

2022 GAR Contract Dissection

GREC Course #73594

Instructor:

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Handouts available for Download:

- www.eAGENTweb.com
- Click "Training Videos"
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**CE Credit Offered Through:
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Notice to Students for Classroom or 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:
 - ▶ **2022 GAR Contract Dissection – GREC Course #73594**
 - ▶ 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. You may ONLY take one Virtual CE class at a time or with overlapping times regardless of the school offering the course in order to get CE credit for either course.
 - ▶ Your instructor(s) for this course will be: **Dana Sparks, Qualifying Broker of Maximum One Greater Atlanta, REALTORS®**
 - ▶ This course does NOT have required homework not 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.

3

General Information

- GAR's intent is to keep transactions together
- Changes made for consistency among forms
- Changes made based on market & practice
- GAR Changes forms at beginning of year & then Mid-year Review - 4/15/21 last year!
- Universal changes apply across forms
- GAR's forms are licensed & agents must pay each year to use - either in REALTOR® dues or paying GAR directly
- GAR forms may NOT simply be given to public to use
-

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GAR Legal Helpline

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

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5

General Contract Reminders

- ▶ Legal Description is required – Street Address alone is not a sufficient legal description (per License Law)
- ▶ Parties must get a copy of everything they sign (per License Law)
- ▶ Make sure Closing Attorneys get copies of ALL Exhibits & Amendments
- ▶ Do not leave any blanks
- ▶ Use “N/A” or “\$0” or “N/C” on Counter Offer
- ▶ Do NOT use “TBD” – does not reflect “Meeting of the Minds” which is required for enforceability

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General Contract Reminders

- ▶ If contract is subject to financing, all the terms of the financing **MUST** be completed (per License Law)
- ▶ As an Agent, do not hold Earnest Money – must get to Broker “as soon after receipt as practically possible” (per License Law)
- ▶ Complete Brokerage address on signature page – may be your Branch Office vs. Corporate Address

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General Contract Reminders

- ▶ Complete your license number & Firm License Number (per License Law)
- ▶ Complete Agency Representation Disclosures in contract (per License Law)
- ▶ Follow up on Earnest Money **DEPOSIT** – request proof of deposit – regardless of who named Holder is in the contract
- ▶ All Buyer & Seller Signatures Required
- ▶ Do not miss any initial spaces
- ▶ Contact Information for Customers

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General Contract Reminders

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

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Other Pertinent Classes

- ▶ 2022 GAR Contract Changes
- ▶ 2022 Contracts Review: GAR vs. RE Forms
- ▶ 2022 RE Forms Contract Dissection
- ▶ 2022 GAR Brokerage Agreements, Other Useful Forms & Special Stipulations
- ▶ 2022 RE Forms Brokerage Agreements, Other Useful Forms & Special Stipulations
- ▶ Contracts: Offer & Acceptance (How to fill in a GAR contract = “Contracts 101”)

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10

Forms Covered in THIS Class

- ▶ Purchase & Sale Agreement – Slide 10
- ▶ Counter Offer – Slide 77
- ▶ Financing Contingency Exhibits – Slide 82
- ▶ Community Association Disclosure – Slide 106
- ▶ Closing Attorney as Holder of EM Exhibit – Slide 111
- ▶ Agreement of Closing Attorney to Be Holder – Slide 116

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Forms Covered in THIS Class

- ▶ Amendment to Address Concerns – Slide 117
- ▶ Unilateral Notice to Extend Closing Date – Slide 119
- ▶ Termination & Release Agreements – Slide 122
- ▶ Notes about Earnest Money – Slide 128
- ▶ Consumer Brochures – Throughout
- ▶ Common Special Stipulations – Throughout & Email Instructor for Many More – or Dana@MaximumOneRealty.com

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12

F201 – Purchase & Sale Agreement

- ▶ Paragraph A – Fill in the Blanks
- ▶ Page 1 of 8
 - Must therefore include ALL pages when sending – NOT just signature page
- ▶ Legal Description – Required in addition to an address
- ▶ Closing Date – Must be Specific – not “on or before”
 - For a “meeting of the minds” between the parties

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F201 – Purchase & Sale Agreement

- ▶ Holder of Earnest Money
 - Brokerage or Closing Attorney
 - If Closing Attorney, MUST attach F510 – Closing Attorney Acting as Holder EXHIBIT to the contract
 - If Closing Attorney, Closing Attorney MUST sign F511 – Agreement of Closing Attorney to be Holder – within 3 Days AFTER Binding Contract
- ▶ Check with Holder of Earnest Money
 - Policies on Form of funds
 - Holds on personal checks
 - Amounts accepted per form

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14

F510 & F511 – Closing Attorney as Holder of Earnest Money

- ▶ See More Information on F510 & F511
- ▶ Time Frames
- ▶ Must Name Alternate Holder – one of Brokers
- ▶ Form of Earnest Money
- ▶ All Cash Transaction – handling of dispute over Earnest Money

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15

F201 – Purchase & Sale Agreement

- ▶ Form of Earnest Money – See Notes on “EM Points of Practice” that follow
 - Personal Check
 - Certified Funds
 - ACH
 - Wire Transfer
- ▶ Time Frame for Buyer to “remit” = send/deliver Earnest Money to Holder
 - Buyer’s Agent is in possession when writing offer
 - Holder has on deposit from a previously terminated contract
 - OR
 - ____ days from Binding Agreement Date

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Earnest Money Points of Practice

- ▶ Time Frame for Buyer to REMIT Earnest Money
 - If Wire, consider the time frame – Do NOT Email Wire Instructions – so mail, overnight, courier, hand-deliver
- ▶ BOTH agents should follow up with Holder on receipt & deposit of funds
- ▶ Check on policy of Holder for form of funds
 - Many do not accept ACH
 - Many do not accept app – i.e. Zele, Venmo, Paypal, Cash App, etc.
- ▶ Do NOT accept cash as Earnest Money

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Earnest Money Points of Practice

- ▶ Do not co-mingle funds
 - i.e. Don't take client's cash & change the form for Earnest (i.e. digital app, check, wire, etc.)
- ▶ Earnest Money in certified funds or wire or money order may be released faster than a personal check
- ▶ Buyer can stop payment on a personal check
- ▶ Buyer can rescind an ACH payment
- ▶ If Buyer remits funds to Holder directly – make sure they include a note of property address & agent's name

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Earnest Money Points of Practice

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

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Earnest Money Points of Practice

- ▶ Agents' (Selling & Listing) responsibility to follow-up with Holder
 - Both Buyer & Seller have contractual rights to those funds so it's important to know if they were deposited
- ▶ Did Holder RECEIVE & did Holder DEPOSIT?
- ▶ Did agent deliver to Holder?
- ▶ Did Buyer mail in? Deliver? Wire?
- ▶ Address Buyer used? Name on envelope?
- ▶ What memo was written on check?
- ▶ Was there a note in envelope?
- ▶ How will staff at Brokerage know what transaction to attribute the EM to?

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20

F201 – Purchase & Sale Agreement

8. **Inspection and Due Diligence.** Option for BUYER to Terminate for any or no reason.
a. **Due Diligence Period:** Property is being sold subject to a Due Diligence Period of _____ days from the Binding Agreement Date.
b. **Option Payment for Due Diligence Period:** In consideration of Seller granting Buyer the option to terminate this Agreement, Buyer:
(1) has paid Seller \$10,000 in non-refundable option money, the receipt and sufficiency of which is hereby acknowledged; plus
(2) shall pay directly to Seller additional option money of \$ _____ by check ACH or wire transfer of immediately available funds either as of the Offer Date; OR within _____ days from the Binding Agreement Date. Any additional option money paid by Buyer to Seller shall (subject to lender approval) or shall not be applied toward the purchase price at closing and shall not be refundable to Buyer unless the closing fails to occur due to the default of the Seller.

- ▶ **Due Diligence Period = Buyer Right to Terminate**
 - Never put 0 days – at least give Buyer time to sleep on it
 - = Buyer right to terminate for any or no reason
 - ONLY a Buyer right to terminate – NOT Seller right to terminate

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21

F201 – Purchase & Sale Agreement

- Many things a Buyer will investigate to help make the decision to terminate or go through with contract
- Buyer may ask Seller to address some concerns with the property
- Buyer may have Due Diligence Period even if Seller is selling “as-is”

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F201 – Purchase & Sale Agreement

- ▶ Due Diligence = Mini Option Contract
 - Because Buyer may terminate, this creates a mini option contract within the broader context of the Purchase & Sale
 - Therefore the \$10 consideration is for that reason but never changes hands
- ▶ Additional Option Money
 - In addition to the \$10
 - NOT Earnest Money
 - Non-Refundable (unless Seller defaults)
 - Goes directly from Buyer to Seller
 - Negotiate if it's accounted for as part of Buyer's cash to close (i.e. Buyer get credit for this amount on Closing Statement)
 - Only use in a competitive situation to entice Seller to take Buyer's offer over competing offers

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F201 – Purchase & Sale Agreement

10. Brokerage Relationships in this Transaction.	
a. Buyer's Broker is <u>Brokerage Firm</u> and is:	b. Seller's Broker is <u>Brokerage Firm</u> and is:
(1) <input type="checkbox"/> representing Buyer as a client.	(1) <input type="checkbox"/> representing Seller as a client.
(2) <input type="checkbox"/> working with Buyer as a customer.	(2) <input type="checkbox"/> working with Seller as a customer.
(3) <input type="checkbox"/> acting as a dual agent representing Buyer and Seller.	(3) <input type="checkbox"/> acting as a dual agent representing Buyer and Seller.
(4) <input type="checkbox"/> acting as a designated agent where:	(4) <input type="checkbox"/> acting as a designated agent where:
_____	_____
has been assigned to exclusively represent Buyer.	has been assigned to exclusively represent Seller.
c. Material Relationship Disclosure: The material relationships required to be disclosed by either Broker are as follows: <u>Relationship between Agent/Broker & Buyer or Seller</u>	

- ▶ Brokerage Relationships
 - REQUIRED to be disclosed by License Law
 - If found listing in FMLS then Listing Broker MUST have Client relationship with Seller (per FMLS rules)
 - Dual Agency – Check with Broker's Policy
 - Designated Agency
 - Customer Relationship

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F201 – Purchase & Sale Agreement

- ▶ **Material Relationship**
 - Relationship between Principal & Agent/Broker
 - Regardless if working with principal as Client or Customer
 - Examples: Related, Business relationship, Past Client, etc.

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F201 – Purchase & Sale Agreement

- ▶ **Paragraph B – “Further Explanations” to Corresponding Paragraphs in Section A**
 - Do NOT skip this part when creating / presenting an offer to a client/customer
- ▶ **Point of Practice: Send your Party a Blank Purchase & Sale Agreement When you First Meet them and ask them to review so when you get or write an offer, they will have familiarity**

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26

Title – Purchase & Sale – B1

1. Purchase and Sale.

- a. **Warranty:** Seller warrants that at the time of closing Seller will convey good and marketable title to said Property by limited warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements (other than any driveway or walkway) do not encroach; (3) declarations of condominium and declarations of covenants, conditions and restrictions of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement.
- b. **Examination:** Buyer may examine title and/or obtain a survey of the Property and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement without penalty upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.
- c. **Title Insurance:** Buyer hereby directs any mortgage lender involved in this transaction to quote the cost of title insurance based upon the presumption that Buyer will be obtaining an enhanced title insurance policy since such a policy affords Buyer greater coverage.

- ▶ Good & Marketable Title
 - = insured by title company at regular rates
- ▶ Limited Warranty Deed
- ▶ Buyer must assume any leases
 - Include copy of lease in contract
 - Negotiate to transfer security deposit to New Owner
 - Notify Tenant of new account of Security Deposit
- ▶ Buyer Title Objections
 - Notice, Cure, Termination rights

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27

Closing & Possession – Purchase & Sale Agreement – B4

4. Closing Date and Possession.

4/15/21

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

- ▶ 8 Day Unilateral Extension –
 - 8 Days from contract closing date – not from date Notice is given
 - Never schedule a Closing on a Friday in the GAR Contract due to this provision – Wait for next slide!
- ▶ ONLY Specific Reasons to Use 8 Day Unilateral

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28

Closing & Possession – Purchase & Sale Agreement – B4

- ▶ Title Objections – as long as
 - Can't be satisfied with \$\$ (i.e. a lien)
 - Doesn't prevent good & marketable title conveyance
- ▶ Lender or Attorney can't complete their responsibilities
- ▶ Lender Issues
 - Can't fulfill obligation by closing as long as delay is not caused by Buyer
 - Buyer has not received "TRID" disclosures
- ▶ Can Only be used ONE TIME per contract
 - EITHER party may use for any of the above reasons

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Caution About 8 Day Unilateral Extension of Closing

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

- ▶ Purchase & Sale paragraph C4f

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

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

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30

Closing Law Firm – Purchase & Sale – B5

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

- ▶ “Closing law Firm” vs. “Closing Attorney”
- ▶ Buyer shall choose Closing Attorney
- ▶ Closing Attorney represents Lender
- ▶ Cash deal, Attorney shall “represent” Buyer
 - Not in terms of “legal representation” if there is a dispute between Buyer & Seller

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31

Remittance & Deposit of Earnest Money – Purchase & Sale – B6

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

- ▶ Remittance Time Frame – Negotiated by Buyer & Seller – A7
 - Add additional time if wire – to get wire instructions to Buyer via US Mail – NEVER email wire instructions!

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32

Remittance & Deposit of Earnest Money – Purchase & Sale – B6

- ▶ Form of Earnest Money
 - Holder must approve regardless of what Buyer & Seller negotiated
 - Holder may charge Buyer an additional banking fee if incurred by Holder
- ▶ Holder to Deposit – 5 Banking days
- ▶ Holder makes sure time to clear bank
 - Note that Holder may have policy on acting on personal checks or specific amounts for certified funds or wires

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33

Remittance & Deposit of Earnest Money – Purchase & Sale – B6

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

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34

Disbursement of Earnest Money – Purchase & Sale – B7

7. Earnest Money.

- a. **Entitlement to Earnest Money:** Subject to the paragraph below, Buyer shall be entitled to the earnest money upon the: (1) failure of the parties to enter into a binding agreement; (2) failure of any unexpired contingency or condition to which this Agreement is subject; (3) termination of this Agreement due to the default of Seller; or (4) termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement. Otherwise, the earnest money shall be applied towards the purchase price of the Property at closing or if other funds are used to pay the purchase price then the earnest money shall be returned to Buyer.
- b. **Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: (1) the closing of Property; (2) a subsequent written agreement of Buyer and Seller; (3) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (4) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties at least ten (10) days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the ten (10) day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. Holder shall disburse the earnest money to Seller by check in the event Holder: (1) makes a reasonable interpretation of the Agreement that the Agreement has been terminated due to Buyer's default; and (2) sends the required ten (10) day notice of the proposed disbursement to Buyer and Seller. The above-referenced check shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Holder may require Seller to sign a W-9 before issuing a check to Seller for liquidated damages of \$600 or more. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain and are not a penalty.
- c. **Interpleader:** If an earnest money dispute cannot be resolved after a reasonable time, Holder may interplead the earnest money into a court of competent jurisdiction if Holder is unsure who is entitled to the earnest money. Holder shall be reimbursed for and may deduct its costs, expenses and reasonable attorney's fees from any funds interpleaded. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees, court costs and the amount deducted by Holder to cover Holder's costs and expenses from the non-prevailing defendant.
- d. **Hold Harmless:** All parties hereby covenant and agree to: (1) indemnify and hold Holder harmless from and against all claims, injuries, suits and damages arising out of the performance by Holder of its duties; (2) not to sue Holder for any decision of Holder to disburse earnest money in accordance with this Agreement.

"10 Day
Letter"

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35

Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ NO ISSUES:
- ▶ Buyer entitled to Earnest Money
 - Buyer never goes under contract
 - Buyer fails to meet an agreed-upon contingency & sends notice prior to expiration of contingency time frame
 - Termination by Seller default
 - Upon closing
- ▶ Written agreement signed by Buyer & Seller directing Holder how to disburse
 - "T& R" – GAR F522 – Unilateral Notice to Terminate & Proposed Agreement to Disburse Earnest Money
 - Parties may agree to divvy up the funds in any manner (i.e. 100% to one party, 50% / 50% to each party, 70%/30%, etc.)

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Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ ISSUES: (if contract terminates & both DON'T sign the release portion of the T&R)

- ▶ Reasonable Interpretation of contract by Holder = “10 Day Letter”
 - Holder send Notice to both parties of intent to disburse
 - Must wait 10 days from date of Notice sent to parties for any objections
 - These funds are TIED UP during this time & may NOT be used for another contract
 - Funds disbursed AFTER the 10 days

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Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ Interpleader Action = Lawsuit between the Parties
 - Holder may interplead if too much money or too complicated of an issue
 - Costs money to hire an attorney to interplead
 - Court costs to interplead
 - These costs are deducted from the earnest money
 - Loser must pay winner's legal fees & cover any amount deducted from EM to cover Holder's costs
 - Gets expensive and may be more than the earnest money (approx. \$750 – \$3,000+ ... depends on attorney's fees, county, attorney cost to send Notice, etc.)

- ▶ Court Order

- ▶ “Hold Harmless” agreement to not sue Holder for decision

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38

Due Diligence – Purchase & Sale – B8

8. Inspection and 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 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 contractors and vendors, measure for renovations and confirm that any agreed upon repairs have been made and the Property otherwise remains in the same condition. Seller shall cause 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.
- b. Duty to Inspect Neighborhood:** In every neighborhood there are conditions which different buyers may find objectionable. Buyer shall have the sole duty to become familiar with neighborhood conditions that could affect the Property such as landfills, quarries, power lines, airports, cemeteries, prisons, stadiums, odor and noise producing activities, crime and school, land use, government and transportation maps and plans. It shall be Buyer's sole duty to become familiar with neighborhood conditions of concern to Buyer. If Buyer is concerned about the possibility of a registered sex offender residing in a neighborhood in which Buyer is interested, Buyer should review the Georgia Violent Sex Offender Registry available on the Georgia Bureau of Investigation Website at www.abi.georgia.gov.
- c. Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof (and at Buyer's expense, if there is any cost associated with said transfer), Seller's interest in any existing manufacturer's warranties, service contracts, termite treatment and/or repair guarantees and/or other similar warranties which, by their terms, may be transferable to Buyer.
- d. Property Sold "As-is" Unless this Agreement is Subject to Due Diligence Period:**
- (1) **General:** Unless the Property is being sold subject to a Due Diligence Period referenced herein, the Property shall be sold "as-is" with all faults. Even if the Property is sold "as-is" Seller is required under Georgia law to disclose to the Buyer latent or hidden defects in the Property which Seller is aware and which could not have been discovered by the Buyer upon a reasonable inspection of the Property. The inclusion of a Due Diligence Period herein shall: (a) during its term make this Agreement an option contract in which Buyer may decide to proceed or not proceed with the purchase of the Property for any or no reason; and (b) be an acknowledgment by Seller that Buyer has paid separate valuable consideration of \$10 for the granting of the option.
- (2) **Purpose of Due Diligence Period:** During the Due Diligence Period, Buyer shall determine whether or not to exercise Buyer's option to proceed or not proceed with the purchase of the Property. If Buyer has concerns with the Property, Buyer may during the Due Diligence Period seek to negotiate an amendment to this Agreement to address such concerns.
- (3) **Notice of Decision Not to Proceed:** Buyer shall have elected to exercise Buyer's option to purchase the Property unless prior to the end of any Due Diligence Period, Buyer notifies Seller of Buyer's decision not to proceed by delivering to Seller a notice of termination of this Agreement. In the event Buyer does not terminate this Agreement prior to the end of the Due Diligence Period, then: (a) Buyer shall have accepted the Property "as-is" subject to the terms of this Agreement; and (b) Buyer shall no longer have any right to terminate this Agreement based upon the Due Diligence Period.
- e. Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.

Consider negotiating _____ days prior to closing to work through any issues.

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39

Due Diligence – Purchase & Sale – B8

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

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Due Diligence – Purchase & Sale – B8

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

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41

Due Diligence – Purchase & Sale – B8

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

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Negotiated Repairs

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

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Negotiated Repairs

- ▶ So what do you do as an agent?
- ▶ Point of Practice: Address potential issue of Seller Non-performance when negotiating for repairs on the Amendment
- ▶ Magic Phrase = “This provision shall survive closing.”
 - Gives Buyer grounds to sue Seller after closing
- ▶ Seller to pay vendor at closing from proceeds (Seller pays vendor so doesn’t impact loan)
 - “At Closing from Seller’s proceeds, Seller to pay _____(vendor name)_____ \$_____.”
 - Then Buyer in possession of check payable to vendor & can schedule themselves

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Negotiated Repairs

- ▶ Seller to escrow funds & take care of repairs
- ▶ See specific stipulations to consider:
 - www.eAGENTweb.com – click “Training Videos” – find this class for hyperlink to these “Special Stipulations to Consider”
- ▶ Many repair Special Stipulations in GAR Special Stipulation library
- ▶ Check with your own Broker prior to using any special stipulations in a contract

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Repair Issues: – authored by Ameer Davis of Davis & Associates

- ▶ “All parties agree that the repair work contemplated and agreed upon herein shall be completed not less than five business 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 five 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 five 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.”

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Repair Issues – Alternative: (from the RE Forms Special Stipulations)

- ▶ 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 (the "Repair Completion Date") Seller shall complete all repairs to the property herein. It is understood and agreed that Seller, in showing of good faith, shall deposit at Closing \$_____ (the "Repair Funds") with _____ (the "Security Holder") as security for completion of said repairs. As long as Seller completes or causes to complete all repairs no later than midnight of the Repair Completion Date, the Repair Funds shall be returned to Seller within _____ days of the Repair Completion Date or submission of proof of the repairs to Buyer, whichever comes first. Should Seller fail to timely complete said repairs, Buyer shall be entitled to Repair Funds as liquidated damages. Should a dispute arise as to the disbursement of the Repair Funds, the Security Holder shall be entitled to the same rights, remedies, indemnities, etc. As any escrow agent or holder of Earnest Money described in the Contract.

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Brokerage Relationships – Purchase & Sale – B10

- ▶ Must disclose Agency relationship – A10
- ▶ Public is Client – MUST sign Brokerage Agreement – OCGA 10-6A-1 (BRETТА)
 - Seller signs Listing Agreement
 - F101 – Exclusive or F104 – Non-Exclusive
 - Buyer signs Buyer Brokerage Agreement
 - F110 – Exclusive or F113 – Non-Exclusive
- ▶ Public is Customer – Agreements Describe Relationship
 - Seller signs Authorization to Show Unlisted Property
 - F107
 - Buyer signs Agreement to work with Buyer as Customer
 - F116

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Brokerage Relationships – Purchase & Sale – B10

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

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Brokerage Relationships – Purchase & Sale – B10

- ▶ Consumer Brochures – ALWAYS USE

CBs GAR CONSUMER BROCHURES

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

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Brokerage Relationships – Purchase & Sale – B10b

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

- ▶ Commission earned by Brokers is pursuant to another Agreement
 - Brokerage or Customer Agreements signed between Public & Brokerage
 - Instructions to Closing Attorney signed between Seller's Broker & Buyer's Broker
- ▶ Seller pays commission to Seller's Broker & Seller's Broker shares commission with Buyer's Broker
- ▶ What document describes / outlines how YOU the agent get paid?

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Brokerage Relationships – Purchase & Sale – B10b

- ▶ Are Broker/Agent signatures required? ... NO
- ▶ What do these signatures mean relative to contract?
 - Affirm agency relationship indicated in A10
 - Confirm that if Holder is Broker, Broker will perform contractual responsibilities outlined in contract
 - YOU are "Affiliated Licensee" of your Broker
- ▶ HOWEVER...
 - Some Lenders REQUIRE Agent/Broker signatures to sell loan

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Brokerage Relationships – Purchase & Sale – B10c “Disclaimer”

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

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Brokerage Relationships – Purchase & Sale – B10c

- ▶ Brokerage Relationship Disclaimer – “Nothing is an issue until it’s an issue”
- ▶ Parties have not relied on agent advice
- ▶ Buyer needs to check out anything that is important
- ▶ Seller needs to seek independent information regarding their position per the contract

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Brokerage Relationships – Purchase & Sale – B10c

- ▶ Parties to understand Special Stipulations written
- ▶ Buyer acknowledges that answers to questions are from information from Seller
- ▶ Contract Tip: Use GAR F325 “Broker’s Information Disclosure”
 - Fill in the Question & Answer & SOURCE of the answer

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Time Limit – Purchase & Sale – A11 & B11

11. Time Limit of Offer. The Offer set forth herein expires at _____ o'clock _____ m. on the date _____.

11. Time Limit of Offer. The Time Limit of the Offer shall be the date and time referenced herein when the Offer expires unless prior to that date and time both of the following have occurred: (a) the Offer has been accepted by the party to whom the Offer was made; and (b) notice of acceptance of the Offer has been delivered to the party who made the Offer.

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

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Time Limit – Purchase & Sale – A11 & B11

- ▶ What if Party signs offer or counter offer with no changes but it's AFTER the time limit???
- ▶ If NO time limit, then party must withdraw offer or counter offer to take it off the table
 - F285 – Notice to Withdraw Offer or Counter Offer
 - NOT – F288 – Notice to REJECT Offer or Counter Offer

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57

Notice – Purchase & Sale – C1

1. Notices.

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

- ▶ In writing & Signed by Buyer or Seller
- ▶ In person, delivery, certified / registered US mail, fax or email
- ▶ NO phone calls & NO text

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Notice – Purchase & Sale – C1

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

- ▶ Email is “received” when Sender can prove they sent it – regardless of when receiver opens/reads it
- ▶ Must be emailed / faxed to address on signature page
- ▶ Make sure your email / fax number on signature page is what you actually use to conduct business

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Notice – Purchase & Sale – C1

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

GAR F816 – “Notice” – for general Notice – only one siggy

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60

Default – Purchase & Sale – C2

2. Default.

- a. **Remedies of Seller:** In the event this Agreement fails to close due to the default of Buyer, Seller's sole remedy shall be to retain the earnest money as full liquidated damages. Seller expressly waives any right to assert a claim for specific performance. The parties expressly agree that the earnest money is a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain. The parties expressly intend for the earnest money to serve as liquidated damages and not as a penalty.
- b. **Remedies of Buyer:** In the event this Agreement fails to close due to the default of Seller, Buyer may either seek the specific performance of this Agreement or terminate this Agreement upon notice to Seller and Holder, in which case all earnest money deposits and other payments Buyer has paid towards the purchase of the Property shall be returned to Buyer following the procedures set forth elsewhere herein.
- c. **Rights of Broker:** In the event this Agreement is terminated or fails to close due to the default of a party hereto, the defaulting party shall pay as liquidated damages to every broker involved in this Agreement the commission the broker would have received had the transaction closed. For purposes of determining the amount of liquidated damages to be paid by the defaulting party, all written agreements establishing the amount of commission to be paid to any broker involved in this transaction are incorporated herein by reference. The liquidated damages referenced above are a reasonable pre-estimate of the Broker(s) actual damages and are not a penalty.
- d. **Attorney's Fees:** In any litigation or arbitration arising out of this Agreement, including but not limited to breach of contract claims between Buyer and Seller and commission claims brought by a broker, the non-prevailing party shall be liable to the prevailing party for its reasonable attorney's fees and expenses.

- ▶ If Buyer Defaults – Seller may ONLY get Earnest money
- ▶ If Seller Defaults – Buyer may terminate & get Earnest Money or sue for specific performance

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Default – Purchase & Sale – C2

- ▶ Brokers may pursue defaulting party for commission they would have earned had contract closed
- ▶ Parties may NOT sue each other for “damages”
 - i.e. may not sue for expenses incurred, moving fees, emotional distress, etc.
- ▶ If there is a lawsuit, Loser may also have to pay winner's legal fees & expenses

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Risk of Damage to Property – Purchase & Sale – C3

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

- ▶ “Substantially Same Condition” at closing as it was on Offer date (including items staying)
- ▶ Clean & free of trash, debris & items not negotiated to stay with property
- ▶ If substantial damage
 - Seller must send Notice to Buyer
 - Either party may terminate
 - Seller may repair & must close within 1 year

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Other Provisions – Purchase & Sale – C4

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

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

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Other Provisions – Purchase & Sale – C4

- ▶ Assignment – (C4e) – Seller **MUST** agree in writing if Buyer wants to assign contract (i.e. Investor)
- ▶ Contract Must Include Seller’s Permission for Buyer to Assign contract
 - **SS 611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT** Seller consents to Buyer assigning this Agreement to another buyer (“Assignee”) and having Assignee become the buyer thereunder.
- ▶ Assignor & Assignee then Sign an Agreement
 - GAR F279 – Assignment of Purchase & Sale Agreement Rights = Agreement between Assignor (i.e. Original Investor Buyer who has signed contract with Seller) and Assignee (i.e. end Buyer who will live in property)
 - Seller does not sign this

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Other Provisions – Purchase & Sale – C4

- ▶ Extension of Deadlines (C4f) – addressed with 8 Day Unilateral Extension
- ▶ No Authority to Bind (C4i) – Brokers / Agents may not sign anything or send emails that will bind the public to the terms of this contract – Need the Buyer / Seller signatures
- ▶ Broker **MAY** fill in Binding Agreement Date as a ministerial act

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Dispute Over Binding Agreement Date

- ▶ C4i – Resolved by Court Arbitrator or written Agreement between Buyer & Seller or Holder making reasonable interpretation to disburse Earnest Money
- ▶ C4j – Notice of Binding Agreement Date = Accepting Party send Notice of Acceptance to Offering Party
 - Generally speaking... If using Offer & Counter Offer Forms, the agent whose name is pre-printed at bottom would be side that binds
- ▶ FYI Binding Agreement Date = Day 0 for counting days for contingency time frames

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Dispute Over Binding Agreement Date

- ▶ C4k – Objection to Binding Agreement Date = POTENTIALLY CHANGES THE BINDING AGREEMENT DATE
 - Party who object has 1 day to send Notice of Objection to the other Party (GAR F816 – Notice)
 - To be resolved by written agreement of parties
 - Point of Practice – Get your Brokers involved
 - If NO objection then the date entered on Purchase & Sale is agreed to be the Binding Agreement Date
- ▶ NEW in 2022 GAR F733 – Binding Agreement Date Confirmation Amendment
- ▶ If none entered, then contract is still enforceable

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Other Provisions – Purchase & Sale – C4

- ▶ C4i – Rules for Interpreting Agreement
 - i.e. hierarchy of terms governing transaction
 - Formerly spelled out under “Exhibits & Special Stipulations” sections
- ▶ Pre-Printed → Typed → Handwritten →
- ▶ Exhibits → Special Stipulations
 - So do NOT write a Special Stipulation that addresses an issue already covered in P&S or in an Exhibit
- ▶ FHA & VA Amendatory Clause (= Appraisal Contingency) shall CONTROL over any Exhibit or Special Stipulation
 - i.e. an “Appraisal Gap” stipulation in a contract where Buyer is getting FHA or VA loan has NO bearing on the contract

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Other Provisions – Purchase & Sale – C4

- ▶ Survival (C4I) – Very Specific – i.e. obligations legally continue after closing

n. 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 section on attorney's fees; (6) the obligations of the parties regarding ad valorem real property taxes; and (7) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the Closing.

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Other Provisions – Purchase & Sale – C4 – Survival Cont'd

- ▶ Commission
- ▶ Warranty of Title
 - Limited Warranty Deed (time of Seller's ownership)
- ▶ Seller representations of property & Neighborhood
 - May Sellers won't complete Seller's Property Disclosure
- ▶ If property has been condemned

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71

Other Provisions – Purchase & Sale – C4 – Survival Cont'd

- ▶ Attorney's Fees
- ▶ Property Taxes
- ▶ Any obligations parties agree will survive
 - Remember the Magic Phrase" = "This provision shall survive closing"
 - i.e. if Seller agrees to purchase home warranty for Buyer & it doesn't get on Closing Statement, must use "This Provision Shall Survive Closing" for Seller to be legally obligated to pay for it after closing
 - Also for repairs not completed by Seller prior to closing

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72

Definitions – Purchase & Sale – C5

- ▶ Banking Day (C5a) – Mon – Fri excluding Federal Holidays
- ▶ Binding Agreement Date (C5b) – NOTICE of Acceptance
 - Party making the last offer or counter offer is the party who BINDS the contract
 - Party making offer (or counter offer) may WITHDRAW offer prior to receiving notice of acceptance (i.e. contract form with both Buyer & Seller signatures)
 - Binding Agreement Date can be proven per the Notice section discussed earlier
- ▶ Broker (C5c) = Qualifying Broker, Firm, Affiliated Licensee

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Definitions – Purchase & Sale – C5

- ▶ Business Days (C5d) – Monday – Friday and no Federal Holidays
 - Same as “Banking Days” in the GAR contract
 - If contract just says “Days” = Calendar days (Saturdays & Sundays & Federal Holiday are included)
- ▶ Day (C5e) – Calendar Day through 11:59pm
- ▶ Material Relationship (C5f) – must disclose
 - i.e. family, business relationship, past client, etc.
 - If you have to ask yourself if it is a “material relationship” then you should probably disclose

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Cyber-Fraud – Purchase & Sale – c6

- ▶ Warning to Buyers & Sellers to not trust emails with wire instructions
- ▶ Cross-check & verify with a third party source (i.e. Google)
- ▶ So DON'T email wire instructions from your Broker or Closing Attorney
- ▶ Never put “Wire Instructions” in subject line of email
- ▶ Send via US Mail
- ▶ So if Earnest Money is to be wired, negotiate for a longer time frame (A7b) for Buyer to remit funds to Holder

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75

Contract Tip: “Beware of Cyber Fraud”

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

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76

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

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

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

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77

Exhibits & Special Stipulations – Purchase & Sale – C8

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

8. **Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement.

