

2020 GAR Contract Dissection

GREC Course #71209

Instructor:

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Handouts available for Download:

- www.eAGENTweb.com
- Click "Training Videos"
- Find this class & download Handouts

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

General Information

- GAR's intent is to keep transactions together
- Changes made for consistency among forms
- Changes made based on market & practice
- GAR Changes forms at beginning of year & then Mid-year Review - 5/1/20 this year!
- Universal changes apply across forms
- GAR's forms are licensed & agents must pay each year to use - either in REALTOR® dues or paying GAR directly
- GAR forms may NOT simply be given to public to use
-

GAR Legal Helpline

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

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

General Contract Reminders

- ▶ 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

General Contract Reminders

- ▶ 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 for Customers

General Contract Reminders

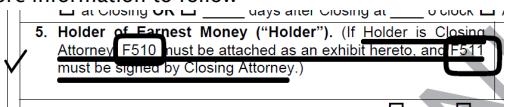
- ▶ Limit Special Stipulations
 - Use the pre-printed Stipulations available from GAR in the Special Stipulation library
 - Consult with the Special Stipulation Library in the RE Forms contract package as well
 - Do Not write/use a Special Stipulation for an issue already addressed elsewhere in the contract
 - Consult with your Broker &/or an Attorney before writing any Special Stipulations on your own
- ▶ Peruse the GAR Library for Other Useful Forms & Special Stipulations

2020 GAR New Forms & Stips

- ▶ **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 (for Leases Only)
- ▶ **SPECIAL STIPULATIONS**
 - ▶ SS 524 – Lender Required Repairs (Conventional Loan)
 - ▶ SS526 – FHA / VA Development Approval

F201 – Purchase & Sale Agreement

- ▶ Legal Description – Required in addition to an address
- ▶ Holder of Earnest Money
 - If Closing Attorney MUST attach F510 & F511
 - MUST name an “Alternate Holder” – one of Brokers
 - More information to follow
- ▶ Form of Earnest Money
 - Check (personal or certified) Cash (Money Order) Wire
 - Many Brokers have time frame to hold personal checks

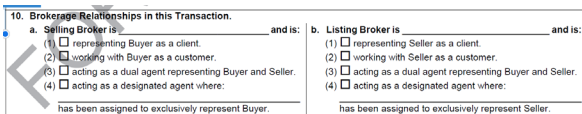


Earnest Money

- ▶ Time Frame for Buyer to REMIT Earnest Money
 - If Wire, consider the time frame – Do NOT Email Wire Instructions – so mail, overnight, courier, hand-deliver
- ▶ Point of Practice – Earnest Money
 - Many notes at the end – after discussion of Terminations & Releases of Earnest Money

F201 – Purchase & Sale Agreement

- ▶ Brokerage Relationships
 - REQUIRED by License Law
 - If found listing in FMLS then Listing Broker MUST have Client relationship with Seller (per FMLS rules)



F201 – Purchase & Sale Agreement

- ▶ Page 1 of 8
 - Must therefore include ALL pages when sending – NOT just signature page

Title – Purchase & Sale – B1

B. CORRESPONDING PARAGRAPHS FOR SECTION A

1. Purchase and Sale

a. Warranty: Seller warrants that at the time of 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 assessments or records 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.

b. Examination: Buyer may examine title and obtain a survey of the Property and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement without penalty upon written notice to Seller. Good and marketable title as stated herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.

c. Title Insurance: Buyer hereby directs any mortgage lender involved in this transaction to quote the cost of title insurance based upon the presumption that Buyer will be obtaining an enhanced title insurance policy since such a policy affords Buyer greater coverage.

- ▶ Good & Marketable Title
- ▶ Limited Warranty Deed
- ▶ Buyer Title Objections
 - Notice, Cure, Termination rights

Closing & Possession – Purchase & Sale Agreement – B4

4. Closing Date and Possession

a. Right to Extend the Closing Date: Buyer or Seller may unilaterally extend the closing date for eight (8) days upon notice to the other party given prior to or on the date of closing to: (1) Seller cannot satisfy valid title objections (excluding title objections that (a) can be satisfied through the payment of money or by bonding off the same, and (b) do not prevent Seller from conveying good and marketable title, as that term is defined herein) to the Property); (2) Buyer's mortgage lender (even in "all cash" transactions where Buyer is obtaining a mortgage loan) or the closing attorney is delayed and cannot fulfill their respective obligations by the date of closing, provided that the delay is not caused by Buyer; or (3) Buyer has not received required estimates or disclosures and Buyer is prohibited from closing under federal regulations. The party unilaterally extending the closing date shall state the basis for the delay in the notice of extension. If the right to unilaterally extend the closing date is exercised once by either the Buyer or Seller, the right shall thereafter terminate.

b. Keys and Openers: At Closing, Seller shall provide Buyer with all keys, door openers, codes and other similar equipment pertaining to the Property.

- ▶ 8 Day Unilateral Extension – Specific Reasons
- ▶ Title Objections – as long as
 - Can't be satisfied with \$\$ (i.e. a lien)
 - Doesn't prevent good & marketable title conveyance
- ▶ Lender

Closing & Possession – Purchase & Sale Agreement – B4

- ▶ Lender or Attorney can't complete their responsibilities
- ▶ Lender Issues
 - Can't fulfill obligation by closing as long as delay is not caused by Buyer
 - Buyer has not received "TRID" disclosures
- ▶ Can Only be used ONE TIME per contract
 - EITHER party may use for any of the above reasons

Caution About 8 Day Unilateral Extension of Closing

- ▶ When is 8 Days NOT really 8 days???
- ▶ ONLY when original or amended closing date is a FRIDAY
- ▶ 8 days from a Friday is a SATURDAY
- ▶ Purchase & Sale paragraph C4f

f. Extension of Deadlines: No time deadline under this Agreement shall be extended by virtue of it falling on a Saturday, Sunday or federal holiday except for the date of closing.

- ▶ So closing AUTOMATICALLY extends to next business day
- ▶ Therefore 8 days from a Friday closing = Monday (10 days) or Tuesday if Mon is holiday (11 days)

Remittance & Deposit of Earnest Money – Purchase & Sale – B5

5. Holder of Earnest Money. The earnest money shall be deposited into Holder's escrow/trust account (with Holder being permitted to retain the interest if the account is interest bearing) not later than: (a) five (5) banking days after the Binding Agreement Date hereunder or (b) five (5) banking days after the date it is actually received if it is received after the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not return the earnest money until the check has cleared the account on which the check was written. In the event any earnest money check is dishonored by the bank upon which it is drawn or earnest money is not timely paid, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have three (3) banking days from the date of receiving the notice to cure the dishonor and if Buyer does not do so, Seller may within seven (7) days thereafter terminate this Agreement upon notice to Buyer. If Seller fails to terminate the Agreement timely, Seller's right to terminate based on the default shall be waived.

- ▶ Remittance Time Frame – Negotiated by Buyer & Seller – A7
 - Add additional time if wire – to get wire instructions to Buyer via US Mail
- ▶ Deposit – 5 Banking days
- ▶ Holder makes sure time to clear bank
 - Note that Holder may have policy on acting on personal checks

Remittance & Deposit of Earnest Money – Purchase & Sale – B5

- ▶ Not received of NSF
 - Holder send Notice of Default to Buyer & Seller
 - Buyer has 3 Banking days to cure
 - If no Cure, Seller has 7 days to Terminate
- ▶ If Seller does NOT terminate, then transaction continues with \$0 Earnest Money
 - Make sure Lender knows
 - Make sure Closing Attorney knows

Closing Attorney – Purchase & Sale – B6

6. Closing Attorney/Law Firm. Buyer shall have the right to select the closing attorney to close this transaction, and hereby selects the closing attorney referenced herein. In all cases where an individual closing attorney is named in this Agreement but the closing attorney is employed by or an owner, shareholder, or member in a law firm, the law firm shall be deemed to be the closing attorney. If Buyer's mortgage lender refuses to allow that closing attorney to close this transaction, Buyer shall select a different closing attorney acceptable to the mortgage lender. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing (including transactions where the method of payment referenced herein is "all cash"). In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the Buyer.

