

2021 GAR Contract Changes #72468

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

Notice to Students for Virtual Broadcast of Continuing Education (CE) Classes of GREC-Approved Classroom Classes

- ▶ **Georgia Real Estate Academy (GREC School #6915)** with end date of renewal being December 31, 2022, presents to you the following course of study:
- ▶ **2021 GAR Contract Changes – GREC Course #72468**
- ▶ This is a Virtual / Remote Broadcast of an approved in-class course, is 3 hours in duration, and is approved by the Georgia Real Estate Commission for the purpose of Continuing Education (CE.) There are no pre-requisites to receive credit for this course.
- ▶ Your instructor(s) for this course will be: **Dana Sparks**
- ▶ This course does NOT have required homework nor any required written examination.

Notice to Students Cont'd.

- ▶ **Attendance policy:**
 - ▶ All students must be on-time and present for all remote / virtual broadcast instruction hours in order to receive credit for this course. Roll call and documentation of Student's Real Estate License Number will be conducted via a "Chat Function" at the beginning and end of each session, and after all breaks.
- ▶ **Continuing Education Notice:**
 - ▶ Students may only receive credit for a specific course number once every twelve months. If you have already received credit for this course within the last twelve months, you are invited to attend but will not receive additional credits.
- ▶ **Prohibition of Recruitment:**
 - ▶ No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the school premises. Report promptly any effort to recruit on behalf of a brokerage firm by anyone including a fellow student to the Director of Georgia Real Estate Academy, Dana Sparks (Dana@MaximumOneRealty.com) 678-580-6880, the Coordinator of Georgia Real Estate Academy, Heidi Kelly (RosterCEAdmin@eAGENTweb.com) 770-919-8825 ext. 306, or the Georgia Real Estate Commission.

GAR Licensing Agreement

- ▶ 2021 Cost for Non-Realtors – \$249
- ▶ Available online January 1, 2021
- ▶ Once 2021 forms are released, it is a GAR licensing violation to use GAR forms with any previous dates
 - Penalty: GAR may revoke yours (or your Broker's) license to use the GAR forms for the year or a specified period of time

Who Is Authorized to Use GAR Forms?

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

Who Is Authorized to Use GAR Forms?

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

GAR Legal Helpline

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

GAR Forms - Other Changes

- ▶ Refer to "2021 GAR Form Changes"
- ▶ Remember to check GAR Mid-Year Changes in May or June of each year
- ▶ This CE class will cover BOTH 2020 Midyear changes (major changes) along with 2021 changes to the GAR contract package forms

MidYear Changes - 2020

2020 GAR Forms Revisions Package Changes

The following pages will list the changes to the forms in the entire GAR Forms Revisions Package. The changes listed below are changes made after the initial release of the forms dated 8/1/2020.

- F101 Exclusive Seller Listing Agreement
- F101M Multiple Listing Service - similar language on when the Agreement is to be deemed a listing agreement
- F122 Exclusive Listing Agreement - New BR Addendum and BR Addendum
- F126 Non-Exclusive Listing Agreement - New BR Addendum and BR Addendum
- F246 Special Situations - Revised language in other forms to be used in multiple transactions
- F316 Lead Based Paint Exhibit - Revised AGENT'S DISCLOSURE - Lead Based Paint Exhibit
- F322 Commonly Association Disclosure Exhibit - Revised language regarding the assessment to fund the maintenance of the common areas
- F401 All Cash Sale Exhibit - Revised AGENT'S DISCLOSURE - All Cash Sale Exhibit
- F404 Conventional Loan Contingency Exhibit - Revised language regarding the assessment to fund the maintenance of the common areas
- F510 Chasing Attorney Acting as Holder of Earnest Money Exhibit - Revised language regarding the assessment to fund the maintenance of the common areas
- F601 Sale of Equity of Buyer's Property Contingency Exhibit - Revised language regarding the assessment to fund the maintenance of the common areas
- F716 Assignment to Retain Contingency on Sale or Lease of Buyer's Property - Revised language regarding the assessment to fund the maintenance of the common areas
- C007 Agreement for License Use of a Real Estate Assistant - Revised language regarding the assessment to fund the maintenance of the common areas

MidYear Changes - 2020 F316 - Lead Based Paint Exhibit

DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT

LEAD-BASED PAINT HAZARD

EXHIBIT

The Seller hereby certifies that the Seller has provided the following information to the Buyer:

1. Lead-Based Paint Hazard

2. Seller's Knowledge of Lead-Based Paint Hazard

3. Seller's Remediation Efforts

4. Buyer's Acknowledgment

5. Seller's Signature

6. Buyer's Signature

MidYear Changes - 2020 F316 - Lead Based Paint Exhibit

- ▶ Changed AGAIN on 5/22/20
- ▶ Changes AGAIN in 2021
- ▶ Added "&/or LBP Hazards"
- ▶ MUST Provide Buyer with copy of LBP Pamphlet PRIOR to Entering into a Binding Agreement
 - GAR CB04 - Lead-Based Paint Pamphlet
 - www.EPA.gov
- ▶ MUST Be Signed by Buyer & Seller PRIOR to Entering into a Binding Agreement
- ▶ MUST give Buyer a 10 Day period to inspect for LBP

MidYear Changes - 2020 F401 - All Cash / No Financing Contingency

ALL CASH SALE (NO FINANCING CONTINGENCY) EXHIBIT

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of the property located at _____.

1. All Cash Sale - The Buyer has sufficient liquid assets to purchase the Property in full cash. The Buyer is not obtaining a mortgage loan to purchase the Property.

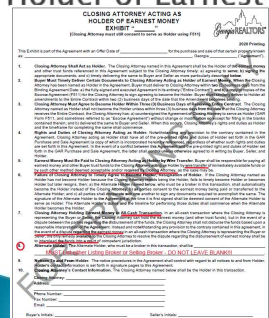
2. Buyer's Acknowledgment - The Buyer acknowledges that the Seller is not providing any financing assistance to the Buyer.

3. Seller's Signature - The Seller has signed this Exhibit.

4. Buyer's Signature - The Buyer has signed this Exhibit.

Included Language to include a "Hard-Money Loan"

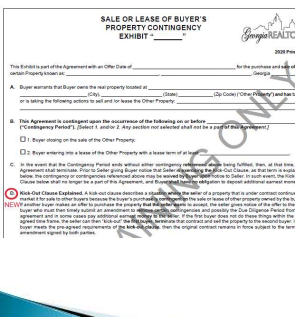
MidYear Changes – 2020 F510 – Closing Attorney Acting as Holder of Earnest Money



**Changes Again in 2021
 Changed form of EM
 Removed "ACH"
 Added "or Other
 Form acceptable
 by attorney"**

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MidYear Changes – 2020 F601 – Sale or Lease Contingency



**Revised Again in 2021
 Added Paragraph D
 "Kick-Out Explained"**

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2021 GAR Changes – Overview

- ▶ Biggest Changes – Brokerage Agreements
- ▶ Consumer Brochures – A few changes
- ▶ Purchase & Sale – Very few changes
- ▶ New Construction – A few changes
- ▶ Commercial Forms – A few Changes
- ▶ Exhibits & Amendments – A few Changes
 - F301 – Seller's Property Disclosure
 - F316 – Lead-Based Paint Exhibit
 - F322 – Community Association Disclosure
 - F601 – Sale or Lease Contingency
 - F843 – Referral Authorization

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2021 GAR Changes – Overview

- ▶ New Forms
 - F289 – Request for Confirmation of Presentation of Offer / Counter Offer
 - F290 – Agreement to Reinstate Contract
 - F302 – Seller's Disclosure of Latent Defects & Fixtures Checklist
 - F918 – Lead Based Paint Exhibit – LEASE
 - CF24 – Commercial Exclusive Listing for Leases
- ▶ New Special Stipulation
 - SS627 – Expiration of Deadlines: "All time deadlines set forth herein shall expire at ____ am or pm on that day of the deadline."

