

***Weird Contract Forms:
All You Need to Know about
Brokerage Agreements, Exhibits
& Amendments & Special Stipulations
GREC #65149***

(Focus is on GAR Contracts)

Instructor: Dana Sparks
Qualifying Broker, Maximum One Greater Atlanta, REALTORS®
Dana@MaximumOneRealty.com

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**Brokerage Agreements:
Listing & Buyer Brokerage Agreements**

- ▶ Brokerage Relationships: Broker may work with the public as a "Client" or a "Customer"
- ▶ "Client" = "Agency Relationship"
 - Contractually created in Georgia
- ▶ Sellers
 - Client
 - Customer
- ▶ Buyers
 - Client
 - Customer

§10-6a-4: Broker's Legal Relationship to Customers or Clients (BRETТА Law)

- ▶ (a) A broker who performs brokerage services for a client or customer shall owe the client or customer only the duties and obligations set forth in this chapter, unless the parties expressly agree otherwise in a writing signed by the parties. **A broker shall not be deemed to have a fiduciary relationship with any party or fiduciary obligations to any party but shall only be responsible for exercising reasonable care** in the discharge of its specified duties as provided in this chapter and, in the case of a client, as specified in the brokerage engagement.

Agency Relationships

- ▶ Seller Agency
 - Client Relationship with Seller
- ▶ Buyer Agency
 - Client Relationship with Buyer
- ▶ Designated Agency
 - 1 Broker
 - 2 Agents
 - Client Relationship with BOTH Buyer & Seller
- ▶ Dual Agency
 - 1 Broker
 - 1 Agent
 - Client Relationship with BOTH Buyer & Seller

License Law & Brokerage Agreements

- ▶ License Law **REQUIRES** signature on Brokerage Agreement if Broker is working with Public as a CLIENT
- ▶ No Law required to sign anything to work with public as Customer
- ▶ BUT.....
- ▶ It's a good idea to have the public sign a document that describes their relationship with you & Broker relative to the transaction
- ▶ Your Broker may have a Policy also

Seller Agreements

- ▶ Agreement **Creates** CLIENT Relationship
 - GAR F101 – Exclusive Seller Listing Agreement
 - GAR F104 – Non-Exclusive Seller Listing Agreement
 - RE151 – Exclusive Right to Sell
 - RE162 – Non-Exclusive Right to Sell
- ▶ Form **Describes** the CUSTOMER Relationship
 - GAR F107 – Authorization to Show Unlisted Property
 - RE158 – Seller Authorization to Show Property Not Listed

Buyer Agreements

- ▶ Agreement Creates CLIENT Relationship
 - GAR F110 – Exclusive Buyer Brokerage Agreement
 - GAR F113 – Non-Exclusive Buyer Brokerage Agreement
 - RE150 – Exclusive Buyer Brokerage Agreement
 - RE161 – Non-Exclusive Buyer Brokerage Agreement
- ▶ Form Describes the CUSTOMER Relationship
 - GAR F116 – Agreement to Work with Buyer as Customer
 - RE159 – Acknowledgement of Customer

F101 – Exclusive Listing Agreement

Fill-In-The-Blank

- ▶ Address
- ▶ Legal Description
- ▶ Listing Period
- ▶ List Price
- ▶ MLS Services
- ▶ Commission
 - TOTAL Amount or % needs to be LARGER than Amount or % that Listing Broker will pay Selling Broker
- ▶ Protection Period
- ▶ Agency Not permitted (i.e. Dual Agency)

F101 – Exclusive Listing Agreement

A10 – Special Circumstances – These get checked only if 3rd party approval is required based on these situations

F101 – Exclusive Listing Agreement

- ▶ May a Seller Terminate?

B. CORRESPONDING PARAGRAPHS FOR SECTION A.

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.

- ▶ Must be in writing & signed by the parties.... If not, then it is a Seller default
- ▶ If you are under contract & get “fired” you may be fired from “representation” but not necessarily compensation
 - Depends on what agreements are signed upon termination – Unilateral or Mutual

Brokerage Terminations

Termination of a Brokerage Agreement

- ▶ GAR F155 – Unilateral Termination of Brokerage Agreement
 - By Broker or Client
 - Does NOT eliminate Seller's obligation to pay a commission
- ▶ GAR F152 – Mutual Termination of Brokerage Agreement
 - By Broker and Client
 - Costs & fees negotiated
 - Agreement to not sue one another
- ▶ RE261 – Amendment to Contract
 - Write in any terms agreeable to parties
 - Require Client & Broker/Agent Signature

Listing Period

2. **Listing Period:** 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.

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 shall 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.

- ▶ If Under Contract & Listing Agreement expires, it's automatically extended through closing
- ▶ If Under Contract & then contract terminated, you MAY extend listing agreement for the # of days you were under contract BUT you must send a Notice of this extension to the Seller PRIOR to the expiration of the Listing Agreement

Seller's Duties

4. **Negotiation: Seller's Duties.** Seller represents that Seller:

- will cooperate with Broker to sell the Property to prospective buyers and will refer all inquiries concerning the sale of Property to the Broker during the term of this Agreement;
- will make the Property available for showing at reasonable times as requested by Broker;
- will provide Broker with **accurate information regarding Property (including information concerning all adverse material facts pertaining to the physical condition of Property); and**
- will comply with all local, state and federal laws applicable to the sale of the Property.

e. The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. No party is required to use any GAR Form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR Form he or she should consult an attorney. The parties hereby agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.

- ▶ Refer ALL inquiries to agent
- ▶ Make property available for showing
- ▶ Disclose any adverse condition of property

Marketing

3. **Marketing:** Broker is authorized to market and advertise Property for sale in any media of Broker's choosing, including the Internet and multiple listing services, and attempt to procure buyers for the Property in cooperation with other real estate brokers and their affiliated licensees. Seller acknowledges that listing the Property in a multiple listing service, all members of multiple listing services and real estate-related third parties will have access to Seller's listing information including images and recordings and the right to use all available technology to create, curate, host, disseminate and distribute such listing information to reach Seller's target audience of the Property and for marketing and marketing-related purposes. As such, Seller understands and acknowledges that the marketing of the Property and the marketing-related purposes of the Property are not limited to the physical location of the Property and the marketing of the Property. Seller warrants that the **media provided or used by the Seller is the property of the Seller** and agrees to indemnify the Broker for any claim by a third party for the use of the provided **media** ("PROVIDED MEDIA") used by the Seller provided materials, during the term of this Agreement, with any fee-paying for the purposes of marketing the property, and Seller acknowledges that Broker shall not be liable to Seller for the continued use of media in third parties after the termination of the Agreement. **Seller agrees to give an acknowledgment to the Broker to advertise the Property for sale in any media except where the Seller is the sole advertiser of the Property.** Seller agrees to provide the Broker with the "For Sale" sign for Property, if that party is a part of a contract for the sale or exchange of the Property to advertise the Property during the term of this Agreement. The broker may advertise the Property (including images thereof) in any media of Broker's choosing as being "under contract" while a sale is pending and the "sold" sign on the closing of the Property, if the listing broker and seller agree to place a "sold" sign on property to be placed for Seller except with the written permission of the new owner.