- ▶ Buyer shall choose Closing Attorney
- ▶ Closing Attorney represents Lender
- ▶ Cash deal, Attorney shall "represent" Buyer
 - Not in terms of "legal representation" if there is a dispute between Buyer & Seller

Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ NO ISSUES:
- ▶ Buyer never goes under contract
- ▶ Upon closing
- ▶ Written agreement signed by Buyer & Seller directing Holder how to disburse
 - "T& R" – GAR F522 – Unilateral Notice to Terminate & Proposed Agreement to Disburse Earnest Money
 - Parties may agree to divvy up the funds in any manner (i.e. 100% to one party, 50% / 50% to each party, 70%/30%, etc.)

Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ ISSUES: (if contract terminates & both DON'T sign the release portion of the T&R)
- ▶ Reasonable Interpretation of contract by Holder = “10 Day Letter”
 - Holder send Notice to both parties of intent to disburse
 - Must wait 10 days from date of Notice sent to parties for any objections
 - These funds are TIED UP during this time & may NOT be used for another contract
 - Funds disbursed AFTER the 10 days

Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ Interpleader Action
 - Holder may interplead if too much money or too complicated of an issue
 - Costs money to hire an attorney to interplead
 - Court costs to interplead
 - These costs are deducted from the earnest money
 - Loser must pay winner's legal fees
 - Gets expensive and may be more than the earnest money (approx. \$750 – \$3,000+ ... depends on attorney's fees, county, attorney cost to send Notice, etc.)
- ▶ Court Order
- ▶ “Hold Harmless” agreement to not sue Holder for decision

Due Diligence – Purchase & Sale – B8

- ▶ Due Diligence = Buyer's option to terminate the contract with NO penalty (i.e. keep Earnest Money) for any or no reason
 - Must send Termination Notice prior to expiration of DD period
- ▶ Seller must disclose “latent material defects”
 - Defects in property
 - Seller aware of defects
 - Defects could NOT have been discovered by Buyer by “reasonable inspection”
 - Difficult to prove

Due Diligence – Purchase & Sale – B8

- ▶ Georgia is a “Caveat Emptor” state
- ▶ Buyer may do all kinds of inspections to help make decision to proceed or terminate
 - Home inspection / Roof inspection / Foundation inspection
 - Survey
 - Commute to work
 - School district / Zoning
 - Neighborhood / Area / Sex Offender Registry
 - Etc.
- ▶ Buyer may ask Seller to address concerns
 - GAR F704 – Amendment to Address Concerns w/ Property
 - MUST have Buyer & Seller signatures prior to end of DD
- ▶ If not agreed to, Buyer is buying property AS-IS just means Seller will not address any issues

Due Diligence – Purchase & Sale – B8

- ▶ May only be extended by Agreement
 - GAR F710 – Amendment to the Due Diligence Period
- ▶ How to Protect Buyer’s Due Diligence Time Frame if... (i.e. utilities not on, Seller hasn’t provided Community Association Disclosure, etc.)
 - DD to “START” upon that being corrected? – NO!
 - Then Buyer could never terminate if Seller doesn’t correct because DD would not have even started!
 - Special Stipulation: “Due Diligence to begin upon binding agreement date & extend for 10 days (or any number) after Buyer’s receipt of written notice of _____”

Negotiated Repairs

- ▶ Repairs – “Good & workmanlike manner Prior to closing” – Purchase & Sale B8e
- ▶ What if Seller agrees to perform repairs but doesn’t do them?
 - May Buyer terminate without defaulting?
 - May Buyer close & sue Seller for contract breach?
- ▶ NO CLEAR ANSWER – WOULD BE UP TO A JUDGE
- ▶ No termination rights for Buyer in contract
- ▶ Repair issues don’t survive closing – so Buyer may not have grounds for suing Seller after closing

Negotiated Repairs

- ▶ So what do you do as an agent?
- ▶ Point of Practice: Address potential issue of Seller Non-performance when negotiating for repairs on the Amendment
- ▶ Magic Phrase = “This provision shall survive closing.”
 - Gives Buyer grounds to sue Seller after closing
- ▶ Seller to pay vendor at closing from proceeds
- ▶ Seller to escrow funds & take care of repairs
- ▶ See specific stipulations to consider:
 - www.eAGENTweb.com – click “Training Videos” – find this class
- ▶ Check with your own Broker prior to using any special stipulations in a contract

Brokerage Relationships – Purchase & Sale – B10

- ▶ Must disclose Agency relationship – A10
- ▶ Public is Client
 - Seller signs Listing Agreement
 - F101 – Exclusive or F104 – Non-Exclusive
 - Buyer signs Buyer Brokerage Agreement
 - F110 – Exclusive or F113 – Non-Exclusive
- ▶ Public is Customer
 - Seller signs Authorization to Show Unlisted Property
 - F107
 - Buyer signs Agreement to work with Buyer as Customer
 - F116

Brokerage Relationships – Purchase & Sale – B10

- ▶ Dual Agency
 - 1 Broker
 - 1 Agent
 - CLIENT relationship with BOTH Buyer & Seller
 - Legal with disclosure & written consent of parties
 - Check your Broker's Policy
- ▶ Designated Agency
 - 1 Broker
 - 2 Agents each with a CLIENT relationship with public
- ▶ Having Both Sides
 - Client relationship with Buyer OR Seller
 - Customer relationship with the other party
 - NOT Dual agency but tricky
 - Check your Broker's policy

Brokerage Relationships – Purchase & Sale – B10

▶ Consumer Brochures – ALWAYS USE

CBs	GAR CONSUMER BROCHURES
CB01	The ABC's of Agency
CB04	Lead-Based Paint Pamphlet
CB07	Mold Pamphlet
CB08	EPA Home Buyer's and Seller's Guide to Radon Pamphlet
CB10	Protect Yourself When Selling a House
CB13	Protect Yourself When Buying a Home
CB16	What to Consider When Buying a Home in a Community with a Homeowners Association (HOA)
CB19	What to Consider When Buying a Home in a Condominium
CB22	Protect Yourself When Buying a Home to be Constructed
CB25	What Buyers Should Know About Flood Hazard Areas and Flood Insurance
CB28	What Buyers and Sellers Should Know About Short Sales and Distressed Properties
CB31	What New Landlords Need to Know About Leasing Property

Brokerage Relationships – Purchase & Sale – B10

- ▶ Are Broker/Agent signatures required? ... NO
- ▶ What do these signatures mean relative to contract?
 - Affirm agency relationship indicated in A10
 - Confirm that Holder will perform contractual responsibilities outlined in contract
- ▶ HOWEVER...
 - Some Lenders REQUIRE Agent/Broker signatures to sell loan

b. **Brokerage:** Seller has agreed to pay Listing Broker(s) a commission pursuant to a separate brokerage engagement agreement entered into between the parties and incorporated herein by reference ("Listing Agreement"). The Listing Broker has agreed to share that commission with the Selling Broker. The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective portions of the commissions out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission shall pay any shortfall at closing. The acceptance by the Broker(s) of a partial real estate commission at the closing shall not relieve the party owing the same from paying the remainder after the closing (unless the Broker(s) have expressly agreed in writing to accept the amount paid in full satisfaction of the Broker(s) claim to a commission). The Brokers herein are signing this Agreement to reflect their role in this transaction and consent to act as Holder if either of them is named as such. This Agreement and any amendment thereto shall be enforceable even without the signature of any Broker referenced herein.

