

**2022 GAR Brokerage Agreements &
Other Useful Forms &
Special Stipulations**
GREC Course #73907

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3 Hrs. CE Credit Offered for Georgia Real Estate Licensees
Through: **Georgia Real Estate Academy**
GREC School #6915
As of April 2022

**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 Brokerage Agreements & Other Useful Forms & Special Stipulations – GREC Course #73907**
- ▶ This is a Classroom / 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 (RosterCadmIn@eAGENTweb.com) 770-919-8825 ext. 306, or the Georgia Real Estate Commission.

Notes About This Class

- ▶ The purpose of this class is to bring to your attention the plethora of Contract Forms available to you through the Georgia Association of REALTORS® (GAR)
- ▶ To cover these forms in-depth would require way more than 3 hours
- ▶ Please confirm specific questions with your Broker & your Brokerage's Policies & Procedures
- ▶ Keep The Handouts as a Reference
 - www.eAGENTweb.com Select "Training Videos" Scroll through for this class & there are links for handouts that you may download

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GAR Forms

- ▶ Brokerage Agreements to Create a Client Relationship with the Brokerage
 - F101 – Exclusive Seller Brokerage Agreement
 - F104 – Non-Exclusive Seller Brokerage Agreement
 - F110 – Exclusive Buyer Brokerage Agreement
 - F113 – Non-Exclusive Buyer Brokerage Agreement
- ▶ Customer Acknowledgments to Describe Customer Relationship with Brokerage
 - F107 – Authorization to Show Unlisted Property
 - F116 – Agreement to Work with Buyer as Customer

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5

GAR Forms

- ▶ More Related to Brokerage Agreements
 - F728 – Amendment to Brokerage Agreement
 - F152 – Mutual Termination of Brokerage Agreement
 - F155 – Unilateral Termination of Brokerage Agreement
 - F158 – Notice to Extend Brokerage Agreement

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6

GAR Forms

- ▶ Earnest Money Forms – discussed in depth in 2022 GAR Contract Dissection CE Class
 - F510 – Closing Attorney to Act as Holder or Earnest Money Exhibit
 - F511 – Agreement of Closing Attorney to Act as Holder of Earnest Money
 - F522 – Unilateral Termination & Release
 - F519 – Mutual Termination & Release
 - F290 – Agreement to Reinstate Contract

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7

GAR Forms

- ▶ Contingency Exhibits
 - F601 – Sale or Lease of Property
 - F604 – Back-Up Agreement
 - F607 – General Contingency

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8

Special Stipulations – Check with your Broker prior to using Any stip you learn in any class

- ▶ Appraisal Gap Stipulation
- ▶ Escalation Clause Stipulation
- ▶ Repairs
- ▶ Complex approved for FHA/VA Loan
- ▶ Conformed Copy = “Clean Copy”
- ▶ Home Warranty
- ▶ Property Disclosure Request
- ▶ Termite Letters

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9

GAR Forms

- ▶ Amendments
 - F704 – Amendment to Address Concerns
 - F716 – Amendment to Change Closing & Possession Dates
 - Unilateral Extension – when & If you can use it
 - F713 – Amendment to Sales Price
 - F701 – General Amendment
 - F733 – Binding Agreement Date Confirmation Amendment

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10

GAR Forms

- ▶ Miscellaneous Forms
 - F219 – Temporary Occupancy for Seller After Closing
 - F255 – Instructions to Closing Attorney
 - F285 – Notice to Withdraw Offer
 - F288 – Notice to Reject Offer
 - F289 – Request for Confirmation of Presentation of Offer
 - F264 – Reminder of Important Dates
 - F834 – Vendor List
 - F325 – Broker’s Information Disclosure
 - F837 – Seller Net / F840 – Buyer Cash to Close
 - F816 – Notice
 - F158 – Notice to Extend Brokerage Agreement

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11

Brokerage Agreements: Listing & Buyer Brokerage Agreements

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

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12

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

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

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13

Agency Relationships

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

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14

License Law & Brokerage Agreements

- ▶ License Law **REQUIRES** signature on Brokerage Agreement if Broker is working with Public as a CLIENT (**Unfair Trade Practices (OCGA 43-40-25b)(30)**)
- ▶ No Law required to sign anything to work with public as Customer
- ▶ BUT.....
- ▶ It's a good idea to have the public sign a document that describes their relationship with you & Broker relative to the transaction
- ▶ Your Broker may have a Policy also

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15

Seller Agreements

- ▶ Agreement **Creates** CLIENT Relationship
 - GAR F101 - Exclusive Seller Listing Agreement
 - GAR F104 - Non-Exclusive Seller Listing Agreement
- ▶ Form **Describes** the CUSTOMER Relationship
 - GAR F107 - Authorization to Show Unlisted Property

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16

Buyer Agreements

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

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17

F101 – Exclusive Seller Brokerage Agreement – HIGHLIGHTS

- ▶ Dates
 - Commencement Date of Agreement
 - Marketing Commencement Date
- ▶ Commission
 - Co-Op Commission
 - Commission Adjustment
 - Separate Commission on a Lease
- ▶ Protected Period
 - Negated with Mutual Termination
 - Negated when Seller lists with another Broker
- ▶ Disclosure Statements
 - Property Disclosures
 - Lead-Based Paint
- ▶ Seller Default

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18

F101 – Exclusive Seller Brokerage Agreement – Fill-In-The-Blanks

- ▶ Address
- ▶ Legal Description
- ▶ List Price
- ▶ Time Frames
 - Client Relationship
 - Marketing Commencement Date – See Marketing
 - Expiration Date
- ▶ MLS Services
- ▶ Commission
 - TOTAL Amount or % needs to be LARGER than Amount or % that Listing Broker will pay Selling Broker
- ▶ Protection Period
- ▶ Agency Not permitted (i.e. Dual Agency)
- ▶ Special Circumstances

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19

F101 – Property ID

- ▶ Address
- ▶ Legal Description
 - If you don't have ALL information then use Warranty Deed Book & Page
 - Online county records
 - www.GSCCCA.org
 - Your Favorite Closing Attorney
- ▶ SEPARATE Section if Condominium Ownership vs. Fee Simple

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20

F101 – List Price & Listing Period

- ▶ List Price
- ▶ “Commencement Date”
 - This Date Begins the CLIENT relationship between Public Seller & the Brokerage
- ▶ Expiration Date

2. List Price and Listing Period

a. The price at which the Property shall be listed for sale is \$ _____ (“List Price”).

b. Commencement Date of Agreement: This Date Starts Client Relationship ____/____/20____. This Agreement shall commence and be effective upon it being signed by Seller and Broker and a signed copy delivered to both parties. Creates Client Relationship

c. Ending Date of Agreement: Required by License Law ____/____/20____. This shall be the last full date of the Agreement after which it shall terminate and no longer be in effect unless the parties agree in writing to extend it.

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21

Marketing

- ▶ MLS Services
 - Must go into MLS per their Membership Rules (i.e. FMLS must be entered within 2 business days if “Coming Soon” or 1 business day if immediately Active)
- ▶ Marketing Commencement Date
 - Date property is marketed to the public
- ▶ NOTE: Commencement Date relates to STATUS property is entered into MLS
 - If Commencement Date & Marketing Date are the SAME - enter in MLS as “ACTIVE”
 - If Commencement Date is PRIOR to Marketing Date, enter in MLS as “COMING SOON”
 - “Coming Soon” – may NOT be shown to anyone – only available via info in MLS service to other agents who belong to MLS service

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22

F101 – Marketing

3. Marketing. Broker agrees to file this listing with the following Multiple Listing Service(s):

a. DELIVERY OF AGREEMENT TO AND LISTING WITH MLS. THIS AGREEMENT MUST BE TIMELY DELIVERED TO AND LISTED WITH THE ABOVE-REFERENCED MULTIPLE LISTING SERVICE(S) IN ACCORDANCE WITH THE RULES OF SUCH MULTIPLE LISTING SERVICE(S). THIS OBLIGATION SHALL CONTROL OVER ANY CONFLICTING OR INCONSISTENT LANGUAGE CONTAINED HEREIN.

b. Marketing Commencement Date: May be Same or Different from 2b/20 ____/____/20____. This shall be the date when the Property is first marketed to the public. Seller shall have the right, upon notice to Broker, to move this date up or back by not more than ____ days.

If Commencement Date & Marketing Date are the SAME - enter in MLS as “ACTIVE”
If Commencement Date is PRIOR to Marketing Date - enter in MLS as “COMING SOON”

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23

F101 – Commission

- ▶ Total Commission & then the portion of the total to be shared with a Co-op Broker
 - Amount in 4b should be SMALLER than amount in 4a
- ▶ Commission Adjustment – circumstance under which co-op commission may differ than advertised in MLS
 - i.e. “If Buyer’s Broker not present at time of 1st showing, then Buyer’s Broker Commission to be ___% of Sale Price
 - Must put in Private Remarks in MLS

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24

F101 – Commission

- ▶ Separate Commission on a Lease
 - In addition to commission due upon a Sale (i.e. for a Lease Purchase)
- ▶ Time frame for Protected Period
 - Because Commission is what is being protected
- ▶ Point of Practice: Make sure to mark YES to “VRC” = Variable Rate Commission

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25

F101 – Commission

4. Commission. [Select one or more of the following below.]

a. Seller agrees to pay Broker the following commission (“Commission”) at the closing of any Contract to Sell (as that term is hereinafter defined) of the Property as follows:

\$ _____ percent (%) of the sales price;

(other) _____;

b. Broker agrees to pay cooperating broker, if any, \$ _____ % of the sales price;

(other) _____;

TOTAL Commission \$ _____

This amount is LESS than Amount in 4a

c. Commission Adjustment to Cooperating Broker: There may be circumstances where Seller’s Broker shall not pay the cooperating broker the Commission referenced in Section 4(b) above. These circumstances and the Commission that shall be paid in such circumstances are as follows: For Example: If Buyer’s Broker not present at time of 1st showing, cooperating commission will be _____ % of Seller Price

Check if an additional page(s) (F801) is attached (in which event, the same are incorporated herein).

d. **Separate Commission on Lease.** If Seller leases the Property or enters into a lease/purchase agreement or a lease with an option to purchase agreement during this Agreement, Seller shall also pay Broker a separate leasing commission in the amount of \$ _____ and as follows: _____.

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

5. Protected Period. The length of Protected Period, as that term is herein defined, shall be _____ days.

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26

F101 – Agency & Brokerage

- ▶ Agency Relationships NOT Offered by Broker
- ▶ Double Disclosure & Consent for Dual Agency if offered by Broker
- ▶ Dual Agency is LEGAL If:
 - Disclosed in writing
 - Agreed to in writing by BOTH Sided
 - Broker may have a policy against it
- ▶ Note About Having Both Sides
 - Must be allowed by Broker
 - Not Dual Agency if one side is Customer
 - Suggest you still offer agency relationship to Customer (send a referral to another agent – designated or to another Broker)

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27

F101 – Agency & Brokerage

6. Agency and Brokerage.

a. The following are types of agency relationship(s) NOT offered by Broker:

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

b. If Broker offers dual agency as one of its agency relationships above, Seller does or does not consent to Broker acting in a dual agency capacity, as that agency relationship is explained in Section 8.5(b) below and in the CBOT ABCs of Agency. Seller expressly consents to Broker acting in any other agency relationship offered by Broker.

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28

F101 – Special Circumstances

7. Seller Has the Following Special Circumstances That Will Require Third-Party Approval Before Seller Can Do the Following:

a. List the Property for Sale: ONLY if 3rd party approval/signatures are required.

- (1) **Bankruptcy:** Seller has filed for bankruptcy protection and this Agreement is made contingent upon the bankruptcy court authorizing the listing of the Property for sale.
- (2) **Divorce:** Seller has filed for divorce and this Agreement is made contingent upon the court having jurisdiction over the divorce action authorizing the listing of the Property for sale.
- (3) **Other (Please describe):** _____

b. Contract to Sell the Property:

- (1) **Bankruptcy:** Seller has filed for bankruptcy protection. Any purchase and sale agreement for the sale of the Property will need to be conditioned upon the approval of the bankruptcy court.
- (2) **Divorce:** Seller has filed for divorce. Any purchase and sale agreement for the sale of the Property will need to be conditioned upon the approval of the court having jurisdiction over the divorce.
- (3) **Short Sale:** The sale of the Property will require sufficient proceeds to pay off the Broker's real estate commission and all mortgages or liens on the Property. Therefore, a purchase and sale agreement for the sale of the Property will need to be made contingent upon the mortgage lender and other lien holders agreeing to take less than the face amount of what they are owed.
- (4) **Seller Not On Title:** Seller does not yet have title to the Property and the purchase and sale agreement for the Property will or will not need to be approved by Seller acquiring title to the Property.
- (5) **Other (Please describe):** _____

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

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F101 – Further Explanations to Seller Brokerage Agreement

- ▶ **Exclusive Agreement = Seller is not a party to any other Seller Brokerage Agreement & has not terminated a previous Agreement without consent of previous Broker**
- ▶ **List Price**
 - If property doesn't get shown or a contract = price may be too high
- ▶ **Listing Period: Automatically Extended if:**
 - Property under contract & closing date is after expiration date
 - Property was under contract but terminated – those # of days automatically get added on to the end of the period IF Agent sends Notice within 5 days of termination of contract to Seller that they will extend listing period by those number of days it was under contract

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F158 – Notice to Extend Brokerage Agreement

NOTICE TO EXTEND BROKERAGE ENGAGEMENT AGREEMENT

Georgia REALTORS
2022 Printing

"Notice" so only Broker or Affiliated Licensee signature Required - to comply with Extension provisions in Seller & Buyer Brokerage Agreements

This notice is given this date of _____ in accordance with the provisions of that certain Agreement ("Agreement") dated _____ with an original expiration date of _____ between _____ ("Client") and _____ ("Broker").

In accordance with the Agreement, Broker hereby gives notice that the Agreement is extended through Fill in Date

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F101 – Exclusive Agreement & List Price & Period

B. FURTHER EXPLANATIONS TO CORRESPONDING PARAGRAPHS IN SECTION A.

1. **Exclusive Seller Brokerage Engagement Agreement.** Seller has the full authority to enter into this Agreement for the listing of Seller's Property for sale. This Agreement may not be amended except by the written agreement of Seller and Broker. The failure of the parties to adhere strictly to the terms and conditions of this Agreement shall not constitute a waiver of the right of the parties later to insist on such strict adherence. Seller is not a party to any other exclusive seller brokerage engagement agreement and all such previous agreements, if any, have expired and not been renewed. Seller acknowledges that Seller may have to pay a previous broker a real estate commission if Seller is subject to a current seller brokerage engagement agreement or has terminated a previous seller brokerage engagement agreement without the consent of the previous broker.
2. **List Price and Listing Period.**
 - a. **List Price:** Seller agrees to list the Property for sale at the list price specified in this Agreement. The failure of the Property to be shown or sell at the list price may be an indication that the list price for the Property is too high.
 - b. **Initial Listing Period When Property is Under Contract to Sell:** If the Property is under a Contract to Sell, as that term is defined below, during the Listing Period, but the Listing Period expires prior to the closing, then the Listing Period shall be automatically extended through the closing of the Contract to Sell.
 - c. **Extension:** If during the term of this Agreement, Seller and a prospective buyer enter into: 1) a real property purchase and sale agreement for the Property, 2) a contract to exchange property, including the Property, 3) an option contract for the sale of the Property, or 4) a contract to sell the shares or partnership or membership interests in the legal entity owned by Seller (hereinafter, collectively referred to in this Agreement as a "Contract to Sell") which is not consummated or closed for any reason whatsoever, then the Listing Period may be extended unilaterally by Broker for the number of days that Property has been under the Contract to Sell (hereinafter, "Extension Period") by broker providing written notice to Seller, within five (5) days of the Contract to Sell not being consummated but in no event later than prior to the expiration of this Agreement (hereinafter, "Notification Period"). If such written notice is not given before the end of the Notification Period, then the Extension Period for that transaction shall be deemed to have been waived by Broker.

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F101 – Marketing

- ▶ Broker doesn't have control over all marketing (i.e. Zillow, etc.)
- ▶ Photos/Videos purchased or taken by Broker belong to Broker; taken or paid for by Seller belong to Seller
- ▶ Seller agrees to not market/advertise on their own without permission of Broker
- ▶ Seller acknowledges that others may take photos / videos
- ▶ Broker to put in referenced MLS services within 1 business day of when "marketing" begins
 - Flyers, Sign in Yard, Website, etc.
 - Marketing to agents in same brokerage is not "public" marketing
- ▶ Seller agrees to remove or secure all valuables & prescription drugs

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33

3. **Marketing:**

a. **Generally:** Broker is authorized to market and advertise Property for sale in any media of Broker's choosing, including the Internet and multiple listing services, and attempt to procure buyers for the Property in cooperation with other real estate brokers and their affiliated licensees. Seller acknowledges that in listing the Property on a multiple listing service, all members of multiple listing services and real estate related third parties will have access to Seller's listing information including flyers and recordings and the right to use all available technology to create, download, store, supplement and update the listing information to assist Seller in the sale of the Property and for tracking and analyzing real estate transactions. As such, Broker may not always have control over aspects of the marketing of the Property. Any media created or purchased by Broker for use in the marketing effort shall not be the property of the Seller and may not be copied, reproduced or used by Seller or other third parties without the Seller's written permission of the Broker. Seller warrants that any third party for the purposes of marketing the property, and Seller agrees to indemnify the Broker for any claim by a third party resulting from the use of the provided media. Broker shall be allowed to use Seller provided materials, during the term of this Agreement, with any third party for the purposes of marketing the property, and Seller acknowledges that Broker shall not be liable to Seller for the continued use of media by third parties after the termination of the Agreement. Seller agrees not to place any advertisements on this Property or to purchase the Property for sale or to act except with the prior written consent of Broker. Seller hereby authorizes Broker to place Broker's "For Sale" sign on Property. If the Property is sold or a contract to sell the Property is entered into during the term of this Agreement, the Broker may advertise the Property (including images thereof) in any media of Broker's choosing as being "under contract" while a sale is pending and as being "sold" upon the closing of the Property (except where Seller shall permit Broker to place a Sold sign on property no longer owned by Seller except with the written permission of the Seller). Seller acknowledges that buyers and other brokers may take photographs, videos and use other technology to capture images of the Property to assist in marketing the Property and buyers remember internet properties. Seller agrees to remove any personal property prior to listing the Property of which Seller does not want images to be so captured.

b. **Multiple Listing Service(s):** Broker agrees to file this Agreement with the above referenced Multiple Listing Service(s) within one (1) business day of the Marketing Commencement Date, which shall be the date the Property is made available to the public. Marketing of the property to the public includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, long/short website displays including (DX and WDM), digital communications marketing (email blasts), multi-brokerage listing sharing networks and applications available to the general public. Internal marketing that only goes to other licensees within the Seller's Brokerage firm is not considered public facing marketing unless it is approved by the Seller. Broker shall not be responsible for the actions of other licensees who are not a party to this Agreement and shall not be responsible for errors or omissions on the part of Seller or others. Seller agrees to indemnify Seller's firm and agents and all claims, liabilities, damages or losses arising out of or related to the listing and sale of Property. Seller acknowledges that by virtue of listing the Property in MLS(s), all MLS(s) members and their affiliated licensees, will have access to Seller's listing information for the purpose of assisting Seller in the sale of the Property.

c. **Consent of Seller to be Called:** If Seller is on a "Do Not Call List," Seller expressly consents to Broker calling Seller for any purpose related to the sale of the Property. This paragraph shall survive the termination of this Agreement.

d. **Lockboxes:** A lockbox may be used in connection with the marketing of Property. There have been isolated instances of reported burglaries of homes on which lockboxes have been placed and for which the lockbox has been alleged to have been used to access the home. In order to minimize the risk of misuse of the lockbox, Broker recommends against the use of lockboxes on door handles that can be unsecured from the outside or any parts of the home from which the lockbox can be easily removed. Since prospective buyers and others will have access to Property, Seller agrees to either remove all valuables, prescription drugs and/or keys, or put them in a secure place.

e. **No Marketing by Seller:** Seller is encouraged to communicate the availability of the Property for sale to friends and other acquaintances. However, since Broker has been hired to exclusively market and show the Property, Seller shall not, with respect to the sale of the Property, prepare and distribute marketing materials, food, open houses, signs, flyers, regarding the Property, create websites for the Property, prepare flyers, brochures or videos or engage in any other marketing activity without the prior written consent of Broker.

