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

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

3 Hrs. CE Credit Offered for Georgia Real Estate Licenses 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

- 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@Max/mumOneRealty,com) 678–580–6880, the Coordinator of Georgia Real Estate Academy, Heidi Kelly (RosterCadmin@ACENTweb.com) 770–919–8825 ext. 306, or the Georgia Real Estate Cadming.

Please confirm specific questions with your Broker & your Brokerage's Policies & Procedures

The purpose of this class is to bring to your

To cover these forms in-depth would require

attention the plethora of Contract Forms available to you through the Georgia Association of REALTORS® (GAR)

Keep The Handouts as a Reference

way more than 3 hours

Notes About This Class

www.eAGENTweb.com Select "Training Videos" Scroll through for this class & there are links for handouts that you may download

Power Point courtesy of Dana Sparks – Georgia Real Estate Academy – GREC School #6915

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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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

Power Point courtesy of Dana Sparks - Georgia Real Estate

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
- $\,{}^{_{\odot}}$ F290 Agreement to Reinstate Contract

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GAR Forms

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

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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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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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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
- T158 Notice to Extend Brokerage Agreement

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Brokerage Agreements: Listing & Buyer Brokerage Agreements

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

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§10-6a-4: Broker's Legal Relationship to Customers or Clients (BRETTA 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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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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License Law & Brokerage

- 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.....

Agreements

- 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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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

Power Point courtesy of Dana Sparks - Georgia Real Estate

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Buyer Agreements

- Agreement <u>Creates</u> 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

Power Point courtesy of Dana Sparks – Georgia Real Estate Cademy – GREC School #6915

F101 - Exclusive Seller Brokerage Agreement - HIGHLIGHTS

- 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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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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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

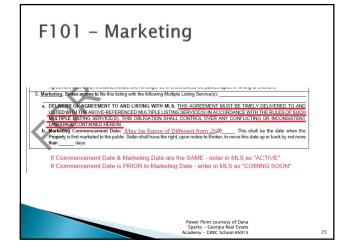


Marketing

- MLS Services
 - Must go into MLS per their Membership Rules (i.e. FMLS must be entered within 2 business days if "Coming Soon" or1 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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Recording Real Estate



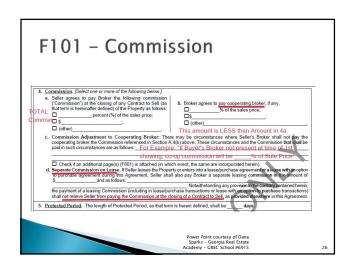
F101 - Commission

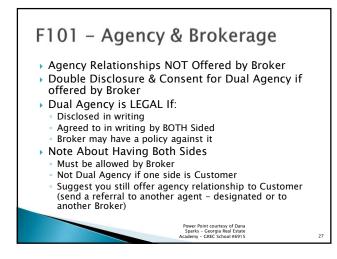
- Total Commission & then the portion of the total to be shared with a Co-op Broker
 - Amount in 4b should be SMALLER than amount in 4a
- Commission Adjustment circumstance under which co-op commission may different than advertised in MLS
 - i.e. "If Buyer's Broker not present at time of 1st showing,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

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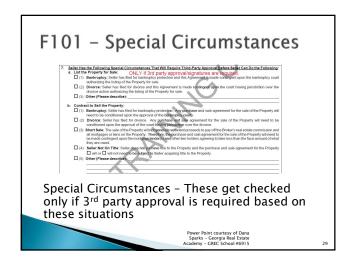
GREC Course #73907 through Georgia Real Estate Academy GREC School #6915 Director Dana Sparks -











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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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
- 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

 Broker to put in referenced MLS services within 1 business day of when "marketing" begins to same brokerage is not "public" marketing

 Broker to put in referenced MLS services within 1 business day of when "marketing" begins to same brokerage is not "public" marketing

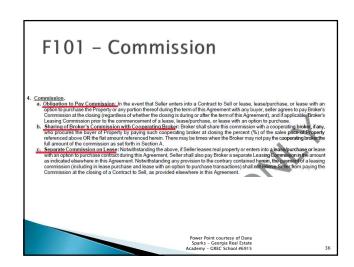
 Broker to put in referenced MLS services within 1 business day of when "marketing" begins business day of when "marketing" begins begin
- Seller agrees to remove or secure all valuables & prescription drugs

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F101 - Commission

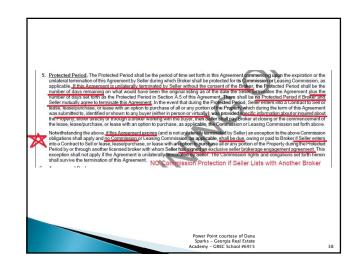
- Seller obligated to pay commission at closing of sale or consummation of lease
- Listing Broker will share commission with Buyer's Broker
- Seller to pay Commission upon Lease AND would still owe commission at closing if it is also sold

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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!



F101 - Agency & Brokerage

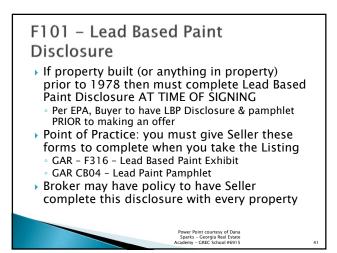
- Description of Brokerage options
- Disclosure & consent of Dual Agency if Broker offers

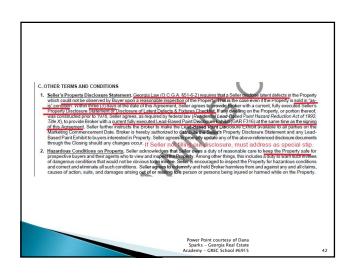
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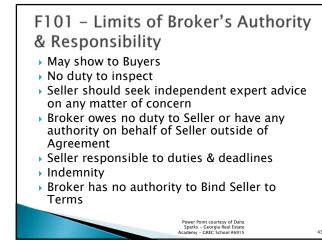
F101 - Seller's Property

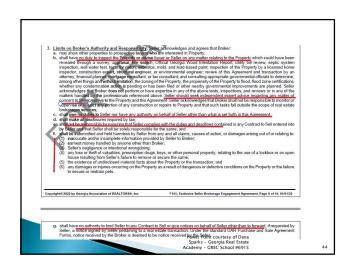
- Disclosures
 Legally required (O.C.G.A §51-6-2) to
 disclose "Latent Defects" = material defect that the Seller has knowledge of and could not be observed by Buyer upon reasonable inspection - even when selling "as is'
- Seller agrees to complete Seller's Property Disclosure (F301) or Latent Defects & 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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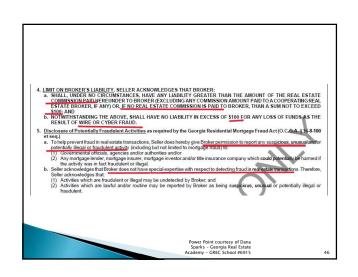






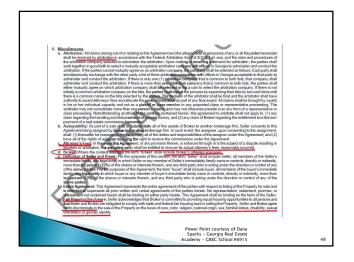


F101 – Limits on Broker's Liability • Broker liability limited to amount of commission paid or \$100 if no commission paid • Loss by Cyberfraud – Broker limit of liability to \$100 • Note: I do not believe these statements have been tested in the Georgia Courts • Broker to report Fraud or suspicious activity

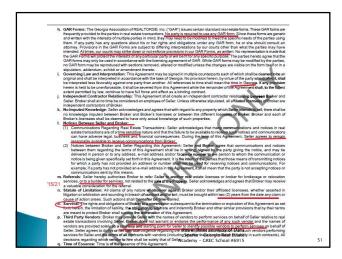


F101 - Miscellaneous Duty to Arbitrate If arbitration or litigation - Loser has to pay winner's legal fees "Broker" = "Broker" & "Affiliated Licensee" Buyer & Seller = LLC, heirs, etc. Fair Housing Laws apply Seller must also comply with State & Federal Fair Housing Laws Point of Practice: Give Seller Fair Housing Brochure - https://nationalfairhousing.org/fair-housing-brochures/

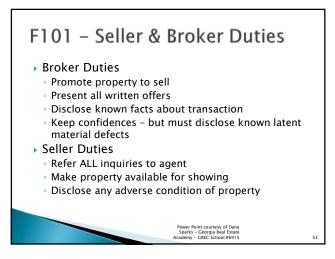
Fair Housing Laws • Fair Housing Protected Groups - "FRESH CORN" • F - Familial Status • R - Race • E • S - Sex • H - Handicap/Disability • C - Color • O • R- Race • N - National Origin • (no "E" or "O" = "Equal Opportunity" GAR contract ADDS - Sexual Operation & Gender Identity

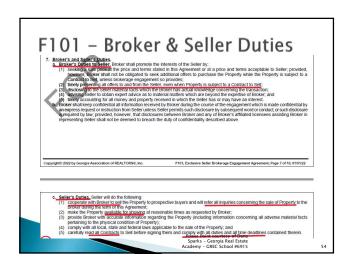


F101 - Miscellaneous Cont'd GAR Forms - not required to use & courts may rule against provision in contract Laws of Georgia prevail Communication between Broker & Seller - time sensitive Seller gives consent to Broker to refer year statute of limitations Survival - commission & indemnity 3rd Party Vendors - provided as a courtesy Consider Using F834 "Vendor List"









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

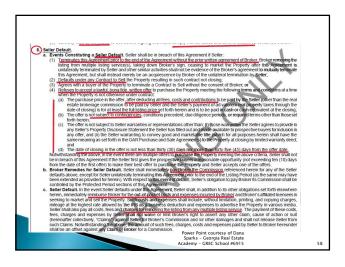
Power Point courtesy of Dana Sparks – Georgia Real Estate cademy – GREC School #6915

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

Power Point courtesy of Dana Sparks – Georgia Real Estate Academy – GREC School #6915





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

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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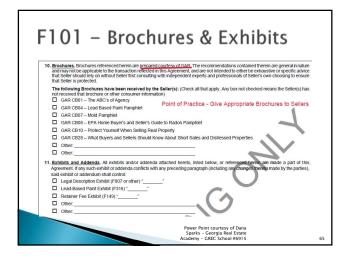
Beware of Cyber Fraud

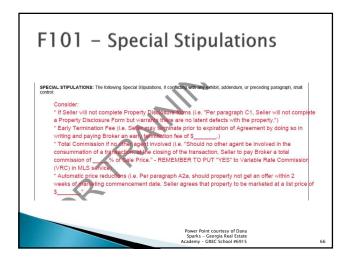
- Warning to Buyers & Sellers to not trust emails with wire instructions
- Cross-check & verify with a third party source (i.e. Google)
- So DON'T email wire instructions from your Broker or Closing Attorney
- Never put "Wire Instructions" in subject line of email
- Send via US Mail
- So if Earnest Money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

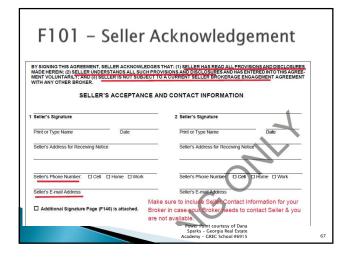
Power Point courtesy of Dana Sparks - Georgia Real Estate Academy - GREC School #6915

Power Point Courtes; of Changes they get to wire instructions for their Broker & 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

9. WARNING TO BUYERS & DO BE LERG BEWARE OF CYBER-ERAUD, Fraudulent e-mails attempting to get the buyer and/or seler to wire money to criminal compliant hackers are increasingly common in real estate transactions. Specifically, criminals are impressonating the online identity of the actual mortgage lender, closing attorney, real estate broker or other person or companies involved in the registre transaction in that other. Bermander that we may return our attempting to thick buyers and resident in the warm of the mortgage of the person of the person of the person of the person many the mortgage of the person responsible for sending the buyer of seller wring instructions. The buyer and/or seller should verify wring instructions selfly reflect the protection of the person perso









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

F110 - Exclusive Buyer Brokerage Agreement Many similarities to Seller Brokerage Agreement State law prohibits Broker from representing Buver as a client without first entering int with Buver under O.C.G.A. § 10-6A-1 et. seg. 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 Power Point courtesy of Dana Sparks - Georgia Real Estate Academy - GREC School #6915

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" A Commission: NEW Formatting & Verbiage Buyer 5 Commission Obligations in Purbasing Real Property: Buyer agrees to pay broker the commission set forth below ("Commission") at the closing of a Contract to Purbasing Real Property: Buyer agrees to pay broker the commission set forth below ("Commission") at the closing of a Contract to Purbasing Real Property: Buyer agrees to pay broker the commission set forth below ("Commission") at the closing of a Contract to Purbasing Real Property: Buyer agrees to pay broker the commission set forth below ("Commission") at the closing of a Contract to Purbasing Real Property: Buyer agrees to pay broker the commission set forth below ("Commission") at the closing of a Contract to Purbasing Real Property in the multiple Indian service in which the property because the property of the seller specific page of the seller specific page and the property of the seller specific page and the page



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

Power Point courtesy of Dana Sparks - Georgia Real Estate Academy - GREC School #6915

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:

Power Point courtesy of Dana Sparks - Georgia Real Estate Academy - GREC School #6915

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."

Power Point courtesy of Dana Sparks - Georgia Real Estate Academy - GREC School #6915

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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nt courtesy of Dana Georgia Real Estate

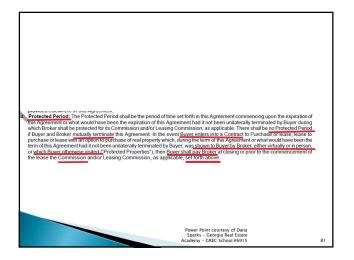
F110 - Commission Cont'd • One of the issues is that in a transaction, the Buyer is the only party who does not know how much the Brokers are getting paid AND these commission amounts DO affect the Buyer due to negotiations regarding the sale price & concessions • There are other issues that involve 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®

F110 - Commission Cont'd • Separate Commission on Lease • Protected period Time Frame • Separate Commission on Lease • Protected period Time Frame • Separate Commission on Lease, If Buc-leases property or enters into a lease/purchase contract or a lease with an option to purchase agreement during this Agreement, 1999 is shall also pay Broker a separate leasing commission (except where the commission is paid by the Landborgh in the afformat of S in the contrary contained herein, the playment left a leasing Commission (including in lease-purchase transactions or lease with a report of the contrary contained herein, the playment left a leasing Commission (including in lease-purchase transactions or lease with a report of the Protected Period is the least of the Protected Period as that term is hereinafter defined, shall be | Fill | n # | days | Power Point courtesy of Dana Sparks - Cercipa Real Islands | Sparks - Cercipa Real I

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, pathership or membership interests in a legal entity owning real property freerinatiner, collectively. "Contract to Purchase" which is not closed or consummated for any reason whatsoever, then the original expension date of this Agreement may be extended for the number of doys but Buyer wish meter contract ("Extension Period") by fixer reviewer are recommended to buyer within the (b) days in the Buyer was under contract ("Extension Period") for that transaction shall be deemed to have been waived by Broder. Power Point courtes of Busines Academy - GREC School #6915