Brokerage Relationships – Purchase & Sale – B10c

▶ Brokerage Relationship Disclaimer – “Nothing is an issue until it’s an issue”

c. **Disclaimer:** Buyer and Seller have not relied upon any advice or representations of Brokers other than what is included in this Agreement. Brokers shall have no duty to inspect the Property or to advise Buyer or Seller on any matter relating to the Property which could have been revealed through a survey, appraisal, title search, Official Georgia Wood Infestation Report, utility bill review, septic system inspection, well water test, tests for radon, asbestos, mold, methamphetamine, and lead-based paint, moisture test of stucco or synthetic stucco, inspection of the Property by a professional, construction expert, structural engineer or environmental engineer, review of this Agreement and transaction by an attorney, financial planner, mortgage consultant or tax consultant; and consulting appropriate governmental officials to determine, among other things and without limitation, the zoning of Property, whether any condemnation action is pending or has been filed or other nearby governmental improvements are planned. Buyer and Seller acknowledge that Broker does not perform or have expertise in any of the above tests, inspections, and reviews or in any of the matters handled by the professionals referenced above. Buyer and Seller should seek independent expert advice regarding any matter of concern to them relative to the Property and this Agreement. Buyer and Seller acknowledge that Broker shall not be responsible to monitor, supervise, or inspect any construction or repairs to Property and such tasks clearly fall outside the scope of real estate brokerage services. If Broker has written any special stipulations herein, the party for whom such special stipulations were written: a) confirms that each such stipulation reflects the party's complete understanding as to the substance and form of the special stipulations; b) hereby adopts each special stipulation as the original work of the party; and c) hereby agrees to indemnify and hold Broker who prepared the stipulation harmless from any and all claims, causes of action, suits, and damages arising out of or relating to such special stipulation. Buyer acknowledges that when and if Broker answers a question of 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).

Brokerage Relationships – Purchase & Sale – B10c

- ▶ Parties have not relied on agent advice
- ▶ Buyer needs to check out anything that is important
- ▶ Seller needs to seek independent information regarding their position per the contract
- ▶ Parties to understand Special Stipulations written
- ▶ Buyer acknowledges that answers to questions are from information from Seller
- ▶ Contract Tip: Use GAR F325 “Broker’s Information Disclosure”
 - Fill in the Question & Answer & SOURCE of the answer

Time Limit – Purchase & Sale – A11 & B11

- ▶ NOT a time frame for the party or agent to respond
- ▶ ONLY a time frame for the receiving party to accept with NO changes & send notice of acceptance for a Binding Contract
- ▶ If party makes a Counter Offer then the time limit is of no consequence
 - i.e. Seller may make a counter offer prior to end of time limit, hours after end of time limit or days after end of time limit
- ▶ If NO time limit, then party must withdraw offer or counter offer to take it off the table
 - F285 – Notice to Withdraw Offer or Counter Offer

Notice – Purchase & Sale – C1

1. Notices.

a. **Generally:** All notices given hereunder shall be in writing, legible and signed by the party giving the notice. In the event of a dispute regarding notice, the burden shall be on the party giving notice to prove delivery. The requirements of this notice paragraph shall apply even prior to this Agreement becoming binding. Notices shall only be delivered: (1) in person; (2) by courier, overnight delivery service, by certified or registered U.S. mail (hereinafter collectively “Delivery Service”); or (3) by e-mail or facsimile. The person delivering or sending the written notice signed by a party may be someone other than that party.

b. **Delivery of Notice:** A notice to a party shall be deemed to have been delivered and received upon the earliest of the following to occur: (1) the actual receipt of the written notice by a party; (2) in the case of delivery by a Delivery Service, when the written notice is delivered to an address of a party set forth herein (or subsequently provided by the party following the notice provisions herein), provided that a record of the delivery is created; (3) in the case of delivery electronically, on the date and time the written notice is electronically sent to an e-mail address or facsimile number of a party herein (or subsequently provided by the party following the notice provisions herein). Notice to a party shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the party set forth herein (or subsequently provided by the party following the notice provisions herein).

- ▶ In person, delivery, certified / registered US mail, fax or email
- ▶ NO phone calls & NO text
- ▶ Email is “received” when Sender can prove they sent it – regardless of when receiver reads it
- ▶ Must be emailed / faxed to address on signature page
- ▶ Make sure your email / fax number on signature page is what you actually use to conduct business

Notice – Purchase & Sale – C1

- ▶ If Client Relationship – Broker or agent or staff may accept Notice for Buyer or Seller
 - So public email not needed on purchase & sale but IS needed on Listing Agreement or Buyer Brokerage Agreement for your Broker
- ▶ If Dual Agency – Notice must also be sent to clients themselves
- ▶ If Designated Agency – Notice must be sent to specific agent representing party
- ▶ If Customer Relationship – Notice must also be sent to Buyer or Seller directly
 - So that info required to be on contract (address OR fax OR email)
 - Must ALSO communicate with agent with whom the Customer has chosen to work (i.e. still can't “cross a sign”) GAR F816 – “Notice” – for general Notice – only one siggy

Default – Purchase & Sale – C2

2. **Default:**
- a. **Remedies of Seller:** In the event this Agreement fails to close due to the default of Buyer, Seller's sole remedy shall be to retain the earnest money as full liquidated damages. Seller expressly waives any right to assert a claim for specific performance. The parties expressly agree that the earnest money is a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain. The parties expressly intend for the earnest money to serve as liquidated damages and not as a penalty.
 - b. **Remedies of Buyer:** In the event this Agreement fails to close due to the default of Seller, Buyer may, after 30 days of the closing performance of this Agreement, terminate this Agreement upon notice to Seller and Holder, in which case all earnest money deposits and other payments Buyer has paid towards the purchase of the Property shall be returned to Buyer following the procedures set forth elsewhere herein.
 - 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 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, all written agreements reflecting the amount of commission to be paid to any broker involved in the 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.
 - d. **Attorney's Fees:** In any litigation or arbitration arising out of this Agreement, including but not limited to breach of contract claims between Buyer and Seller and commission claims brought by a broker, the non-prevailing party shall be liable to the prevailing party for its reasonable attorney's fees and expenses.
- ▶ If Buyer Defaults – Seller may ONLY get Earnest money
 - ▶ If Seller Defaults – Buyer may terminate & get Earnest Money or sue for specific performance

Default – Purchase & Sale – C2

- ▶ Brokers may pursue defaulting party for commission they would have earned had contract closed
- ▶ Parties may NOT due each other for "damages"
 - i.e. may not sue for expenses incurred, moving fees, emotional distress, etc.