b. **Multiple Listing Services:** Broker agrees to file this Agreement with the above-referenced Multiple Listing Service(s) within 10 business days of commencing marketing of the Property to the public. Marketing of the property to the public includes, but is not limited to, Internet and multiple listing services, and any other electronic or digital listing services, coverage media, direct mail, radio, TV, and print. Seller acknowledges that the Multiple Listing Service(s) are not a party to this Agreement and Seller is not responsible for actions or omissions of the public or the Broker. Seller agrees to indemnify the Broker for any and all claims, damages, losses or costs arising out of or related to the listing and sale of Property. Seller acknowledges that by virtue of listing the Property in the Multiple Listing Service(s) and their affiliated services, Seller will have access to Seller's listing information for the purpose of assisting Seller in the sale of the Property.

c. **Consent of Seller to be Called:** If Seller is on a "Hot List Call List," Seller expressly consents to Broker calling Seller for any purpose related to the sale of the Property. This paragraph shall survive the termination of this Agreement.

d. **Lockboxes:** A lockbox may be used in connection with the marketing of Property. There have been isolated instances of reported burglaries of homes in which lockboxes have been opened and the contents of the lockboxes have been damaged or stolen. Seller agrees to indemnify the Broker for any and all claims, damages, losses or costs arising out of or related to the listing and sale of Property. Seller acknowledges that by virtue of listing the Property in the Multiple Listing Service(s) and their affiliated services, Seller will have access to Seller's listing information for the purpose of assisting Seller in the sale of the Property.

e. **My Marketing by Owner:** Seller is encouraged to promote the availability of the Property for sale through other social media and other advertising. However, since Broker has been hired to exclusively market and sell the Property, Seller shall not, with respect to the sale of the Property, prepare and distribute marketing materials, hold open houses, or set up signs regarding the Property, create websites for the Property, prepare flyers, brochures or videos or engage in other similar activities without the prior written consent of Broker.

See next slide

Marketing

- ▶ Broker doesn't have control over all marketing (i.e. Zillow, etc.)
- ▶ Photos/Videos purchased or taken by Broker belong to Broker; taken or paid for by Seller belong to Seller
- ▶ Seller agrees to not market/advertise on their own without permission of Broker
- ▶ Broker to put in referenced MLS services within 1 business day of when "marketing" begins
 - Flyers, Sign in Yard, Website, etc.

Commission

6. **Commission:**

a. In the event that during the term of this Agreement Seller enters into a contract (including an option contract) for the sale or exchange of the Property, or any portion thereof, or the sale of the ownership interests in the legal entity which owns the Property, with any buyer, Seller agrees to pay Broker a commission as shown and regardless of whether the closing is during or after the term of this Agreement. Seller agrees to immediately pay Broker the commission referenced above if during the term of this Agreement any of the following events occur:

- Seller defaults under any contract to sell or exchange the Property (including an option contract);
- Without the consent of Broker, Seller and Buyer mutually agree to terminate a contract for the purchase and sale or exchange of the Property (including an option contract); or
- Seller refuses to accept a valid, bona fide written offer to purchase the Property meeting the following terms and conditions at a time when the Property is not otherwise under contract, or
- This contract is not in effect, after recording of fees, costs and contributions to be paid by the Seller (other than the real estate brokerage commission to be paid by Seller and the Seller's payment of all option payments (even through the date of closing) is for at least the full listing price set forth herein and is to be paid in cash or cash equivalent at the closing.

(b) The offer is not subject to contingencies, conditions or periods, or required terms other than those set forth herein;

(c) The offer is not subject to Seller's warranties or representations other than: (i) those warranties the Seller agrees to provide in any Seller's Property Disclosure Statement the Seller has filled out and made available to prospective buyers for inclusion in any offer, and (ii) the Seller's agreement to convey good and marketable title (which for all purposes herein shall have the same meaning as set forth in the GAR Purchase and Sale Agreement, Form FDS) to the Property at closing by limited warranty deed;

(d) The date of closing is the offer is not less than 150 days nor more than 180 days from the offer date notwithstanding the above, in the event there are multiple offers to purchase the Property, Seller shall not be in breach of this Agreement if the Seller first gives the prospective buyer a reasonable opportunity (not exceeding 10 days from the date of the first offer) to make their best offer to purchase the Property.

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6. **Survival:** The commission obligations of Broker and the commission obligations of Seller set forth herein shall survive termination or expiration of this Agreement.

7. **Assignment:** Seller unilaterally terminated a Listing Agreement on the Property with a different broker. Seller acknowledges that in such event, Seller shall be obligated to pay Broker the full commission. **Seller may pay only a reduced commission to the previous broker in certain circumstances.**

Commission

- ▶ Seller agrees to pay commission at closing
- ▶ Commission obligation survives closing
- ▶ Seller agrees to pay commission upon default
- ▶ Works with a Buyer to cut out Broker
- ▶ What if they receive a full price offer?... No
- ▶ If they receive this offer:
 - Full price excluding fees, commissions, closing cost contributions
 - No contingencies & no Due Diligence
 - No warranties outside of what's in Seller's Property Disclosure Statement given to Buyer
 - Closing Date is 30 - 45 days from offer date

Seller may owe commission to a previous Broker if unilaterally terminated previous listing agreement

Protected Period

7. Protected Period. If Seller during the Protected Period, as that term is hereinafter defined, sells, options to sell, contracts to sell ownership interests in the legal entity which owns the Property or contracts to sell or exchange Property to any buyer who made an offer on, was introduced to, visited, received information on, inquired about, or otherwise learned of the Property during the term of this Agreement, as a result of the efforts of the Broker, then Seller shall pay the commission referenced above to Broker at the closing of the sale or exchange of Property to said buyer. The term "Protected Period" shall refer to the period with the number of days referenced above following the earlier of either: (a) the expiration of this Agreement; or (b) the date that the Agreement is terminated upon the mutual, written consent of the Broker and Seller. If this Agreement is terminated by Seller without the express, written consent of Broker, the Protected Period shall be the time period referenced above plus the number of days that remained on the term of this Agreement at the time it was terminated early without the express, written consent of Broker. In such event, the Protected Period shall commence on the date this Agreement was terminated early without the express written consent of Broker. For the purposes of this Agreement, the term "buyer" shall include buyer, all members of the buyer's immediate family, any legal entity in which buyer or any member of buyer's immediate family owns or controls, directly or indirectly, more than ten percent (10%) of the shares or interests therein, and any third party who is acting under the direction or control of any of the above parties. Notwithstanding the above, no listing commission shall be paid to Broker if this Agreement has either expired or been terminated upon the mutual, written consent of Broker and Seller and no Property is sold or contracted to be sold to a prospective buyer by or through another licensed broker with whom Seller has signed an exclusive right to sell listing agreement. The commission rights and obligations set forth herein shall survive the termination or expiration of this Agreement.

- ▶ Commission is Protected if Seller goes Under contract or sells to Buyer who was introduced to Property during term of Agreement
- ▶ UP UNTIL the point Seller lists with another Broker then NO PROTECTION FOR YOUR COMMISSION!