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F101 – Exclusive Seller Brokerage Agreement

2. List Price and Listing Period: The price at which the Property shall be listed for sale is \$ _____ ("List Price"). The term of this Agreement shall begin on the date of _____ ("Starting Date") and made available to the public on the date of _____ ("Marketing Commencement Date") and shall continue through the date of _____ ("Ending Date"), as the same may be extended by written agreement of the parties as provided for herein (hereinafter, "Listing Period").

- ▶ **A2 "List Price & Listing Period"**
 - Brokerage Agreement begins on _____ **"Starting Date"** and made available to the public on the date of _____ **"Marketing Commencement Date"** and shall continue through the date of _____ "Ending Date" as the same may be extended by written agreement of the parties or as provided herein.
- ▶ **Why this change?**
 - To stay in compliance with License Law – Seller as Client For Broker Commission Protection

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What About MLS Listing Rules?

- ▶ FMLS has Changed per NAR Clear Cooperation 8.0
- ▶ **Rule 3 – Listings of Properties**
- ▶ **3.1** All improved and unimproved real estate listed for sale under an Exclusive Right to Sell Contract with a Principal Member must be listed with FMLS and entered into the FMLS Database within 48 hours after the listing is signed by the Owner (excepting weekends, federal holidays and postal holidays). See Rules 3.4 and 3.5 below for exceptions.
 - a) Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.
- ▶ **Exceptions: Outside of Compulsory Area & Commercial**

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What About MLS Listing Rules?

GAMLS General Listing Policies:

All residential listings must be entered into the system within two (2) business days. Any Exclusive Right to Sell residential listing (i.e. single family detached, single family attached or multifamily property) is required to be entered into the listing database within 48 hours after obtaining the necessary signatures. Other types of exclusive listings (e.g. commercial, land/lot) are optional but must be maintained according to Georgia MLS policy once entered. The list date and expiration date must be supported by the listing agreement.

Any change to the listing must be reflected in the system within one (1) business day. Any change to the original listing agreement, the listed price or the status must be reflected in the database within 24 hours of the broker's receipt of the seller's authorization.

All listing content must be accurate. When an agent or broker enters listing information into the database, the information must be correct and timely.

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All About "Coming Soon"

- ▶ NAR Clear Cooperation 8.0
- ▶ Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.
- ▶ For more information regarding NAR Clear Cooperation 8.0, please visit – <https://www.nar.realtor/about-nar/policies/mls-clear-cooperation-policy>

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All About "Coming Soon"

- ▶ Coming Soon – Seller must Sign Brokerage Agreement & Property must Actually Get Listed
- ▶ Not to be shown to ANY prospects until available to all
- ▶ A Coming Soon listing refers to a property that is not available for showing or sale until a later date. "Coming soon" can be a legitimate advertising technique, allowing the owners more time to complete repairs, pack, or otherwise prepare the property for showing or sale. A legitimate Coming Soon listing should truly be unavailable for purchase or showing.

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All About "Coming Soon"

- ▶ Coming Soon – Never Gets Listed
- ▶ May be a License Law Violation
- ▶ May be an MLS Membership Violation
- ▶ May be a Fair Housing Violation
- ▶ May be a REALTOR® Code of Ethics Violation
- ▶ Sometimes "coming soon" advertising is used to circumvent the MLS, market the property to a select group of people, or pressure a buyer to use the listing broker for the transaction, which not only breaches real estate professionals' ethical duties to clients but may violate real estate license and consumer protection laws.

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All About "Coming Soon"

- ▶ Proper Use of "Coming Soon"
- ▶ Must have a Signed Seller Brokerage Agreement
 - GREC Rule – 520-1-.09(2) – Avoid violation of GREC License Law against misleading advertising because it is advertising a property as being listed soon when in fact, no listing agreement has been entered into.
 - (O.C.G.A. § 43-40-25(b)(ii)) – Avoid License Law Violation by placing a sign on any property offering it for sale or rent without the written consent of the owner, or the owner's authorized agent.
- ▶ Appraisal Issues – if sold prior to being exposed on Open Market (via MLS)

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All About "Coming Soon"

- ▶ If Broker is member of MLS, check with MLS Rules
- ▶ FMLS –
 - The property is currently "off market," and will be Active within the next 21 days.
 - Only FMLS members will be able to view Coming Soon listings.
 - The Coming Soon status is only available at the beginning of the listing period, and once a listing is taken out of the Coming Soon status, it cannot go back into Coming Soon.

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All About "Coming Soon"

- Does this mean that you can bypass an agent and list on the FMLS without ever hitting the market? No. You still must have an exclusive listing agreement signed with a licensed FMLS member real estate agent to take advantage of this perk. If you sell the home before it "goes live," you are still responsible for FMLS fees and other agreed upon terms.

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All About "Coming Soon"

- GAMLS -
 - Coming Soon is only allowed for a maximum of 21 days prior to the list date on the Exclusive Right to Sell or Exclusive Agency Agreement. The Coming Soon Listing must have an "On Market Date" that must be later than the date of listing entry and list date.
 - After the 21 days of Coming Soon, the listing will automatically go to New status. A listing can be changed to an Active status any time within the 21 days by having GAMLS change the "On Market Date" field.
 - "Days on Market (DOM)" will not accrue while in the Coming Soon status and will only begin once the listing status becomes New.
 - The Coming Soon status will be designated as "CS" and will only be visible to Georgia MLS members.
 - A listing that was once in the Coming Soon status must be off market for 90 days or more before it can be relisted by the same Brokerage as Coming Soon.
 - Listings in the Coming Soon status will not be distributed to Broker, Agent, consumer facing, or any 3rd party syndication websites.
 - Listings in the Coming Soon status cannot be shown until the listing reaches the "On Market Date". Coming Soon listings will be unavailable for the ShowingTime service.
 - Coming Soon status is required to be strictly adhered to, as stated by the MLS Statement 8.0 Clear Cooperation Policy. If the status is not updated within one business day, the Broker's office will be subject to an initial fine of \$25 and \$5 every business day thereafter, until the property is within compliance.

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All About "Coming Soon"

- Benefits
 - Allows Seller time to make repairs, get ready, etc.
 - Perhaps good to use during Holidays or School vacations
 - Gives Listing Agent more opportunity for getting sign calls & both sides of transaction (if your Broker allows)
- Drawbacks
 - Buyers will want to see property & may get upset when agent may not show it
 - Limited exposure to market so fewer offers & potentially lower sale price
 - Puts agents in a position where they are not knowledgeable about the market
 - Listing Broker Commission may not be protected if Seller Brokerage Agreement not signed
 - May be Fair Housing violation if not exposed equally
 - May not appraise for market price if sold prior to limited exposure

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F101 - Exclusive Seller Brokerage Agreement

- ¶A4 - Commission
 - Changed from "Seller agrees to pay Broker at Closing" to "Seller agrees to pay the following commission at the closing of any contract to sell of the property"
- Added two new sub paragraphs
 - c: Commission Adjustment to Cooperating Broker
 - d: Separate Commission on Lease

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F101 - Exclusive Seller Brokerage Agreement

c. Commission Adjustment to Cooperating Broker: There may be circumstances where Seller's Broker shall not pay the cooperating broker the Commission referenced in Section A.4(b) above. These circumstances and the Commission that shall be paid in such circumstances are as follows: Listing Broker may CHANGE commission offered to Co-Op. Based on certain circumstances - those are disclosed here

*****Seller MUST approve what happens to THEIR Money*****

Check if an additional page(s) is attached (in which event, the same are incorporated herein).