All Cash Sale Exhibit (F401) *

~~Removed hierarchy language due to new paragraph C4k~~

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

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78

Signatures & Binding Agreement Date

- ▶ Must have ALL Buyers / Sellers sign
- ▶ Agents must include License Number & Firm Number
- ▶ Agents must include:
 - Mailing Address – for Closing Attorney
 - For Notice: Address OR Email OR Fax
- ▶ If Public is Customer, you must include their:
 - Address OR Email OR Fax for Notice
 - Also true if Dual Agency or Designated Agency contract
 - See ¶C1c
- ▶ Binding Agreement Date
 - Fill in so all are on same page
 - Can be determined per Notice section Unless an Objection was never raised within 1 day – see ¶ C4k

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Counter Offer – F249

- 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 of any agreement between the parties; and 4) nothing requires the other party to continue the negotiations.
- B. Relationship between Original Offer and This Counteroffer. The Original Offer is hereby incorporated by reference into this Counteroffer. However, the terms of this Counteroffer shall modify and control over any conflicting or inconsistent provisions contained in the Original Offer.
- C. Effect of Accepting This Counteroffer. When this Counteroffer is signed by the Buyer and Seller and a copy of the same is delivered to both parties, the Original Offer as modified by this Counteroffer constitutes a legally binding agreement. Since the Original Offer (including all exhibits thereto) is incorporated by reference into this Counteroffer, only this Counteroffer needs to be signed to create a legally binding agreement between the parties.
- D. Clean Copy of Agreement. At any time prior to closing, either party if so requested by the other shall sign a conformed or "clean" copy of the Agreement combining the terms of Original Offer with the controlling and supplemental provisions of this Counteroffer into one (1) document, including initialing or signing, as the case may be, all exhibits. (Include SS622 Conformed Copy of Agreement in conformed or "clean" copy of Agreement)
- E. Terms and Conditions. The following terms and conditions of the Original Offer are modified as follows: [The sections not filled in or marked N/C (for "no change" which shall mean that no change is being proposed to that section of the agreement) shall not be a part of this Counteroffer and shall remain the same as set forth in the Original Offer.]

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80

Counter Offer – F249

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

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81

Counter Offer – F249

- ▶ **Contract Tip:** Exhibits that Should Have Seller Initials & Be Available to Potential Buyers for Writing an Offer:
 - F301 – Seller’s Property Disclosure Statement
 - F322 – Community Association Disclosure Exhibit
 - F316 – Lead Based Paint Exhibit – 2022 GAR Seller Brokerage Agreement requires Seller complete this at time of signing Brokerage Agreement
- ▶ Note on EPA:
- ▶ Also use CB04 – Lead Based Paint Pamphlet (EPA)
- ▶ EPA fines Brokers / Agents \$18,000 per missing initial/signature

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82

Counter Offer – F249

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

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83

Counter Offer – F249

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

In the event of any conflict between this conformed Agreement and the original thereof, all parties agree that the original Agreement shall control.”

- Write “CONFORMED” on front page of Purchase & Sale

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84

Conventional Loan Contingency – F404

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

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

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Conventional Loan Contingency – F404

- ▶ Approved Mortgage Lender

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

Approved Mortgage Lender(s)

- ▶ Not Required
- ▶ If one is identified, Buyer MUST apply for loan with one of those identified
- ▶ Buyer not required to get loan from this lender
- ▶ Comes in to play if Loan Denied

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Conventional Loan Contingency – F404

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

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

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Conventional Loan Contingency – F404

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

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

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Conventional Loan Contingency – F404

▶ Loan Denial Letter

- Must be sent to Seller within 7 days of Notice of Termination even if those 7 days fall AFTER the contingency time frame
- Must be from one of the identified “Approved Mortgage Lenders” if one was named
- If no lender identified, then loan denial letter may be from any lender approved to do business in GA

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

Approved Mortgage Lender(s)

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89

Conventional Loan Contingency – F404

- ▶ Denial Letter may NOT be based solely on the following – i.e. Buyer’s EM is NOT protected if the loan denial letter is based solely on
 - a. Buyer not having cash for down payment or closing costs
 - b. Buyer not having sold/leased current home (if no exhibit included)
 - c. Not having sent Lender request documents timely
 - d. Buyer’s actions AFTER Binding (i.e. buying stuff & damaging credit or losing job, etc.)
 - e. Property not appraising for Sale Price unless subject to appraisal contingency (i.e. 0 days for appraisal contingency)
 - f. Lender not having completed underwriting

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Conventional Loan Contingency - F404

- d. Buyer's actions AFTER Binding (i.e. buying stuff & damaging credit or losing job, etc.)
- e. Property not appraising for Sale Price unless subject to appraisal contingency
 - * Financing Contingency & Appraisal Contingency are SEPARATE contingencies (Financing assesses person & Appraisal assess property as collateral)
 - * But if 0 days for appraisal contingency, then it now (in 2022) falls under Financing Contingency
- f. Lender not having completed underwriting
 - * Buyers need to choose Lender wisely

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Conventional Loan Contingency - F404

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

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

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

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92

Conventional Loan Contingency – F404

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

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Conventional Loan Contingency – F404

7. Right of Seller to Request Evidence of Buyer's Ability to Close. If the Financing Contingency ends without Buyer terminating this Agreement, Seller shall have the right, but not the obligation, to request that Buyer provide Seller with written evidence of Buyer's financial ability to purchase the Property ("Evidence"). A copy of a loan commitment from each institutional mortgage lender from whom Buyer is seeking mortgage financing to purchase the Property stating the type, amount and terms of the loan(s) and the conditions for funding the loan(s), shall be deemed sufficient Evidence. The provision of such Evidence is not a guarantee that the mortgage loan(s) will be funded or that Buyer will close on the purchase of the Property. Buyer shall have seven (7) days from the date Seller delivers notice to Buyer requesting such Evidence to produce the same. No request for such Evidence shall be made by Seller less than seven (7) days from the date of Closing.
8. Seller's Right to Terminate. In the event Buyer fails to provide Seller with the Evidence of Buyer's Ability to Close within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶11

- ▶ If property does NOT appraise for sale price or more then Buyer has ____ days from Binding Agreement Date to send an Amendment to Seller asking Seller to sell at appraised price
 - F713 – Amendment to Sale Price “ATSP”
- ▶ Buyer MUST give Seller the option to sell at the lower appraised price OR agree to buy for higher price
 - Buyer may NOT simply terminate on a low appraisal
- ▶ Must provide Seller with copy of appraisal

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶11

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

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶ 11

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

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

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NOTE about Conventional Loan Contingency – F404

- ▶ ¶ 112 – Lender Required Repairs – Eliminated from Exhibit in 2020
- ▶ Instead made this a Special Stipulation 524
- ▶ **“Any repairs required by lender are to be completed and paid for by _____ prior to Closing provided such repairs do not exceed \$_____ in total costs. In the event the anticipated costs exceed the amount listed above, an itemized estimate shall be provided to all parties from third-party contractor(s), selected by Seller, of the total costs of repairs to be made to the Property.**
- ▶ **Seller or Buyer shall have the option to pay the excess amount. If the parties do not agree in writing who shall pay the excess amount, then this Agreement shall terminate within three (3) days of written notice of itemized estimate.”**