Seller Default

C. OTHER TERMS AND CONDITIONS

1. Seller Default. In the event Seller defaults under this Agreement, Seller shall, in addition to its other obligations set forth elsewhere herein, reimburse Broker for the out-of-pocket costs and expenses incurred by Broker and Broker's affiliated Licensees in seeking to market and sell the Property. Such costs and expenses shall include, without limitation, printing and copying charges, mileage at the highest rate allowed by the IRS as a business deduction and expenses to advertise the Property on various media. Seller shall also pay all costs, fees and charges for removing the listing from any multiple listing service. The payment of these costs, fees, charges and expenses by Seller shall not waive or limit Broker's right to assert any other claim, cause of action or suit (hereinafter collectively "Claims") against Seller for a real estate commission(s) and/or other damages and shall not release Seller from such Claims. Notwithstanding the above, the amount of such fees, charges, costs and expenses paid by Seller to Broker hereunder shall be an offset against any Claim of Broker for a real estate commission(s).

- ▶ If Seller Defaults (i.e. unilateral termination) Seller shall reimburse Broker/Affiliated Licensee costs & Withdraw Fees from MLS Services
- ▶ Point of Practice: Keep records & receipts of your costs & mileage per listing

Seller's Disclosure & Lead Paint Exhibit

2. Seller's Property Disclosure Statement. Within three (3) days of the date of this Agreement, Seller agrees to provide Broker with a current, fully executed Seller's Property Disclosure Statement. In addition, if any dwelling on the Property, or portion thereof, was constructed prior to 1978, Seller agrees to additionally provide Broker with a current fully executed Lead-Based Paint Disclosure Exhibit (GAR Form F318) within the same timeframe so that Broker may provide the same to buyers in accordance with federal law. Broker is hereby authorized to distribute the Seller's Property Disclosure Statement and any Lead-Based Paint Exhibit to buyers interested in Property. Seller agrees to promptly update any of the above-referenced disclosure documents should any changes occur.

3. Hazardous Conditions on Property. Seller acknowledges that Seller owes a duty of reasonable care to keep the Property safe for prospective buyers and their agents who to view and inspect the Property. Among other things, this includes a duty to warn such invitees of hazardous conditions that would not be obvious to an invitee. Sellers are encouraged to inspect the Property for hazardous conditions and correct and eliminate all such conditions. Seller agrees to indemnify and hold Broker harmless from and against any and all claims, causes of action, suits, and damages arising out of or relating to a person or persons being injured or harmed while on the Property.

- ▶ Seller has 3 days to complete & return to you
- ▶ Point of Practice: you must give Seller these forms to complete when you take the Listing
 - GAR - F301 - Seller Property Disclosure
 - GAR - F316 - Lead Based Paint Exhibit
 - GAR CB04 - Lead Paint Pamphlet
- ▶ If Seller is not going to complete Disclosure, must add that as a Special Stip in the Listing Agreement - ("Per paragraph C2, Seller will not complete a Seller Disclosure Statement.")

Fair Housing Laws

Laws of the State of Georgia

4. Fair Housing Disclosure: Seller acknowledges that Broker is committed to providing equal housing opportunities to all persons and that Seller and Broker are obligated to comply with state and federal fair housing laws in selling the Property. Seller and Broker agree not to discriminate in the sale of the Property on the basis of race, color, religion, national origin, sex, familial status, disability, sexual orientation or gender identity.

- ▶ Seller must also comply with State & Federal Fair Housing Laws
- ▶ GAR contract ADDS - Sexual Orientation & Gender Identity
- ▶ Point of Practice: Give Seller Fair Housing Brochure - <https://nationalfairhousing.org/fair-housing-brochures/>

Authorization to Show Unlisted Property - Seller as Customer

- ▶ Similar descriptive information & Broker protection disclosures as Listing Agreement

6. Commission
 A. In the event that during the term of this Agreement Broker, pursuant to the above authorization procures a buyer and/or tenant, ready, willing, and able to purchase or lease the Property at the price or rental rate described above or any other price acceptable to Owner, Owner agrees to pay Broker at closing the following commission:
 (The sections not marked shall not be a part of this Agreement.)
 (1) Commission for Selling Property:
 _____ percent (%) of the sales price;
 \$ _____
 (Other) _____

- ▶ Seller agreement to pay commission & Protected Period

13. No Brokerage Relationship Between Seller and Broker. This Agreement shall not be construed to create a brokerage engagement between Owner and Broker, but is, rather, limited to Owner's permission given to Broker to show the above Property to prospective buyer(s) and/or tenants, pursuant to the above authorization, in exchange for compensation to Broker as set forth above. The parties understand and agree that Owner is Broker's customer, and that as such, Broker may perform ministerial acts for Owner. It is understood that this Agreement in no way prohibits Owner from selling or leasing Property directly to a buyer or tenant other than prospective buyer(s) and tenant(s) listed above or subsequently provided by Broker to Owner. Owner shall retain the right to enter into a listing agreement concerning Property with any other real estate broker.

Seller IS CUSTOMER

F110 - Exclusive Buyer Brokerage Agreement

2020 Printing

State law prohibits Broker from representing Buyer as a client without first entering into a written agreement with Buyer under O.C.G.A. § 10-2A-1 et. seq.

- ▶ To represent Buyer as Client, Buyer MUST sign the Agreement

Commission

5. **Commission:**

A. Buyer agrees that Broker shall be entitled to the following commission at the closing of the transaction (Commission). (Select one or more of the following sections below. The sections not marked shall not be part of this Agreement.)

_____ percent (%) of the sales price;

\$ _____;

(other) _____.

B. In the event Seller does not pay the Broker the full amount of the Commission, Buyer shall OR shall not pay Broker the difference if closing follows Broker's Commission and the commission actually paid to Broker.

6. **Separate Commission on Lease:** If Buyer buys property or enters into a lease purchase contract during this Agreement, Buyer shall also pay Broker a separate leasing commission (except where the commission is paid by the Landlord) in the amount of \$ _____ and as follows: _____.

7. **Protected Period:** The length of the protected period shall be _____ days ("Protected Period").

- ▶ Fill in commission Broker is entitled to
- ▶ Fill in if BUYER is responsible for at Closing if Listing Broker doesn't pay this "entitled" to amount
- ▶ Fill in # days for Protected Period

Exclusive Agreement

B. CORRESPONDING PARAGRAPHS FOR SECTION A.

1. **Exclusive Agreement:** The undersigned buyer ("Buyer" or "Client") hereby agrees to hire the undersigned Broker to act as Buyer's exclusive real estate broker to assist Buyer in locating, and to the extent authorized elsewhere herein, negotiating the purchase or exchange of real property on behalf of Buyer. Buyer warrants that Buyer is not a party to any other current exclusive buyer brokerage agreement (or contemplated that all previous exclusive buyer brokerage engagement agreements entered into between Buyer and any other real estate brokerage have either been terminated or have expired and not been renewed).

Buyer represents that Buyer 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 Buyer. Buyer agrees to terminate this Agreement or any other brokerage agreement of the parties relating to this Agreement as to all properties 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.