- For Example - MLS Remarks: "Selling Broker Commission to be ___% if Listing Broker shows Buyer."
- "VRC" in MLS Listing - must be marked YES
- There is a field on every listing - "Selling Commission" - which notifies the selling broker/agent what to expect if they participate in a sale of that listing. The selling commission can be entered as a percentage of the sales price or a specific dollar amount.
- If there is a possibility that the selling commission might be different than what is listed in the selling commission field, for any reason, an explanation must be provided in the Private Remarks. An example would be a situation where the seller provides a reduced commission if the listing agent - and not the buyer's agent - shows the property to the buyer. Another example could be situations in which there could be a potential short sale and the commission is subject to lender approval.
- The "VRC" (Variable Rate Commission) field may also be used to indicate "Y" in cases where the commission can vary, but the explanation is still required in the Private Remarks.
- Any comments relating to commission or compensation may only appear in the Private Remarks and must include "to selling broker" and not "to selling agent".

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F101 - Exclusive Seller Brokerage Agreement

- ¶A4d
 - d. Separate Commission on Lease:** If Seller leases the Property or enters into a lease/purchase agreement or a lease with an option to purchase agreement during this Agreement, Seller shall also pay Broker a separate leasing commission in the amount of \$_____ and as follows: _____
 - Notwithstanding any provision to the contrary contained herein, the payment of a Leasing Commission (including in lease/purchase transactions or lease with an option to purchase transactions) shall not relieve Seller from paying the Commission at the closing of a Contract to Sell, as provided elsewhere in this Agreement.

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F101 – Exclusive Seller Brokerage Agreement

6. **Agency and Brokerage.** The following are types of agency relationship(s) NOT offered by Broker:

seller agency buyer agency designated agency dual agency sub-agency tenant agency limited agency

Seller does does not consent to Broker acting in a dual agency capacity, as that agency relationship is prohibited in Section B.6(b) below and in the CB01 ABC's of Agency. Seller expressly consents to Broker acting in any other agency relationship offered by Broker.

- ▶ ¶A6 – Brokerage – Dual Agency – Legal with Informed Consent – 2021 makes this more prominent for INFORMED consent vs. IMPLIED consent

F101 – Exclusive Seller Brokerage Agreement

- ▶ 2020 GAR
 - Just listed types of Agency Broker did not allow
- ▶ 2021 GAR
 - Lists types of Agency Broker does not allow
 - Adds section for Seller to consent or not to Dual Agency
 - References explanation of Dual Agency in ¶B6 and in Consumer Brochure CB01 – “ABC’s of Agency”
- ▶ ¶A7 – “Employee or Independent Contractor” – Deleted

F101 – Exclusive Seller Brokerage Agreement

B. CORRESPONDING PARAGRAPHS FOR SECTION A.

1. **Exclusive Seller Brokerage Engagement Agreement.** Seller has the full authority to enter into this Agreement for the listing of Seller's Property for sale. This Agreement may not be amended except by the written agreement of Seller and Broker. 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. Seller is not a party to any other exclusive seller brokerage engagement agreement and all such previous agreements, if any, have expired and not been renewed. Seller acknowledges that Seller may have to pay a separate broker a real estate commission if Seller is subject to a current seller brokerage engagement agreement or has terminated a previous seller brokerage engagement agreement without the consent of the previous broker. “I fired my previous Agent / Broker” What does that mean??

- ▶ ¶B1 – Exclusive Right to Sell – Added verbiage that Seller has not unilaterally terminated a previous Listing Agreement with another Broker or may owe that other Broker commission

F101 – Exclusive Seller Brokerage Agreement

2. **List Price and Listing Period.**

a. **List Price:** Seller agrees to list the Property for sale at the list price specified in this Agreement. The failure of the Property to be shown or sell at the list price may be an indication that the list price for the Property is too high.

- ▶ ¶B2a – List Price & Listing Period – “... The failure of the Property to see at the list price may be an indication that the list price for the property is too high.”
- ▶ ¶B2b – Initial Period When Property is Under Contract to Sell – the same as 2020
 - Listing Agreement still in tact if Seller is under contract & closing date is AFTER end of Listing Agreement
 - Changed verbiage from “extended through closing of contract” to “extended through the closing of the contract to sell.” – to differentiate between Listing Contract & Purchase & Sale Contract

F101 – Exclusive Seller Brokerage Agreement

c. **Extension:** If during the term of this Agreement, Seller and a prospective buyer enter into: 1) a real property purchase and sale agreement for the Property; 2) a contract to exchange property, including the Property; 3) an option contract for the sale of the Property; or 4) a contract to sell the shares or partnership or membership interests in the legal entity constituting Seller (hereinafter, collectively referred to in this Agreement as a “Contract to Sell”) which is not consummated or closed for any reason whatsoever, then the Listing Period may be extended unilaterally by Broker for the number of days that property was under the Contract to Sell (hereinafter, “Extension Period”) by Broker providing written notice of the same to Seller within five (5) days of the Contract to Sell not being consummated (but in no event later than prior to the expiration of the Agreement), (hereinafter, “Notification Period”). If such written notice is not given before the end of the Notification Period, then the Extension Period for that transaction shall be deemed to have been waived by Broker. F158 - “Notice to Extend Brokerage Engagement Agreement”

- ▶ ¶B2c – Extension – specified time frames for procedure for unilateral extension by Broker for # of days property was under contract but didn't sell
- ▶ Listing Agreement may be extended by Broker

F101 – Exclusive Seller Brokerage Agreement

- ▶ Broker must send Notice to Seller within 5 days after termination of Purchase & Sale contract & prior to expiration of Listing Agreement
- ▶ If Broker fails to send Notice of extension to Seller, then there is no extension
- ▶ Use GAR F158 – “Notice to Extend Brokerage Engagement Agreement”
- ▶ May Use F816 – “Notice”

F158 - Notice to Extend Brokerage Agreement

New Name Multi-Use

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F101 - Exclusive Seller Brokerage Agreement

Property to be covered by this agreement shall be the entire interest in the property (including images/videos) in any media of Broker's choosing as being "under contract" while a sale is pending and as being "sold" upon the closing of the Property (except nothing herein shall permit Broker to place a Sold sign on property no longer owned by Seller except with the written permission of the new owner). Seller acknowledges that buyers and other brokers may take photographs, videos, and use other technology to capture images of the Property to assist in marketing the Property and that buyers remember different properties. **Seller agrees to remove any personal property prior to listing the Property of which Seller does not want images to be captured.**

- ▶ ¶B3a - Marketing - photos & videos by others
- ▶ ¶B3b - References property in MLS w/I one day of "Marketing Commencement Date"

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F101 - Exclusive Seller Brokerage Agreement

4. Commission

a. **Obligation to Pay Commission:** In the event that Seller enters into a Contract to Sell or lease, lease/purchase, or lease with an option to purchase the Property or any portion thereof during the term of this Agreement with any buyer, seller agrees to pay Broker's Commission at the closing (regardless of whether the closing is during or after the term of this Agreement), and if applicable, Broker's Leasing Commission prior to the commencement of a lease, lease/purchase, or lease with an option to purchase.

b. **Sharing of Broker's Commission with Cooperating Broker:** Broker shall share this commission with a cooperating broker, if any, who procures the Buyer of Property by paying such cooperating broker at closing the percent (%) of the sales price of Property referenced above OR the flat amount referenced herein. There may be times when the Broker may not pay the cooperating broker the full amount of the commission as set forth in Section A.

