

# 2023 GAR Contract Changes #75552

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**Instructor:**

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CE Credit Offered Through:  
Real Estate Academy of America  
GREC School #6915

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

- ▶ **Georgia Real Estate Academy (GREC School #6915)** with end date of renewal being December 31, 2026, presents to you the following course of study:
- ▶ **2023 GAR Contract Changes – GREC Course #75552**
- ▶ This is a Virtual / Remote Broadcast of an approved in-class course, is 3 hours in duration, and is approved by the Georgia Real Estate Commission for the purpose of Continuing Education (CE.) There are no pre-requisites to receive credit for this course.
- ▶ Your instructor(s) for this course will be: **Dana Sparks**
- ▶ This course does NOT have required homework not any required written examination.

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## 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.
- ▶ Students may only attend 1 virtual course at a time; if GREC determines that a student has virtually attended simultaneous courses or courses with overlapping times, GREC will not give CE credit for either course.
  
- ▶ **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](mailto:Dana@MaximumOneRealty.com)) 678-580-6880, the Coordinator of Georgia Real Estate Academy, Heidi Kelly ([RosterCEadmin@eAGENTweb.com](mailto:RosterCEadmin@eAGENTweb.com)) 770-919-8825 ext. 306, or the Georgia Real Estate Commission.

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## GAR Licensing Agreement

- ▶ 2023 Cost for Non-Realtors – \$259
- ▶ Available online January 1, 2023
- ▶ Once 2023 forms are released, it is a GAR licensing violation to use GAR forms with any previous dates
  - Penalty: GAR may revoke yours (or your Broker's) license to use the GAR forms for the year or a specified period of time

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## Who Is Authorized to Use GAR Forms?

- ▶ Are you a REALTOR®?
  - Are your Local Board Dues paid?
  - Have you fulfilled the National Association of Realtors (NAR) Code of Ethics Course
    - NAR new 3 year Cycle #7 1/1/22 – 12/31/24
- ▶ Have You Paid GAR to become an Authorized User? You'll receive an FPID Number to then use with FMLS or GAMLS – contact your MLS for assistance accessing the GAR Forms package through their systems

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## Who Is Authorized to Use GAR Forms?

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

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## GAR Legal Helpline

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

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## GAR Forms – Other Changes

- ▶ Refer to “2023 GAR Form Changes”
- ▶ Remember to check GAR Mid-Year Changes in April or May of each year
- ▶ This CE class will cover BOTH 2022 Midyear changes (major changes) along with 2023 changes to the GAR contract package forms

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## Changes 5/1/22 – Purchase & Sale F201

- ▶ ¶B3a – Seller’s Contribution to Closing Costs – may be used towards commission

### 3. Closing Costs.

a. Seller’s Contribution at Closing: At closing, Seller shall make the referenced Seller’s Monetary Contribution which Buyer may use to pay any cost or expense of Buyer related to this transaction, including without limitation, any commission obligations of Buyer. Buyer acknowledges that Buyer’s mortgage lender(s) may not allow the Seller’s Monetary Contribution, or the full amount thereof, to be used for some costs or expenses. In such event, any unused portion of the Seller’s Monetary Contribution shall remain the property of the Seller. The Seller shall pay the fees and costs of the closing attorney: (1) to prepare and record title curative documents and (2) for Seller not attending the closing in person.

- ▶ ¶B7d – EM Disbursement by Broker Hold Harmless – includes negligence

d. Hold Harmless: All parties hereby covenant and agree to: (1) indemnify and hold Holder harmless from and against all claims, injuries, suits and damages (collectively, “Claims”) arising out of the performance by Holder of its duties, including Claims caused, in whole or in part, by the negligence of the Holder; (2) not to sue Holder for any decision of Holder to disburse earnest money in accordance with this Agreement.

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## Changes 5/1/22 – Purchase & Sales

- ▶ ¶ B8a – Inspection – Lead-Based Paint info with Termination Rights for Buyer

### 8. Inspection and Due Diligence. Lead-Based Paint Info with Termination Rights for Buyer

a. Right to Inspect Property: Upon prior notice to Seller, Buyer and/or Buyer’s representatives shall have the right to enter the Property at Buyer’s expense and at reasonable times (including immediately prior to closing) to inspect, examine, test, appraise and survey Property. If any portion of the Property was built prior to 1978, the Lead-Based Paint Exhibit (F316) is hereby attached as an Exhibit to the Agreement. Buyer shall have the right to conduct a lead hazard evaluation within ten (10) days from the Binding Agreement Date (or other mutually agreed upon time period) and to terminate this Agreement without penalty upon notice to Seller if lead-based paint and/or lead hazards are found (unless these rights are waived by Buyer in the Lead-Based Paint Exhibit (F316)). If the Lead-Based Paint Exhibit (F316) gives Buyer the right to terminate this Agreement if lead-based paint or lead hazards are found and such notice of termination is not given within ten (10) days from Binding Agreement Date (or other mutually agreed upon time period), the right to terminate for lead-based paint and/or lead hazards shall be waived. The above right to enter the Property shall include the time period after the end of any Due Diligence Period to, among other things, and without limitation, conduct inspections, surveys and evaluations,