- ▶ Buyer warrants that Buyer is not a party to any other Exclusive Buyer Brokerage Agreement

How to Proceed if Buyer Says They Have "Fired" Their Previous Agent

- ▶ License Laws in Georgia governing how you are to proceed if a Buyer approaches you & says they have "fired" their previous agent!
- ▶ BRETТА - OCGA - 10-6a
- ▶ Unfair Trade Practice License Laws - OCGA 43-40-25b(13) and OCGA 43-40-25b(26)
- ▶ "If you have reason to believe a Buyer or Seller may have an outstanding Brokerage Agreement with another Broker, you need to confirm with the previous Broker that the person has terminated that Agreement with previous Broker prior to signing the person to a Brokerage Agreement"
- ▶ For sample of specific verbiage, see YouTube Video - Real Estate Made Crystal Clear - ["All About the Protected Period in the Buyer Brokerage Agreement"](#)

Commission Agreement Explained

5. **Commission:**

a. **Broker's Entitlement to Commission:** During the term of this Agreement or during the Protected Period after the termination or expiration of this Agreement (hereafter "this contract for the purchase and sale (including a Lease/Purchase Contract), option (including a Lease/Option Contract) or exchange of real property with the seller thereof"), Buyer agrees that Broker shall be entitled to the commission as provided in section 5c "Commission". There may be properties shown to Buyer by Broker while a bona fide offer is being offered to Broker for listing a buyer to purchase the property. Buyer consents to Broker accepting such bona fide offers in addition to the commission referenced herein.

b. **Whoed requires the option in Georgia for the seller to pay the commission of the real estate brokers.** This obligation is usually created in a listing agreement between the seller and the listing broker. Generally, these agreements require the listing broker (if/when the commission is received with the selling broker working with or representing the buyer in the transaction. In the event Seller does not pay the Broker the full amount of the Commission, Commission will be paid by the Buyer as agreed in section 5a.

c. **Commission on Property Sold For Sale By Owner ("FSBO"):** In the event Buyer purchases property that is being sold by owner ("FSBO") without a broker and the owner is unwilling to pay Broker its Commission at or before the closing, Buyer agrees to pay Broker its Commission at or before the closing.

d. **Buyer Default:** Notwithstanding any provision to the contrary herein, Buyer agrees to immediately pay Broker its Commission in the event any of the following occur:

(1) Buyer defaults under a contract to purchase (or exchange) real property under which Broker would have been paid a commission had the transaction closed;

(2) Without the prior consent of Broker, Buyer agrees with a seller to mutually terminate a contract to purchase or exchange real property under which Broker would have been paid a commission had the transaction closed; or

(3) Buyer defaults under this Agreement resulting in Broker not being paid a commission to which Broker would otherwise have been entitled.

- ▶ Listing Broker GENERALLY Pays
- ▶ What about buying a FSBO?
- ▶ Buyer Default

Protected Period

7. **Protected Period:** In the event that during the Protected Period, as that term is defined below, following termination or expiration of this Brokerage Agreement, Buyer purchases, options or contracts to purchase or exchange, or contracts to purchase ownership interest in a legal entity which owns, leases or lease purchases any property which during the term of this Agreement was submitted to, identified or shown to Buyer by Broker or for which Broker provided information about to Buyer, then notwithstanding any provision to the contrary contained herein, Buyer shall pay Broker at closing or the commencement of any lease, if applicable, the commission or commissions set forth above. The term "Protected Period" shall refer to the period following the earlier of either: (a) the expiration of this Agreement; or (b) the date that the Agreement is terminated upon the mutual, written consent of the Broker and Buyer. In addition, if this Agreement is terminated by Buyer without the express, written consent of Broker, the Protected Period shall be the time period referenced above plus the number of days remaining on the term of the Agreement at the time the Agreement was terminated, without the express written consent of Broker. In such event, the Protected Period shall commence from the date this Agreement was terminated early without the express, written consent of Broker. For the purposes of this paragraph, the term "Buyer" shall include Buyer, all immediate family of the Buyer's immediate family, any legal entity in which Buyer or any member of Buyer's immediate family owns or controls, directly or indirectly, more than ten percent (10%) of the shares or interests therein, and any third party who is acting under the direction or control of any of the above parties. Rights and obligations set forth herein shall survive the termination or expiration of this Agreement.

- ▶ Commission is protected during this period for Buyer who was introduced to the property during the term of the BBA - vague but intent is showed, wrote offer, discussed... not just that Buyer saw it in an automated program
- ▶ Time is extended if Buyer defaults by early unilateral termination
- ▶ DIFFERENT from Protection in Listing Agreement - still protected if Buyer signs with another Broker

Buyer's Duties

2. Buyer's Duties: Buyer agrees to:

- a. be reasonably available to see property with Broker or property for which Broker has arranged Buyer to see;
- b. timely respond to communications from Broker;
- c. provide Broker with accurate and complete information;
- d. **inspect and become familiar with any potentially adverse conditions and conditions of special concern to Buyer** relating to the physical condition of any property in which Buyer becomes interested, any improvements located thereon and the neighborhood surrounding such property;
- e. become familiar with the terms of any purchase agreement and other documents which Buyer may sign and comply with the duties and deadlines contained therein;
- f. **work exclusively with Broker (and not with any other real estate broker or licensee) in identifying, previewing and seeing property for purchase by Buyer (since if Buyer identifies, previews or sees property with another broker or fails to disclose to the listing broker that Buyer is working with Broker, a commission will likely not be due to Broker by the listing broker and Buyer shall be responsible for the same).**
- g. disclose to Broker at the commencement of this Agreement whether Buyer previously worked with any other real estate broker and the addresses of the properties, if any; Buyer made an offer to purchase or for which Buyer may owe a commission to another broker if Buyer now purchases; and
- h. **not accept or take a property listing For Sale By Owner ("FSBO") without first giving Broker a reasonable opportunity to contact the owner and attempt to enter into an agreement with the owner to pay Broker a commission should Buyer purchase the owner's property.**

- ▶ Work exclusively with Broker / Agent
- ▶ Disclose to Broker if they have worked with any others
- ▶ Not see FSBO's without Broker

Limits on Broker's Authority & Other Disclosures

- ▶ Paragraphs C4 – 6
- ▶ Broker may work with other Buyer to see property
- ▶ Buyer's responsibility to investigate anything of concern to them regarding the contract & property & area
- ▶ i.e. Get a Survey, Check Zoning, Check Flood Insurance, check School District, etc.
- ▶ Point of Practice: Document this discussion
 - GAR Consumer Brochures
 - Signature on "Service Recommendations"

Service Recommendations

BUYER SERVICE RECOMMENDATIONS

As a professional, I am required to provide you with the information you need to make an informed decision about your real estate purchase. I have provided you with the information you need to make an informed decision about your real estate purchase. I have provided you with the information you need to make an informed decision about your real estate purchase.