Commission upon Default moved to C8

- ▶ Titled Paragraphs & added "Obligation to Pay"
- ▶ Referenced Listing Broker may not pay Cooperating Broker amount agreed to in ¶A4
 - o i.e. Private Remarks "If I show Buyer, Selling Commission so be ___%"
 - o Best Practice - Have this discussion with Seller & TOGETHER decide on this Fee
 - o Mark "YES" to Variable Rate Commission (VRC) in MLS Listing

Commission upon Seller Default moved to ¶C8

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F101 - Exclusive Seller Brokerage Agreement

- ▶ ¶B5 - Protection Period - Paragraph Re-Worded for Clarity - for Sellers AND Agents!

5. Protected Period Paragraph Re-Worded for Clarity

The Protected Period shall be the period of time set forth in this Agreement commencing upon the expiration or the unilateral termination of this Agreement by Seller during which Broker shall be protected for its Commission or Leasing Commission, as applicable. If this Agreement is unilaterally terminated by Seller without the consent of the Broker, the Protected Period shall be the number of days remaining on what would have been the original listing as of the date the Seller terminates the Agreement plus the number of days set forth as the Protected Period in Section A.5 of this Agreement. There shall be **no Protected Period** if Broker and Seller mutually agree to terminate this Agreement. In the event that during the Protected Period, Seller enters into a Contract to Sell or lease, lease/purchase, or lease with an option to purchase of all or any portion of the Property which during the term of this Agreement was submitted to, identified or shown to any buyer (either in person or virtually), was provided specific information about or inquired about the Property, either directly or through a broker working with the buyer, then Seller shall pay Broker at closing or the commencement of the lease, lease/purchase, or lease with an option to purchase, as applicable, the Commission or Leasing Commission set forth above.

Notwithstanding the above, if this Agreement expires (and is not unilaterally terminated by Seller) an exception to the above Commission obligations shall apply and no Commission or Leasing Commission, as applicable, shall be due, owing or paid to Broker if Seller enters into a Contract to Sell or lease, lease/purchase, or lease with an option to purchase all or any portion of the Property during the Protected Period or enters into a Contract to Sell or lease, lease/purchase, or lease with an option to purchase all or any portion of the Property during the Protected Period if the Agreement is unilaterally terminated by Seller. The Commission rights and obligations set forth herein shall survive the termination of this Agreement.

For the purposes of this section, the term "Seller" shall include Seller, all member of the Seller's immediate family any legal entity in which Seller or any member of Seller's immediately 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. 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.

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F101 - Exclusive Seller Brokerage Agreement

- ▶ Seller owes Broker Commission if Seller sells (lease, option, etc.) property to a Buyer whom during the time of the Listing Agreement, the Broker / Agent brought to their attention
- ▶ Protection period begins at expiration of this Agreement OR at time of Seller's unilateral termination of agreement AND the # days that were left on the original Agreement get ADDED to the Protection Time frame for Broker commission
- ▶ NO Protection for Commission if the Agreement is MUTUALLY Terminated

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F101 - Exclusive Seller Brokerage Agreement

- ▶ NO Protection for Commission if the Seller lists with another Broker via Exclusive Seller Brokerage Agreement!
- ▶ Only exception is if the Seller UNILATERALLY terminated the Agreement & then listed with another Broker

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F301 – Seller’s Property Disclosure Statement Exhibit

- ▶ Minor Changes
- ▶ ¶C5– Systems & Components
 - Added questions about service & replacement dates
- ▶ ¶C6 – Sewer / Plumbing
 - Added question about age of Hot Water Heater
- ▶ ¶C10 – Termites, etc.
 - Modified questions about damage caused by pests
 - Modified question about transfer of warranty costs

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More About Seller Disclosures

- ▶ Sellers in Georgia do **not** need to disclose certain things that have happened on the property. For example, the seller does not need to tell a buyer if a diseased person ever lived in the home, or if a homicide, felony, suicide, or any other death occurred there (Georgia OCGA §44-1-16(a)(1)).
- ▶ Additionally, a seller in Georgia is not required to let a buyer know if a registered sex offender lives in the area (Georgia Official Code Annotated §44-1-16 (b)).
- ▶ The seller must answer any direct question a buyer asks about these things honestly (Georgia OCGA §44-1-16(a)(1)).

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“Stigmatized” Property

- ▶ **O.C.G.A. 44-1-16 (2010)** – Failure to disclose in real estate transaction that property was occupied by diseased person or was site of death; failure to disclose information required to be provided or maintained in accordance with Code Section 44-9-44.1.
 - (a)(1) No cause of action shall arise against an owner of real property, a real estate broker, or any affiliated licensee of the broker for the failure to disclose in any real estate transaction the fact or suspicion that such property:
 - (A) is or was occupied by a person who was infected with a virus or any other disease which has been determined by medical evidence as being highly unlikely to be transmitted through the occupancy of a dwelling place presently or previously occupied by such an infected person; or
 - (B) was the site of a homicide or other felony or a suicide or a death by accidental or natural causes; provided, however, an owner, real estate broker, or affiliated licensee of the broker shall, except as provided in paragraph (2) of this subsection, answer truthfully to the best of that person’s individual knowledge any question concerning the provisions of subparagraph (A) or (B) of this paragraph.
 - (a)(2) An owner, real estate broker, or affiliated licensee of the broker shall not be required to answer any question if answering such question or providing such information is prohibited by or constitutes a violation of any federal or state law or rule or regulation, expressly including without limitation the federal Fair Housing Act as now or hereafter amended or the state’s fair housing law as set forth in Code Sections 8-3-200 through 8-3-223.
 - (b) No cause of action shall arise against an owner of real property, real estate broker, or affiliated licensee of the broker for the failure to disclose in any real estate transaction any information or fact which is provided or maintained or is required to be provided or maintained in accordance with Code Section 42-9-44.1. No cause of action shall arise against any real estate broker or affiliated licensee of the broker for revealing information in accordance with this Code section. Violations of this Code section shall not create liability under this Code section against any party absent a finding of fraud on the part of such party.

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As a listing broker, am I required to disclose if a murder or suicide took place in the home?

- ▶ The answer to this question is no, unless you are asked. Georgia law provides that no cause of action shall arise against an owner of real property, a real estate broker or any affiliated licensee of the broker for failing to disclose that a person was murdered or committed suicide in a home unless those parties are asked.
- ▶ **§ 24-12-21 – Disclosure of AIDS confidential information**

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GA Licensed Agent Must ALSO Disclose Known Latent Material Defects

- ▶ **License Law OCGA §10-6A-5(b)(1) & (2) – Brokerage Relationships**
- ▶ (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 plans; 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.

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- ▶ 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 discloses 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.

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GA Licensed Agent Must ALSO Disclose Known Latent Material Defects

- ▶ **REALTOR® Code of Ethics – Article 2** – “REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.” (Amended 1/00)

Lead-Based Paint Disclosures

- ▶ Federal law requires that before being obligated under a contract to buy housing built prior to 1978, buyers must receive the following from the homeseller: (Forms also available at www.EPA.gov)
 - Lead-Based Paint Informational Pamphlet
 - CB04 – Lead Based Paint Pamphlet
 - CB13 – Protect Yourself When Buying a Home
 - Seller’s Disclosure regarding knowledge of Lead-Based Paint in property
 - F316 – Lead Based Paint Exhibit
 - F918 – Lead Based Paint Exhibit (Leases) – **NEW FORM**
- ▶ Seller must sign & make these available to prospective Buyer **PRIOR** to entering into a contract
- ▶ Seller must allow Buyer (if desired by Buyer) a 10 day risk assessment of LBP **PRIOR** to entering into a contract

Lead based Paint Disclosures

This is a screenshot of the F316 form. It includes sections for 'New Name', 'Seller's Disclosure', and 'Buyer's Acknowledgment'. A large 'DRAFTING ONLY' watermark is visible across the center of the page.

Lead based Paint Disclosures

- ▶ Changed Name: includes “hazards” & for “Purchase & Sale”
- ▶ See NEW Form – F918 – Lead Based Paint Exhibit for Leases
- ▶ This Exhibit & Lead-based Paint Brochure **MUST** be signed by Seller & Prospective Buyer prior to going Binding
- ▶ Seller must allow Buyer 10 day risk assessment **PRIOR** to going Binding unless waived by Buyer but Buyer may still assess LBP risk during Due Diligence

NEW Form – F918 – Lead Based Paint Exhibit (Leases)

This is a screenshot of the F918 form. It includes sections for 'New Name', 'Seller's Disclosure', and 'Buyer's Acknowledgment'. A large 'DRAFTING ONLY' watermark is visible across the center of the page.

F101 – Exclusive Seller Brokerage Agreement

3. **Limits on Broker's Authority and Responsibility.** Seller acknowledges and agrees that Broker:

- may show other properties to prospective buyers who are interested in the Property;
- shall have no duty to inspect the Property or advise buyer or Seller on any matter relating to the Property which could have been revealed through a survey, appraisal, title search, Official Georgia Flood Information Report, utility bill review, septic system inspection, well water test, tests for radon, asbestos, mold, and lead-based paint. Inspection of the Property by a licensed home inspector, construction expert, structural engineer, or environmental engineer, review of this Agreement and transaction by an attorney, financial planner, mortgage consultant, or tax consultant, and obtaining appropriate governmental approvals to determine, among other things and without limitation, the zoning of the Property, the propriety of the Property to flood, flood zone certifications, whether any condemnation action is pending or has been filed or other nearby governmental improvements are planned. Seller acknowledges that Broker does not perform or have expertise in any of the above tests, inspections, and review or in any of the matters handled by the professionals referenced above. Seller should seek independent expert advice regarding any matter of concern to Seller relative to the Property and this Agreement. Seller acknowledges that Broker shall not be responsible to monitor or supervise or inspect any portion of any construction or repairs to the Property and that such tasks fall outside the scope of real estate brokerages services.

- ▶ **F101 – Limits on Broker's Authority** – added propensity to flooding & knowledge of being in flood plain
- ▶ Have Buyer find out that info during Due Diligence!

F101 - Exclusive Seller Brokerage Agreement

b. Broker Remedies for Seller Default: Seller shall immediately pay Broker the Commission referenced herein for any of the Seller defaults above, except for Seller unilaterally terminating this Agreement prior to the end of the Listing Period (as the same may have been extended as provided for herein). With respect to this event of default, Seller's obligation to pay Broker its Commission shall be controlled by the Protected Period sections of this Agreement.

1. Broker Remedies for Default - References Protection Period

c. Seller Default: In the event Seller defaults under this Agreement, Seller shall, in addition to its other obligations set forth elsewhere herein, immediately 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 in 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 Broker's Commission and for 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 Commission. **For Marketing Expenses, consider using F149 - Retainer Fee Exhibit.**

1. Seller Default

- Reimburse Broker for expenses including MLS Withdrawal fees
- Consider using F149 - Retainer Fee Exhibit for Marketing Expenses
- Consider a Special Stipulation regarding a specified "Early Termination Fee"
- Consider using F152 - MUTUAL Termination of Brokerage Agreement

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F110 - Exclusive Buyer Brokerage Agreement

Similar changes as made to Listing Brokerage Engagement Agreement

2. Agency and Brokerage: The following are types of agency relationships NOT offered by Broker:

- seller agency
- buyer agency
- designated agency
- dual agency
- sub-agency
- tenant agency
- landlord agency

Buyer does not consent to Broker acting in a dual agency capacity, as that agency relationship is explained in Section B.3(b) below and in the CBOT ABCs of Agency. Buyer expressly consents to Broker acting in any other agency relationship offered by Broker.

1. A3 - expanded language about Dual Agency for INFORMED vs. Implied consent by Buyer

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F110 - Exclusive Buyer Brokerage Agreement

4. Commission:

A. Buyer agrees that Broker shall be entitled to the following commission ("Commission") at the closing of a Contract to Purchase (as that term is hereinafter defined) as follows:

_____ 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 at closing between Broker's Commission and the commission actually paid to Broker at the closing of a Contract to Purchase (as that term is hereinafter defined):

2020 - read "contract"

1. A4 - Commission - Changed language from "contract" to "Contract to Purchase" for clarity

2. Separate Commission on Lease: If Buyer leases property or enters into a lease/purchase contract or a lease with an option to purchase agreement during this agreement, Buyer shall also pay Broker a separate leasing commission (except where the commission is paid by the Landlord) of the amount of _____ and as follows: _____

Notwithstanding any provision to the contrary contained herein, the payment of a leasing Commission (including in lease/purchase transactions or lease with an option to purchase transactions) shall not relieve Buyer from paying the Commission at the closing of a Contract to Purchase, as provided elsewhere in this Agreement.

1. A5 - Added Separate Commission on Lease

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F110 - Exclusive Buyer Brokerage Agreement

2. Term:

a. The term of this Agreement shall begin on the Starting Date and shall continue through the Ending Date as the same may be extended upon the written agreement of the parties or as provided for herein. If Buyer is a party to a Contract to Purchase, as that term is hereinafter defined, but the term expires prior to the closing, then the term of this Agreement shall be automatically extended through the closing of the Contract to Purchase.

b. Extension: If during the term of this Agreement, Buyer and a prospective seller enter into a real estate purchase and sale agreement, option to purchase real property, agreement to exchange real property or contract to purchase the shares, partnership or membership interests in a legal entity owning real property (hereinafter, collectively, "Contract to Purchase") which is not closed or consummated for any reason whatsoever, then the original expiration date of this Agreement may be extended for the number of days that Buyer was under contract ("Extension Period") by Broker providing written notice of the same to Buyer within five (5) days of the date the Contract to Purchase not being consummated but in no event later than prior to the expiration of this Agreement (hereinafter "Notification Period"). If such written notice is not given before the end of the Notification Period, then the Extension Period for that transaction shall be deemed to have been waived by Broker.

1. B2b - Extension of Term

- Added same time frames as with Seller Brokerage

1. Use GAR F158 - "Notice to Extend Brokerage Engagement Agreement" - Multi-Use Buyer or Seller

1. May Use F816 - "Notice"

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F110 - Exclusive Buyer Brokerage Agreement

3. Agency and Brokerage:

a. Broker's Policy on Agency: Unless Broker has indicated elsewhere herein that Broker is not offering a special agency relationship, the types of agency relationships offered by Broker are: seller agency, buyer agency, designated agency, dual agency, sub-agency, landlord agency, and tenant agency.

b. Dual Agency Disclosure: Applicable only if Broker's agency policy is to practice dual agency and Buyer has consented to Broker acting in a dual agency capacity. If Buyer and a prospective seller are both being represented by the same Broker and the Broker is not acting in a designated agency capacity, Buyer is aware that Broker is acting as a dual agent in this transaction and hereby consents to the same. Buyer has been advised that: _____

1. B3b - Further clarification of Buyer's Informed Consent to Dual Agency

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F110 - Exclusive Buyer Brokerage Agreement

Commission Paragraph - reworded & sections moved around

4. Commission: 2020 Version

a. Broker's Policy on Agency: In the event of a purchase agreement during the Protected Period after the termination or expiration of this Agreement, the following types of agency relationships shall be offered by Broker: seller agency, buyer agency, designated agency, dual agency, sub-agency, landlord agency, and tenant agency.