Risk of Damage to Property – Purchase & Sale – C3

3. **Risk of Damage to Property:** Seller warrants that at the time of closing the Property and all items remaining with the Property, if any, will be in substantially the same condition (including conditions disclosed in the Seller's Property Disclosure Statement) as of the Offer Date, except for changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. At time of possession, Seller shall deliver Property clean and free of trash, debris, and personal effects of Seller not identified as remaining with the Property. Notwithstanding the above, if the Property is destroyed or substantially damaged prior to closing, Seller shall promptly give notice to Buyer of the same and provide Buyer with whatever information Seller has regarding the availability of insurance and the disposition of any insurance claim. Buyer or Seller may terminate this Agreement, without penalty not later than fourteen (14) days from receipt of the above notice. If Buyer or Seller do not terminate this Agreement, Seller shall cause Property to be restored to substantially the same condition as on the Offer Date. The date of closing shall be extended until the earlier of one year from the original date of closing, or seven (7) days from the date that Property has been restored to substantially the same condition as on the Offer Date and a new certificate of occupancy (if required) is issued.
- ▶ "Substantially Same Condition" at closing as it was on Offer date (including items staying)
 - ▶ Clean & free of trash, debris & items not negotiated to stay with property
 - ▶ If substantial damage
 - Seller must send Notice to Buyer
 - Either party may terminate
 - Seller may repair & must close – within 1 year

Other Provisions – Purchase & Sale – C4

- ▶ **Entire Agreement, Modification (C4e)** – After contract is binding it may ONLY be changed in writing & signed by the parties – Amendments & Termination
- ▶ **Contract Tip: Use GAR Form: F519 Mutual Agreement to Terminate Purchase & Sale & Disburse Earnest Money** (includes negotiated payment to Brokers)

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

Other Provisions – Purchase & Sale – C4

- ▶ Assignment – (C4e) – Seller MUST agree in writing if Buyer wants to assign contract (i.e. Investor)
 - GAR F279 – Assignment of Purchase & Sale Agreement Rights
- ▶ Extension of Deadlines (C4f) – addressed with 8 Day Unilateral Extension
- ▶ No Authority to Bind (C4i) – Brokers / Agents may not sign anything or send emails that will bind the public to the terms of this contract – Need the Buyer / Seller signatures

Other Provisions – Purchase & Sale – C4

- ▶ Statute of Limitations (C4k) – New in 2020 – 2 years to bring legal claim of breach
- ▶ Survival (C4l) – Very Specific – i.e. obligations legally continue after closing

I. Survival of Agreement: The following shall survive the closing of this Agreement: (1) the obligation of a party to pay a real estate commission; (2) any warranty of title; (3) all representations of Seller regarding the Property; (4) the section on condemnation; and (5) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the closing.

Other Provisions – Purchase & Sale – C4

- ▶ Survival Cont'd
- ▶ Commission
- ▶ Warranty of Title
 - Limited Warranty Deed (time of Seller's ownership)
- ▶ Seller representations of property
 - May Sellers won't complete Seller's Property Disclosure
- ▶ If property has been condemned
- ▶ Any obligations parties agree will survive
 - Remember the Magic Phrase" = "This provision shall survive closing"

Definitions – Purchase & Sale – C5

- ▶ Binding Agreement Date (C5b) – NOTICE of Acceptance
 - Party making the last offer or counter offer is the party who BINDS the contract
 - Party making offer (or counter offer) may WITHDRAW offer prior to receiving notice of acceptance (i.e. contract form with both Buyer & Seller signatures)
 - Binding Agreement Date can be proven per the Notice section discussed earlier
- ▶ Broker (C5c) = Qualifying Broker, Firm, Affiliated Licensee

Definitions - Purchase & Sale - C5

- ▶ **Business Days** (C5d) - Monday - Friday and no Federal Holidays
 - aka "Banking Days"
 - If contract just says "Days" = Calendar days (Saturdays & Sundays & Federal Holiday are included)
- ▶ **Material Relationship** (C5e) - must disclose
 - i.e. family, business relationship, past client, etc.
 - If you have to ask yourself if it is a "material relationship" then you should probably disclose

Cyber-fraud - Purchase & Sale - c6

- ▶ Warning to Buyers & Sellers to not trust emails with wire instructions
- ▶ Cross-check & verify with a third party source (i.e. Google)
- ▶ So DON'T email wire instructions from your Broker or Closing Attorney
- ▶ Send via US Mail
- ▶ So if Earnest Money is to be wired, negotiate for a longer time frame (A7b) for Buyer to remit funds to Holder

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

Limit of Broker's Liability - Purchase & Sale - C7

7. 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.

- ▶ Limited to commission paid or \$100 if no commission

Exhibits & Special Stipulations - Purchase & Sale - C8

- ▶ Exhibits supersede Purchase & Sale
- ▶ Are included if attached, listed or even if just referenced here

8. **Exhibits and Addenda** All exhibits and/or addenda attached hereto, listed below (or referenced herein) are made a part of this Agreement. If any such exhibit or addendum conflicts with any preceding paragraph (including any changes thereto made by the parties), said exhibit or addendum shall control.

- ▶ Special Stipulations supersede Purchase & Sale & Exhibits
 - DON'T write Special Stips that address an item already addressed in contract or Exhibit

SPECIAL STIPULATIONS: The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph (including any changes thereto made by the parties), shall control.

Signatures & Binding Agreement Date

- ▶ Must have ALL Buyers / Sellers sign
- ▶ Agents must include License number & Firm Number
- ▶ Agents must include:
 - Mailing Address - for Closing Attorney
 - For Notice: Address OR Email OR Fax
- ▶ Customers must include:
 - For Notice: Address OR Email OR Fax
- ▶ Binding Agreement Date
 - Fill in so all are on same page
 - Can be determined per Notice section

Counter Offer - F249

- A. **Previous Counteroffers Rejected.** Any and all previous Counteroffers made by either party are hereby rejected and shall not be considered a part of any agreement between the parties.
- B. **Relationship between Original Offer and This Counteroffer.** The Original Offer is hereby incorporated by reference into this Counteroffer. However, the terms of this Counteroffer shall modify and control over any conflicting or inconsistent provisions contained in the 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.
- 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.
- E. **Terms and Conditions.** The following terms and conditions of the Original Offer are modified as follows: *[The sections not filled in or marked "NC for no change" which shall mean that no change is being proposed to that section of the agreement] shall not be a part of this counteroffer and shall remain the same as set forth in the Original Offer.*

Counter Offer - F249

- ▶ Binding Contract = Original Offer + ONE Counter Offer that has Buyer & Seller signatures
- ▶ Binding Contract = Terms of original + anything in Counter that contradicts original
- ▶ Counter Offer references Original (including Exhibits & Special Stipulations) so ONLY Counter Offer needs to be signed by Seller
- ▶ If a party or Lender requires Seller signatures on Exhibits, then do a "clean copy"

Counter Offer – F249

- ▶ **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

Counter Offer – F249

- ▶ **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

Counter Offer – F249

- 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

Conventional Loan Contingency – F404

- ▶ Must fill out type of loan for application
 - Per License Law
 - For any Loan Denial Letter
 - Get information from Buyer’s Lender

<input type="checkbox"/> A.	FIRST MORTGAGE LOAN	Loan Amount	Term	Interest Rate (at par)	Rate Type	Source Of Loans/Term
		_____ % of purchase price	_____ years	_____ % per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable <input type="checkbox"/> Interest Only	<input type="checkbox"/> Institutional <input type="checkbox"/> Seller <input type="checkbox"/> Other

Conventional Loan Contingency - F404

- ▶ Buyer may apply for a different loan BUT
 - Denial of a different conventional loan will NOT protect Buyer's Earnest Money if denied for the other loan
 - Must get Seller's written approval if switching to FHA, VA or USDA

3. **Buyer May Apply for Different Loan(s).** A Loan Denial Letter (as that term is defined below) must be for the Loan(s) described above. Buyer may also apply for different conventional loans than the Loan(s) described above. However, the denial of such other loans shall not be a basis for Buyer to terminate this Agreement. Notwithstanding the above, Buyer shall not have a right to apply for a FHA, VA, or USDA loan unless the parties agree to amend this Agreement to add a FHA, VA, or USDA loan contingency exhibit meeting FHA, VA, or USDA requirements as the case may be in which event this Conventional Loan Contingency shall no longer be part of this Agreement. Nothing herein shall require the Seller to agree to amend this Agreement.