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34

F101 – Commission

- ▶ Seller obligated to pay commission at closing of sale or consummation of lease
- ▶ Listing Broker will share commission with Buyer's Broker
- ▶ Seller to pay Commission upon Lease AND would still owe commission at closing if it is also sold

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35

F101 – Commission

4. **Commission:**

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

b. **Sharing of Broker's Commission with Cooperating Broker:** Broker shall share this commission with a cooperating broker, if any, who procures the buyer of Property by paying such cooperating broker at closing the percent (%) of the sales price of Property referenced above OR the flat amount referenced herein. There may be times when the Broker may not pay the cooperating broker the full amount of the commission as set forth in Section 4.

c. **Separate Commission on Lease:** Notwithstanding the above, if Seller leases real property or enters into a lease/purchase or lease with an option to purchase contract during this Agreement, Seller shall also pay Broker a separate Leasing Commission in the amount as indicated elsewhere in this Agreement. Notwithstanding any provision to the contrary contained herein, the payment of a leasing commission (including in lease purchase and lease with an option to purchase transactions) shall not prevent Seller from paying the Commission at the closing of a Contract to Sell, as provided elsewhere in this Agreement.

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36

F101 – Protected Period

- ▶ If Seller unilaterally terminates, then the number of days left on the Agreement are added to the protection period
- ▶ NO Protection period if Agreement is Mutually terminated
- ▶ Commission is Protected if Seller goes Under contract or sells to Buyer who was introduced to or shown Property during term of Agreement provided that Broker provided specific info or Buyer specifically asked about the property
 - Point of Practice: Make a list of all Buyers that you specifically identified the property to & share it with the Seller to make sure your commission is protected
- ▶ UP UNTIL the point Seller lists with another Broker then **NO PROTECTION FOR YOUR COMMISSION!**

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

Notwithstanding the above, **if this Agreement expires** (and is not unilaterally terminated by Seller) an exception to the above Commission obligations shall apply and **no Commission or Leasing Commission, as applicable, shall be due, owing or paid to Broker if Seller enters into a Contract to Sell or lease, lease/purchase, or lease with an option to purchase all or any portion of the Property during the Protected Period by or through another licensed broker with whom Seller has signed an exclusive seller brokerage engagement agreement.** This exception shall not apply if the Agreement is unilaterally terminated by Seller; the commission rights and obligations set forth herein shall survive the termination of this Agreement.

NO Commission Protection if Seller Lists with Another Broker

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F101 – Agency & Brokerage

- ▶ Description of Brokerage options
- ▶ Disclosure & consent of Dual Agency if Broker offers

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F101 – Seller’s Property Disclosures

- ▶ Legally required (O.C.G.A §51-6-2) to disclose “Latent Defects” = material defect that the Seller has knowledge of and could not be observed by Buyer upon reasonable inspection – even when selling “as is”
- ▶ Seller agrees to complete Seller’s Property Disclosure (F301) or Latent Defects & Fixtures Checklist (F316) within 3 days of signing
 - If Seller is not going to complete, must address as a Special Stip
 - (“Per paragraph C1, Seller will not complete a Seller Disclosure Statement but agrees to disclose in writing any known latent defects with property even if selling “as is.”)

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F101 – Lead Based Paint Disclosure

- ▶ If property built (or anything in property) prior to 1978 then must complete Lead Based Paint Disclosure AT TIME OF SIGNING
 - Per EPA, Buyer to have LBP Disclosure & pamphlet PRIOR to making an offer
- ▶ Point of Practice: you must give Seller these forms to complete when you take the Listing
 - GAR – F316 – Lead Based Paint Exhibit
 - GAR CB04 – Lead Paint Pamphlet
- ▶ Broker may have policy to have Seller complete this disclosure with every property

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41

C. OTHER TERMS AND CONDITIONS

1. **Seller's Property Disclosure Statement:** Georgia Law (O.C.G.A. §51-6-2) requires that a Seller disclose latent defects in the Property which could not be observed by Buyer upon a reasonable inspection of the Property. This is the case even if the Property is sold in "as-is" condition. Within three (3) days of the date of this Agreement, Seller agrees to provide Broker with a current, fully executed Seller's Property Disclosure Statement or Disclosure of Latent Defects & Evictions Check List. If any drilling on the Property, or portion thereof, was constructed prior to 1978, Seller agrees, as required by federal law (Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X), to provide Broker with a current fully executed Lead-Based Paint Disclosure Exhibit (GAR F316) at the same time as the signing of this Agreement. Seller further instructs the Broker to make the Lead-Based Paint Disclosure Exhibit available to all parties on the Marketing Commencement Date. Broker is hereby authorized to distribute the Seller's Property Disclosure Statement and any Lead-Based Paint Exhibit to buyers interested in Property. Seller agrees to promptly update any of the above-referenced disclosure documents through the Closing should any changes occur. If Seller notifies Buyer of any disclosure, must address as special stip.
2. **Hazardous Conditions on Property:** Seller acknowledges that Seller owes a duty of reasonable care to keep the Property safe for prospective buyers and their agents who to view and inspect the Property. Among other things, this includes a duty to warn purchasers of dangerous conditions that would not be obvious to an average person. Seller is encouraged to inspect the Property for hazardous conditions and correct and eliminate all such conditions. Seller agrees to indemnify and hold Broker harmless from and against any and all claims, causes of action, suits, and damages arising out of or relating to the person or persons being injured or harmed while on the Property.

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42

F101 – Limits of Broker's Authority & Responsibility

- ▶ May show to Buyers
- ▶ No duty to inspect
- ▶ Seller should seek independent expert advice on any matter of concern
- ▶ Broker owes no duty to Seller or have any authority on behalf of Seller outside of Agreement
- ▶ Seller responsible to duties & deadlines
- ▶ Indemnity
- ▶ Broker has no authority to Bind Seller to Terms

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43

3. Limits on Broker's Authority and Responsibility

- Seller acknowledges and agrees that Broker:
- a. may show other properties to prospective buyers who are interested in Property;
 - b. shall have no duty to inspect the Property or advise Buyer or Seller on any matter relating to the Property which could have been revealed through a survey, appraisal, sewer scope, official Georgia Wood Inspection Report, utility line review, septic system inspection, well water test, radon, asbestos, mold, and lead-based paint inspection of the Property by a licensed home inspector, construction expert, structural engineer, or environmental engineer; review of this Agreement and transaction by an attorney, financial planner, mortgage consultant, or tax consultant; and consulting appropriate governmental officials to determine, among other things and without limitation, the zoning of the Property, the propensity of the Property to flood, flood zone certifications, whether any condemnation action is pending or has been filed or other nearby governmental improvements are planned. Seller acknowledges that Broker does not perform or have expertise in any of the above tests, inspections, and reviews or in any of the matters handled by the professionals referenced above. Seller should seek independent expert advice regarding any matter of concern to Seller relative to the Property and this Agreement. Seller acknowledges that Broker shall not be responsible to monitor or supervise or inspect any portion of any construction or repairs to Property and that such tasks fall outside the scope of real estate brokerage services;
 - c. shall have no authority to bind Seller to any contract on behalf of Seller other than what is set forth in this Agreement;
 - d. shall make all disclosures required by law;
 - e. shall not be responsible for ensuring that Seller complies with the duties and deadlines contained in any Contract to Sell entered into by Seller and that Seller shall be solely responsible for the same; and
 - f. shall be indemnified and held harmless by Seller from any and all claims, causes of action, or damages arising out of or relating to:
 - (1) inaccurate and/or incomplete information provided by Seller to Broker;
 - (2) earnest money handled by anyone other than Broker;
 - (3) Seller's negligence or intentional wrongdoing;
 - (4) any loss or theft of valuables, prescription drugs, keys, or other personal property, relating to the use of a lockbox or an open house resulting from Seller's failure to remove or secure the same;
 - (5) the existence of undisclosed material facts about the Property or the transaction; and
 - (6) any damages or injuries occurring on the Property as a result of dangerous or defective conditions on the Property or the failure to secure or restrain pets.

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F101, Exclusive Seller Brokerage Engagement Agreement, Page 5 of 10, 01/01/22

- g. shall have no authority to bind Seller to any Contract to Sell or give notices on behalf of Seller other than to forward, if requested by Seller, a notice signed by Seller pertaining to a real estate transaction. Under the standard OAR Purchase and Sale Agreement Forms, notice received by the Broker is deemed to be notice received by the Seller.

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44

F101 – Limits on Broker’s Liability

- ▶ Broker liability limited to amount of commission paid or \$100 if no commission paid
- ▶ Loss by Cyberfraud – Broker limit of liability to \$100
- ▶ Note: I do not believe these statements have been tested in the Georgia Courts
- ▶ Broker to report Fraud or suspicious activity

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45

4. LIMIT ON BROKER'S LIABILITY. SELLER ACKNOWLEDGES THAT BROKER:
- a. SHALL, UNDER NO CIRCUMSTANCES, HAVE ANY LIABILITY GREATER THAN THE AMOUNT OF THE REAL ESTATE COMMISSION PAID HEREUNDER TO BROKER (EXCLUDING ANY COMMISSION AMOUNT PAID TO A COOPERATING REAL ESTATE BROKER, IF ANY) OR, IF NO REAL ESTATE COMMISSION IS PAID TO BROKER, THAN A SUM NOT TO EXCEED \$100; AND
 - b. NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY IN EXCESS OF \$100 FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD;
5. Disclosure of Potentially Fraudulent Activities as required by the Georgia Residential Mortgage Fraud Act (O.C.G.A. §16-8-100 et seq.)
- a. To help prevent fraud in real estate transactions, Seller does hereby give Broker permission to report any suspicious, unusual and/or potentially illegal or fraudulent activity (including but not limited to mortgage fraud) to:
 - (1) Governmental officials, agencies and/or authorities and/or
 - (2) Any mortgage lender, mortgage insurer, mortgage investor and/or title insurance company which could potentially be harmed if the activity was in fact fraudulent or illegal.
 - b. Seller acknowledges that Broker does not have special expertise with respect to detecting fraud in real estate transactions. Therefore, Seller acknowledges that:
 - (1) Activities which are fraudulent or illegal may be undetected by Broker; and
 - (2) Activities which are lawful and/or routine may be reported by Broker as being suspicious, unusual or potentially illegal or fraudulent.

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46

F101 – Miscellaneous

- ▶ Duty to Arbitrate
- ▶ If arbitration or litigation – Loser has to pay winner’s legal fees
- ▶ “Broker” = “Broker” & “Affiliated Licensee”
- ▶ Buyer & Seller = LLC, heirs, etc.
- ▶ Fair Housing Laws apply
 - Seller must also comply with State & Federal Fair Housing Laws
 - Point of Practice: Give Seller Fair Housing Brochure – <https://nationalfairhousing.org/fair-housing-brochures/>

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47

Fair Housing Laws

- ▶ Fair Housing Protected Groups – “FRESH CORN”
 - F – Familial Status
 - R – Race
 - E –
 - S – Sex
 - H – Handicap/Disability

 - C – Color
 - O –
 - R – Race
 - N – National Origin

 - (no “E” or “O” = “Equal Opportunity”)

GAR contract ADDS – Sexual Orientation & Gender Identity
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48

6. Miscellaneous

a. Arbitration: All claims arising out of or relating to this Agreement and the assignment or provisions of any or all the parties hereunder shall be resolved by arbitration in accordance with the Federal Arbitration Act (U.S.G.A.) and the rules and procedures of the arbitration company selected to administer the arbitration. Upon making a demand for arbitration, the parties shall work together in good faith to select a mutually acceptable arbitration company with offices in Georgia to administer and conduct the arbitration. If the parties cannot mutually agree on an arbitration company, the company shall be selected as follows. Each party shall simultaneously exchange with the other party a list of three arbitration companies with offices in Georgia acceptable to that party to administer and conduct the arbitration. If there is only one (1) arbitration company that is common to both lists, that company shall administer and conduct the arbitration. If there is more than one arbitration company that is common to both lists, the parties shall either mutually agree on which arbitration company shall administer and conduct the arbitration. If there is not initially a common arbitration company on the lists, the parties shall engage in a process by expanding their lists to two each time until there is a common name on the lists selected by the parties. The method of the arbitrator shall be final and the arbitrator shall have authority to award attorneys fees and allocate the costs of arbitration as part of any final award. All claims shall be brought by a party in his or her individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Notwithstanding any other law, this agreement to arbitrate shall not apply to: (1) any claim regarding the handling and disbursement of earnest money; and (2) any claim of Broker regarding the entitlement to or the non-payment of a real estate commission.

b. Assignment: As part of a sale of all or substantially all of the assets of Broker to another brokerage firm, Seller consents to this Agreement being assigned to the other brokerage firm. In such event, the assignee, upon consenting to the assignment, shall: (1) thereafter be responsible for performing all of the duties and responsibilities of the assignor under this Agreement; and (2) have all of the rights of the assignor including the right to receive the commissions under the Agreement.

c. Attorney's Fees: In the event this Agreement, or any provision therein, is enforced through or is the subject of a dispute resulting in litigation or arbitration, the prevailing party shall be entitled to recover its actual attorney's fees, reasonable incurred.

d. Broker: Where the context requires, the term Broker shall include Seller, all members of the Seller's immediate family, any person in which Seller or any member of Seller's immediate family owns or controls, directly or indirectly, more than ten percent (10%) of the shares or interests therein, and any third party who is acting under the direction or control of any of the above parties. For the purposes of this Agreement, the term "buyer" shall include buyer, all members of the buyer's immediate family, any person in which buyer or any member of buyer's immediate family owns or controls, directly or indirectly, more than ten percent (10%) of the shares or interests therein, and any third party who is acting under the direction or control of any of the above parties.

f. Entire Agreement: This Agreement represents the entire agreement of the parties with respect to listing of the Property for sale and is intended to supersede all prior written and verbal agreements of the parties hereto. No representation, statement, promise, or agreement not contained herein shall be binding on either party hereto. This Agreement shall be binding on the heirs of the Seller.

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

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F101 - Miscellaneous Cont'd

- ▶ GAR Forms - not required to use & courts may rule against provision in contract
- ▶ Laws of Georgia prevail
- ▶ Communication between Broker & Seller - time sensitive
- ▶ Seller gives consent to Broker to refer
- ▶ 2 year statute of limitations
- ▶ Survival - commission & indemnity
- ▶ 3rd Party Vendors - provided as a courtesy
 - Consider Using F834 "Vendor List"

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h. GAR Forms: The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form, he or she should consult an attorney. Provisions in the GAR Forms are subject to differing interpretations by our courts other than what the parties may have intended. All times, our courts may strike down or not enforce provisions in our GAR Forms, as written. No representation is made that the GAR Forms will protect the interests of any particular party or will be for any specific purpose. The parties hereby agree that the GAR Forms may only be used in accordance with the licensing agreement of GAR. While GAR Forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.

i. Governing Law and Interpretation: This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original and shall be interpreted in accordance with the laws of Georgia. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. All references to time shall mean the time in Georgia. If any provision herein is held to be unenforceable, it shall be severed from this Agreement while the remainder of the Agreement shall, to the fullest extent permitted by law, continue to have full force and effect as a binding contract.

j. Independent Contractor Relationship: This Agreement shall create an independent contractor relationship between Broker and Seller. Broker shall not be considered an employee of Seller. Unless otherwise stipulated, all affiliates of Broker are independent contractors of Broker.

k. No Imputed Knowledge: Seller acknowledges and agrees that with regard to any property which Seller intends to sell, there shall be no knowledge imputed between Broker and Broker's licensees or between the different licensees of Broker. Broker and each of Broker's licensees shall be deemed to have only actual knowledge of such properties.

l. Notices Between Seller and Broker:

- (1) Communications Regarding Real Estate Transactions: Seller acknowledges that many communications and notices in real estate transactions are of a time sensitive nature and that the failure to receive such notices and communications can have adverse legal, business and financial consequences. During the term of this Agreement, Seller agrees to maintain reasonably available to receive communications from Broker.
- (2) Notices between Broker and Seller: Regarding this Agreement, Seller and Broker agree that communications and notices between them regarding the terms of this Agreement shall be witnessed by the party giving the notice, and may be delivered in person or to any address, e-mail address and/or facsimile number to the person to whom the communication or notice is being given specifically set forth in this Agreement. It is the intent of the parties that those means of transmitting notices for which a party has not provided an address or number shall not be used for receiving notices and communications. For example, if a party has not provided an e-mail address in this Agreement, it shall mean that the party is not accepting notices or communications sent by this means.

m. Referrals: Seller hereby authorizes Broker to refer Seller to another real estate licensee or broker for brokerage or relocation services to a building for purposes not related to the sale of the Property. Seller acknowledges and agrees that Broker may receive a valuable consideration for the referral.

n. Statute of Limitations: All claims of any nature whatsoever against Broker and/or their affiliated licensees, whether asserted in litigation or arbitration and sounding in breach of contract or tort, must be brought within two (2) years from the date any claim or cause of action arises. Such actions shall be subject to the statute of limitations.

o. Survival: The rights and obligations of Broker in this Agreement shall survive the termination or expiration of this Agreement as set forth herein. The limitation of liability, the obligation to disclose and indemnify Broker and other similar provisions that by their terms are meant to protect Broker shall survive the termination of this Agreement.

p. Third Party Vendors: Broker may provide Seller with the names of vendors to perform services on behalf of Seller relative to real estate transactions involving breach of contract or tort, and the names of vendors are provided solely as a courtesy and starting point for Seller to identify possible vendors to perform services on behalf of Seller. Seller agrees to give the highest priority to the vendors listed in this Vendor List. Seller shall not discriminate in the selection of vendors for Seller and the names of all vendors (including Seller's Real Estate) in this Vendor List shall be provided to all parties in this contract. All decisions regarding which vendor to hire shall be solely that of Seller. Seller shall be solely that of Seller.

q. Time of Essence: This is of the essence of this Agreement.

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F834 - Vendor List

VENDOR LIST

1522 Printing

VENDOR:	NAME	TYPE OF VENDOR	PHONE NUMBER
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			

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F101 – Seller & Broker Duties

- ▶ **Broker Duties**
 - Promote property to sell
 - Present all written offers
 - Disclose known facts about transaction
 - Keep confidences – but must disclose known latent material defects
- ▶ **Seller Duties**
 - Refer ALL inquiries to agent
 - Make property available for showing
 - Disclose any adverse condition of property

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F101 – Broker & Seller Duties

7. Broker's and Seller's Duties.

a. Broker's Duties to Seller. Broker shall promote the interests of the Seller by:

- (1) seeking a sale price at the price and terms stated in this Agreement or at a price and terms acceptable to Seller; provided, however, Broker shall not be obligated to seek additional offers to purchase the Property while the Property is subject to a Contract to Sell, unless brokerage engagement so provides;
- (2) timely presenting all offers to and from the Seller, even when Property is subject to a Contract to Sell;
- (3) disclosing to the Seller material facts which the Broker has actual knowledge concerning the transaction;
- (4) advising Seller to obtain expert advice as to material matters which are beyond the expertise of Broker; and
- (5) timely accounting for all money and property received in which the Seller has or may have an interest.

b. Seller's Duties to Broker. Seller shall keep confidential all information received by Broker during the course of the engagement which is made confidential by an express request or instruction from Seller unless Seller permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between Broker and any of Broker's affiliated licensees assisting Broker in representing Seller shall not be deemed to breach the duty of confidentiality described above.

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c. Seller's Duties. Seller will do the following:

- (1) cooperate with Broker to sell the Property to prospective buyers and will refer all inquiries concerning the sale of Property to the broker during the term of this Agreement;
- (2) make the Property available to show at reasonable times as requested by Broker;
- (3) provide Broker with accurate information regarding the Property (including information concerning all adverse material facts pertaining to the physical condition of Property);
- (4) comply with all local, state and federal laws applicable to the sale of the Property; and
- (5) carefully read all Contracts to Sell before signing them and comply with all duties and all time deadlines contained therein.

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F101 – Seller Default = Owes Commission

- ▶ Unilaterally Terminates
- ▶ Defaults on Purchase & Sale & it fails to close
- ▶ Colludes with Buyer to mutually terminate to then do deal outside of Brokers
- ▶ Fails to Sell upon receiving offer that meets very specific conditions
 - Full price excluding fees, commissions, closing cost contributions
 - No contingencies & no Due Diligence
 - No warranties outside of what's in Seller's Property Disclosure Statement given to Buyer
 - Closing Date is 30 – 45 days from offer date

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F101 – Seller Default = Owes Commission

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

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F101 – Seller Default = Owes Commission

- ▶ Seller may owe commission to a previous Broker if unilaterally terminated previous listing agreement
- ▶ If Seller Defaults (i.e. unilateral termination) Seller shall reimburse Broker/Affiliated Licensee costs & Withdraw Fees from MLS Services
- ▶ Point of Practice: Keep records & receipts of your costs & mileage per listing

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8. Seller Default:

a. Events Constituting a Seller Default: Seller shall be in breach of this Agreement if Seller:

- (1) Terminates this Agreement prior to the end of the Agreement without the prior written agreement of Broker, Broker removing the listing from multiple listing services), taking down Broker's sign, ceasing to market the Property after this Agreement is unilaterally terminated by Seller and other similar activities shall not be evidence of the Broker's agreement to mutually terminate this Agreement, but shall instead merely be an acquiescence by Broker of the unilateral termination by Seller;
- (2) Defaults under any Contract to Sell the Property resulting in such contract not closing;
- (3) Agrees with a buyer of the Property to terminate a Contract to Sell without the consent of Broker; or
- (4) Refuses to accept a lawful, bona fide, written offer to purchase the Property meeting the following terms and conditions at a time when the Property is not otherwise under contract:
 - (a) The purchase price in the offer, after deducting all fees, costs and contributions to be paid by the Seller (other than the real estate brokerage commission to be paid by Seller and the Seller's payment of 50% of the Seller's Property Taxes through the date of closing) is for at least the full listing price set forth herein and is to be paid in cash or cash equivalent at the closing;
 - (b) The offer is not subject to contingencies, conditions precedent, due diligence periods, or required terms other than those set forth herein;
 - (c) The offer is not subject to Seller warranties or representations other than: (i) those warranties the Seller agrees to provide in any Seller's Property Disclosure Statement the Seller has filled out and made available to prospective buyers for inclusion in any offer, and (ii) the Seller warranting to convey good and marketable title for all purposes herein shall have the same meaning as set forth in the GAR Purchase and Sale Agreement(s) to the Property at closing by limited warranty deed; and
 - (d) The date of closing in the offer is not less than thirty (30) days and no more than forty-five (45) days from the offer date.

Notwithstanding the above, in the event there are multiple offers to purchase the Property meeting the above criteria, Seller shall not be in breach of this Agreement if the Seller first gives the prospective buyer a reasonable opportunity (not exceeding ten (10) days from the date of the first offer) to make their best offer to purchase the Property and Seller accepts one of the offers.

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

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

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F101 – Exclusive Listing Agreement

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

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Amendments or Termination of a Brokerage Agreement

- ▶ GAR F728 – Amendment to Brokerage Agreement
 - Change Price or Terms
 - Etc.
- ▶ GAR F158 – Notice to Extend Brokerage Agreement
- ▶ GAR F155 – Unilateral Termination of Brokerage Agreement
 - By Broker or Client
 - Does NOT eliminate Seller's obligation to pay a commission
- ▶ GAR F152 – Mutual Termination of Brokerage Agreement
 - By Broker and Client
 - Costs & fees negotiated
 - Agreement to not sue one another

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Brokerage Terminations

UNILATERAL TERMINATION OF BROKERAGE ENGAGEMENT AGREEMENT

Termination by Client: _____ (Client) hereby terminates this Brokerage Engagement Agreement or Agreement with _____ (Broker) effective as of _____ (Termination Date).

The effective date of the termination ("Termination Date") shall be _____ (Date). The broker shall not be paid for any services rendered on or after the Termination Date.

Effective as of 11:59 a.m. on _____ (Date).

Termination by Broker: _____ (Broker) hereby terminates this Brokerage Engagement Agreement or Agreement with _____ (Client) effective as of _____ (Termination Date).

The effective date of the termination ("Termination Date") shall be _____ (Date). The broker shall not be paid for any services rendered on or after the Termination Date.

Effective as of 11:59 a.m. on _____ (Date).

Client's Signature: _____ **Client's Signature:** _____

Broker's Signature: _____ **Broker's Signature:** _____

MUTUAL TERMINATION OF BROKERAGE ENGAGEMENT AGREEMENT

This Mutual Termination Agreement is entered into this _____ day of _____, 20____, by and between _____ (Client) and _____ (Broker).

Whereas, _____ (Client) and _____ (Broker) entered into a Brokerage Engagement Agreement or Agreement ("Agreement") on _____ (Date) for the purpose of _____ (Purpose); and

Whereas, _____ (Client) and _____ (Broker) mutually agree to terminate the Agreement as of _____ (Termination Date); and

Whereas, _____ (Client) and _____ (Broker) mutually agree to release each other from any and all obligations under the Agreement as of _____ (Termination Date);

IT IS HEREBY AGREED THAT:

- Broker and Client do hereby agree to mutually terminate the Brokerage Engagement Agreement effective as of the Termination Date.
- The Brokerage Engagement Agreement is a binding agreement, the last to remain in effect being the last written agreement entered into by the parties to the Agreement.
- Upon the mutual termination of the Agreement, the parties shall have no further rights or responsibilities to one another other than the obligations set forth in this Mutual Termination Agreement.
- The Brokerage Engagement Agreement shall remain in effect until the termination of the Brokerage Engagement Agreement.
- Client and Broker mutually agree to release each other from any and all obligations under the Agreement as of the Termination Date.
- Client and Broker mutually agree to release each other from any and all obligations under the Agreement as of the Termination Date.

Client's Signature: _____ **Client's Signature:** _____

Broker's Signature: _____ **Broker's Signature:** _____

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Beware of Cyber Fraud

- ▶ 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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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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9. WARNING TO BUYERS AND SELLERS: BEWARE OF CYBER FRAUD. Fraudulent e-mails attempting to get the buyer and/or seller to wire money to criminal computer hackers are increasingly common in real estate transactions. Specifically, criminals are impersonating the online identity of the actual mortgage lender, closing attorney, real estate broker or other person or companies involved in the legitimate transaction. In that role, the criminals send fake wiring instructions attempting to trick buyers and/or sellers into wiring them money related to the real estate transaction, including, for example, the buyer's earnest money, the cash needed for the buyer to close, and/or the seller's proceeds from the closing. These instructions, if followed, will result in the money being wired to the criminals. In many cases, the fraudulent email is believable because it is sent from what appears to be the email address of the legitimate company or person responsible for sending the buyer or seller wiring instructions. The buyer and/or seller should verify wiring instructions sent by email by independently looking up and calling the telephone number of the company or person purporting to have sent them. Buyers and sellers should never call the telephone number provided with wiring instructions sent by email since they may end up receiving a fake verification from the criminals. Buyer and sellers should be on special alert for: 1) emails directing the buyer and/or seller to wire money to a bank or bank account in a state other than Georgia, and 2) emails from a person or company involved in the real estate transaction that are slightly different (often by one letter, number, or character) from the actual email address of the person or company.