Property Address: _____

1. I received a copy of the Seller's Disclosure Statement (SDS) and read it.	Yes	No
2. I received the SDS from the Seller or Broker and read it.	Yes	No
3. I received the SDS from the Seller or Broker and read it.	Yes	No
4. I received the SDS from the Seller or Broker and read it.	Yes	No
5. I received the SDS from the Seller or Broker and read it.	Yes	No
6. I received the SDS from the Seller or Broker and read it.	Yes	No
7. I received the SDS from the Seller or Broker and read it.	Yes	No
8. I received the SDS from the Seller or Broker and read it.	Yes	No
9. I received the SDS from the Seller or Broker and read it.	Yes	No
10. I received the SDS from the Seller or Broker and read it.	Yes	No
11. I received the SDS from the Seller or Broker and read it.	Yes	No
12. I received the SDS from the Seller or Broker and read it.	Yes	No
13. I received the SDS from the Seller or Broker and read it.	Yes	No
14. I received the SDS from the Seller or Broker and read it.	Yes	No
15. I received the SDS from the Seller or Broker and read it.	Yes	No
16. I received the SDS from the Seller or Broker and read it.	Yes	No
17. I received the SDS from the Seller or Broker and read it.	Yes	No
18. I received the SDS from the Seller or Broker and read it.	Yes	No
19. I received the SDS from the Seller or Broker and read it.	Yes	No
20. I received the SDS from the Seller or Broker and read it.	Yes	No

Buyer as Customer - F116 Agreement to Work with Buyer as Customer

1. Agreement to Work with Buyer as Customer. Buyer hereby agrees to work with Broker in locating real property to purchase suitable to Buyer's needs. In working with Buyer, Broker shall not be representing Buyer as a client but shall only be working with Buyer as a customer. As a customer, Broker cannot represent or advise Buyer on brokerage matters as Broker would be able to do if Broker were representing Buyer but can only perform ministerial tasks on behalf of Buyer. (The terms "client," "customer" and "ministerial tasks" shall have the meaning that they have in the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et seq.). Buyer or Broker can terminate this Agreement at any time upon written or electronic notice to the other party.

- ▶ Buyer is Customer
- ▶ Agent / Broker may perform ministerial acts
- ▶ No mention of commission

Client vs. Customer

- ▶ OCGA 10 - 6A - Brokerage Relationships in Real Estate Transactions (BRRETA)
- ▶ Legal Definitions
- ▶ Responsibilities to Seller Client
- ▶ Responsibilities to Buyer Client
- ▶ Responsibilities to Customers
- ▶ Responsibilities as Transaction Broker

Seller as Client - OCGA 10-6A-5

O.C.G.A. 10-6A-5 (2010)
10-6A-5. Duties and responsibilities of broker engaged by seller

(a) A broker engaged by a seller shall:

- (1) Perform the terms of the brokerage engagement made with the seller;
- (2) Promote the interests of the seller by:
 - (A) Seeking a sale at the price and terms stated in the brokerage engagement or at a price and terms acceptable to the seller, provided, however, the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless the brokerage engagement so provides;
 - (B) Timely presenting all offers to and from the seller, even when the property is subject to a contract of sale;
 - (C) Disclosing to the seller material facts which the broker has actual knowledge concerning the transaction;
 - (D) Advising the seller to obtain expert advice as to material matters which are beyond the expertise of the broker; and
 - (E) Timely accounting for all money and property received in which the seller has or may have an interest;
- (3) Exercising reasonable skill and care in performing the duties set forth in this subsection and such other duties, if any, as may be agreed to by the parties in the brokerage engagement;
- (4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes; and
- (5) Keep confidential all information received by the broker during the course of the engagement which is made confidential by an express request or instruction from the seller unless the seller permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between a broker and any of the broker's affiliated licensees assisting the broker in representing the seller shall not be deemed to breach the duty of confidentiality described above.

Seller as Client - OCGA 10-6A-5

- (b) A broker engaged by a seller shall timely disclose the following to all parties with whom the broker is working:
 - (1) All adverse material facts pertaining to the physical condition of the property and improvements located on such property including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer; and
 - (2) All material facts pertaining to existing adverse physical conditions in the immediate neighborhood within one mile of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions. Nothing in this subsection shall be deemed to create any duty on the part of a broker to discover or seek to discover either adverse material facts pertaining to the physical condition of the property or existing adverse conditions in the immediate neighborhood. Brokers shall not knowingly give prospective buyers false information provided, however, that a broker shall not be liable to a buyer for providing false information to the buyer if the broker did not have actual knowledge that the information was false and disclosed to the buyer the source of the information. Nothing in this subsection shall limit any obligation of a seller under any applicable law to disclose to prospective buyers all adverse material facts actually known by the seller pertaining to the physical condition of the property nor shall it limit the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, any improvements located on the property, and the neighborhood in which the property is located. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this subsection shall not create liability on the part of the broker absent a finding of fraud on the part of the broker.
- (c) A broker engaged by a seller in a real estate transaction may provide assistance to the buyer by performing ministerial acts of the type described in Code Section 10-6A-14, and performing such ministerial acts shall not be construed to violate the broker's brokerage engagement with the seller nor shall performing such ministerial acts for the buyer be construed to form a brokerage engagement with the buyer.
- (d) A broker engaged by a seller does not breach any duty or obligation by showing alternative properties to prospective buyers.

Buyer as a Client - OCGA 10-6A-7

- O.C.G.A. 10-6A-7 (2010)
10-6A-7. Duties of broker engaged by buyer
 - (a) A broker engaged by a buyer shall:
 - (1) Perform the terms of the brokerage engagement made with the buyer;
 - (2) Promote the interests of the buyer by:
 - (A) Seeking a property at a price and terms acceptable to the buyer; provided, however, the broker shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property, unless the brokerage engagement so provides;
 - (B) Timely presenting all offers to and from the buyer, even when the buyer is a party to a contract to purchase property;
 - (C) Disclosing to the buyer adverse material facts of which the broker has actual knowledge concerning the transaction;
 - (D) Advising the buyer to obtain expert advice as to material matters which are beyond the expertise of the broker; and
 - (E) Timely accounting for all money and property received in which the buyer has or may have an interest;
 - (3) Exercise ordinary skill and care in performing the duties set forth in this subsection and such other duties as may be agreed to by the parties;
 - (4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes; and

Buyer as a Client - OCGA 10-6A-7

- (5) Keep confidential all information received by the broker during the course of the engagement which is made confidential by an express request or instruction from the buyer unless the buyer permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between a broker and any of the broker's affiliated licensees assisting the broker in representing the buyer shall not be deemed to breach the duty of confidentiality described above.
- (b) A broker engaged by a buyer shall timely disclose to a prospective seller with whom the broker is working as a customer and who is selling property which will be financed either by a loan assumption or by the seller's providing a part or all of the financing all material adverse facts actually known by the broker concerning the buyer's financial ability to perform the terms of the sale and, in the case of a residential transaction, the buyer's intent to occupy the property as a principal residence. Brokers shall not knowingly give prospective sellers false information; provided, however, that a broker shall not be liable to a seller for providing false information to the seller if the broker did not have actual knowledge that the information was false and disclosed to the seller the source of the information. Nothing in this subsection shall limit the obligation of the prospective buyer under any applicable law to disclose to the prospective seller all adverse material facts actually known by the buyer concerning the buyer's financial ability to perform the terms of the sale and, in the case of a residential transaction, the buyer's intent to occupy the property as a principal residence. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. Violations of this subsection shall not create liability on the part of the broker absent a finding of fraud on the part of the broker.
- (c) A broker engaged by a buyer in a real estate transaction may provide assistance to the seller by performing ministerial acts of the type described in Code Section 10-6A-14, and performing such ministerial acts shall not be construed to violate the broker's brokerage engagement with the buyer nor shall performing such ministerial acts for the seller be construed to form a brokerage engagement with the seller.
- (d) A broker engaged by a buyer does not breach any duty or obligation by showing properties in which the buyer is interested to other prospective buyers.