- ▶ ¶ B10b – Brokerage – Commissions Shown on Closing Statement & reflect Buyer & Seller Brokerage Agreements –

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## Changes 5/1/22 – Purchase & Sale

- ▶ ¶ B10b – Brokerage – Commissions Shown on Closing Statement & reflect Buyer & Seller Brokerage Agreements – BOTH may be responsible for commission
- ▶ 1/1/22 – Seller’s Broker to pay Buyer’s Broker
- ▶ 5/1/22 – Buyer & Seller may pay – or share based on Instructions to Closing Attorney

b. **Brokerage:** Seller has agreed to pay Seller's Broker(s) a commission pursuant to a separate brokerage engagement agreement entered into between the parties and incorporated herein by reference ("Seller Brokerage Engagement Agreement"). The Seller's Broker has agreed to share that commission with the Buyer's Broker. The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective portions of the commissions out of the proceeds of the sale. If the sale proceeds are insufficient to

b. **Brokerage:** Unless otherwise specified herein, the real estate commissions owing to the Seller's Broker and Buyer's Broker, if any, are being paid pursuant to separate brokerage engagement agreements. Buyer and Seller agree that any commissions to be paid to Broker(s) shall be shown on the settlement statement and collected by closing attorney as a pre-condition to Buyer and Seller closing on the Property so long as the same is permitted by Buyer's mortgage lender, if any. The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective commissions pursuant to written instructions from the Broker(s) at closing, their respective commissions pursuant to written instructions from the Broker(s). If the sale proceeds are insufficient to pay the full

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## Changes 5/1/22 – Instructions to Closing Attorney – F255

- ▶ ¶3 – Added Subsection c – to reflect changes in Purchase & Sale

c. not paid hereunder, or to assert any claim or seek arbitration regarding the same. The closing attorney is directed to show the above-referenced commissions on the settlement statement and to collect the same as pre-condition to the parties closing on the purchase and sale of real property, so long as the same is permitted by the Buyer's mortgage lender, if any. **NEW Section C - 5/1/22**

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## Changes 5/1/22 – Amendatory Clause – FHA F407 & VA F410 Loan Exhibits

- ▶ Amendatory Clause prevails through closing – even after end of Financing Contingency
- ▶ FHA

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

- ▶ VA

11. Amendatory Clause. It is expressly agreed that, notwithstanding any other provisions of this Agreement, the Buyer shall not incur any penalty by forfeiture of earnest money deposits or otherwise be obligated to complete the purchase of the property described herein, if the Agreement purchase price or costs exceeds the reasonable value of the property established by the Veterans Administration ("VA"). The Buyer shall, however, have the privilege and option of proceeding with the consummation of this Agreement without regard to the amount of the reasonable value established by VA. If Buyer elects to complete the purchase at an amount in excess of the reasonable value established by VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to VA and which Buyer represents will not be borrowed funds except as approved by VA. If VA reasonable value of the property is less than the purchase price, Seller may reduce the purchase price to an amount equal to the VA reasonable value and the parties to the sale shall close at such lower purchase price with appropriate adjustments to the sales Agreement. This amendatory clause shall apply even when the Financing Contingency Period has terminated.

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## Changes 5/1/22 – Closing Attorney Acting as Holder

- ▶ Closing Attorney may not deduct their fees from Earnest Money
- ▶ F510 – Exhibit – ¶4

forth in the GAR Purchase and Sale Agreement, the latter shall control unless otherwise agreed to in writing by Buyer, Seller, and Holder. In the event the transaction does not close, Closing Attorney shall not have a right to deduct any of attorney's costs or fees pertaining to the Closing from the earnest money or other trust funds being held by Closing Attorney, except as may be provided elsewhere herein.

- ▶ F511 – Agreement of Closing Attorney to be Holder – ¶1 – New subsection c

**C.** In the event the transaction does not close, Closing Attorney shall not have a right to deduct any of attorney's costs or fees pertaining to the Closing from the earnest money or other trust funds being held by Closing Attorney, except as may be provided elsewhere herein.

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## Changes 5/1/22 – