ **c. Rights of Broker:** In the event this Agreement is terminated or fails to close due to the default of a party hereto, the defaulting party shall pay as liquidated damages to every broker involved in this transaction with whom the defaulting party does not have a brokerage engagement agreement an amount equal to the share of the commission the broker would have received had the transaction closed.
- ▶ Changed to: **Agreement the commission the broker would have received had the transaction closed.**
- ▶ For purposes of determining the amount of liquidated damages to be paid by the defaulting party, the written offer(s) of compensation to such broker and/or other written agreements establishing such broker's commission are incorporated herein by reference.

F201 Purchase & Sale - "Default" cont'd

- ▶ **All written agreements establishing the amount of commission to be paid to any broker involved in this transaction are incorporated herein by reference.**
- ▶ The liquidated damages referenced above are a reasonable pre-estimate of the Broker(s) actual damages and are not a penalty. ~~In the~~
- ▶ ~~event a Broker referenced herein either has a brokerage engagement agreement or other written agreement for the payment of a real estate commission with a defaulting party, the Broker shall only have such remedies against the defaulting party as are provided for in such agreement.~~

F201 Purchase & Sale Agreement

- ▶ **¶ C3 - Risk of Damage to Property** - Changed "Binding Date" to "Offer Date"
- ▶ "Seller warrants that at the time of closing the Property and all items remaining with the Property, if any, will be in substantially same condition (including conditions disclosed in the Seller's Property Disclosure Statement) as on the **Offer Date**, except for changes made to the condition of Property pursuant to the written agreement of Buyer and Seller..."

F201 Purchase & Sale Agreement

- ▶ **¶ C4e - Entire Agreement, Modification & Assignment** - added termination & other changes must be in writing (Mid 2019)
- ▶ "... This Agreement may not be amended or waived except upon the written agreement of Buyer and Seller. **Any agreement to terminate this Agreement or any other subsequent agreement of the Parties relating to the Property must be in writing and signed by the Parties.**"

F201 Purchase & Sale Agreement

- ▶ **Contract Tip:**
- ▶ Use **GAR Form: F519 Mutual Agreement to Terminate Purchase & Sale & Disburse Earnest Money** (includes negotiated payment to Brokers)

A. Selling Broker: 1. Amount to be Paid by Seller to the Selling Broker under the Agreement: \$ _____ 2. Amount to be Paid by Buyer to the Selling Broker under the Agreement: \$ _____	B. Listing Broker: 1. Amount to be Paid by Seller to the Listing Broker under the Agreement: \$ _____ 2. Amount to be Paid by Buyer to the Listing Broker under the Agreement: \$ _____
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- ▶ Or Use GAR Form: **F522 Unilateral Notice to Terminate Purchase & Sale Agreement & Proposed Disbursement of Earnest Money**

F201 Purchase & Sale Agreement

- ▶ ¶ C4k – Statute of Limitations – NEW paragraph
- ▶ **“All claims of any nature whatsoever against Broker(s) and /or their affiliated licensees, whether asserted in litigation or arbitration, must be brought within two (2) years from the date any claim of action arises. Such actions shall thereafter be time-barred.”**
- ▶ Based on case law

F201 Purchase & Sale

- ▶ ¶ C5b Definitions – Binding Agreement Date (Mid 2019)
- ▶ “The Binding Agreement Date shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. **Once that occurs, this Agreement shall be deemed a Binding Agreement.**”

F201 Purchase & Sale Agreement

- ▶ ¶ C6 – Beware of Cyber Fraud & ¶ 7 Limit of Broker’s Liability
- ▶ Changed verbiage of Cyber Fraud Warning
- ▶ Made Limit of Liability a Separate paragraph & Bold & All Caps
- ▶ Eliminated separate initial places for Buyer & Seller that were in the middle of this page

F201 Purchase & Sale

- ▶ **Cyber Fraud Language Changed**
- ▶ (1/1/19) **Beware of Cyber Fraud:** Fraudulent e-mails attempting to get you to wire money to criminal computer hackers are increasingly common in real estate transactions. Under this scam, computer hackers fraudulently assume the online identity of the actual mortgage lender, closing attorney and/or real estate broker with whom you are working in the real estate transaction. Posing as a legitimate company, they then direct you to wire money to them. In many cases, the fraudulent e-mail is sent from what appears to be the authentic web page of the legitimate company responsible for sending the wiring instructions. You should use great caution in sending or receiving funds based solely on wiring instructions sent to you by e-mail. Independently verifying the wiring instructions with someone from the company sending them is the best way to prevent fraud. In particular, you should treat as highly suspect any follow up e-mails you receive from a mortgage lender, closing attorney and/or real estate broker directing you to wire funds to a revised account number. Never verify wiring instructions by calling a telephone number provided along with a second set of wiring instructions since you may end up receiving a fraudulent verification from the computer hackers trying to steal your money. Independently look up the telephone number of the company who is supposed to be sending you the wiring instructions to make sure you have the right one.

F201 Purchase & Sale

- ▶ **(1/1/20) WARNING TO BUYERS AND SELLERS: BEWARE OF CYBER-FRAUD.** Fraudulent emails attempting to get the buyer and/or seller to wire money to criminal computer hackers are increasingly common in real estate transactions. Specifically, criminals are impersonating the online identity of the actual mortgage lender, closing attorney, real estate broker or other person or companies involved in the real estate transaction. In that role, the criminals send fake wiring instructions attempting to trick buyers and/or sellers into wiring them money related to the real estate transaction, including, for example, the buyer's earnest money, the cash needed for the buyer to close and/or the seller's proceeds from the closing. These instructions, if followed, will result in the money being wired to the criminals. In many cases, the fraudulent email is believable because it is sent from what appears to be the email address/domain of the legitimate company or person responsible for sending the buyer or seller wiring instructions. The buyer and/or seller ...

F201 Purchase & Sale

- ▶ **...should verify wiring instructions sent by email by independently looking up and calling the telephone number of the company or person purporting to have sent them. Buyers and sellers should never call the telephone number provided with wiring instructions sent by email since they may end up receiving a fake verification from the criminals. Buyers and Sellers should be on the alert for: 1) emails directing the buyer and/or seller to wire money to a bank account in a state other than Georgia; and 2) emails from a person or company involved in the real estate transaction that re slightly different (often by one letter, number, or character) from the actual email address of the person or company."**

Contract Tip: "Beware of Cyber Fraud"

- ▶ Agent should NEVER share wiring instructions from Closing Attorney to Public
- ▶ Agent should NEVER email wiring instructions (i.e. for Earnest Money to Broker)
Agent should have wire fraud disclaimer on email signature
- ▶ Wire instructions should be delivered to public by hand, US mail, analog fax
- ▶ Agent should have wire instructions for their Broker & Closing Attorney & HAND to client at first meeting - to avoid any delays & getting these instructions to the public once under contract
- ▶ Agent should warn client about not trusting any changes they get to wire instructions via email or text

F201 Purchase and Sale

- ▶ **LIMIT ON BROKER'S LIABILITY. BUYER AND SELLER ACKNOWLEDGE THAT BROKER(S):**
- ▶ **A. SHALL, UNDER NO CIRCUMSTANCES HAVE ANY LIABILITY GREATER THAN THE AMOUNT OF THE REAL ESTATE COMMISSION PAID HEREUNDER TO BROKER (EXCLUDING ANY COMMISSION AMOUNT PAID TO A COOPERATING REAL ESTATE BROKER, IF ANY) OR, IF NO REAL ESTATE COMMISSION IS PAID TO BROKER, THAN A SUM NOT TO EXCEED \$100; AND**
- ▶ **B. NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY IN EXCESS OF \$100 FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD.**

F201 – Purchase & Sale Changes

- ▶ Appropriate Corresponding Changes made in
 - ▶ F122 Exclusive Lease Listing Agreement
 - ▶ F125 Non-Exclusive Lease Listing Agreement
 - ▶ F128 Exclusive Leasing/Mngmnt Agreement
 - ▶ F134 Exclusive Tenant Brokerage Agreement
 - ▶ F137 Non Exclusive Tenant Brokerage Agrmnt
 - ▶ CF01 Commercial Excl Seller Listing Agrmnt
 - ▶ CF04 Commercial Purchase & Sale
 - ▶ CF25 Commercial Open Listing – Leases
 - ▶ CF28 Commercial Excl Leasing / Mngmt Agrmnt

F249 CounterOffer

- ▶ **¶ D Clean Copy** – Added verbiage about initialing Exhibits
- ▶ D. Clean Copy of Agreement. “At any time prior to closing, either party if so requested by the other shall sign a conformed or “clean” copy of the Agreement combining the terms of Original Offer with the controlling and supplemental provisions of this Counteroffer into one (1) document, **including initialing or signing, as the case may be, all exhibits.**”

F249 CounterOffer

- ▶ **Contract Tip:** Confusion on Seller initialing / signing Exhibits from Original Offer
- ▶ “C. Effect of Accepting This Counteroffer. When this Counteroffer is signed by the Buyer and Seller and a copy of the same is delivered to both parties, a legally binding agreement shall be formed. Since the Original Offer (including all exhibits thereto) is incorporated by reference into this Counteroffer, only this Counteroffer needs to be signed to create a legally binding agreement between the parties.”
- ▶ So Seller does NOT need to sign Exhibits from Original Offer

F249 CounterOffer

- ▶ **Contract Tip:** Exhibits that Should Have Seller Initials & Be Available to Potential Buyers for Writing an Offer:
 - F301 – Seller’s Property Disclosure Statement
 - F322 – Community Association Disclosure Exhibit
 - F316 – Lead Based Paint Exhibit
- ▶ Note on EPA:
- ▶ Also use CB04 – Lead Based Paint Pamphlet (EPA)
- ▶ EPA fines Brokers / Agents \$16,000 per missing initial/signature

F249 – CounterOffer

- ▶ **Note:** If a Lender wants the Financing Contingency Exhibit signed, best way to handle this is by creating a Conformed Copy
 - Also if any party (or Lender or Closing Attorney) wants a Conformed “clean” copy
 - Complete a Purchase & Sale Agreement & all Exhibits with terms that reflect the actual final agreement

F249 – CounterOffer

- ADD THIS SPECIAL STIPULATION: SS 622 CONFORMED COPY OF AGREEMENT
- “Buyer and Seller acknowledge that the above Agreement is a conformed copy of an Agreement between the parties dated _____.”

In the event of any conflict between this conformed Agreement and the original thereof, all parties agree that the original Agreement shall control.”
- Write “CONFORMED” on front page of Purchase & Sale

F404 Conventional Loan Contingency

- ▶ **¶3 Buyer May Seek Different Loans** – limits types of loans
- ▶ **“... Notwithstanding the above, Buyer shall not have the right to apply for an FHA, VA or USDA loan unless the parties agree to amend this agreement ... Nothing herein shall require the Seller to agree to amend this Agreement.”**
- ▶ **¶11 – Appraisal** – added word “timely”
- ▶ “... If Buyer does not **timely** submit ATSP to Seller, Buyer shall ... waived Buyer’s right to do so...”

F404 Conventional Loan Contingency

- ▶ **¶12 - Lender Required Repairs** - Eliminated
- ▶ Instead made this a Special Stipulation 524
- ▶ **"Any repairs required by lender are to be completed and paid for by _____ prior to Closing provided such repairs do not exceed \$_____ in total costs. In the event the anticipated costs exceed the amount listed above, an itemized estimate shall be provided to all parties from third-party contractor(s), selected by Seller, of the total costs of repairs to be made to the Property.**
- ▶ **Seller or Buyer shall have the option to pay the excess amount. If the parties do not agree in writing who shall pay the excess amount, then this Agreement shall terminate within three (3) days of written notice of itemized estimate."**

F407 FHA Loan Contingency Exhibit

- ▶ **¶15 - FHA - Required Repairs** - added verbiage about process if repair cost is more than negotiated amount
- ▶ **(This is Same) Repairs Required in FHA Commitment.** "Any repairs required in the FHA Commitment shall be completed and paid for by _____ prior to closing provided such repairs do not exceed \$_____ in total costs."

F407 FHA Loan Contingency

- ▶ **"In the event the anticipated costs exceed the amount listed above, Seller shall provide Buyer with an itemized written statement of the total costs of the repairs required in the FHA Commitment from third-party contractor(s) selected by Seller. Seller or Buyer shall have the option to agree to pay the excess amount upon notice to the other party, which shall constitute an amendment to this Agreement. If neither party provides such notice to the other within three (3) days of the date Seller provides Buyer with the written estimate of the above-referenced cost of the repairs (or the parties otherwise fail to agree in writing within the timeframe as to how the excess repair costs will be paid), then this Agreement shall automatically terminate. If Buyer agrees to pay excess amount, the same shall be paid by Buyer to Seller at closing."**

F410 VA Loan Contingency

- ▶ **¶14 VA Rules & Regulations: Termite Letter** - MANY CHANGES since Mid Year 2019
- ▶ **1/1/19 Version:**
- ▶ **14. Certain Fees Paid by Seller.** Notwithstanding any provision to the contrary contained in this Agreement or in any exhibit attached hereto, Seller shall pay all of the following amounts to the extent the same are charged as part of this transaction even if they exceed Seller's
- ▶ Contributions at Closing:
 - ▶ **A.** termite letter, loan closing or settlement fees, document preparation fees, preparing loan papers or conveyance fees, attorneys services (other than for title work), photographs, interest rate lock-in fees, postage and other mailing charges, stationery, telephone calls and other overhead, amortization schedules, pass books, and membership or entrance fees, escrow fees or charges, notary fees, preparation and assignment of mortgage to other secondary market purchasers, trustee's fees or charges, loan application or processing fees, fees for preparation of truth-in-lending disclosure statement, fees charged by loan brokers, finders or other third party fees, and tax service fees.
 - ▶ **B.** any other fees, costs and charges which are not permitted or allowed by VA to be paid by the Buyer.
- ▶ The above-referenced costs, which must be paid by Seller shall first be paid out of Seller's Contribution at Closing, if any. If Seller's Contribution to Closing is zero, Seller shall pay the entire amount of the costs referenced above.

F410 VA Loan Contingency

- ▶ **6/1/19 Version**
- ▶ **14. VA Rules and Regulations; Termite Letter.** The Veteran's Administration has certain rules and regulations limiting the items for which Buyer can be charged relating to the closing of a VA loan. Buyer should consult with Buyer's mortgage lender to determine how Buyer may be affected by these rules and regulations. Notwithstanding any other Seller contribution, Seller shall provide Buyer, at or before the Closing and at Seller's cost, with an Official Georgia Wood Infestation Inspection Report meeting the requirements of Georgia law. The termite inspection that is the basis of the Report shall be conducted within 90 days prior to the date of Closing.

F410 VA Loan Contingency

- ▶ 1/1/20 Version
- ▶ The Veteran's Administration has certain rules and regulations limiting the items for which Buyer can be charged relating to the closing of a VA loan. Buyer should consult with Buyer's mortgage lender to determine how Buyer may be affected by these rules and regulations. **Notwithstanding any other Seller contribution, Seller shall provide Buyer, at or before the Closing and at Seller's cost, with an Official Georgia Wood Infestation Inspection Report meeting the requirements of Georgia law and dated within 90 days prior to the date of Closing, indicating that the property is free from infestation from termites and other wood destroying organisms. ...**

F410 VA Loan Contingency

- ▶ 1/1/20 Version Cont'd
- ▶ **... In the event the property is not free from infestation and other wood destroying organisms, Seller shall immediately cause the property to be treated or retreated, as the case may be, such that an Official Georgia Wood Infestation Inspection report meeting the requirements of Georgia law indicating that the Property is free from infestation from termites and other wood destroying organisms can be issued within 90 days prior to the date of Closing. Buyer and Seller acknowledge that the property may not meet VA's minimum Property Requirements if it contains damage from a previous infestation of termites and/or other wood destroying organisms....**

F410 VA Loan Contingency

- ▶ 1/1/20 Version Cont'd
- ▶ **... In such event, Seller shall obtain a written estimate from a contractor to repair such damage and provide a copy of the same to the Buyer. If the parties are unable to reach a written agreement as to the repair of this damage within three (3) days of the date that the contractor's estimate is provided by Seller to Buyer, then this Agreement shall automatically terminate."**

NEW SS 526 – VA/FHA Approval

- ▶ What happens if complex/development not approved for FHA or VA Loan?
- ▶ SS 526 FHA/VA Development Approval
- ▶ **“Notwithstanding any other provision to the contrary, if it is determined the Property is in a real estate development that is not FHA/VA approved, Buyer may terminate this Agreement upon Notice to Seller and receive a full refund of Buyer’s earnest money.”**

F510 Closing Attorney Acting as Holder of EM – 2019 Midyear Changes

- ▶ **15 Earnest Money must be sent by wire or ACH** – added ACH
- ▶ **Earnest Money Must Be Sent to Closing Attorney Acting as Holder by Wire or ACH.** Buyer shall be responsible for sending all earnest money and other Buyer trust funds to the Closing Attorney acting as Holder by wire transfer of immediately available funds **or ACH** and immediately notify Seller when the same has been accomplished. This provision shall only apply if the Holder is the Closing Attorney.
- ▶ **Contract Tip:** Most Closing Attorneys in Metro Atlanta do NOT accept funds into their ACH accounts so if Buyer/Seller tries to ACH funds to the attorney, there will most likely be a banking “hold” on those funds prior to them being returned to the Buyer/Seller.

F510 – Closing Attorney as Holder of Earnest Money (2019 Midyear Change)

- ▶ **17 All Cash Transaction that terminates & EM disbursement is disputed** – Attorney MUST interplead into a court – NO attorney contract interpretation
- ▶ Closing Attorney Holding Earnest Money in All-Cash Transaction.
- ▶ In an all-cash transaction where the Closing Attorney is representing the Buyer or Seller, the Closing Attorney can hold the earnest money (and other trust funds), but in the event of a dispute between the parties regarding the disbursement of the funds, the Closing Attorney shall not disburse the funds based upon a reasonable interpretation of the Agreement. Instead and notwithstanding any provision to the contrary contained in this agreement, in the event of a dispute regarding the earnest money in an all-cash transaction where the Closing Attorney is representing the Buyer or Seller, the only remedy available to the Closing Attorney to resolve the dispute regarding the disbursement of earnest money shall be to interplead the funds into a court of competent jurisdiction.

F525 Acknowledgement of Person Contributing Earnest Money on Behalf of Buyer

- ▶ Added verbiage about disbursement of Earnest Money
- ▶ **“Additionally if the earnest money is to be returned, it will be returned to the Buyer and not to the party who paid the earnest money.”**
- ▶ GREAT form to use & make sure LENDER gets immediately to avoid delays because lender can’t “source” the EM for Buyer’s loan
- ▶ Not an Exhibit to the Contract
- ▶ Signed by person contributing the funds (not a party to the contract)

F301 Seller's Property Disclosure

- ▶ **D. FIXTURES CHECKLIST (Mid 2019)**
- ▶ **Directions on HOW TO USE:** It is often unclear what constitutes a fixture which remains with the Property versus personal property which does not remain with the Property. **To avoid disputes, Seller shall have the right to remove all items on the checklist below that are left blank. THE ITEMS ON THE CHECKLIST BELOW THAT ARE CHECKED OR MARKED SHALL REMAIN WITH THE PROPERTY.** All items remaining with Property shall include remotes and/or all accessories necessary for use. Unless otherwise indicated, if an item is left blank, the Seller may remove all of that item from the Property. For example, if "Refrigerator" is left blank, Seller may remove all Refrigerators on the Property. This checklist is intended to supersede the common law of fixtures with regard to the items below. The common law of fixtures shall apply to all items not on this checklist. Seller shall remove all items left blank below prior to closing or the transfer of possession, whichever is later. Seller shall lose the right to remove those items not timely removed. **(See next for addition midyear 2019)**
- ▶ ~~In removing items, damage to the area where the item was removed. Items identified as remaining with the Property shall mean those specific items as they existed in the Property as of the Binding Agreement Date. No such item shall be removed from the Property unless it is broken or destroyed. In such an event, it shall be replaced with a substantially identical item, if reasonably available. If not reasonably available, it shall be replaced with a substantially similar item of equal quality and value, or better. The same or newer model of the item being replaced in the same color and size and with the same functions or better shall be considered substantially identical.~~

F301 Seller's Property Disclosure

- ▶ ¶D Fixtures Checklist (Mid 2019)
- ▶ **Seller shall lose the right to remove those items not timely removed but shall remain liable for the cost of Buyer having to dispose of such items provided that Buyer disposes of them within 30 days after Closing. In removing items, Seller shall use reasonable care to prevent and repair damage to the area where the item was removed.**
- ▶ **items identified as remaining with the Property shall mean those specific items as they existed in the Property as of the Offer Date. No such item shall be removed from the Property unless it is broken or destroyed. In the event such item is removed, it shall be replaced with a substantially identical item, if reasonably available. If not reasonably available, it shall be replaced with a substantially similar item of equal quality and value, or better. The same or newer model of the item being replaced in the same color and size and with the same functions or better shall be considered substantially identical. This section entitled "Fixtures Checklist" shall survive Closing.**

F301 Seller's Property Disclosure

- ▶ ¶ C5 Systems & Components - added
- ▶ **G. Are there any systems/components subject to a lease or rental payment plan (i.e. HVAC, security system, appliances, solar systems, etc.)?**
- ▶ ¶D Fixtures Checklist - added 2 items
 - Aboveground Pool
 - Car Charging Station

F322 Community Association Disclosure Exhibit - MANY Changes

- ▶ Shortened Name
- ▶ ¶ 2A - Type of Association - Combined in one section (with appropriate verbiage & fees)
 - ◻ Mandatory Membership Condominium Association
 - ◻ Mandatory Membership Homeowner's Association
 - ◻ Voluntary Membership Homeowner's Association
 - ◻ Master Membership in a Master Association
 - ◻ Age Restriction
 - ◻ Other Mandatory Billed Association Fees

F322 Community Association Disclosure

- ▶ ¶13B – Amounts to be Paid by Seller
- ▶ i. **Account Statement or Clearance Letter:** Seller agrees to pay the cost of any Association account statement or clearance letter (“Closing Letter”) including all amounts required by the Association or management company to be pre-paid in order to obtain such Closing Letter. **Seller shall not be reimbursed at Closing for any amounts prepaid in order to obtain closing letter.”**

F322 Community Association Disclosure

- ▶ ¶13B Amounts To Be Paid by Seller
- ▶ ii. **Assessments and Special Assessments:** In addition to Fees paid in order to obtain the Closing Letter, Seller agrees to pay: a) all Fees owing on the Property which come due before the closing so that the Property is sold free and clear of liens and monies owed to the Association; and b) any Transfer and Initiation Fees (as that term is defined below) which the Association designates are to be paid by the Seller. If a special assessment may be paid in installments without penalty over a period of time, those installments coming due before the date of Closing shall be paid by the Seller and those installments coming due after the Closing shall be paid by the Buyer. **b) any Seller move-out Fees, foreclosure Fees or other fees specifically intended by the Association to be paid by the Seller; and c) any Transfer, Initiation and Administration Fees and Special Assessments (as those terms are defined below) which Seller does not fully and accurately disclose herein.**

F322 Community Association Disclosure

- ▶ ¶13C Amounts To Be Paid by Buyer – NEW paragraphs added
- ▶ i. **Transfer and Initiation Fees:** Other than the amounts to be paid by Seller above, Buyer agrees to pay any initiation fee, capital contribution, new member fee, transfer fee, new account set-up fee, fees which are referenced by a different name, other similar fees which are required to be paid to the Association and/or property management company as a one-time fee associated with the closing of the transaction and fees to transfer keys, gate openers, fobs and other similar equipment (collectively, “Transfer and Initiation Fees”). Advance assessments due at closing for a period of time after closing, shall not be Transfer and Initiation Fees and are to be paid by Buyer. Move-in fees, including fees and security deposits to reserve an elevator, shall not be a Transfer and Initiation Fee and are to be paid by Buyer.
- ▶ **Seller warrants at Closing that Buyer shall be require to pay no more than \$ ____ for all Transfer, Initiation and Administrative Fees. Seller shall pay any amount in excess of this sum even in the event of any later disclosures made by the Seller of increases in such Transfer, Initiation and Administration Fees. All Transfer, Initiation and Administrative Fees paid by Seller pursuant to this section are considered actual Seller fees and are not a Seller concession or contribution to the Buyer's cost to close.**

F322 Community Association Disclosure

- ▶ ¶13C Amounts To Be Paid by Buyer – NEW paragraphs added
- ▶ ii. **Pre-Paid Regular Assessments and Buyer Move-In Fees:** Notwithstanding the above, pre-paid regular assessments (excluding Special Assessments) due at closing for a period of time after Closing, shall not be Transfer, Initiation and Administrative Fees and shall be paid by the Buyer. Move-In fees, including fees and security deposits to reserve elevator, shall not be Transfer, Initiation and Administrative Fees and shall be paid by Buyer.

F322 Community Association Disclosure

- ▶ **13D Special Assessments** – Definition of Under Consideration was 2019 Midyear Change
- ▶ To the best of Seller's knowledge there • is **OR** • is not a special assessment owing, has been approved, or is Under Consideration. **For all purposes herein, the term "Under Consideration" shall mean that a notice of a meeting at which a special assessment will be voted upon, has been sent to the members of the Association. If a special assessment(s) has been voted upon and rejected by the members of the Association, it shall not be deemed to be Under Consideration by the Association.** Seller warrants that Seller has accurately and fully disclosed to Buyer all special assessment(s) passed or Under Consideration to Buyer. This warranty shall survive Closing.

F322 Community Association Disclosure

- ▶ If a special assessment(s) is owing to or under consideration by the Association or any Master Association, it is *Select all which apply. The sections not checked shall not be a part of this Agreement*;
- ▶ • already passed by the Association in the estimated amount of \$_____;
- ▶ • under consideration by the Association in the estimated amount of \$_____;
- ▶ AND/OR
- ▶ • already passed by the Master Association in the estimated amount of \$_____;
- ▶ or
- ▶ • under consideration by the Master Association in the estimated amount of \$_____.

F322 Community Association Disclosure

- ▶ **13D – NEW Sections:** Liability for Undisclosed Assessments, Who Pays, Special Assessments AFTER Binding Agreement Date
- ▶ **i. Liability for Undisclosed Special Assessments:** "With respect to special assessment(s) Under Consideration or approved before Binding Agreement date that are either not disclosed or are not disclosed accurately by Seller to Buyer, the Seller shall be liable for and shall reimburse Buyer for that portion of the special assessment(s) that was either not disclosed or was not disclosed accurately.

F322 Community Association Disclosure

- ▶ **ii. Who Pays for Disclosed Special Assessments:** **With respect to special assessment(s) Under Consideration or approved and accurately disclosed above:**
- ▶ (a) If the special assessment(s) is adopted and due in whole or in part prior to Closing, that portion due prior to Closing shall be paid by Seller; and
- ▶ (b) If the special assessment(s) is adopted and due in whole or in part subsequent to Closing, that portion due subsequent to Closing shall be paid by Buyer.

F322 Community Association Disclosure

- ▶ **iii. Special Assessments Arising after Binding Agreement Date:** With respect to special assessments that are only Under Consideration after Binding Agreement Date and are promptly disclosed by Seller to Buyer:
- ▶ (a) If the special assessment(s) is adopted and due, in whole or in part, prior to Closing, that portion due prior to Closing shall be paid by the Seller;
- ▶ (b) If the special assessment(s) is adopted and due in whole or in part subsequent to Closing, that portion due subsequent to Closing shall be paid by the Buyer; and
- ▶ (c) Notwithstanding the above, if the Buyer's portion of the special assessment(s) that is Under Consideration or approved is \$ _____ or more, Buyer shall have the right, but not the obligation to terminate the Agreement upon notice to Seller, provided that Buyer terminates the Agreement within five (5) days of being notified of the above, after which Buyer's right to terminate shall be deemed waived.

F601 Sale or Lease of Buyer's Property Contingency

▶ **¶D Kick-Out Provision - All New**

- D. Kick-Out Provision. [Select Option 1 or Option 2. If an option is not checked, Option 1 shall control]
Seller shall have the right to continue to offer Property for sale.
- 1. This Agreement IS NOT subject to a Kick-Out provision.
 - 2. This Agreement IS subject to a Kick-Out provision. In the event that Seller receives an acceptable offer to purchase the Property, Seller shall give Buyer notice of the same. Buyer shall then have _____ hours after receipt of the notice to deposit with Holder additional earnest money of \$ _____ and to deliver to Seller an Amendment to this Agreement signed by Buyer in which Buyer agrees to remove the following provisions of the Agreement (any item not checked shall not be part of this Exhibit; if no items are checked, then all Contingencies and Due Diligence Period shall be removed):
 - Sale or Lease of Buyer's Property Contingency;
 - Due Diligence Period;
 - Right to Request Repairs;
 - Buy Financing Contingency;
 - any Appraisal Contingency;
 - Special Stipulation identified as: _____
 - Other: _____
- All Contingencies and Due Diligence Period **OR** _____

F601 Sale or Lease of Buyer's Property Contingency

- ▶ New verbiage protecting Seller
- ▶ **In the event Buyer does not deliver within the time period stated above: (1) the additional earnest money (if any referenced above) to Holder and (2) the signed Amendment to Seller, then this Agreement shall terminate and Buyer shall be entitled to a refund of Buyer's earnest money. The removal of such provisions by Buyer shall not eliminate any rights benefitting the Seller.** In the event that Buyer delivers the Amendment referenced above to Seller and the additional earnest money (if any referenced
- ▶ above) to Holder within the time period stated above, Seller shall execute the Amendment and return a copy of the same to
- ▶ Buyer.

F604 Back-Up Agreement Contingency

- ▶ Language changed regarding earnest money and time frames
- ▶ **5.** In the event the Primary Agreement is terminated, Seller shall deliver notice of the same to Buyer, this Agreement shall become primary and no longer subject to this Contingency Exhibit and Buyer and Seller shall close on this Agreement in accordance with its terms and conditions, provided, however, that: (a) notwithstanding anything to the contrary contained herein, all parties agree that the time limits (except the delivery and deposit of Earnest Money) shall commence on the date that notice of the termination of Primary Agreement is provided; and for all purposes under this Agreement the Binding Agreement Date in the Agreement shall be the date that the notice of the termination of the Primary Agreement is delivered by Seller to Buyer; and (b) the closing date shall be the date listed in the Agreement unless because of the change in the Binding Agreement Date any of the time periods for Buyer to conduct due diligence, or fulfill other contingencies in the Agreement extend beyond the closing date in which event the new closing date shall be seven (7) days from the last date Buyer has to fulfill Buyer's contingencies or the end of any Due Diligence Period, whichever is later.

F704 Amendment to Address Concerns with Property – (2019 Midyear Change)

- ▶ **Added time limit to this Amendment**
- ▶ **Whereas**, the undersigned parties desire to amend the aforementioned Agreement, it being to the mutual benefit of all parties to do so. This Amendment shall become effective on the date when the party who has accepted the Amendment delivers notice of that acceptance to the party who proposed the Amendment in accordance with the Notice section of the Agreement.
- ▶ **This Amendment is intended to set forth the agreement of the parties relative to concerns raised by Buyer during the Due Diligence Period. If this Amendment does not become effective during the Due Diligence Period, it shall become null and void and of no legal force and effect.**
- ▶ In consideration of Seller agreeing to address certain concerns of Buyer with Property, all parties agree that if this Amendment is signed by Buyer and Seller and delivered to both parties, the remainder of Buyer's Due Diligence Period shall OR shall not terminate. Now therefore, for and in consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to modify and amend the Agreement to address the following concerns existing with the Property and for such other purposes as are set forth below:
 [The following language is furnished by the parties and is particular to this transaction]

F101 & 104 – Exclusive & Non-Exclusive Listing Agreements

- ▶ **¶B1 Exclusive Listing Agreement** – added termination language
- ▶ **1. Exclusive Listing Agreement.** Seller represents that Seller has the full authority to enter into this Agreement. This Agreement constitutes the sole and entire agreement between the parties. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement and the terms and conditions herein may not be amended, modified or waived except by the written agreement of Broker and Seller. **Any agreement to terminate this Agreement or any other subsequent agreement of the parties relating to the property must be in writing and signed by the parties.** The failure of the parties to adhere strictly to the terms and conditions of this Agreement shall not constitute a waiver of the right of the parties later to insist on such strict adherence.

Brokerage Agreements

- ▶ **Contract Tip:**
 - ▶ Use GAR Form: F152 Mutual Termination of Brokerage Agreement (negotiate fees)
3. Upon the mutual termination of the Agreement, the parties shall have no further rights or responsibilities to one another other than the following which the parties agree shall expressly survive the termination of the Agreement. (Select all that apply). The boxes not marked shall not be a part of the Agreement.
- The Protected Period under the Brokerage Engagement shall expressly survive the termination of the Brokerage Engagement.
 - Simultaneously with the execution of this Agreement, Client shall pay Broker \$_____ to reimburse Broker for the fees, costs and expenses incurred by Broker in connection with the Agreement.
 - Client shall pay Broker \$_____ in full and final settlement of any and all claims, causes of action, suits and damages of Broker arising out of or relating to the Agreement.
 - Other: _____
- ▶ Or Use GAR Form: F155 Unilateral Termination of Brokerage Agreement (no verbiage related to negotiating fees)

F101 & 104 – Exclusive & Non-Exclusive Listing Agreements

- ▶ **¶B2a. Initial Listing Period** – re-worded for clarification (Mid 2019)
- ▶ **a. (1/1/19)** The referenced Listing Period shall be the term of this Agreement and it shall begin on the referenced Starting Date and shall continue through the referenced Ending Date. If the Property is under contract prior to referenced Ending Date, this Agreement shall be automatically extended until Closing.
- ▶ **a. (6/1/19)** The referenced Listing Period shall be the term of this Agreement and it shall begin on the referenced Starting Date and shall continue through the referenced Ending Date. If the Property is under contract **during the Listing Period, but the Listing Period expires prior to the closing, then the Listing Period shall be automatically extended through the closing of the contract.**

F158 Notice to Extend Listing Period – NEW Form

- ▶ To be used per ¶B2b of Listing Agreements – Extension of Agreement
- ▶ **b. Extension:** If during the term of this Agreement, Seller and a prospective buyer enter into a real estate sales contract or option to purchase contract which is not consummated for any reason whatsoever, then the original expiration date of this Agreement may be extended for the number of days that Property was under contract by providing **written notice** of the same to the Seller prior to the referenced Ending Date set forth herein. If the Ending Date is modified in any amendment hereto, such amendment shall control. If such written notice is not given by the Ending Date, this Agreement shall terminate and be of no further force or effect.

F101 & 104 – Exclusive & Non-Exclusive Listing Agreements

- ▶ ¶B5 Marketing – new subsection about Owner Marketing
- ▶ **e. No Marketing by Owner:** Owner is encouraged to communicate the availability of the property for sale to friends and other acquaintances. However, since Broker has been hired to exclusively market and show the property, Owner shall not, with respect to the sale of the Property, prepare and distribute marketing materials, hold open houses, put up signs regarding the Property, create websites for the Property, prepare flyers, brochures or videos or engage in other similar activities without prior written consent of Broker.

F101 & 104 – Exclusive & Non-Exclusive Listing Agreements

- ▶ ¶C4 & C5 – Limits on Broker’s Authority, Responsibility & Liability – separated out “Liability” limits to its own paragraph (¶5) (Mid 2019)
- ▶ **Liability Limits:**
- ▶ (1/1/19) **g.** shall, under no circumstances, have any liability greater than the amount of the real estate commission paid hereunder to Broker (excluding any commission amount paid to a cooperating real estate broker, if any) or, if no real estate commission is paid to Broker, than a sum not to exceed one hundred dollars;

F101 & 104 – Exclusive & Non-Exclusive Listing Agreements

- ▶ (6/1/19) **5. LIMIT ON BROKER’S LIABILITY. SELLER ACKNOWLEDGES THAT BROKER:**
- ▶ **a. SHALL, UNDER NO CIRCUMSTANCES, HAVE ANY LIABILITY GREATER THAN THE AMOUNT OF THE REAL ESTATE COMMISSION PAID HEREUNDER TO BROKER (EXCLUDING ANY COMMISSION AMOUNT PAID TO A COOPERATING REAL ESTATE BROKER, IF ANY) OR, IF NO REAL ESTATE COMMISSION IS PAID TO BROKER, THAN A SUM NOT TO EXCEED \$100; AND**
- ▶ **b. NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD IN EXCESS OF \$100.**
- ▶ (1/1/20) **b. NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY IN EXCESS OF \$100 FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD IN EXCESS OF \$100.**

Limit on Broker's Liability Sections Changed on Other Forms

- ▶ F107 Authorization to Show Unlisted Property
- ▶ F110 Excl Buyer Brokerage
- ▶ F113 Non-Excl Buyer Brokerage
- ▶ F116 Agrmnt to Work with Buyer as Customer
- ▶ F122 - Excl Lease Listing
- ▶ F125 Non-Excl Lease Listing
- ▶ F128 Excl Leasing Mngmt
- ▶ F134 Excl Tenant Brokerage
- ▶ F137 Non-Excl Tenant Brokerage
- ▶ F140 Agrmnt to Work with Tenant as Customer

F101 & 104 - Exclusive & Non-Exclusive Listing Agreements

- ▶ **NEW - Statute of Limitations**
- ▶ ¶C7f **Statute of Limitations: All claims of any nature whatsoever against Broker and/or their affiliated licensees, whether asserted in litigation or arbitration, must be brought within two (2) years from the date any claim or cause of action arises. Such actions shall thereafter be time-barred.**
- ▶ Based on Case Law.

Statute of Limitations Section Added to Other Forms

- ▶ F107 Authorization to Show Unlisted Property
- ▶ F110 Excl Buyer Brokerage
- ▶ F113 Non-Excl Buyer Brokerage
- ▶ F116 Agrmnt to Work with Buyer as Customer
- ▶ F122 - Excl Lease Listing
- ▶ F125 Non-Excl Lease Listing
- ▶ F128 Excl Leasing Mngmt
- ▶ F134 Excl Tenant Brokerage
- ▶ F137 Non-Excl Tenant Brokerage
- ▶ F140 Agrmnt to Work with Tenant as Customer
- ▶ F201 Purchase & Sale
- ▶ F210 Lot Purchase & sale
- ▶ F213 Land Purchase & Sale
- ▶ F228 New Construction Purchase & Sale
- ▶ F243 Option Agreement to Purchase Leased Property Exhibit

F101 & 104 - Exclusive & Non-Exclusive Listing Agreements

- ▶ (1/1/20) C.8. **WARNING TO BUYERS AND SELLERS: BEWARE OF CYBER-FRAUD.** Fraudulent emails attempting to get the buyer and/or seller to wire money to criminal computer hackers are increasingly common in real estate transactions. Specifically, criminals are impersonating the online identity of the actual mortgage lender, closing attorney, real estate broker or other person or companies involved in the real estate transaction. In that role, the criminals send fake wiring instructions attempting to trick buyers and/or sellers into wiring them money related to the real estate transaction, including, for example, the buyer's earnest money, the cash needed for the buyer to close and/or the seller's proceeds from the closing. These instructions, if followed, will result in the money being wired to the criminals. In many cases, the fraudulent email is believable because it is sent from what appears to be the email address/domain of the legitimate company or person responsible for sending the buyer or seller wiring instructions. The buyer and/or seller ...

F101 & 104 – Exclusive & Non-Exclusive Listing Agreements

- ▶ ...should verify wiring instructions sent by email by independently looking up and calling the telephone number of the company or person purporting to have sent them. Buyers and sellers should never call the telephone number provided with wiring instructions sent by email since they may end up receiving a fake verification from the criminals. Buyers and Sellers should be on the alert for: 1) emails directing the buyer and/or seller to wire money to a bank account in a state other than Georgia; and 2) emails from a person or company involved in the real estate transaction that re slightly different (often by one letter, number, or character) from the actual email address of the person or company."

Cyber Fraud Language Changed in Other Forms

- ▶ F107 Authorization to Show Unlisted Property
- ▶ F110 Excl Buyer Brokerage
- ▶ F113 Non-Excl Buyer Brokerage
- ▶ F116 Agrmnt to Work with Buyer as Customer
- ▶ F201 Purchase & Sale
- ▶ F243 Option Agrmnt to Purchase Leased Property Exhibit

F110 & F113 – Exclusive & Non-Exclusive Buyer Brokerage

- ▶ Same Changes as with Listing Agreements
- ▶ ¶B1 **Exclusive Agreement** – added termination language
- ▶ ¶B2 **Term** – extension for time under contract but terminated & written notice required
- ▶ ¶C4 & 5 **Limit on Broker's Authority & Responsibility & Limit on Broker's Liability** (Mid 2019) – Same Changes as in Listing Agreements
- ▶ ¶C12 **Statute of Limitations:** Added
- ▶ ¶ C18 **WARNING TO BUYERS AND SELLERS: BEWARE OF CYBER-FRAUD** – Same Changes

F149 Retainer Fee Exhibit

- ▶ ¶2 – Changed so these funds are not Trust Funds
- ▶ (1/1/19) 2. Client will pay a retainer to Broker for the Services in the amount of \$_____. This fee shall be payable in advance upon signing this Agreement. This retainer is non-refundable and shall be held in the Broker's Trust Account until:
 - Client closes on real property utilizing the Services of Broker in accordance with the Agency Agreement;
 - End Date of Agency Agreement;
 - Mutual termination of the Agency Agreement by the parties.
- ▶ (1/1/20) 2. Client will pay a retainer to Broker for the Services in the amount of \$_____ **which shall be deemed earned upon payment and does not need to be placed in escrow. This fee shall be payable in advance upon signing this Agreement.**

F913 Lease for Residential Real Estate & F916 Lease for Lease-Purchase

- ▶ ¶12 Exhibits – Added
- ▶ Move-In Inspection Report (F911)
 - Parties may use LONG Form or Short Form
- ▶ Pool on Property (F921) – NEW Form

F921 Pool on Property Exhibit – NEW Form

New Forms

- ▶ F731 New Construction Change Order(s) Amendment
- ▶ F911 Move-In Inspection Report (Short Form)
- ▶ F912 Move-Out Inspection Report (Short Form)
- ▶ F921 Pool On Property Exhibit

NEW Special Stipulations

- ▶ **SS524 Lender Required Repairs**
- ▶ Any repairs required by lender are to be completed and paid for by _____ prior to Closing provided such repairs do not exceed \$ _____ in total costs. In the event the anticipated costs exceed the amount listed above, an itemized estimate shall be provided to all parties from third-party contractor(s), selected by Seller, of the total costs of repairs to be made to the Property.
- ▶ Seller or Buyer shall have the option to pay the excess amount. If the parties do not agree in writing who shall pay the excess amount, then this Agreement shall terminate within three (3) days of written notice of itemized estimate.

New Special Stipulations

- ▶ **SS 526 FHA/VA Development Approval**
- ▶ “Notwithstanding any other provision to the contrary, if it is determined the Property is in a real estate development that is not FHA/VA approved, Buyer may terminate this Agreement upon Notice to Seller and receive a full refund of Buyer’s earnest money.”

Government Consumer Brochures

- ▶ Added Disclaimer that these are Government-provided forms
- ▶ **“This form is prepared by the United States Government and is Re-Printed in the Georgia Association of REALTORS® forms packages as a convenience to its members. The Georgia Association of REALTORS® has not independently evaluated or verified the accuracy of information herein.”**
- ▶ CB04 – Lead-Based Paint
- ▶ CB07 – Mold
- ▶ CB08 – Radon

Instructor Evaluation

- ▶ Handout
- ▶ Please complete & leave with instructor



Thank you!

- ▶ Remember to Confirm all Contract Questions with your Broker!
- ▶ Please attend Additional Courses: www.registerforREclasses.com – select a geographic area
- ▶ Course Offered through: Georgia Real Estate Academy (GREC School #6915)
- ▶ Hosted by: Maximum One REALTORS®
- ▶ Credits to be recorded within 3 Business Days
- ▶ **Contract Tip Videos: YouTube Channel: “Real Estate Made Crystal Clear”**
- ▶ **Have a joyous & prosperous year helping others with their real estate needs!**