Conventional Loan Contingency - F404

- ▶ Contingency = Seller gives Buyer ___ days from BAD to convince a Lender to lend them money to buy the house
- ▶ If Buyer can't do that, they must terminate the contract prior to 11:59pm on the last day of time frame
- ▶ AND prove it with a Loan Denial Letter

6. **Financing Contingency.** Buyer shall have ___ days from the Binding Agreement Date ("Financing Contingency Period") to determine if Buyer has the ability to obtain the Loan(s) described above ("Financing Contingency"). Buyer shall be deemed to have the ability to obtain the Loan(s) unless prior to the end of the Financing Contingency Period, Buyer: a) notifies Seller that Buyer is terminating the Agreement because Buyer has been turned down for the Loan(s) and b) provides Seller within seven (7) days from the date of such notice a letter of loan denial from a mortgage lender based upon the mortgage lender's customary and standard underwriting criteria ("Loan Denial Letter"). The Loan Denial Letter and mortgage lender issuing the Loan Denial Letter must meet all of the requirements set forth elsewhere in this Exhibit. Notwithstanding any provision to the contrary contained herein, the Loan Denial Letter may be provided to Seller after the Financing Contingency Period has ended if the above-referenced seven (7) day period to provide the Loan Denial Letter falls outside of the Financing Contingency Period.

Conventional Loan Contingency - F404

- ▶ Loan Denial Letter
 - Must be sent to Seller within 7 days of Notice of Termination even if those 7 days fall AFTER the contingency time frame
 - Must be from one of the identified "Approved Mortgage Lenders" if one was named

2. **Use of Particular Mortgage Lender.** Unless an Approved Mortgage Lender is identified below, Buyer may apply for approval of the Loan(s) with any institutional mortgage lender licensed to do business in Georgia. If an Approved Mortgage Lender(s) is identified below, Buyer shall apply for approval of the Loan(s) with at least one such Approved Mortgage Lender. Nothing herein shall require Buyer to obtain mortgage financing from an Approved Mortgage Lender.

Approved Mortgage Lender(s)

Conventional Loan Contingency - F404

- ▶ If no lender identified, then loan denial letter may be from any lender approved to do business in GA
- ▶ Denial Letter may NOT be based solely on the following
- ▶ i.e. Buyer's EM is NOT protected if the loan denial letter is based solely on
 - Buyer not having cash for down payment or closing costs
 - Buyer not having sold/leased current home (if no exhibit included)
 - Not having sent Lender request documents timely
 - Buyer's actions AFTER Binding (i.e. buying stuff & damaging credit or losing job, etc.)

Conventional Loan Contingency - F404

6. Use of Approved Mortgage Lender and Loan Denial Letter. If Buyer has agreed to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter must be from an Approved Mortgage Lender. If Buyer is not required to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter may be from any institutional mortgage lender licensed to do business in Georgia. A Loan Denial Letter from a non-institutional mortgage lender shall not be the basis for Buyer to terminate this Agreement.

Notwithstanding any provision to the contrary contained herein, the Loan Denial Letter may not be based solely upon any of the following: (a) Buyer lacking sufficient funds other than the amount of the Loan(s) to close; (b) Buyer not having leased or sold other real property (unless such a contingency is expressly provided for in this Agreement); (c) Buyer not having provided the lender(s) in a timely fashion with all information required by lender, including but not limited to, loan documentation, Official Wood Infestation Reports, structural letters, well tests, septic system certifications, flood plain certifications and any other similar information required by lender (hereinafter collectively "Required Information"); or (d) Buyer making purchases that adversely affect Buyer's debt to income ratio.

Buyer may terminate this Agreement without penalty based upon an inability to obtain the Loan(s) only if Buyer fulfills all of the applicable requirements set forth in this Exhibit.

Conventional Loan Contingency - F404

- ▶ Financing Contingency Time frame has passed & Buyer did not terminate, the Seller may request Proof of ability to close = Loan Commitment Letter
 - Seller send Notice to Buyer with this request
 - Buyer has 7 days to produce
 - If not, then Seller notifies Buyer of Default
 - Buyer has 3 days to cure default (i.e. produce commitment letter)
 - If no cure, then Seller has 7 days to Terminate
 - WATCH YOUR TIME FRAMES - if Financing contingency is 2 days & closing date is 30 days then these above time frames don't make sense - you'll be out of contrac

Conventional Loan Contingency - F404

7. Right of Seller to Request Evidence of Buyer's Ability to Close. If the Financing Contingency ends without Buyer terminating this Agreement, Seller shall have the right, but not the obligation, to request that Buyer provide Seller with written evidence of Buyer's financial ability to purchase the Property ("Evidence"). A copy of a loan commitment from each institutional mortgage lender from whom Buyer is seeking mortgage financing to purchase the Property stating the type, amount and terms of the loan(s) and the conditions for funding the loan(s), shall be deemed sufficient Evidence. The provision of such Evidence is not a guarantee that the mortgage loan(s) will be funded or that Buyer will close on the purchase of the Property. Buyer shall have seven (7) days from the date Seller delivers notice to Buyer requesting such Evidence to produce the same. No request for such Evidence shall be made by Seller less than seven (7) days from the date of Closing.

8. Seller's Right to Terminate. In the event Buyer fails to provide Seller with the Evidence of Buyer's Ability to Close within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

Conventional Loan Contingency - F404

- ▶ Appraisal Contingency - paragraph 11
- ▶ If property does NOT appraise for sale price or more then Buyer has ____ days from Binding Agreement Date to send an Amendment to Seller asking Seller to sell at appraised price
 - F713 - Amendment to Sale Price "ATSP"
- ▶ Buyer MUST give Seller the option to sell at the lower appraised price OR agree to buy for higher price
- ▶ Must provide Seller with copy of appraisal

Conventional Loan Contingency - F404

- ▶ After Buyer sends Seller ATSP, then Seller has 3 days to accept, reject or negotiate new sale price
- ▶ If Buyer & Seller don't come to terms within these 3 days, the Buyer has an additional 3 days to terminate with no penalty (i.e. get EM back) as long as those 3 days fall at least 1 day prior to contracted closing date
- ▶ If Buyer does NOT terminate within that time frame, then Buyer is obligated to buy property at higher contract price regardless of appraisal price

Conventional Loan Contingency - F404

11. **Appraisal Contingency.** In addition to Buyer's other rights herein, this Agreement shall be subject to the following appraisal contingency. Buyer shall cause the Lender to (a) select an appraiser to perform one or more appraisals of the Property and (b) provide Buyer with a copy of any appraisal that is for less than the purchase price of the Property. If any such appraisal is for less than the purchase price, Buyer shall within _____ days of the Binding Agreement Date have the right to request that Seller reduce the sales price of the Property to a price not less than the appraised price by submitting an Amendment to Sales Price (F713) (ATSP) to Seller along with a copy of the appraisal supporting the low price. In the event that Buyer does not timely submit an ATSP to Seller, Buyer shall be deemed to have waived Buyer's right to do so and this Agreement shall no longer be subject to an appraisal contingency.