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FHA Loan – F407

- ▶ Same as Conventional up until Loan Denial Letter paragraph
 - No reference to a Low Appraisal
 - i.e. a Low Appraisal is covered in the Amendatory Clause and not an issue for a Buyer to terminate under “Financing Contingency”
- ▶ Then the Same until Amendatory Clause Paragraph – ¶11

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FHA Loan – F407

- ▶ Amendatory Clause = Appraisal
 - No time frame so appraisal contingency protection for Buyer’s Earnest Money in FHA goes THROUGH day of closing
 - MUST fill in dollar amount – remember to counter this if sale price gets changed in a counter offer
 - “Amendatory Clause paragraph 11 of FHA Loan Exhibit shall read \$_____.”
 - If low appraisal, Buyer may terminate & get Earnest Money back
 - Remember that Amendatory Clause SUPERSEDES any Special Stipulation (i.e. Appraisal Gap Stip)
 - Buyer MAY ask Seller to sell for lower appraised value but it’s not required like it is in Conventional

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FHA Loan – F407

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

▶ Seller Required Fees

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

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1

FHA Loan – F407

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

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2

FHA Loan – F407

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

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

- ▶ Property MAY be required by FHA to be connected to public Sewer – amount & obligation negotiated by Buyer & Seller – paragraph 18
- ▶ Arm’s Length Transaction = no relationship between Buyer & Seller

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3

VA Loan – F410

- ▶ Same as Conventional & FHA through Loan Denial Paragraph & then paragraph 11 = Amendatory Clause = Appraisal Contingency
- ▶ Same as FHA but no price identified so must appraise for Contracted Sale Price
- ▶ Remember that Amendatory Clause SUPERSEDES any Special Stipulation (i.e. Appraisal Gap Stip)
- ▶ Lender–Required Repairs – paragraph 13
 - Must be paid for by Seller
 - Amount negotiated in Exhibit
 - If price exceeds this, same process as in FHA Exhibit

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4

VA Loan – F410

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

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5

VA Loan – F410

14. VA Rules and Regulations: Termite Letter. The Veteran's Administration has certain rules and regulations limiting the items for which Buyer can be charged relating to the closing of a VA loan. Buyer should consult with Buyer's mortgage lender to determine how Buyer may be affected by these rules and regulations. Notwithstanding any other Seller contribution, Seller shall provide Buyer, at or before the Closing and at Seller's cost, with an Official Georgia Wood Infestation Inspection Report meeting the requirements of Georgia law and dated within 90 days prior to the date of Closing, indicating that the Property is free from infestation from termites and other wood destroying organisms. In the event the Property is not free from infestation and other wood destroying organisms, Seller shall immediately cause the Property to be treated or retreated, as the case may be, such that an Official Georgia Wood Infestation Inspection Report meeting the requirements of Georgia law indicating that the Property is free from infestation from termites and other wood destroying organisms can be issued within 90 days prior to the date of Closing. Buyer and Seller acknowledge that the Property may not meet VA's Minimum Property Requirements if it contains damage from a previous infestation of termites and/or other wood destroying organisms. In such event, Seller shall obtain a written estimate from a contractor to repair such damage and provide a copy of the same to Buyer. If the parties are unable to reach a written agreement as to the repair of this damage within three (3) days of the date that the contractor's estimate is provided by Seller to Buyer, then this Agreement shall automatically terminate.

- ▶ The rest is same as FHA Exhibit
- ▶ May be required to be connected to public water & sewer

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Special Stipulations – Especially if Condo / Townhouse Community

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

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10
7

All Cash (No Financing Contingency) – F401

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

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Community Association Disclosure – F322

- ▶ Seller must complete info & Update form with any changes & confirm with Association
- ▶ Buyer responsible for researching & agreeing to Covenants
- ▶ All Fill-In-The-Blanks now in Paragraph A
- ▶ Additional Explanations now in Paragraph B
- ▶ Seller **MUST** disclose all fees of HOA / Management Company to Buyer in this Form
 - Any fees NOT disclosed or not accurate, Seller will pay at closing (EVEN if it is a Buyer-related fee such as initiation)
 - Seller must pay these additional fees EVEN if Seller updates this form (paragraph B5b)
 - Reason is that in most cases, the Seller is **ONLY** one who can get these figures
 - These “Seller-paid” fees do not count as “contribution to Buyer”
- ▶ Both parties SIGN (used to be initial)

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Community Association Disclosure – F322

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

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Community Association Disclosure – F322

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

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Community Association Disclosure – F322

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

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Closing Attorney as Holder of EM EXHIBIT- F510

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

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

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Closing Attorney as Holder of EM EXHIBIT- F510

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

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

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Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ If Closing Atty doesn't agree or doesn't sign in time, then Alternate Holder is Holder
- ▶ Must Name Alternate Holder
 - Default is Buyer's Broker

6. ~~Failure of Closing Attorney to Become Holder. If the Closing Attorney named as Holder has not become Holder because the Closing Attorney rejects being the Holder or fails to timely become Holder, then: a) the Alternate Holder named below, who must be a broker in this transaction, shall automatically become the Holder instead of the Closing Attorney; b) all parties consent to the earnest money being paid or transferred to the Alternate Holder, and c) all parties shall cooperate with one another to sign any documents required to accomplish the same. The signature of the Alternate Holder to the Agreement at the time it is first signed shall be deemed consent of the Alternate Holder to serve as Holder. The Alternate Holder's duties and the timeline for performing those duties shall commence when the Alternate Holder becomes the Holder.~~
7. ~~Alternate Holder. The Buyer must immediately notify all parties if the Closing Attorney fails to become Holder. The Alternate Holder, who must be a broker in this transaction, shall be Fill In Name of Either Brokerage. In the event an Alternate Holder is not named, the Alternate Holder shall be the Buyer's Broker.~~

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Closing Attorney as Holder of EM EXHIBIT- F510

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

Closing Attorney Holding Earnest Money in All-Cash Transaction. In an all-cash transaction where the Closing Attorney is representing the Buyer or Seller, the Closing Attorney can hold the earnest money (and other trust funds), but in the event of a dispute between the parties regarding the disbursement of the funds, the Closing Attorney shall not disburse the funds based upon a reasonable interpretation of the Agreement. Instead and notwithstanding any provision to the contrary contained in this agreement, in the event of a dispute regarding the earnest money in an all-cash transaction where the Closing Attorney is representing the Buyer or Seller, the only remedy available to the Closing Attorney to resolve the dispute regarding the disbursement of earnest money shall be to interplead the funds into a court of competent jurisdiction.

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Closing Attorney as Holder of EM EXHIBIT- F510

▶ Notes

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

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Agreement of Closing Attorney to be Holder - F511

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

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Amendment to Address Concerns with Property – F704

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

This Amendment is intended to set forth the agreement of the parties relative to concerns raised by Buyer during the Due Diligence Period. If this Amendment does not become effective during the Due Diligence Period, it shall become null and void and of no legal force and effect.

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Amendment to Address Concerns with Property – F704

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

In consideration of Seller agreeing to address certain concerns of Buyer with Property, all parties agree that if this Amendment is signed by Buyer and Seller and delivered to both parties, the remainder of Buyer's Due Diligence Period shall OR shall not terminate.