Ministerial Acts - OCGA 10-6A-14

- O.C.G.A. 10-6A-14 (2010)
10-6A-14. Ministerial acts explained; required actions of transaction brokers; false information
 - (a) A broker acting as a transaction broker may provide assistance to buyers, sellers, tenants, and landlords by performing ministerial acts. Examples of ministerial acts which can be performed by the transaction broker on behalf of any of the parties in a real estate transaction include without limitation the following:
 - (1) Identifying property for sale, lease, or exchange;
 - (2) Providing real estate statistics and information on property;
 - (3) Providing pre-printed real estate form contracts, leases, and related exhibits and addenda;
 - (4) Acting as a scribe in the preparation of real estate form contracts, leases, and related exhibits and addenda;
 - (5) Locating architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys, and other professionals; and
 - (6) Identifying schools, shopping facilities, places of worship, and other similar facilities on behalf of any of the parties in a real estate transaction.

Ministerial Acts - OCGA 10-6A-14

- (b) A broker acting as a transaction broker shall do the following:
 - (1) Timely present all offers to and from the parties involving the sale, lease, and exchange of property;
 - (2) Timely account for all money and property received by the broker on behalf of a party in a real estate transaction;
 - (3) Timely disclose the following to all buyers and tenants with whom the broker is working:
 - (A) All adverse material facts pertaining to the physical condition of the property and improvements located thereon including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer; and
 - (B) All material facts pertaining to existing adverse physical conditions in the immediate neighborhood within one mile of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and plans; zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; crime statistics; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions.

Ministerial Acts - OCGA 10-6A-14

- (c) Transaction brokers shall not knowingly give any party in a real estate transaction false information; provided, however, that a broker shall not be liable to a party for providing false information to the party if broker did not have actual knowledge that the information was false and discloses to the party the source of the information. Nothing in this subsection shall limit any obligation of a seller under any applicable law to disclose to prospective buyers all adverse material facts actually known by the seller pertaining to the physical condition of the property nor shall it limit the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, any improvements located thereon, and the neighborhood in which the property is located. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this subsection shall not create liability on the part of the broker absent a finding of fraud on the part of the broker.

Financing & Appraisal Forms – Covered in Contract Dissection Classes

- ▶ Conventional – GAR F404 RE – Included in Contract
- ▶ FHA – GAR-F407 RE- 200 – REQUIRED
- ▶ VA – GAR – F410 RE – 201- REQUIRED
- ▶ Cash – Included in Both Contracts – GAR – F401
- ▶ RE Forms
 - ▶ Financing & Appraisal Contingencies – Included in Purchase & Sale Agreement
- ▶ RE Separate Financing & Appraisal Contingency Forms
 - ONLY for use in Buyer initiates offer on RE Forms & goes Binding on GAR & Agent needs to include these contingencies

Contract Disclosure Forms – Covered in Contract Dissection Classes

- ▶ Seller’s Property Disclosure
 - GAR F301 RE – 130
- ▶ Community Association Disclosure
 - GAR – F322 RE – 136

Sale or Lease of Property Contingency Exhibit – GAR F601

A. Buyer warrants that Buyer owns the real property located at _____ (City) _____ (State) _____ (Zip Code) (“Other Property”) and has taken or is taking the following actions to sell and/or lease the Other Property: i.e. currently listed or currently under contract

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, an 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.

- ▶ Contract is contingent upon Buyer selling/leasing current home on or before – MUST fill in date = Contingency Period
- ▶ If house doesn’t sale by that date, THIS contract terminates (buyer gets EM back)

Sale or Lease of Property Contingency Exhibit – GAR F601

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 is contingent 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 those 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 agreed to by both parties.

- ▶ If there is a Kickout, Seller may continue to market property, if they want to go with Buyer #2, then they must first give CURRENT Buyer #1 opportunity to stay in contract or be kicked out & get Earnest Money back.
- ▶ Point of Practice for Listing Agents – DON’T Kickout Buyer #1 before fully negotiating with Buyer #2 & going Binding with a Back-Up Exhibit

Sale or Lease of Property Contingency Exhibit – GAR F601

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. **Kickout is Better for Seller**

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, Seller shall give notice of the offer to Buyer. Buyer shall then have _____ hours after receipt of the notice to deposit with Seller additional earnest money of \$ _____ and agree to Seller’s 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 that Seller requests below. If Seller’s bona fide offer is accepted, then as is selected by default.

Option 2. This Agreement is NOT subject to a Kick-Out Clause. **Better for Buyer**

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

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 Inspections;

Any Financing Contingency;

Any Appraisal Contingency;

Special stipulation identified as: _____

Other: _____

- ▶ With a Kickout, then Buyer #1 agrees to remove certain contingencies agreed in advance
- ▶ Additional Earnest Money is optional – may put \$0.00

Sale or Lease of Property Contingency Exhibit – GAR F601

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 above-referenced signed Amendment to Seller, then this Agreement shall terminate, and Buyer shall be entitled to a full refund of Buyer’s earnest money. Notwithstanding any provision to the contrary contained herein, the removal of such checked provisions by Buyer from this Agreement shall not eliminate any rights in Contingencies or the Due Diligence Period benefiting Seller. Therefore, for example, Seller can still request a proof of funds from the Buyer even though the Agreement is no longer subject to a Financing Contingency. 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, return a copy of the same to Buyer and this Agreement shall otherwise remain in full force and effect subject to the Amendment.

- ▶ If Buyer #1 can’t remove contingencies & proceed, then this contract terminates & Buyer gets Earnest Money back
- ▶ Then Seller continues to contract with Buyer #2

Back-Up Contingency Exhibit - GAR F604

1. Buyer and Seller acknowledge that this Agreement is a "backup" or "Secondary Agreement" to the primary agreement, which may be amended from time to time. ("Primary Agreement") with a Binding Agreement Date of _____ for the purchase and sale of the Property between Seller and _____ (Name(s) of Primary Buyer(s)) ("Primary Buyer") and that backup Buyer has no right to purchase the Property unless the Primary Agreement is terminated and Seller gives notice to Buyer of the same.

- ▶ This is an Exhibit to a Binding Contract - so Seller & Buyer #2 actually have a Binding Contract - WHEN there is an accepted contract & Notice of acceptance has been delivered
- ▶ Must reference Buyer #1 of Primary Contract - therefore there is only ONE back-up contract

Back-Up Contingency Exhibit - GAR F604

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 correspond to those 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 fulfilling any 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.

- ▶ If Primary gets terminated, Seller send Notice to Buyer #2 that they are now Primary
- ▶ THAT is the date (Day 0) for timing of all other Contingencies
- ▶ Except for Earnest Money which was due from Binding Agreement Date - per Purchase & Sale

Temporary Occupancy Agreement for Seller After Closing - GAR F219

NOT TO BE USED IF OCCUPANCY IS FOR MORE THAN 60 DAYS!

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as _____, Georgia _____, and shall control the rights of the parties after Closing with respect to the Temporary Occupancy Period as defined below.

1. Seller shall have the right to continue to occupy the Property for _____ day(s) after Closing is consummated at _____ o'clock _____ m. (hereinafter "Temporary Occupancy Period"). Seller shall vacate the Property no later than by the end of Temporary Occupancy Period. If Seller vacates the Property sooner than by the end of the Temporary Occupancy Period, Seller shall notify Buyer of the Same.
2. At the time of closing, Seller shall provide Buyer with one set of keys to the Property. At time of possession, Seller shall turn over all remaining keys, door openers, codes and other similar equipment pertaining to the Property in Seller's possession to Buyer.
3. Until time of possession, Buyer shall arrange for common element access with Community Association.
4. Seller agrees to maintain all utilities in Seller's name and pay the bills for such utilities as they become due.

- ▶ If Seller to occupy for more than 60 days, they need a lease
- ▶ This is a contract Agreement - NOT a Lease
- ▶ Seller to maintain utilities

Temporary Occupancy Agreement for Seller After Closing - GAR F219

10. If Seller does not timely vacate Property by the end of the Temporary Occupancy Period, Seller shall be deemed to be a tenant at sufferance, shall be unlawfully holding over, shall be subject to being evicted and shall pay Buyer a per day rent during the period in which Seller is holding over in the amount of \$_____ per day for each day after the end of the Temporary Occupancy Period that Seller remains in the Property.

- ▶ If Seller does NOT leave when they say they will, THEN Buyer (who owns property) must evict them - Seller owes them \$___ per day for THAT holdover time period - Make sure it's enough to cover cost of hotel / extended stay

Temporary Occupancy Agreement for Seller After Closing - GAR F219

- ▶ There is nothing in this Agreement about Seller paying Buyer for this privilege
- ▶ See RE255 - Occupancy Agreement for Seller After Closing

2. COMPENSATION

2.1. Usage Fee- Seller shall pay Buyer at Closing a fee (the "Usage Fee") in the amount of (check one) a lump sum of US\$ _____ OR US\$ _____ per month (prorated at US\$ _____ per day) beginning on _____ 20____, and continuing thereafter on the _____ day of each month until the end of the Occupancy Period. All payments of the Usage Fee shall be payable to Buyer at the following address: _____ and shall NOT be applied to the purchase price of the Property.

- ▶ So GAR form is better for Sellers & RE Form is better for Buyers!

Amendment to Address Concerns with Property - GAR F704

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.

- ▶ If this becomes Binding AFTER end of Due Diligence, Seller is NOT obligated to perform repairs
- ▶ If Due Diligence ends without this being fully executed, Buyer is buying AS-IS

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.

- ▶ Negotiate if Agreement terminates Due Diligence Period

Amendment to Address Concerns

- ▶ What if it's a "Make It or Break It" issue for Buyer & they CAN'T Buy if Seller doesn't repair something major (i.e. new roof, cracked foundation, etc.) and communication with Seller is sketchy?
- ▶ Protect Buyer with this Special Stipulation:
 - **SS 302 AMENDMENT TO ADDRESS CONCERNS AS NOTICE TO TERMINATE**
 - "In the event that a subsequent Amendment to Address Concerns with Property is not accepted by Seller and delivered back to Buyer prior to the end of the Buyer's Right to Terminate as set forth in the Due Diligence provision of the Agreement, said Amendment to Address Concerns with Property shall serve as notice of termination of this Agreement upon expiration of the Right to Terminate period as set forth herein."
- ▶ Then follow up by sending a "T&R" to get written agreement on release of Earnest Money

Amendment to Change Closing - GAR F716

Extension: The right to unilaterally extend the closing date for up to eight (8) days as provided for in the Right to Extend Closing Date paragraph of the aforementioned Agreement is hereby terminated OR shall remain in full force and effect.

- ▶ Pay attention if parties agree or not to keep in Unilateral Right to Extend Closing for 8 days

Amendment to Reduce Sales Price - GAR F713

In the event that the Amendment to Sales Price is pursuant to an appraisal contingency, a copy of the appraisal is attached, and in consideration of Seller agreeing to amend the sales price of the property, all parties agree that if this Amendment is signed by Buyer and Seller and delivered to both parties, the remainder of the Buyer's Appraisal Contingency Period shall OR shall not terminate.

- ▶ Amendment to Change Sale Price
- ▶ If this change is due to a low appraisal, you MUST attach copy of appraisal
- ▶ Make sure Lender & Closing Attorney gets a copy
- ▶ If lowering sale price in lieu of repairs, JUST state new Sale price & never include phrase "in lieu of repairs"

Other Amendments

- ▶ General Amendment to Agreement - GAR F701
- ▶ Amendment to Remove Contingency (General) - GAR F707
- ▶ Amendment to Remove Sale or Lease Contingency - GAR F719
- ▶ Notice - GAR F816

Earnest Money Forms

- ▶ F110 - Closing Attorney to act as Holder of Earnest Money
- ▶ F111 - Agreement of Closing Attorney to Hold Earnest Money
- ▶ F522 - Unilateral Termination & Release
- ▶ F519 - Mutual Termination & Release

Closing Attorney Acting as Holder F510 - Exhibit to Agreement F511 - Attorney must sign

- ▶ Buyer MUST deliver contract to Attorney within 2 Business days after Binding
- ▶ Closing Attorney must agree (sign GAR F511) within 3 Business days after receipt
- ▶ If Closing Attorney does not agree, then Alternate Holder becomes Holder
- ▶ Alternate Holder MUST be named & MUST be Listing or Selling Broker
- ▶ If All Cash transaction & contract terminates & there is dispute over earnest money, Attorney MUST interplead the funds (i.e. they may not interpret contract & send 10 day letter)

Unilateral Termination & Release – F522

- ▶ Termination is UNILATERAL
- ▶ Must state reason
- ▶ Agreement to Disburse Earnest Money requires BOTH Buyer & Seller Signatures
- ▶ If they don't agree, Holder may interpret contract & send "10 day" letter
- ▶ If Earnest Money is addressed in the creation of a contract, it must addressed in the Termination of a contract EVEN if EM not yet sent
- ▶ "Earnest Money not yet remitted per contract to be retained by Buyer."