Seller shall, within three (3) days of the date of an ATSP is delivered to Seller (but not later than two (2) days prior to Closing), accept or reject the ATSP or seek to negotiate with Buyer a lesser reduction in the sales price of the Property than what is reflected in the ATSP. If, within the above timeframe, an ATSP has not been signed and accepted by the Buyer and Seller and timely delivered to create a legally enforceable amendment, Buyer shall have an additional three (3) days (but not later than one (1) day prior to Closing) to terminate this Agreement without penalty. If Buyer does not terminate the Agreement within this timeframe, Buyer's right to terminate due to the failure to appraise shall be waived and Buyer shall close on the Property for the purchase price set forth in this Agreement. Nothing herein shall require Buyer to seek a reduction in the sales price of the Property.

FHA Loan - F407

- ▶ Same as Conventional up until Appraisal paragraph
- ▶ Amendatory Clause = Appraisal
 - No time frame so appraisal contingency protection for Buyer's Earnest Money in FHA goes THROUGH day of closing
 - MUST fill in dollar amount - remember to counter this if sale price gets changed in a counter offer
 - If low appraisal, Buyer may terminate & get Earnest Money back
 - Buyer MAY ask Seller to sell for lower appraised value but it's not required like it is in Conventional

FHA Loan - F407

11. **Amendatory Clause.** It is expressly agreed that notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given in accordance with HUD/FHA requirements a written statement by the Federal Housing Commissioner or a Direct Endorsement lender setting forth the appraised value of Property of not less than \$ MUST FILL IN DOLLAR AMOUNT. Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable. This is APPRAISAL contingency

- ▶ Seller Required Fees
 - Tax Service Fees - paragraph 14
 - Lender-required inspection of Septic & well - paragraph 16
 - Lender-required Home warranty if less than 1 year old - paragraph 17

FHA Loan - F407

- ▶ Appraisal / Lender required repairs - paragraph 15
- ▶ Negotiate who will pay & amount that party is willing to pay
- ▶ If actual repairs exceed the amount negotiated
 - Seller must get 3rd party estimate & send to Buyer
 - Buyer & Seller must agree who will pay overage within 3 days of when Seller sent Estimate
 - If no written agreement (via Amendment) within that time frame, then this contract terminates

FHA Loan - F407

15 **Repairs Required in FHA Commitment.** Any repairs required in the FHA Commitment shall be completed and paid for by Buyer or Seller prior to closing provided such repairs do not exceed \$_____ in total costs.

✓ 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 this timeframe as to how the excess repair costs will be paid), then this Agreement shall automatically terminate. If Buyer agrees to pay the excess amount, the same shall be paid by Buyer to Seller at Closing.

- ▶ Property MAY be required by FHA to be connected to public Sewer - amount & obligation negotiated by Buyer & Seller - paragraph 18
- ▶ Arm's Length Transaction = no relationship between Buyer & Seller
- ▶ This Exhibit controls = can't use stip to change any of this

21 **Exhibit Controls.** This exhibit shall control over a conflicting or inconsistent provision set forth in any other Exhibit to this Agreement.

NOTE about Conventional Loan Contingency - F404

- ▶ **112 - Lender Required Repairs** - Eliminated from Exhibit in 2020
- ▶ 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."

VA Loan - F410

- ▶ Same as Conventional & FHA through paragraph 11 = Amendatory Clause = Appraisal Contingency
- ▶ Same as FHA but no price identified so must appraise for Contracted Sale Price
- ▶ Lender-Required Repairs - paragraph 13
 - Must be paid for by Seller
 - Amount negotiated in Exhibit
 - If price exceeds this, same process as in FHA Exhibit

VA Loan – F410

- ▶ Required Termite Letter – paragraph 14 – new verbiage in 2020
 - Seller must provide termite clearance letter
 - Letter dated within 90 days of closing
 - If active infestation, then Seller must treat or retreat in order to provide this clearance letter
 - If property is damaged from PREVIOUS infestation, Lender may require that damage to be repaired
 - Seller to get estimate & send Notice of amount to Buyer
 - Buyer & Seller must decide who will pay
 - If they don't agree in writing on an Amendment within 3 day of Seller's Notice, then contract terminates

VA Loan – F410

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 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. 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. In such event, Seller shall obtain a written estimate from a contractor to repair such damage and provide a copy of the same to 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.

- ▶ The rest is same as FHA Exhibit
- ▶ May be required to be connected to public water & sewer
- ▶ Exhibit controls – no special stipulations may eliminate any of the provisions in this exhibit

New Special Stipulations in 2020

- ▶ **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.”

All Cash (No Financing Contingency) – F401

- ▶ Revised 5/1/20
- ▶ Cash
- ▶ OR Institutional Financing just no contingency
- ▶ OR Hard-Money Loan
- ▶ Verification of Funds time frame
- ▶ Options to negotiate between Buyer & Seller
- ▶ Option to include Appraisal Contingency

Community Association Disclosure - F322

- ▶ Seller must complete & Update form with any changes
- ▶ Description of Association
- ▶ Fees - Paragraph 3
- ▶ Seller MUST disclose all fees of HOA / Management Company to Buyer in this Form
 - Any fees NOT disclosed or not accurate, Seller will pay at closing (EVEN if it is a Buyer-related fee such as initiation)
 - Seller must pay these additional fees EVEN if Seller updates this form (paragraph 3 c i)
 - Reason is that in most cases, the Seller is ONLY one who can get these figures
 - These "Seller-paid" fees do not count as "contribution to Buyer"

Community Association Disclosure - F322

- ▶ Seller Fees
 - Closing / Clearance Statement (i.e. Seller all paid up)
 - Fees already in place due prior to closing date
 - Move-Out fees
- ▶ Buyer Fees
 - Transfer, Initiation, Admin Fees
 - Move-In Fees
 - Pre-Paid Special Assessments

Community Association Disclosure - F322

- ▶ Special Assessments Already Passed On by HOA
 - Seller must disclose
 - Seller pays any portion due prior to closing date
 - Buyer responsible for any portion due after closing date
- ▶ Special Assessments Under Consideration but Not yet Passed (i.e. addressed at a meeting)
 - Seller must disclose
 - Seller pays any portion due prior to closing date
 - Buyer responsible for any portion due after closing date

Community Association Disclosure - F322

- ▶ Special Assessments that Come up by HOA BETWEEN Binding Date & Closing Date
 - i.e. HOA has meeting between BAD & Closing & assessments are discussed
 - Seller must disclose
 - Any voted in & due prior to closing - Seller must pay
 - Any voted in & due after closing - Buyer must pay
 - BUT, since Buyer & Seller go under contract now & these will be fees discussed in the future, then....
 - IF these unknown fees become adopted & due & they EXCEED \$_____, Buyer may terminate & get EM back (3Diic) - within 5 days of receipt of notice from Seller
- ▶ Note to Seller: MUST stay aware of HOA Minutes from previous meetings & Current Meetings

Seller's Property Disclosure - F301

- ▶ Form intended to help Seller disclose latent material defects of which Seller has knowledge
- ▶ Seller must disclose those items even when selling "AS-IS"

Georgia, _____). This Statement is intended to make it easier for Seller to fulfill Seller's legal duty to disclose hidden defects in the Property of which Seller is aware. Seller is obligated to disclose such defects even when the Property is being sold "as-is."

- ▶ Buyer must know that Georgia is Caveat Emptor & has duty to inspect property & confirm it's suitable

HOW THIS STATEMENT SHOULD BE USED BY BUYER. Caveat emptor or "buyer beware" is the law in Georgia. Buyer should conduct a thorough inspection of the Property. If Seller has not occupied the Property recently, Seller's knowledge of the Property's condition may be limited. Buyer is expected to use reasonable care to inspect the Property and confirm that is suitable for Buyer's purposes. If an inspection of the Property reveals problems or areas of concern that would cause a reasonable Buyer to investigate further, Buyer should investigate further. A "yes" or "no" answer to a question means "yes" or "no" to the actual knowledge and belief of all Sellers of the Property.