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

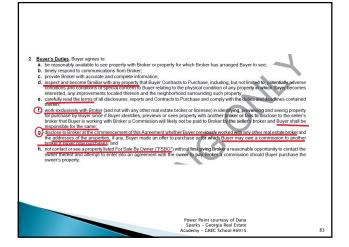
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F110 - Buyer's Duties

- 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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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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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!
- ▶ BRETTA 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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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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Sample Affirmation from Buyer

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

F110 – Limits on Broker's Authority & Other Disclosures Paragraphs C3 – 6 Broker may work with other Buyer to see property Buyer's responsibility to investigate anything

- of concern to them regarding the contract & property & area

 i.e. Get a Survey, Check Zoning, Check Flood
- Insurance, check School District, etc.
- Point of Practice: Document this discussion
 GAR Consumer Brochures
 - Signature on "Service Recommendations"

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F110 - Buyer Buying Property Sight Unseen Paragraph C7e - NEW for 2022 Buyer assumes risks & holds Broker harmless Buyer Buying Property Sight Unseen: Bricks hereby advises Buyer that there are synfacial risks in buying property sight unseen since profuse, since and query different property and accurately reflect the true nature and condition of the property or area are which the property is located. Therefore, if Buyer purchases the property sight unseen sight and damages arising out of or feating to any issue that Buyer and Buyer's representatives (other than Buyer's Broker) would have reasonably observed had Buyer visited the property and surrounding area. Power Point coursey of Dana Sparks - Ceorgia Real Estate Academy - CREC School #6015



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
- Buyer unilaterally terminates BBA
- Buyer goes under contract during BBA & later closes on property & Broker not paid commission

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

Agreement to Work with Bours as Customer Duyer hereby agrees to work with Bioter in locating real property. Buyer's needs in working with Buyer Boder shall not be representing buyer as a dient to shall only be supported by the standard to the shall not be supported by an an adverted shall not be supported by an an adverted by all or presenting Buyer to an only present or advise Buyer on brokerage matters as Broker would by all orpresenting Buyer but can only perform ministerial stakes on behalf of Buyer. (The terms "client", customer shall have the meaning that they have in the strokerage Relationships in Real Estate Transactions Act. O. C. 6. A § 103 Eroker can terminate this Agreement at any time upon wither or electronic notice to the other party.

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

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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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:

(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 influence of an inclusing ain covering its accessed, and to give the broker during the course of the engagement confidential by an express request or instruction from the seller unless the seller permits such dis subsequent word or conduct, or such disclosure is required by law, provided, however, that disclose has been advantaged as a broker and any of the broker's affiliated licensees assisting the broker in representing the seller deemed to breach the dury of confidentiality described above.

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Seller as Client – OCGA 10—6A—5 1. (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 gertaining to the physical condition of the property and improvements, located on such property including disclosed which are actually known by the broker which could not be disclosered by a restainable digital respective 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 of the buyer. and (3) All material facts pertaining to existing adverse physical conditions in the immediate neighborhood within one mile of the property of the buyer. and plantage of the property of the buyer. and plantage of the property of the prop

Buyer as a Client – OCGA 10–6A–7 O.C.G.A. 10–6A–7 (2010) 10–6A–7. Duttes 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 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: (2) Exercise ordinary skill and care in performing the duties set forth in this subsection and such other duties as may be agreed to by the parties: (4) Comply with all requirements of this chapter and all applicable statutes and regulations, including but not limited to fair housing and civil rights statutes; and

Buyer as a Client – OCGA 10 –6A –7 (5) Kep 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 standing the course of the confidential by an express request or instruction from the buyer unless the buyer permits such disclosure by the confidential of the course of the course

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

Ministerial Acts – OCGA 10–6A–14

- b) A broker acting as a transaction broker shall do the following:
- (1) Timely present all offers to and from the parties involving the sale, lease, and exchange of property;
- (2) Timely account for all money and property received by the broker on behalf of a party in a real estate transaction;
- (3) Timely disclose the following to all buyers and tenants with whom the broker is working:

(A) All adverse material facts pertaining to the physical condition of the property and improvements located thereon including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker; and 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 othrough 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; conin ordinances, recorded plats and surveys; transportation maps and plans; maps of flood plains are statistic; tax maps: action 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)

Unilateral Termination & Release -F522

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

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Mutual Termination & Release -**GAR F519** 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

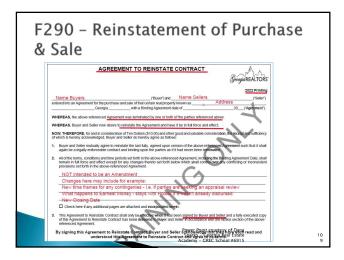
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Termination & Release Notes

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

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



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!

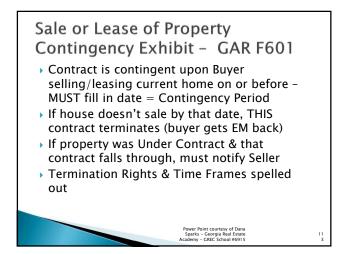
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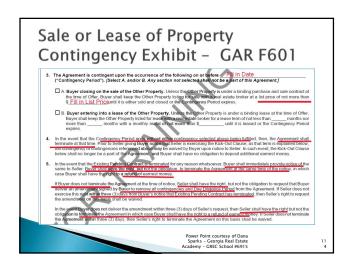
Contract Disclosure Forms –
Covered in Contract Dissection
Classes

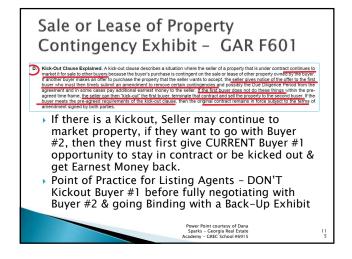
Seller's Property Disclosure
GAR F301 – Seller's Property Disclosure Form
GAR F302 – Seller's Disclosure of Latent Defects

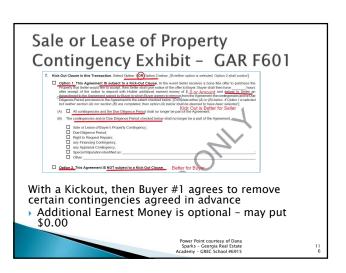
Community Association Disclosure
GAR – F322



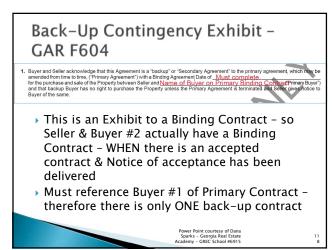


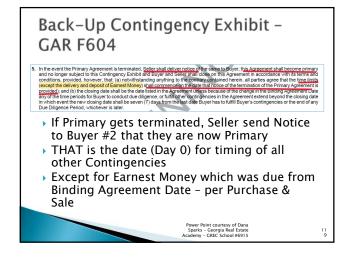


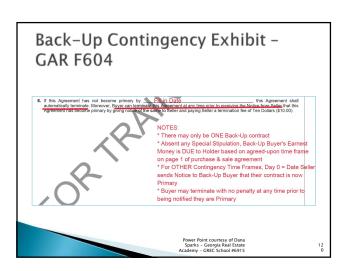


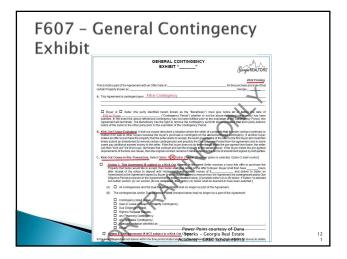












Special Stipulations

- Limit them as much as possible!
- Do NOT write a Special Stipulation addressing an issue already covered in the Purchase & Sale Agreement or Exhibit
- Special Stip will supersede & often they are not complete when agent writes them
- Consult the Library of Special Stips in the GAR & RE Forms contract Packages or your Broker or an Attorney
- GAR Special Stipulations
- RE 10 Special Stipulations
- See Handout: "Special Stipulations to Consider 2022"