Mutual Termination & Release – GAR F519

<p>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>Listing Broker:</p> <p>3. Amount to be Paid by Seller to the Listing Broker under the Agreement: \$ _____</p> <p>4. Amount to be Paid by Buyer to the Listing Broker under the Agreement: \$ _____</p>
<p>Disbursement of Earnest Money The parties direct the earnest money being held by _____ to be disbursed as follows: _____</p>	

- ▶ In essence, this may be used as an out of court settlement agreement
- ▶ Only effective when signed by BOTH Buyer & Seller
- ▶ References release of Earnest Money AND compensation to each party & compensation to Brokers – if any gets negotiated

Special Stipulations

- ▶ Limit them as much as possible!
- ▶ Do NOT write a Special Stipulation addressing an issue already covered in the Purchase & Sale Agreement or Exhibit
 - Special Stip will supersede & often they are not complete when agent writes them
- ▶ Consult the Library of Special Stips in the GAR & RE Forms contract Packages or your Broker or an Attorney
 - GAR – Special Stipulations
 - RE 10 – Special Stipulations

Repairs – Special Stipulations

- ▶ What if Seller fails to complete negotiated repairs?
- ▶ May a Buyer terminate? – NOT NECESSARILY!!!
- ▶ Address this potential issue on the Amendment when you are negotiating for Repairs!!!
- ▶ See YouTube Video for complete explanation: Channel – “Real Estate Made Crystal Clear” – Video – [Seller Doesn't Do Repairs... May a Buyer Terminate???](#)

Special Stipulations

- ▶ Repairs
 - "All parties agree that the repair work contemplated and agreed upon herein shall be completed not less than three days prior to the closing dated of _____. All work shall be completed by vendors Licensed, in the State of Georgia, through the proper state licensing board, to complete the work required herein. Seller shall provide to buyer at least three days prior to closing, evidence of vendors license to do repair work, invoices and paid receipts for all work completed. Should seller not complete the work required herein at least three days in advance of closing, buyer shall have the right to either (1) immediately hire vendors of buyer's choice and have work completed at seller's expense to be paid at time of closing from seller's proceeds or (2) terminate the contract agreement with full refund of all earnest money deposits."

Special Stipulations

- ▶ Repairs
 - RE Forms Special Stip – The parties agree that the repairs Seller has agreed to complete under the Contract may not be complete as of the date of closing. In that event, no later than ____ days after Closing, Seller shall complete all repairs to the Property agreed herein. It is understood and agreed that Seller, in showing of good faith, shall deposit at closing \$_____ with _____ as security for the completion of said repairs. As long as Seller completes or causes to be complete all repairs no later than midnight of Repair Completion Date, the repair funds shall be returned to the Seller within ____ days of the Repair Completion Date or the submission of proof of the repairs to Buyer.....

Special Stipulations

- ▶ Repairs
 - **SS 316 REPAIRS PAID BY SELLER, LIMIT ON COST***
Seller shall not be obligated to pay more than \$_____ for the following repairs and replacements:

_____. Buyer shall be obligated to pay any costs in excess of said amount. At or prior to closing, Seller shall provide Buyer with copies of paid invoices to verify that Seller has fulfilled its obligations hereunder.

Special Stipulations

- ▶ Down Payment Assistance
 - "This Agreement is contingent upon the Buyer's approval for the receipt of down payment from _____ program within _____ days from Binding Agreement Date. Should Buyer not be approved for the DPA program within this time frame, Buyer may terminate without penalty if Buyer notifies Seller in writing and providing DPA denial letter."

Special Stipulations

- ▶ Termite Letter
 - **SS 326 TERMITES, GUARANTY PROVIDED BY SELLER** Not later than at the closing, Seller shall provide Buyer, at Seller's sole expense, with a termite guaranty against subterranean termite damage covering all dwellings and garages on the Property for a term of at least one (1) year from the date of closing. The guaranty shall be issued by a licensed Georgia pest control operator, shall be subject to the issuing company's standard deductibles and conditions and shall cover all dwellings and garages on the Property for a term of at least one (1) year from the date of closing. The guaranty shall either: *[Select one. Any box not checked shall not be a part of this Agreement.]*
 - be limited to retreating the Property against subterranean termites; or
 - cover both the retreatment and the repair of any damage to the Property caused from subterranean termite damage.
 - In addition, Seller shall provide Buyer, within three (3) days of the Binding Agreement Date, with a copy of any Georgia Wood Infestation Report which may have been obtained by Seller within 12 months of the Binding Agreement Date.

Special Stipulations

- ▶ Home Warranty
 - At time of closing, Seller shall provide Buyer a home warranty issued by _____ at a cost to the Seller not to exceed \$_____. The terms of the home warranty shall be at least one year from date of closing.
 - (Home warranty to be ordered by _____.)
 - This provision shall survive closing

Special Stipulations

- ▶ "Clean Copy"
 - **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.

Special Stipulations

- ▶ Survival
 - "This provision shall survive closing."

Commission Instructions

- ▶ Instructions to Closing Attorney
 - GAR - F255 RE - 115
 - Includes Commission paid from Seller to Listing Broker
 - From Listing Broker to Selling Broker
 - Any Commission Rebates or other fees paid from commissions (i.e. Home Warranty)
- ▶ Co-Op Commission Agreement - To Be Used PRIOR to Showing - GAR - F258
 - Avoid any misunderstanding about Commission BEFORE you show Property or before you write an Offer

Miscellaneous Forms

- ▶ Withdraw of Offer
 - GAR- F285 RE-264
 - Remember definition of Binding Agreement Date
 - Especially important if Seller makes a Counter Offer to Buyer & then gets a better offer!
- ▶ Rejection of Offer
 - GAR - F288 RE- 260 (Notification)
 - Prove you presented Offer / Counter Offer
- ▶ Bill of Sale - for Personal Property Items
 - GAR - F225 RE - 112
 - A receipt between the Buyer & Seller
 - Not part of the contract

Miscellaneous Forms

- ▶ Reminder of Important Dates - GAR F264
 - Share with your client & with your Co-op agent so that all parties are on the same page
- ▶ Estimated Net to Seller - GAR F837
- ▶ Estimated Cost to Buyer - GAR F840
- ▶ Vendor List - GAR F834
 - Contact info of more than one so Buyer or Seller may choose
- ▶ Broker Information Disclosure - GAR F325
 - Answers & source of answer to questions asked by Buyer or Seller

Consumer Brochures / Disclosures GAR

- ▶ Protect Yourself When Selling a Home
- ▶ Protect Yourself when Buying a Home
- ▶ Protect Yourself When Buying a Home to Be Constructed
- ▶ What to Consider When Buying a Home in a Condominium
- ▶ What to Consider When Buying a Home with an HOA
- ▶ What Buyers Should Know about Buying a Short Sale & Distressed Properties

Consumer Brochures / Disclosures GAR Cont'd

- ▶ What Buyers Should Know about Flood Hazard Areas & Flood Insurance
- ▶ Lead Based Paint Pamphlet
- ▶ Mold Pamphlet
- ▶ What a New Landlord Needs to Know about Leasing a Property
- ▶ The ABC's of Agency

Consumer Brochures / Disclosures RE Forms

- ▶ Home Buying - The Process
- ▶ Home Selling - The Process
- ▶ EPA - Protect Your Family from Lead in the Home
- ▶ EPA - A Brief Guide to Mole & Moisture
- ▶ EPA - A Brief Guide to Radon
- ▶ Dekalb County Plumbing Disclosure

Thank you!

- ▶ Remember to Confirm all Contract Questions with your Broker!
- ▶ Please attend Additional Courses:
www.registerforREclasses.com - Select "Marietta" for full list of all VIRTUAL classes
- ▶ Course Offered through: Georgia Real Estate Academy (GREC School #6915)
- ▶ Credits to be recorded within 3 - 5 Business Days

- ▶ Contract Tip Videos: YouTube Channel:
▶ **"Real Estate Made Crystal Clear"**

- ▶ Handouts Available: www.eAGENTweb.com ... click "Training Videos" ... scroll through page for the class