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F101 – Brochures & Exhibits

10. **Brochures.** Brochures referenced herein are prepared courtesy of GAR. The recommendations contained therein are general in nature and may not be applicable to the transaction reflected in this Agreement, and are not intended to either be exhaustive or specific advice that Seller should rely on without Seller first consulting with independent experts and professionals of Seller's own choosing to ensure that Seller is protected.

The following Brochures have been received by the Seller(s): (Check all that apply. Any box not checked means the Seller(s) has not received that brochure or other consumer information)

GAR CB01 – The ABC's of Agency Point of Practice - Give Appropriate Brochures to Sellers
 GAR CB04 – Lead Based Paint Pamphlet
 GAR CB07 – Mold Pamphlet
 GAR CB08 – EPA Home Buyer's and Seller's Guide to Radon Pamphlet
 GAR CB10 – Protect Yourself When Selling Real Property
 GAR CB28 – What Buyers and Sellers Should Know About Short Sales and Distressed Properties
 Other: _____
 Other: _____

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

Legal Description Exhibit (F807 or other) " _____"
 Lead Based Paint Exhibit (F316) " _____"
 Retainer Fee Exhibit (F149) " _____"
 Other: _____
 Other: _____

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F101 – Special Stipulations

SPECIAL STIPULATIONS: The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph, shall control:

Consider:

- * If Seller will not complete Property Disclosure forms (i.e. "Per paragraph C1, Seller will not complete a Property Disclosure Form but warrants there are no latent defects with the property.")
- * Early Termination Fee (i.e. Seller may terminate prior to expiration of Agreement by doing so in writing and paying Broker an early termination fee of \$ _____.)
- * Total Commission if no other agent involved (i.e. "Should no other agent be involved in the consummation of a transaction at the closing of the transaction, Seller to pay Broker a total commission of _____% of Sale Price." - REMEMBER TO PUT "YES" to Variable Rate Commission (VRC) in MLS service.)
- * Automatic price reductions (i.e. Per paragraph A2a, should property not get an offer within 2 weeks of marketing commencement date, Seller agrees that property to be marketed at a list price of \$ _____)

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F101 – Seller Acknowledgement

BY SIGNING THIS AGREEMENT, SELLER ACKNOWLEDGES THAT: (1) SELLER HAS READ ALL PROVISIONS AND DISCLOSURES MADE HEREIN; (2) SELLER UNDERSTANDS ALL SUCH PROVISIONS AND DISCLOSURES AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY; AND (3) SELLER IS NOT SUBJECT TO A CURRENT SELLER BROKERAGE ENGAGEMENT AGREEMENT WITH ANY OTHER BROKER.

SELLER'S ACCEPTANCE AND CONTACT INFORMATION

<p>1 Seller's Signature</p> <p>Print or Type Name _____ Date _____</p> <p>Seller's Address for Receiving Notice _____</p> <p>Seller's Phone Number: <input type="checkbox"/> Cell <input type="checkbox"/> Home <input type="checkbox"/> Work _____</p> <p>Seller's E-mail Address _____</p>	<p>2 Seller's Signature</p> <p>Print or Type Name _____ Date _____</p> <p>Seller's Address for Receiving Notice _____</p> <p>Seller's Phone Number: <input type="checkbox"/> Cell <input type="checkbox"/> Home <input type="checkbox"/> Work _____</p> <p>Seller's E-mail Address _____</p>
---	---

Additional Signature Page (F146) is attached.

Make sure to include Seller Contact Information for your Broker in case your Broker needs to contact Seller & you are not available.

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F107 – Authorization to Show Unlisted Property – Seller as Customer

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

6. Commission.

A. In the event that during the term of this Agreement Broker, pursuant to the above authorization procures a buyer and/or tenant, ready, willing, and able to purchase or lease the Property at the price or rental rate described above or any other price acceptable to Owner, Owner agrees to pay Broker at closing the following commission:

(The sections not marked shall not be a part of this Agreement.)

(1) Commission for Selling Property: _____ percent (%) of the sales price:

\$ _____
 (Other) _____

- ▶ Seller agreement to pay commission & Protected Period

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

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F110 – Exclusive Buyer Brokerage Agreement – HIGHLIGHTS

- ▶ Commission
- ▶ Protected Period
- ▶ Buyer’s Duties
- ▶ Buying Property Sight Unseen
- ▶ Buyer Affirms Exclusivity
 - How to Proceed if Buyer says they have “fired” their previous agent
- ▶ Buyer Default

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F110 – Exclusive Buyer Brokerage Agreement

- ▶ Many similarities to Seller Brokerage Agreement

2022 Printing
State law prohibits Broker from representing Buyer as a client without first entering into a written agreement with Buyer under O.C.G.A. § 10-6A-1 et. seq.

- ▶ To represent Buyer as Client, Buyer MUST sign the Agreement
- ▶ Term
- ▶ Agency & Brokerage
- ▶ Commission
- ▶ Duties
- ▶ Limits on Broker’s Authority & Responsibility
- ▶ Disclosures
- ▶ Notices
- ▶ Default
- ▶ Cyber Fraud

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F110 – Commission

- ▶ Buyer Obligation to Pay Broker Commission
- ▶ Broker is entitled to MINUS any commission paid by Broker or Seller
- ▶ Reference to Seller-Side Commission paid listed in MLS service
- ▶ Removed “Seller normally pays commission”

4. Commission. **NEW Formatting & Verbiage**
 a. **Buyer’s Commission Obligations in Purchasing Real Property:** Buyer agrees to pay broker the commission set forth below (Commission) at the closing of a Contract to Purchase (as that term is hereinafter defined) entered into during the term of the Agreement minus any commission paid to Broker by either the seller or the seller’s broker. Buyer acknowledges that the Commission, if any, being offered by the seller’s broker is usually set forth in the multiple listing service in which the property may be listed.
 b. **Commission:**
 _____ percent (%) of the sales price.
 \$ _____
 (other) _____

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F110 – Commission

- ▶ Check with your Broker’s Policies on Commission
- ▶ If you put in 0% or \$0 then if Buyer Defaults during Agreement or Protected Period, Broker is entitled to \$0!

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F110 - Commission Cont'd

- ▶ GAR changed this Commission section in 2022 from a Buyer OPTION to pay commission to an OBLIGATION
 - The 2021 version had "Buyer's Broker deserves _____% which is usually paid by Listing Broker; if not Buyer SHALL or SHALL NOT pay the difference..."
- ▶ Additionally, GAR stated that you should not put \$0 in the fill-in-the-blank. In teaching the 2022 GAR Contract Changes CE class, agents are going CRAZY over this

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73

F110 - Commission Cont'd

- ▶ This is a huge issue right now due to:
 - Ongoing Lawsuit between the Department of Justice & NAR regarding violations of the Sherman Antitrust Act
 - Many Sellers/Listing Brokers paying \$0.00 (or very very little) for a Buyer's Broker as a co-op fee
- ▶ From conversations with attorneys knowledgeable on this topic, here are considerations on the 2022 Buyer Brokerage Agreement although there is no definitive prevailing thoughts even by these attorneys:

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74

F110 - How to Complete Commission Paragraph

- ▶ Consider that due to this issue being a "hot topic" in real estate, that agent do NOT put in 0% or \$0
- ▶ Consider entering a % of Sale Price or \$_____ and then on a transaction by transaction basis, amend the Buyer Brokerage Agreement if they wish - AFTER the Buyer is under contract & specifically identifying a property & commission to be received from Seller side
- ▶ i.e. *"At the closing of 123 Lucky Street, Buyer to pay Maximum One Realty Greater Atlanta \$0.00 as the Brokerage will accept commission of _____% of Sale Price solely from Listing Broker."*

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75

F110 - Commission Cont'd

- ▶ Agents may still never market their services as "Free" to Buyers because they are not - commission is included in sale price and may be negotiated outside of the Buyer &/or Buyer's Broker but has impact on the Buyer
- ▶ The lawsuit between the US Dept of Justice & NAR is still ongoing - not yet settled nor litigated - so no law or ruling on this issue as being a violation of antitrust laws

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76

F110 - Commission Cont'd

- ▶ One of the issues is that in a transaction, the Buyer is the only party who does not know how much the Brokers are getting paid AND these commission amounts DO affect the Buyer due to negotiations regarding the sale price & concessions
- ▶ There are other issues that involve lockboxes & ekeys that are from agents who belong to one MLS & buyers of agents who don't belong to that MLS are precluded from seeing that property
 - Not in Metro Atlanta with FMLS & GAMLs which are independent but definitely in other parts of GA & around the country where the MMLS services are owned & operated by a particular Association of REALTORS®

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77

F110 - Commission Cont'd

- ▶ Separate Commission on Lease
- ▶ Protected period Time Frame

c. **Separate Commission on Lease.** If Buyer leases property or enters into a lease/purchase contract or a lease with an option to purchase agreement during this Agreement, Buyer shall also pay Broker a separate leasing commission (except where the commission is paid by the Landlord) in the amount of \$ _____ and as follows: _____ Notwithstanding any provision to the contrary contained herein, the payment of a leasing Commission (including in lease/purchase transactions or lease with an option to purchase transactions) shall not relieve Buyer from paying the Commission at the closing of a Contract to Purchase, as provided elsewhere in this Agreement.

d. **Protected Period:** The length of the Protected Period, as that term is hereinafter defined, shall be Fill In # days ("Protected Period").