b. Dual Agency Disclosure: Applicable only if Broker's agency policy is to practice dual agency and Buyer has consented to Broker acting in a dual agency capacity. If Buyer and a prospective seller are both being represented by the same Broker and the Broker is not acting in a designated agency capacity, Buyer is aware that Broker is acting as a dual agent in this transaction and hereby consents to the same. Buyer has been advised that: _____

1. Commission Paragraph reworded & "Default" section moved to paragraph C2

a. Broker's Entitlement to Commission: If during the term of this Agreement (as the same may be extended by the written agreement of the parties or as provided for herein) Buyer enters a Contract to Purchase or a Lease, Buyer agrees that Broker shall be entitled to the Commission set forth herein at the closing of the transaction (regardless of whether the closing is during or after the Ending Date) or to a Leasing Commission, if Buyer leases, leases to purchase or a lease with an option to purchase real property (regardless of whether the commencement of the lease is before or after the expiration of this Agreement). There may be properties shown to Buyer by Broker where a bonus is being offered to Broker in addition to the Commission or by Broker to an affiliated licensee for finding a buyer to purchase the property listed by Broker. Buyer consents to Broker and Broker's affiliated licensees receiving such bonuses.

b. Seller Normally Pays Commission: In the event Seller does not pay the Broker the full amount of the Commission, the difference in Commission will be paid by Buyer as agreed in Section A.4.(i).

c. Commission on Property Sold For Sale By Owner ("FSBO"): In the event Buyer purchases, leases, leases to purchase or leases with an option to purchase property that is being sold or leased 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 the Commission set forth herein at or before the closing or the Leasing Commission, if applicable, prior to the commencement of the lease.

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F110 – Exclusive Buyer Brokerage Agreement

Protected Period. The Protected Period shall be the period of time set forth in this Agreement commencing upon the expiration of this Agreement or what would have been the expiration of this Agreement had it not been unilaterally terminated by Buyer during which Broker shall be protected for its Commission and/or Leasing Commission, as applicable. There shall be no Protected Period if Buyer and Broker mutually terminate this Agreement. In the event Buyer enters into a Contract to Purchase or Lease to purchase or lease with an option to purchase of real property which, during the term of this Agreement or what would have been the term of this Agreement had it not been unilaterally terminated by Buyer, was shown to Buyer by Broker, either virtually or in person, or which Buyer otherwise visited ("Protected Properties"), then Buyer shall pay Broker at closing or prior to the commencement of the lease/Commission and/or Leasing Commission, as applicable, set forth above.

For the purposes of this section, 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. For the purposes of this Agreement, the term "seller" shall include seller, all member of the seller's immediate family, any legal entity in which seller or any member of seller'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. **Different than Protection in Seller Brokerage Agreement!**

C. OTHER TERMS AND CONDITIONS

- ¶B6 – Protection Period – Re-worded
 - Begins upon expiration
 - Additional protection time frame if Buyer unilaterally terminated
 - No protection with MUTUAL termination
 - Defines "Protected Properties"

DIFFERENT than Protection in Seller Brokerage Agreement

F110 – Exclusive Buyer Brokerage Agreement

Limits on Broker's Authority and Responsibility. Buyer acknowledges and agrees that Broker:

- may show property in which Buyer is interested to other prospective buyers;
- shall have no duty to inspect the Property or 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, and lead-based paint; inspection of the Property by a licensed home inspector, 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 the Property, the propensity of the Property to flood, flood zone certification, whether any condemnation action is pending or has been filed or other nearby governmental improvements are planned; Buyer acknowledges 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 should seek independent expert advice regarding any matter of concern to Buyer relative to the Property and this Agreement. Buyer acknowledges that Broker shall not be responsible to monitor or supervise or inspect any portion of any construction or repairs to Property and that such tasks fall outside the scope of real estate brokerage services;

- ¶C3b – Added language about Buyer responsibility to check about flooding – i.e. is Flood Insurance required – Check during Due Diligence!

F110 – Exclusive Buyer Brokerage Agreement

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:

- Buyer defaults under a Contract to Purchase or Lease under which Broker would have been paid a commission, had the agreement been consummated;
- Buyer agrees with a seller to mutually terminate a Contract to Purchase under which Broker would have been paid a commission, had the transaction closed without the prior consent of Broker, or
- Buyer voluntarily terminates this Agreement and then enters into a Contract to Purchase property, lease, lease to purchase, or lease with an option to purchase of property, or applicable, either during what would have been the protected term of this Agreement had the Agreement not been unilaterally terminated, or during the Protected Period, or any other term in the Protected Period section of this Agreement.

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F110 – Exclusive Buyer Brokerage Agreement

- ¶C7 – Miscellaneous Paragraph
- Same changes as in Seller Brokerage
 - Attorney's Fees
 - Broker Definition
 - Third Party Vendors
- Addition of ¶C7b – Assignability
 - NOT assignability of Purchase & Sale Agreement
 - If Brokerage sells or gets taken over by another firm, all assets (including Brokerage Agreements) get assigned to the new firm as an asset
 - Already in Seller Brokerage Agreement

F110 – Exclusive Buyer Brokerage Agreement

- ¶C8 – Buyer Default
- Mixture of same information organized differently in 2020
- Same changes as in Seller Brokerage

F116 – Agreement to Work with Buyer as Customer

- Added "Special Stipulations" section

F201 - Purchase & Sale Agreement

- Not Many Changes!!!

7. Earnest Money. Earnest Money shall be paid by check ACH cash or wire transfer of immediately available funds as follows:

a. \$ _____ as of the Offer Date.
 b. \$ _____ within _____ days from the Binding Agreement Date.
 c. _____

1A7 - Earnest Money - Added "ACH" - referenced throughout with reference to Earnest Money

10. Brokerage Relationships In this Transaction.

a. Buyer's Broker is _____ and is: <input type="checkbox"/> (1) representing Buyer as a client. <input type="checkbox"/> (2) working with Buyer as a customer. <input type="checkbox"/> (3) acting as a dual agent representing Buyer and Seller. <input type="checkbox"/> (4) acting as a designated agent where: _____ has been assigned to exclusively represent Buyer.	b. Seller's Broker is _____ and is: <input type="checkbox"/> (1) representing Seller as a client. <input type="checkbox"/> (2) working with Seller as a customer. <input type="checkbox"/> (3) acting as a dual agent representing Buyer and Seller. <input type="checkbox"/> (4) acting as a designated agent where: _____ has been assigned to exclusively represent Seller.
--	--

c. Material Relationship Disclosure: The material relationships required to be disclosed by either Broker are as follows:

1A10 - Brokerage Relationships - Terms changed for clarity
 "Buyer's Broker" vs "Selling Broker"
 "Seller's Broker" vs. "Listing Broker"

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F201 - Purchase & Sale Agreement

3. Closing Costs

a. Seller's Contribution at Closing: At closing, Seller shall make the referenced Seller's Monetary Contribution which Buyer may use to pay any cost or expense of Buyer related to this transaction. Buyer acknowledges that Buyer's mortgage lender(s) may not allow the Seller's Monetary Contribution, or the full amount thereof, to be used for some costs or expenses related to the closing. In the event ad valorem property taxes are based upon an estimated tax bill or tax bill under appeal, Buyer and Seller shall, upon the issuance of the actual tax bill or the appeal being resolved, promptly make such financial adjustments between themselves as are necessary to correctly prorate the tax bill. In the event there are tax savings resulting from a tax appeal, the party (Buyer or Seller) who is responsible for the appeal may be deducted from the savings for that tax year before prorating. Any pending tax appeal for the year in which the Property is sold shall be deemed assigned to Buyer at closing. The liability for the county in which the Property is located for ad valorem real property taxes for the year in which the Property is sold shall be apportioned by Buyer upon the basis of the Property. Buyer agrees to prorate the county and all claims of the county for unpaid ad valorem real property taxes for the year in which the Property is sold.