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Special Stipulations

- IF you do write a Special Stipulation, make sure to address:
 - What the issue is
 - One party giving the other party Notice of the issue
 - Time Frame

 - $\,{}^{_{\odot}}$ What constituted default
 - Time frame to CURE default
 - Time frame for termination
 - What happens to Earnest Money

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Seller Needs to Act Before Buyer May Proceed

- For example: Seller to turn on Utilities or Seller to complete Community Association Disclosure
- "Buyer's Due Diligence period to begin upon Binding Agreement Date and extend for _____ days after Buyer's written receipt of _____" (i.e. notice that all utilities are on & operational.)
- Do not START a Buyer's DD upon receipt of the thing or Buyer won't be able to terminate & protect EM if Seller never acts because Due Diligence NEVER started!

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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
- Seller NOT obligated to automatically come down to low appraisal + cash Buyer is bringing
- Make sure Buyer HAS the cash for down payment, pre-paids, escrows, etc. PLUS gap cash
- Seller may want to ask for Proof of Funds

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Escalation Clause

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

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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
- May a Buyer terminate? NOT NECESSARILY!!!
- Address this potential issue on the Amendment when you are negotiating for Repairs!!!

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Special Stipulations

- Repairs

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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 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

- - 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

- - Frinte Letter

 \$\$ 326 TERMITES, CUARANTY 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 check shall not be a part of this Agreement.]
 - [] be limited to retreating the Property against subterranean termites; or
 - Î cover both the retreatment and the repair of any damage to the Property caused from subterranean termite damage.

 In addition, Seller shall provide Buyer, within three (3) days of the Binding Agreement Date, with a copy of any Georgia Wood Infestation Report which may have been obtained by Seller within 12 months of the Binding Agreement Date.

Special Stipulations

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

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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

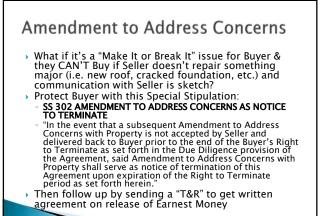
This Amendment is intended to set forth the agreement of the parties relative to conceins raised by Buyer during the Due Diligence Period. If this Amendment does not become effective during the Due Diligence Period, it shall become null and void and of no legal force and effect.

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

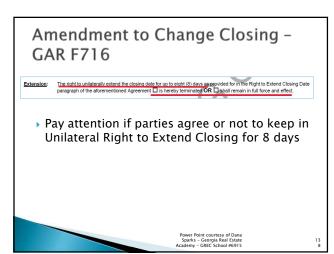
In consideration of Seller agreeing to address certain concerns of Buyer with Property, all parties agree that if this Amendment is signed by Buyer and Seller and delivered to both parties, the remainder of Buyer's Due Diligence Period shall OR shall not terminate.

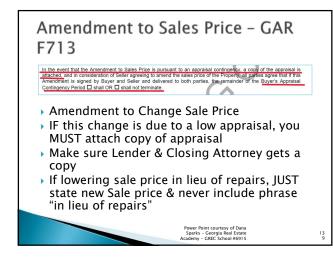
Negotiate if Agreement terminates Due Diligence Period

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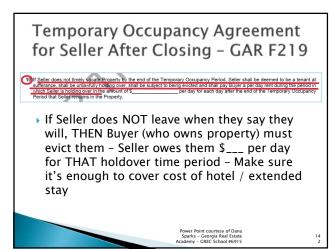
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Other Amendments • General Amendment to Agreement - GAR F701 • Amendment to Remove Contingency (General) - GAR F707 • Amendment to Remove Sale or Lease Contingency - GAR F719 • Notice - GAR F816





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

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

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 Shorts 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

Power Point courtesy of Dana Sparks – Georgia Real Estate Academy – GREC School #6915 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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