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78

F110 - Extension

- ▶ If Buyer goes Under contract but fails to close, the duration of that Pending deal gets added to the term of the BB Agreement
- ▶ BUT, Agent MUST send Notice of that
- ▶ Term is also extended if Buyer defaults by unilateral termination

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

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79

F110 - Protected Period

- ▶ If during this period Buyer buys/rents property during this period then Broker's Commission is protected IF during the term of the BBA:
 - Broker showed Buyer the property in person or virtually
 - Or Buyer otherwise visited
 - THESE are "Protected Properties"
- ▶ Much more specific than in BBA from 2021 - protected propertied if Buyer was "introduced to the property during the term of the BBA"
- ▶ DIFFERENT from Protection in Listing Agreement - still protected if Buyer signs with another Broker

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80

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

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F110 - Buyer's Duties

- ▶ Paragraph C2
- ▶ Inspect/be familiar with property
- ▶ Read contract & forms
- ▶ Comply with duties & time frames in a contract
- ▶ * Work exclusively with Broker / Agent
- ▶ * Disclose to Broker if they have worked with any others or go back to properties already seen
- ▶ Not see FSBO's without Broker

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2. **Buyer's Duties.** Buyer agrees to:

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

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F110 - Exclusive Agreement

- ▶ Paragraph B1
- ▶ Buyer warrants that Buyer is not a party to any other Exclusive Buyer Brokerage Agreement

1. **Exclusive Buyer Brokerage Engagement Agreement.** Buyer hereby agrees to hire Broker to act as Buyer's exclusive real estate broker in locating, and to the extent requested by Buyer, negotiating the purchase or exchange of real property on behalf of Buyer and filing out a pre-printed form contract for Buyer's review and approval. Buyer is not a party to any other current exclusive buyer brokerage engagement agreement and all such previous agreements, if any, have expired and not been renewed. Buyer acknowledges that Buyer may have to pay previous broker a real estate commission if Buyer is: a) subject to a current buyer brokerage engagement agreement, b) terminated a previous buyer brokerage agreement without the consent of the previous broker and enters into a Contract to Purchase, or that term is defined herein, or lease during what would have been the term of a previous exclusive brokerage engagement agreement had it not been terminated by buyer; or c) enters into a Contract to Purchase or lease on a Protected Properties during the Protected Period.

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What if Buyer Says “I FIRED my previous agent”

- ▶ A Broker may be “fired” from representation but not necessarily compensation
- ▶ Per License Law, NEW Buyer’s Agent/Broker must confirm
- ▶ Do not advise a potential Buyer how to terminate a previous Brokerage Agreement
- ▶ You also don’t know what Special Stipulations may be included in previous agreement
- ▶ So.....

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85

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

- ▶ License Laws in Georgia governing how you are to proceed if a Buyer approaches you & says they have “fired” their previous agent!
- ▶ BRETТА – OCGA – 10-6a
- ▶ Unfair Trade Practice License Laws – OCGA 43-40-25b(13) and OCGA 43-40-25b(26)
- ▶ “If you have reason to believe a Buyer or Seller may have an outstanding Brokerage Agreement with another Broker, you need to confirm with the previous Broker that the person has terminated that Agreement with previous Broker prior to signing the person to a Brokerage Agreement”

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86

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

- ▶ “If you have reason to believe a Buyer or Seller may have an outstanding Brokerage Agreement with another Broker, you need to confirm with the previous Broker that the person has terminated that Agreement with previous Broker prior to signing the person to a Brokerage Agreement”
- ▶ Confirm in writing with previous Broker
- ▶ OR Have Buyer written affirmation

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87

Sample Affirmation from Buyer

- ▶ Always check with your Broker prior to using any document learned in any class

Buyer(s) Affirmation of Termination of Previous Buyer Brokerage Agreements

I _____ affirm that I have no written obligation to work with any other Broker for my real estate needs.

All parties agree to indemnify and hold agent and Brokerage harmless from and against all claims, injuries, suits and damages arising out of the parties' answer to the above choices.

Buyer Printed Name _____	Signature _____	Date _____
Buyer Printed Name _____	Signature _____	Date _____
Agent Printed Name _____	License # _____	Signature _____
Brokerage Name _____		Date _____

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88

F110 – Buyer Default = Buyer owes Commission

- ▶ Paragraph C8
- ▶ Owes Commission ONLY if ¶A4b has a % or \$ amount filled in
- ▶ Colludes with Seller to terminate to freeze out Brokers
- ▶ Buyer unilaterally terminates BBA
- ▶ Buyer goes under contract during BBA & later closes on property & Broker not paid commission

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93

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

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

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

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94

Client vs. Customer – FYI

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

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95

Seller as Client – OCGA 10-6A-5

- ▶ O.C.G.A. 10-6A-5 (2010) 10-6A-5. Duties and responsibilities of broker engaged by seller
- (a) A broker engaged by a seller shall:
 - (1) Perform the terms of the brokerage engagement made with the seller;
 - (2) Promote the interests of the seller by:
 - (A) Seeking a sale at the price and terms stated in the brokerage engagement or at a price and terms acceptable to the seller; provided, however, the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless the brokerage engagement so provides;
 - (B) Timely presenting all offers to and from the seller, even when the property is subject to a contract of sale;
 - (C) Disclosing to the seller material facts which the broker has actual knowledge concerning the transaction;
 - (D) Advising the seller to obtain expert advice as to material matters which are beyond the expertise of the broker; and
 - (E) Timely accounting for all money and property received in which the seller has or may have an interest;
 - (3) Exercise reasonable skill and care in performing the duties set forth in this subsection and such other duties, if any, as may be agreed to by the parties in the brokerage engagement;
 - (4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes; and
 - (5) Keep confidential all information received by the broker during the course of the engagement which is made confidential by an express request or instruction from the seller unless the seller permits such disclosure by subsequent word or conduct, or such disclosure is required by law; provided, however, that disclosures between a broker and any of the broker's affiliated licensees assisting the broker in representing the seller shall not be deemed to breach the duty of confidentiality described above.

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96

Seller as Client - OCGA 10-6A-5

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

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

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

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

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

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Ministerial Acts - OCGA 10-6A-14

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

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Ministerial Acts – OCGA 10-6A-14

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

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Ministerial Acts – OCGA 10-6A-14

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

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Earnest Money Forms

- ▶ F110 – Closing Attorney to act as Holder of Earnest Money
- ▶ F111 – Agreement of Closing Attorney to Hold Earnest Money
- ▶ F522 – Unilateral Termination & Release
- ▶ F519 – Mutual Termination & Release
- ▶ F290 – Agreement to Reinstate Purchase & Sale Agreement

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

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

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Unilateral Termination & Release - F522

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

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Mutual Termination & Release - GAR F519

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: \$ _____

C. Disbursement of Earnest Money:
The parties direct the earnest money being held by holder to be disbursed as follows: _____

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

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Termination & Release Notes

- ▶ The TERMINATION of a contract is a separate issue from the Disbursement of the Earnest Money even though GAR addresses these issues on one form

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F290 - Reinstatement of Purchase & Sale

- ▶ Buyer & Seller may agree to reinstate a terminated contract
- ▶ Many Lenders require this rather than writing a new contract
- ▶ Make sure to address Earnest Money - stay in the deal or was it disbursed upon termination of contract

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F290 – Reinstatement of Purchase & Sale

AGREEMENT TO REINSTATE CONTRACT

Georgia REALTORS

2022 Printing

Name Buyers (Buyer) and Name Sellers (Seller)
 entered into an Agreement for the purchase and sale of that certain real property known as _____ Address _____ (City) _____ (State) _____ (Zip Code) _____ (County) _____ (Agreement#) _____ with a Binding Agreement date of _____ 20____.

WHEREAS, the above referenced Agreement was terminated by one or both of the parties referenced above;

WHEREAS, Buyer and Seller now desire to reinstate the Agreement and have for its full force and effect;

NON-THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, Buyer and Seller do hereby agree as follows:

- Buyer and Seller mutually agree to reinstate the last fully agreed upon version of the above referenced Agreement such that it shall again be a legally enforceable contract and binding upon the parties as if it had never been terminated.
- All of the terms, conditions and time periods set forth in the above referenced Agreement, including the Binding Agreement Date, shall remain in full force and effect except for any changes thereto set forth below which shall constitute a conflicting or inconsistent provision set forth in the above referenced Agreement.
 - NOT intended to be an Amendment.
 - Changes here may include for example:
 - New time frames for any contingencies - i.e. if parties are seeking an appraisal review
 - What happens to Earnest Money - stays with Holder if resubmit already disbursed
 - New Closing Date
- Check here if any additional pages are attached and incorporated herein
- This Agreement to Reinstatement Contract shall only be effective when it has been signed by Buyer and Seller and a fully executed copy of this Agreement to Reinstatement Contract has been delivered to Buyer and Seller. **Buyer and Seller hereby agree to read and understand this Agreement to Reinstatement Contract and to accept its terms and conditions.**

By signing this Agreement to Reinstatement Contract, Buyer and Seller agree to accept its terms and conditions. **Buyer and Seller hereby agree to read and understand this Agreement to Reinstatement Contract and to accept its terms and conditions.**

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Financing & Appraisal Forms – Covered in Contract Dissection Classes

- ▶ F404 – Conventional Loan Contingency Exhibit
- ▶ F407 – FHA Loan Contingency Exhibit
- ▶ F410 – VA Loan Contingency Exhibit
- ▶ F401 – Cash / No Financing Contingency
- ▶ FYI.... Do NOT leave # days for Financing Contingency blank! Does it mean 0 days or goes through length of contract? ... A JUDGE would have to decide in an interpleader case!