1B3c - Added language about Buyer assumption of liability for county ad valorem taxes of year sold

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F201 - Purchase & Sale Agreement

8. Inspection and Due Diligence. More clearly explained Buyer has right to enter even after Due Diligence

a. Right to Inspect Property. Upon prior notice to Seller, Buyer and/or Buyer's representatives shall have the right to enter the Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test, appraise and survey the Property. This right to enter shall include the time period after the end of any Due Diligence Period to, among other things, and without limitation, meet with owners/vendors/contractors to discuss and confirm that they agreed upon repairs have been made and the Property otherwise remains in the same condition. Seller shall waive all utilities, systems and equipment to be on so that Buyer may complete all inspections. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages relating to the exercise of these rights and shall promptly restore any portion of the Property damaged or disturbed from testing or other evaluations to a condition equal to or better than the condition it was in prior to such testing or evaluation. If Buyer is concerned that the Property may have been used as a laboratory for the production of methamphetamine, or as a dumpsite for the same, Buyer should review the National Clandestine Laboratory Register - Georgia at www.dea.gov.

1B8a- Added clarifying language about Buyer's right to access property from Binding through Closing

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F201 - Purchase & Sale Agreement

1B10b - Brokerage - added that Broker is a third party beneficiary to the contract - i.e. receives money

1B10c - Disclaimer - added verbiage about flooding - same as in Brokerage Agreements

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F201 - Purchase & Sale Agreement

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 or Seller's Disclosure of Latent Defects and Futures Checklists) 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 property of Seller not identified as remaining with the Property. (Notwithstanding the above, if the Property is destroyed or substantially destroyed 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. 2020 - it stated "Destroyed or Substantially Damaged"

4. Other Provisions

1C3 - Risk of Damage to Property

- Added reference to New Form - "Latent Defects"
- Changed language from "substantially damaged" to "substantially destroyed"

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F201 - Purchase & Sale Agreement

GAR Forms: 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. Provisions in the GAR Forms are subject to differing interpretations by our courts other than what the parties may have intended. At times, our courts may strike down or not enforce provisions in our GAR Forms, as written. No representation is made that the GAR Forms will protect the interests of any particular party or will be fit for any specific purpose. The parties hereto 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 made on the form itself or in a stipulation, addendum, exhibit or amendment thereto.

1C4g - GAR Forms - same protection language as in Brokerage Agreements - Courts may not enforce provisions of the contract as "intended" by the parties

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F201 - Purchase & Sale Agreement

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 written representations of Seller in this Agreement regarding the Property or neighborhood in which the Property is located; (4) the section on condemnation; (5) the obligations of the parties regarding ad valorem real property taxes; and (6) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the closing.

- ▶ **¶C4I - Survival Paragraph**
 - **Changed #3 - Representations of Seller**

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.

- **Added #5 - Property Taxes**
- ▶ **Remember the "magic phrase" = "This provision shall survive closing" - to fulfill #6**
 - Use for example - Seller obligation for repairs, Seller obligation to purchase a Home Warranty, etc.

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F201 - Purchase & Sale Agreement

By signing this Agreement, Buyer and Seller acknowledge that they have each read and understood this Agreement and agree to its terms.

Buyer Acceptance and Contact Information	Seller Acceptance and Contact Information
1 Buyer's Signature _____	1 Seller's Signature _____
Print or Type Name _____ Date _____	Print or Type Name _____ Date _____

- ▶ **New Language above Signature Lines - Parties acknowledgement of reading & understanding & agreeing to terms of contract**

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F249 - Counter Offer

A. Previous Counteroffers Rejected. The party making this Counteroffer acknowledges that in doing so: 1) it constitutes a rejection of the Original Offer as presented and all previous counteroffers; 2) the Original Offer and all previous counteroffers are no longer available for acceptance; 3) no previous counteroffer(s) shall be considered a part or any agreement between the parties; and 4) accepting requires the other party to continue the negotiations. **NEW Language - No going back!**

- ▶ **¶A - NEW language!!!**
 - Once a Counter Offer is initiated, the party initiating it may NOT go back and accept any previous offer

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. **2020 Version**

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F249 - Counter 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, the Original Offer as modified by this Counteroffer constitutes a legally binding agreement. Since the Original Offer (including all amendments incorporated by reference into this Counteroffer) only the Counteroffer needs to be signed to create a legally binding agreement between the parties.

- ▶ **¶C - added language for clarity**

This Counteroffer is made at _____ o'clock _____ m. on the date of _____.

By signing this Counteroffer, Buyer and Seller acknowledge that they have each read and understood this Counteroffer and agree to its terms.

- ▶ **Above Signatures - added statement of Understanding & Consent & Agreement**

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NEW FORM: F289 - Request for Confirmation of Presentation of Offer / Counter Offer

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NEW FORM: F289 - Request for Confirmation of Presentation of Offer / Counter Offer

- ▶ Reference to License Law - ALL licensees in Georgia
- ▶ Reference to REALTOR® Code of Ethics - Agents who choose to join a local Board of REALTORS® & thereby NAR
- ▶ Date & time offer or counter offer presented
- ▶ This is NOT the form actually signed by Buyer or Seller - JUST to be signed by Broker / Agent
- ▶ Form that is actually signed by Public:
 - F288 - Notice to Reject Offer / Counter Offer

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F601 – Sale or Lease of Buyer’s Property Contingency Exhibit

- ▶ Lots of changes for clarity

2. At the time of Offer, Buyer warrants that other Property is: (select all that apply) **Changed for clarification**

A. Currently listed with _____ (“Other Property Seller’s Broker”);

B. Currently under contract with buyer represented by _____ (“Other Property Buyer’s Broker”); with a Closing Date of _____ (“Existing Pending Contract”);

C. Other: _____

- ▶ ¶2 – What is status of Buyer’s current property?

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F601 – Sale or Lease of Buyer’s Property Contingency Exhibit

3. The Agreement is contingent upon the occurrence of the following on or before **Just Fill in Date** (“Contingency Period”): (Select A, and/or B. Any section not selected shall not be part of this Agreement.)

A. Buyer closing on the sale of the Other Property. Unless the Other Property is under a binding purchase and sale contract at the time of Offer, Buyer shall keep the Other Property listed for sale with a real estate broker at a sales price of not more than \$_____ until it is either sold and closed or the Contingency Period expires.

B. Buyer entering into a lease of the Other Property. Unless the Other Property is under a binding lease at the time of Offer, Buyer shall keep the Other Property listed for lease with a real estate broker for a lease term of not less than _____ months nor more than _____ months with a monthly rental of not more than \$_____ until it is leased or the Contingency Period expires.

- ▶ ¶3 – Added specific requirements for Buyer to act in earnest to sell or lease property

4. In the event that the Contingency Period ends ~~without either contingency referenced above being fulfilled~~, then, the Agreement shall ~~terminate at that time~~. 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 the Agreement and Buyer shall have no obligation to deposit additional earnest money.

- ▶ ¶4 – No changes – just a reminder – ;-)

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F601 – Sale or Lease of Buyer’s Property Contingency Exhibit

6. In the event that the Existing Pending Contract is terminated for any reason whatsoever, Buyer shall immediately provide notice of the same to Seller. Buyer shall have the right, but not the obligation, to terminate the Agreement at the same time of the notice, in which case Buyer shall have the right to a refund of earnest money.

If Buyer does not terminate the Agreement at the time of notice, Seller shall have the right, but not the obligation, to request that Buyer deliver an amendment signed by Buyer to remove all contingencies and Due Diligence Period from the Agreement. If Seller does not exercise this right within three (3) days from Buyer’s notice that Existing Pending Contract has terminated, then Seller’s right to request the amendment on this basis shall be waived.