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

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12
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Notice to Unilaterally Extend Closing for 8 Days – F270

- ▶ Closing Extended for 8 days from closing date on purchase & sale or on any subsequent Amendment
- ▶ May ONLY extend for one of the specific reasons

- Buyer(s) OR Seller(s) hereby gives notice to the other parties to the above-referenced purchase and sale Agreement that the closing date is extended for eight (8) days for the following reason(s):
- A. Seller(s) cannot satisfy valid title objections; excluding: (a) liens, judgments, and debts to secure debt that can be satisfied through the payment of money or by bonding off the same; and (b) title objections which do not prevent Seller from conveying good and marketable title to the Property.
 - B. Buyer's mortgage lender, if any, (including in "all cash" transactions) or the closing attorney cannot fulfill their respective obligations by the date of closing due to no fault of Buyer.
 - C. Buyer(s) has not received required estimates or disclosures, and Buyer is prohibited from closing under federal regulations.
- = TRID Disclosure Rules - 3 days prior to closing date

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Notice to Unilaterally Extend Closing for 8 Days – F270

- ▶ May only be used ONCE per contract
- ▶ Buyer or Seller may use for ANY of the specific reasons stated
- ▶ Never schedule a closing date on a Friday or this 8 Day Unilateral Extension turns in to 10 days or 11 days if that Monday is a Federal Holiday
 - See GAR Purchase & Sale paragraph C4f – "Extension of Deadlines"
- ▶ This unilateral Extension is provided for in the GAR Purchase & Sale Agreement ¶B4a

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2

Notice to Unilaterally Extend Closing for 8 Days – F270

- ▶ This is ONLY a GAR Contract provision – NOT a law in Georgia
- ▶ Remember parties may extend closing date by Amendment for as many times as they agree
 - “Amendment to Change Closing & Possession Date” – F716

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Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM – “T&R” – F522

- ▶ Notice of Termination is Unilateral (only ONE party needs to sign)
 - Once a contract is terminated, it’s terminated
 - Unless revived in writing – GAR F290 “Agreement to Reinstate Contract”

Unilateral Notice to Terminate

Buyer OR Seller does hereby give notice to the other parties to the above-referenced purchase and sale agreement that he or she is terminating the Agreement effective immediately based upon the following:

a. Buyer's right to terminate during the Due Diligence Period set forth in the Agreement;

b. the failure of the following contingency to which the Agreement is subject: _____

c. the following default under the Agreement by Buyer Seller: _____

d. other lawful reason: _____

1 Buyer _____ Date _____ 1 Seller _____ Date _____

2 Buyer _____ Date _____ 2 Seller _____ Date _____

Additional Signature Page (F267) is attached. Additional Signature Page (F267) is attached.

12
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Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM - "T&R" - F522

- ▶ Agreement to Disburse Earnest Money requires BOTH Buyer & Seller signatures
 - If both DON'T sign, then agent must notify Holder that the EM is in dispute
 - Holder may interpret & write "10 day letter"
 - Holder may interplead the funds for a judge to decide - fees are deducted from Earnest Money

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12
5

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

Proposed Disbursement of Earnest Money

The party unilaterally terminating this Agreement proposes that the earnest money and any other funds currently being held by Holder (collectively "Earnest Money") be disbursed as follows:

Name of Party & Amount of Earnest Money (& Holder would like address for remittance of funds)

This disbursement of Earnest Money shall only become effective upon this form being signed by and delivered to Buyer and Seller with a fully executed copy of the same then being delivered to the Buyer, Seller and Holder. Upon the happening of such event, Buyer and Seller further agree to release each other and all real estate brokerage firms, brokers and their affiliated licensees (all of whom shall be express third party beneficiaries to this Agreement) working with or representing the parties to the Agreement from any and all claims, causes of action, damages and suits arising out of or related to the Agreement. This shall not relieve any party who has defaulted under the Agreement or any brokerage engagement agreement to which they are a party from any claim, cause of action or suit for damages brought by the Broker(s) involved in the transaction. All terms referenced herein shall have the same meaning as in the Agreement.

1 Buyer	Date	AND	1 Seller	Date
2 Buyer	Date		2 Seller	Date

Additional Signature Page (F267) is attached.

Additional Signature Page (F267) is attached.

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12
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Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM - "T&R" - F522

- ▶ The Termination of a Contract is a completely separate issue from the Release / Disbursement of the Earnest Money
- ▶ Once a contract is terminated & not reinstated mutually, the Seller may go back on the market & sell to another Buyer (unless Seller defaulted & there is a pending lawsuit for specific performance)
- ▶ The release of the EM may come at a later date if the parties don't agree

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Mutual T&R - F519

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

A. Selling Broker: 1. Amount to be Paid by Seller to the Selling Broker under the Agreement: \$ _____ 2. Amount to be Paid by Buyer to the Selling Broker under the Agreement: \$ _____	B. Listing Broker: 1. Amount to be Paid by Seller to the Listing Broker under the Agreement: \$ _____ 2. Amount to be Paid by Buyer to the Listing Broker under the Agreement: \$ _____
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- ▶ All parties agree of any payments made to one another - including brokerage commissions
- ▶ May be perceived as an out of court settlement agreement - to avoid a future lawsuit

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Mutual T&R – F519

- ▶ If ONLY one party (Buyer or Seller) & neither or only one Broker sign the MUTUAL Termination Agreement, then the contract is NOT terminated
- ▶ If Buyer is coming to the end of a Contingency Time Frame, then would probably want to use the Unilateral Termination Notice

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Earnest Money & Termination

- ▶ When you tell a Buyer their “Earnest Money” is “safe” because they have a Due Diligence period & they can get it back upon termination, when does Buyer think they’ll get it back?
- ▶ If Buyer’s EM was personal check, Holder may not release until a certain time frame has passed
- ▶ It is responsibility of BOTH agents to follow up with Holder on the receipt & DEPOSIT of Earnest Money

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Earnest Money & Termination

- ▶ Parties really want proof of Deposit – NOT just a photo of a check
- ▶ Holder to send Notice if never received EM or deposit was not honored by the bank
- ▶ If Seller doesn't sign "Release" portion of T&R, then it is in dispute & tied up
- ▶ If Buyer wants to write an offer on another house, what will Seller #2 want as part of the contract?

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Earnest Money & Termination

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

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Earnest Money & Termination

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

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Earnest Money & Termination

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

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Thank you!

- ▶ Remember to Confirm all Contract Questions with your Broker!
- ▶ Please attend Additional Courses:
www.registerforREclasses.com – select a geographic area
- ▶ Course Offered through: Georgia Real Estate Academy (*GREC School #6915*)
- ▶ VIRTUAL Class Credits to be recorded within 3 – 5 Business Days

- ▶ Contract Tip Videos: YouTube Channel:
“Real Estate Made Crystal Clear”

- ▶ **Have a joyous & prosperous & healthy year helping others with their real estate needs!**

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13
5