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Contract Disclosure Forms – Covered in Contract Dissection Classes

- ▶ Seller’s Property Disclosure
 - GAR F301 – Seller’s Property Disclosure Form
 - GAR F302 – Seller’s Disclosure of Latent Defects
- ▶ Community Association Disclosure
 - GAR – F322

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Sale or Lease of Property Contingency Exhibit – GAR F601

- ▶ Much more control for Seller to make this contingency more attractive
- ▶ Is Property Listed or Under Contract? If so, name the Brokerages & dates

1. Buyer warrants that Buyer owns the real property located at Current Property owned by Buyer (City), _____ (State) _____ (Zip Code) (“Other Property”). Buyer agrees to use Buyer’s good faith efforts to sell or lease the Other Property in accordance with the terms of the Agreement prior to the end of the Contingency Period (as that term is defined below).

2. At the time of Offer, Buyer warrants that other Property is: select all that apply

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

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

C. Other: _____

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Sale or Lease of Property Contingency Exhibit - GAR F601

- ▶ Contract is contingent upon Buyer selling/leasing current home on or before - MUST fill in date = Contingency Period
- ▶ If house doesn't sale by that date, THIS contract terminates (buyer gets EM back)
- ▶ If property was Under Contract & that contract falls through, must notify Seller
- ▶ Termination Rights & Time Frames spelled out

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Sale or Lease of Property Contingency Exhibit - GAR F601

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

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

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

4. In the event that the Contingency Period specified in the contingency selected above being fulfilled, then the Agreement shall terminate at that time. Prior to Seller giving Buyer notice that Seller is exercising the Kick-Out Clause, as that term is explained below, the contingency or contingencies referred to above may be waived by Buyer upon notice to Seller. In such event, the Kick-Out Clause below shall no longer be a part of the Agreement and Buyer shall have no obligation to deposit additional earnest money.

5. In the event that the Existing Pending Contract is terminated for any reason whatsoever, Buyer shall immediately provide notice of the same to Seller. Buyer shall have the right to request Seller to terminate the Agreement at the same time of this notice, in which case Buyer shall have the right to a refund of earnest money.

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

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

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Sale or Lease of Property Contingency Exhibit - GAR F601

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

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

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Sale or Lease of Property Contingency Exhibit - GAR F601

7. Kick-Out Clause in this Transaction. Select Option (A) or Option 2 below. (If neither option is selected, Option 2 shall control.)

Option 1. This Agreement is subject to a Kick-Out Clause. In the event Seller receives a bona fide offer to purchase the property that Seller would like to accept, Seller shall give notice of the offer to Buyer. Buyer shall then have _____ hours after receipt of the notice to deposit with Holder additional earnest money of \$ Fill in Amount, and Deliver to Seller an Amendment to the Agreement signed by Buyer to remove all contingencies and the Due Diligence Period from the Agreement on or before the Due Diligence Period provisions in the Agreement to the extent checked below. (Complete either (A) or (B) below. If Option 1 is selected but neither section (A) nor section (B) are completed, then option (A) below shall be deemed to have been selected.)

(A) All contingencies and the Due Diligence Period checked below shall no longer be part of the Agreement. **Kick Out is Better for Seller**

(B) The contingencies and/or Due Diligence Period checked below shall no longer be a part of the Agreement.

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

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

With a Kickout, then Buyer #1 agrees to remove certain contingencies agreed in advance

- ▶ Additional Earnest Money is optional - may put \$0.00

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Sale or Lease of Property Contingency Exhibit - GAR F601

In the event Buyer does not deliver within the time period stated above, (1) the additional earnest money (if any referenced above) to Holder and (2) the above-referenced ~~Special Amendment~~ to Seller, then this Agreement shall terminate, and Buyer shall be entitled to a full refund of Buyer's earnest money. Notwithstanding any provision to the contrary contained herein, the removal of such onerous provisions by Buyer from this Agreement shall not eliminate any rights in Contingencies or the Due Diligence Period benefitting Seller. Therefore, for example, Seller can still request a proof of funds from the Buyer even though the Agreement is no longer subject to a Financing Contingency. In the event that Buyer delivers the Amendment referenced above to Seller and the additional earnest money (if any referenced above) to Holder within the time period stated above, Seller shall execute the Amendment, return a copy of the same to Buyer and this Agreement shall otherwise remain in full force and effect subject to the Amendment.

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

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7

Back-Up Contingency Exhibit - GAR F604

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

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

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Back-Up Contingency Exhibit - GAR F604

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

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

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Back-Up Contingency Exhibit - GAR F604

6. If this Agreement has not become primary by Buy In Date, this Agreement shall automatically terminate. Moreover, Buyer can terminate this Agreement at any time prior to expiration of the Buyer's Earnest Money that this agreement has become primary by giving notice of the same to Seller and paying Seller a termination fee of Ten Dollars (\$10.00).

NOTES:
 * There may only be ONE Back-Up contract
 * Absent any Special Stipulation, Back-Up Buyer's Earnest Money is DUE to Holder based on agreed-upon time frame on page 1 of purchase & sale agreement
 * For OTHER Contingency Time Frames, Day 0 = Date Seller sends Notice to Back-Up Buyer that their contract is now Primary
 * Buyer may terminate with no penalty at any time prior to being notified they are Primary

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Appraisal Gap

- ▶ Make sure to address what happens if there is STILL a gap between cash Buyer willing to bring & low appraisal & contract price
 - Rights to negotiate?
 - Termination rights?
 - What happens to Earnest Money?
 - If you DON'T address these issues, there is nothing that is given
- ▶ Seller NOT obligated to automatically come down to low appraisal + cash Buyer is bringing
- ▶ Make sure Buyer HAS the cash for down payment, pre-pays, escrows, etc. PLUS gap cash
- ▶ Seller may want to ask for Proof of Funds

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12
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Escalation Clause

- ▶ Make sure to cap this amount Buyer willing to pay
- ▶ Get proof of next highest offer

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12
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Repairs - Special Stipulations

- ▶ Avoid MANY issues by handling repairs financially
 - Lower Sale Price
 - Increase Seller contribution to Buyer Closing Costs
 - Special Stipulation: "At Closing, from Seller's proceeds, Seller to pay \$_____ to ___(name of specific vendor___."
 - That way it doesn't involve lender because money goes from Seller to Vendor
 - Buyer may schedule vendor & will supervise activity & have receipts & warranties & may add on to services
- ▶ What if Seller fails to complete negotiated repairs?
- ▶ May a Buyer terminate? - NOT NECESSARILY!!!
- ▶ Address this potential issue on the Amendment when you are negotiating for Repairs!!!

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12
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Special Stipulations

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

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12
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Special Stipulations

- ▶ Repairs
 - RE Forms Special Stip – The parties agree that the repairs Seller has agreed to complete under the Contract may not be complete as of the date of closing. In that event, no later than ___ days after Closing, Seller shall complete all repairs to the Property agreed herein. It is understood and agreed that Seller, in showing of good faith, shall deposit at closing \$_____ with _____ as security for the completion of said repairs. As long as Seller completes or causes to be complete all repairs no later than midnight of Repair Completion Date, the repair funds shall be returned to the Seller within ____ days of the Repair Completion Date or the submission of proof of the repairs to Buyer.....
- ▶ Escrow Agreement – F513
 - Complete form to reflect terms of escrow for repairs

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Special Stipulations

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

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

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Special Stipulations

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

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Special Stipulations

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

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Special Stipulations

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

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Special Stipulations

- ▶ "Clean Copy"
 - **SS 622 CONFORMED COPY OF AGREEMENT** - Buyer and Seller acknowledge that the above Agreement is a conformed copy of an Agreement between the parties dated _____
 - _____. In the event of any conflict between this conformed Agreement and the original thereof, all parties agree that the original Agreement shall control.

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Special Stipulations

- ▶ Survival
 - **"This provision shall survive closing."** - party's responsibility to perform contractually exists even AFTER closing date
- ▶ Complex approved for FHA / VA Financing
 - SS 526 "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 the Seller & receive full refund of Earnest Money."

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Amendment to Address Concerns with Property - GAR F704

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

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

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

- ▶ Negotiate if Agreement terminates Due Diligence Period

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Amendment to Address Concerns

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

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Amendment to Change Closing - GAR F716

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

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

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Amendment to Sales Price - GAR F713

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

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

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Other Amendments

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

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Temporary Occupancy Agreement for Seller After Closing – GAR F219

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

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

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

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

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Temporary Occupancy Agreement for Seller After Closing – GAR F219

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

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

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Temporary Occupancy Agreement for Seller After Closing – GAR F219

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

2. COMPENSATION

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

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

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Commission Instructions

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

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Miscellaneous Forms

- ▶ Withdraw of Offer – F285
 - Remember definition of Binding Agreement Date
 - Especially important if Seller makes a Counter Offer to Buyer & then gets a better offer!
- ▶ Rejection of Offer – F 288
 - Prove Public SAW Offer / Counter Offer
 - Signed by PUBLIC
- ▶ Request for Confirmation of Presentation of Offer – F289
 - Prove you presented Offer / Counter Offer
 - Signed by Agent
- ▶ Bill of Sale – for Personal Property Items – F225
 - A receipt between the Buyer & Seller
 - Not part of the contract

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Miscellaneous Forms

- ▶ Reminder of Important Dates – GAR F264
 - Share with your client & with your Co-op agent so that all parties are on the same page
- ▶ Contract Checklist – GAR CO25 Broker Transaction Checklist & Contract Review
- ▶ Estimated Net to Seller – GAR F837
- ▶ Estimated Cost to Buyer – GAR F840
- ▶ Vendor List – GAR F834
 - Contact info of more than one so Buyer or Seller may choose
- ▶ Broker Information Disclosure – GAR F325
 - Answers & source of answer to questions asked by Buyer or Seller

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Consumer Brochures / Disclosures GAR

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

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Consumer Brochures / Disclosures GAR Cont'd

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

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Consumer Brochures / Disclosures RE Forms

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

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Thank you!

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

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

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

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