In the event Buyer does not deliver the amendment within three (3) days of Seller’s request, then Seller shall have the right but not the obligation to terminate the Agreement in which case Buyer shall have the right to a refund of earnest money. If Seller does not terminate the Agreement within three (3) days, then Seller’s right to terminate the Agreement on this basis shall be waived.

- ▶ ¶5 – NEW Paragraph – Buyer obligations regarding keeping Seller informed of status of current property & termination rights & time frames if Buyer’s contract on current property terminates

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F601 – Sale or Lease of Buyer’s Property Contingency Exhibit

6. **Kick-Out Clause Explained.** A kick-out clause describes a situation where the seller of a property that is under contract continues to market 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 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.

- ▶ ¶6 & ¶7 – separated explanation of “kick out” & actual terms of kick out for the contract

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F601 – Sale or Lease of Buyer’s Property Contingency Exhibit

Kick-Out Clause in this Transaction: (select Option 1 OR Option 2 below. If neither option is selected, Option 2 shall control.)

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 wishes to accept, then Seller shall give notice of the offer to Buyer. Buyer shall then have _____ hours after receipt of the notice to sign an amendment to remove all contingencies and Due Diligence Period from the 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 disclosed herein. (Complete above only if Option 1 is selected and under section 2) (or section 2) and complete 2) from option 2) below shall be deemed to have been amended.)

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

In the event Buyer does not deliver within the time period stated above (1) the additional earnest money if any referenced above to satisfy and/or the down payment referred to above to Seller, then the Agreement shall terminate. All earnest money shall be returned to Buyer’s earnest money.

Notwithstanding any provision to the contrary contained herein, the removal of all contingencies provided to Buyer from this Agreement shall not eliminate any rights in either lower contingency or the Due Diligence Period. Seller. Therefore, for example, Seller shall still require a signed offer from the Buyer even though the Agreement is subject to a financing contingency. In the event that Buyer delivers the Amendment referenced above to Seller and the additional contingencies if any referenced above to Seller within the time period stated above, Seller shall accept the amendment, unless a copy of the offer to Buyer and the Agreement shall otherwise remain in full force and effect subject to the Amendment.

- ▶ ¶7 – Actual terms of kick out for this transaction
- ▶ Buyer to Use F719 – Amendment to Remove Sale or Lease Contingency

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F601 – Sale or Lease of Buyer’s Property Contingency Exhibit

8. **Special Stipulations.** **New Section for Special Stipulations!**

- ▶ ¶8 – Added space for Special Stipulations

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CB10 – Protect Yourself When Selling a Home

Property marketing and coming soon. In any seller brokerage engagement agreement, the broker will disclose the various marketing options the broker offers. As part of any marketing effort, there are certain limits and obligations on the part of all parties, and at times there are things which may be out of the broker's control. Sellers are encouraged to carefully review the marketing options being made available and understand the rights and obligations each party has in any marketing effort.

Depending on MLS policies, a broker's individual business practice, and/or your readiness for bringing your home to market, your broker may list your property in "Coming Soon" status.

While in "Coming Soon" status, your broker cannot show your property to any potential buyers or allow other real estate companies to view the property and cannot do any public-facing advertising.

Should an offer be received during the "Coming Soon" phase, sellers should be aware that their property has not been fully exposed to the marketplace and may want to consider a delay in accepting the offer until the property has been fully marketed via a MLS or until the broker makes the property available for all buyers to consider purchasing.

New Section: "Property Marketing & Coming Soon"

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CB10 – Protect Yourself When Selling a Home

Capturing and sharing media. Buyers may take photos and capture video of a property to help them remember the specifics of that property. It is a convenient way for buyers to review the properties they are considering purchasing. In addition, they may share it with other decision-makers who are unable to attend the showing. There is also the possibility that an agent may be asked to take additional photos or capture a video walk-through of a property on behalf of a buyer. Sellers are advised that any visible personal property which may be in the property may be photographed or contained within a video and should take any precautions they deem necessary.

New Section: "Capturing & Sharing Media"

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CB13 – Protect Yourself When Buying Real Property

- ▶ **New Title – WAS "When Buying a Home"**

Have the home inspected for termites and other wood destroying organisms and obtain an Official Georgia Wood Infestation Inspection Report that can only be prepared by a licensed pest control company. Buyers should have the home they are buying inspected by a licensed Georgia pest control company for evidence of termites and other wood destroying organisms (including powder post beetles, wood boring beetles, dry wood termites and wood decay fungi). In cases where a visual inspection of the entire property is not possible due to visual obstruction, such as, but not limited to, spray-foam and/or roll insulation, floor and walling coverings, and encapsulated spaces, the buyer should consult with a licensed pest control company about preventative treatment measures which may help prevent wood infestation and property damage.

- ▶ Added language about prevention of termites

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CB13 – Protect Yourself When Buying Real Property

- ▶ **"Thoroughly Investigate Property"**
 - Moved to beginning of brochure
 - Updated information about Lead-Based Paint
 - Added language about termite prevention
 - Added language about "latent material defects" & Seller's obligation to disclose but Buyer's recommendation to thoroughly investigate the property & neighborhood

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2021 Changes to F913 – Lease for Residential Property

F913 Lease for Residential Property

TA(4) **Security Deposit** – added language regarding payment of security deposit

TA(12) **Early Termination by Tenant** – added language regarding total amounts for early termination

TA(21) **Lead Based Paint** – updated form reference number

TA(22) **Liquidated Damages Paid by Tenant** – updated title to **Other Liquidated Damages Paid by Tenant**

TA(23) **Lead Based Paint** – updated form reference number

TA(24) **Liquidated Damages** – updated title to **Other Liquidated Damages Paid by Tenant**; new subsection (a); all subsequent subsections renumbered

TC(8) **Rules and Regulations** – new subsection (f)

TC(9) **GAR Forms** – updated language

TC(12) **Exhibits** – updated Lead Based Paint form number

*** Added new language above signature lines; eliminated old language above signature lines

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2021 Changes to F228 – New Construction Purchase & Sale & F231 – New Construction Exhibit

F228 New Construction Purchase and Sale Agreement

TA(9) **Earnest Money** – added ACH option

TA(13)(a) Updated brochure title and corrected form number

TA(13)(c) **Insulation and R-Value Disclosure** – section removed – added to F231 New Construction Exhibit; subsequent Ts renumbered

TA(14) **Brokerage Relationships in this Transaction** – changed broker references

TA(14)(b) **Prorations** – added language referencing ad valorem taxes

TA(14)(c) **Holder of Earnest Money** – added language referencing ACH use

TA(15)(c) **Extending the Closing Date** – corrected "off" to "of"

TA(15)(d) **Completion of Construction and Certificate of Occupancy** – added in exhibit reference and removed "Plans and Specifications" references

TA(16) **Construction Deposit** – removed reference to liquidated damages

TA(13)(a) **Added** and other animals

TA(14)(b) **Brokerage** – added language that brokers are third-party beneficiaries

TA(14)(c) **Disclaimer** – added disclaimer language addressing flooding

TA(16) **Right to Inspect Property** – language added about continuous right to access property

TC(1) **Risk of Damage** – changed "substantially damaged" to "substantially destroyed"

TC(7)(b) **GAR Forms** – updated language

TC(7)(i) **Survival of Agreement** – added clarifying language to subparagraph (3); new subparagraph (5); subsequent subparagraph renumbered

*** Added new language above signature lines

*** Updated broker references on signature lines

F231 New Construction Exhibit

TA(1) **Insulation** – revised **Insulation and R-Value Disclosures**; added disclosure language and explanation lines

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