Seller's Property Disclosure - F301

- ▶ If property is subject to an HOA - must attach Community Association Disclosure - F322

2. COVENANTS, FEES, and ASSESSMENTS:	YES	NO
(a) Is the Property subject to a recorded Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") or other similar restrictions?		
(b) Is the Property part of a condominium or community in which there is a community association? IF YES, SELLER TO COMPLETE AND PROVIDE BUYER WITH A "COMMUNITY ASSOCIATION DISCLOSURE EXHIBIT" GAR F322.		

- ▶ Items remaining with Property - paragraph D
 - If Seller leaves an item they weren't supposed to, Buyer may remove & Seller responsible for cost
 - If item is damaged or broken, Seller must replace with same or better item - this survives closing

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 but shall remain liable for the cost of Buyer having to dispose of the items. If the Seller does not remove the items, the Buyer shall be responsible for their removal and repair (including to the area where the item was located).

Items identified as remaining with the Property shall mean those specific items as they existed in the Property as of the closing 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 (the same color and size and with the same functions or better shall be considered substantially identical. This section subject to the "Features Checklist" shall survive closing.

Sale or Lease Contingency - F601

- ▶ Revised 5/1/20
- ▶ Must fill in Contingency Time Frame - If Buyer doesn't sell by this date, contract TERMINATES
- ▶ Buyer may waive this contingency PRIOR to this date

B. This Agreement is contingent upon the occurrence of the following on or before _____ (MUST FILL IN DATE) ("Contingency Period"). [Select 1, and/or 2. Any section not selected shall not be a part of this Agreement.]

- 1. Buyer closing on the sale of the Other Property;
- 2. Buyer entering into a lease of the Other Property with a lease term of at least _____

C. In the event that the Contingency Period ends without either contingency referenced above being fulfilled, then, at that time, this Agreement shall terminate. Prior to Seller giving Buyer notice that Seller is exercising the Kick-Out Clause, as that term is explained below, the contingency or contingencies referenced above may be waived by Buyer upon notice to Seller. In such event, the Kick-Out Clause below shall no longer be a part of this Agreement, and Buyer shall have no obligation to deposit additional earnest money.

Sale or Lease Contingency - F601

- ▶ Kick-Out - Revised paragraph D
- ▶ Seller may continue to offer property for Sale & accept another contract but must FIRST give this current Buyer option to continue to terminate

D. **Kick-Out Clause Explained.** A kick-out clause describes a situation where the seller of a property that is under contract continues to market it for sale to other buyers because the buyer's purchase contingency on the sale or lease of other property owned by the buyer. If another buyer makes an offer to purchase the property that the seller wants to accept, the seller gives notice of the offer to the first buyer who must then timely submit an amendment to remove certain contingencies and possibly the Due Diligence Period from the agreement and in some cases pay additional earnest money to the seller. If the first buyer does not do these things within the pre-agreed time frame, the seller can then "kick-out" the first buyer, terminate that contract and sell the property to the second buyer. If the buyer meets the pre-agreed requirements of the Kick-Out Clause, then the original contract remains in force, subject to the terms of amendment signed by both parties.

- ▶ Note to Sellers: Fully negotiate contract with Buyer #2 & include Back-Up Contingency Exhibit prior to exercising kickout to Buyer #1 - so that Seller is not left with NO contract if can't come to terms with Buyer #2

Sale or Lease Contingency - F601

- ▶ Negotiate what Contingencies get removed if Buyer #1 stays in contract

Kick-Out Clause in this Transaction. Selection Option 1 or Option 2 below. If no option is selected, then this Agreement shall not be subject to a Kick-Out Clause.

Option 1. This Agreement IS subject to a Kick-Out Clause. In the event Seller receives a bona fide offer to purchase the Property that Seller would like to accept, then Seller shall give notice of the offer to Buyer. Buyer shall then have _____ hours after receipt of the notice to deposit with Holder additional earnest money of \$ _____ and deliver to Seller an Amendment to this Agreement signed by Buyer in which Buyer agrees to remove from the Agreement the contingencies and/or Due Diligence Period provisions in the Agreement to the extent checked below. [Complete either (a) or (b) below. If neither is completed, then (a) is selected by default.]

(a) All Contingencies and the Due Diligence Period shall no longer be part of the Agreement.

(b) The Contingencies and/or Due Diligence Period checked below shall no longer be a part of this Agreement.

Sale or Lease of Buyer's Property Contingency;
 Due Diligence Period;
 Right to Request Repairs;
 any Financing Contingency;
 any Appraisal Contingency;
 Special Stipulation identified as: _____
 Other: _____

Option 2. This Agreement IS NOT subject to a Kick-Out Clause.

Sale or Lease Contingency - F601

- ▶ Contingencies with Kickout
- ▶ Contingency items that get checked get REMOVED from contract if Buyer #1 stays in contract after Seller exercised kickout
- ▶ If Seller kickout out Buyer #1 & Buyer #1 does NOT send Seller Amendment to Remove Sale or Lease Contingency (F 719) then this contract terminates

Back-Up Contingency - F604

- ▶ Must identify Primary Contract (therefore can only be ONE binding back-up contract)
- ▶ Contract with this Back-Up Buyer gets fully negotiated & adds this Back-Up Contingency Exhibit
- ▶ The BINDING Agreement Date of this contract is the date all parties sign & Notice of Acceptance is given to party making last offer or Counter Offer
- ▶ Earnest Money is due per terms of this Binding Agreement date
 - Unless Special Stipulation indicating otherwise

Back-Up Contingency - F604

- ▶ All OTHER contingency time frames begin when the Seller sends notice to this Buyer that the Primary contract terminated & this Back-Up contract is NOW Primary
 - Time frames addressed if too close to closing date

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 the Primary Agreement is provided; 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.

Back-Up Contingency - F604

- ▶ If Back-Up Buyer never gets that Notice, then this contract terminates - must identify a contingency date
- ▶ Buyer may terminate any time prior to receiving Notice they are now Primary

6. If this Agreement has not become primary by MUST FILL IN DATE, this Agreement shall automatically terminate. Moreover, Buyer can terminate this Agreement at any time prior to receiving the Notice from Seller that this Agreement has become primary by giving notice of the same to Seller and paying Seller a termination fee of ten dollars (\$10).

Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ This form is exhibit & is included in Binding Contract
- ▶ Parties identify the Closing Attorney who will be Holder
- ▶ Buyer must deliver contract to attorney within 2 days of Binding Agreement Date

2. **Buyer Must Timely Deliver Certain Documents to Closing Attorney Acting as Holder of Earnest Money.** When the Closing Attorney has been named as Holder in the Agreement, Buyer must deliver to Closing Attorney within two (2) business days from the Binding Agreement Date: a) the fully signed and executed Agreement in its entirety (Entire Contract), and two copies of the Escrow Agreement (F511) for the Closing Attorney to sign agreeing to become the Holder. Buyer must timely deliver to Holder all amendments to the Entire Contract within two (2) business days of the date that the Amendment becomes binding.

Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ Closing Attorney must agree to become Holder within 3 business days of receiving contract - by signing F511

3. **Closing Attorney Must Agree to Become Holder Within Three (3) Business Days of Receiving Entire Contract.** The Closing Attorney named as Holder shall not become the Holder unless within three (3) business days from the date that the Closing Attorney receives the Entire Contract, the Closing Attorney has: a) countersigned the Agreement of Closing Attorney to serve as Holder (GAR Form F511, and sometimes referred to as "Escrow Agreement") without change or modification so except for filling in the blanks contained therein; and b) delivered the same to Buyer and Seller. When this occurs, Closing Attorney's rights and duties as Holder and the timeframe for completing the same shall commence.

- ▶ Earnest Money must be Wire - or other funds acceptable to Attorney - NEW 5/1/20

5. **Earnest Money Must Be Paid to Closing Attorney Acting as Holder by Wire Transfer.** Buyer shall be responsible for paying all earnest money and other Buyer trust funds to the Closing Attorney acting as Holder by wire transfer of immediately available funds or by such other method deemed acceptable and/or required by Closing Attorney, as the case may be.

Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ In All Cash Transaction, if contract terminates & there is a dispute regarding disbursement of Earnest Money (i.e. both parties won't sign "Release" portion of T&R), Attorney MUST interplead the funds into a court - may not do the "10 day letter"

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.

Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ Alternate Holder MUST be named
 - Must be either the Selling or Listing Broker
 - Becomes the Holder if attorney doesn't sign Agreement (F511)

8. Alternate Holder. The Alternate Holder, who must be a broker in this transaction, shall be MUST name an Alternate Holder.....
MUST be Either Listing or Selling Broker

- ▶ Notes
 - Many attorneys won't hold EM based on amount
 - Many attorneys won't hold if they have a previous relationship with one of the parties (Buyer or Seller)
 - Many attorneys won't sign F511 without earnest money in hand
 - Attorneys are not held to license law like Brokers

Agreement of Closing Attorney to be Holder - F511

- ▶ Not an Exhibit
- ▶ Only signed by Closing attorney agreeing to fulfill contractual responsibilities of "Holder"
- ▶ These responsibilities include:
 - Depositing Earnest Money
 - Sending notice to parties if not received
 - Interpreting contract & writing "10 Day Letter" if contract terminates & there is a dispute over disbursement of EM - unless all cash
 - Interplead EM into court if dispute upon termination
 - & more!

Amendment to Address Concerns with Property - F704

- ▶ Amendment Buyer proposes to Seller during Due Diligence period to help Buyer decide to stay in contract or terminate
- ▶ This Amendment must be signed by BOTH parties (with Notice of Acceptance) prior to the end of the due Diligence period or Seller is NOT obligated to perform repairs - i.e. the DD period is the "time limit" for this Amend

* 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.

Amendment to Address Concerns with Property - F704

- ▶ Parties may negotiate to end Due Diligence period earlier than agreed-upon time frame in contract - if Seller agrees to items requested

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.

- ▶ Notes:
 - Repairs don't survive closing unless you use magic phrase "These items shall survive closing"
 - Must address Buyer's recourse if Seller doesn't do the repairs
 - See various Special Stipulations to cover this issue:
 - www.eAGENTweb.com "Training Videos" Find this CE course... download the Handout "Repair Special Stipulations to Consider"

Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM - "T&R" - F522

- ▶ Notice of Termination is Unilateral (only ONE party needs to sign)
 - Once a contract is terminated, it's terminated
- ▶ Agreement to Disburse Earnest Money requires BOTH Buyer & Seller signatures
 - If both DON'T sign, then agent must notify Holder that the EM is in dispute
 - Holder may interpret & write "10 day letter"
 - Holder may interplead the funds for a judge to decide - fees are deducted from Earnest Money

Mutual T&R - F519

- ▶ Requires BOTH Buyer & Seller signatures to terminate
- ▶ Requires BOTH Buyer & Seller signatures to release EM
- ▶ Requires Both Listing & Selling Broker (agent) signatures

A. Selling Broker	B. Listing Broker
1. Amount to be Paid by Seller to the Selling Broker under the Agreement: _____	1. Amount to be Paid by Seller to the Listing Broker under the Agreement: _____
2. Amount to be Paid by Buyer to the Selling Broker under the Agreement: _____	2. Amount to be Paid by Buyer to the Listing Broker under the Agreement: _____

- ▶ All parties agree of any payments made to one another - including brokerage commissions
- ▶ May be perceived as an out of court settlement agreement - to avoid a future lawsuit

Earnest Money & Termination

- ▶ When you tell a Buyer their "Earnest Money" is "safe" because they have a Due Diligence period & they can get it back upon termination, when does Buyer think they'll get it back?
- ▶ If Buyer's EM was personal check, Holder may not release until a certain time frame has passed
- ▶ If Seller doesn't sign "Release" portion of T&R, then it is in dispute & tied up
- ▶ If Buyer wants to write an offer on another house, what will Seller #2 want as part of the contract?

Earnest Money & Termination

- ▶ If Earnest Money is "in dispute" then it is NOT available to use for another contract
- ▶ Buyer may NOT get the funds if Buyer defaulted
 - Sent Termination after end of contingency period
 - Terminated under Financing Contingency but didn't send Loan Denial letter
 - Loan Denial letter has reason that does not protect EM
- ▶ If Buyer is entitled to funds, Holder may not disburse until at least 10 days AFTER date of Notice send to parties
 - 1 - 5 days may pass before Holder interprets contract & send Notice
 - Holder can't disburse until at least 10 days have passed from date of Notice

Earnest Money & Termination

- ▶ Holder may interplead into a court for a judge to decide
- ▶ If Holder DOES disburse to Buyer (per 10 day letter) Holder may not automatically apply those funds to another contract
- ▶ Agent MUST get Buyer's signature directing the Holder to keep the funds on deposit & apply to a new contract (identify property address)
- ▶ Find out method Holder disburses funds
 - Via mail
 - To Agent
 - Via Bank "bill pay"
 - Etc.

Earnest Money & Termination

- ▶ If Earnest Money is addressed in the CREATION of a contract, it must also be addressed in the TERMINATION of a contract
- ▶ Regardless if the Buyer has remitted the funds or not
- ▶ In "Release" portion of T&R
- ▶ "Buyer to retain Earnest Money not yet remitted per paragraph A7b."

Earnest Money Points of Practice

- ▶ BOTH agents should follow up with Holder on receipt & deposit of funds
- ▶ Earnest Money in certified funds or wire or money order may be released faster than a personal check
- ▶ Buyer can't stop payment on a personal check
- ▶ If Buyer remits funds to Holder directly - make sure they include a note of property address & agent's name

Earnest Money Points of Practice

- ▶ If Earnest Money is OVER \$10,000, then Buyer will have to complete an IRS Form 8300 (per Homeland Security Act) UNLESS funds are wired
- ▶ Check on policy of Holder for form of funds
- ▶ Earnest Money as liquidated damages is ONLY remedy for Seller if Buyer defaults
- ▶ Earnest Money is NOT required for a Binding Contract between a Buyer & Seller

Earnest Money Points of Practice

Agents' (Selling & Listing) responsibility to follow-up with Holder

- Both Buyer & Seller have contractual rights to those funds so it's important to know if they were deposited

Did Holder RECEIVE & did Holder DEPOSIT?

Did agent deliver to Holder?

Did Buyer mail in? Deliver? Wire?

Address Buyer used? Name on envelope?

What memo was written on check?

Was there a note in envelope?

How will staff at Brokerage know what transaction to attribute the EM to?

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)
- ▶ VIRTUAL Class Credits to be recorded within 3 - 5 Business Days
- ▶ **Contract Tip Videos: YouTube Channel:**
"Real Estate Made Crystal Clear"
- ▶ **Have a joyous & prosperous & healthy year helping others with their real estate needs!**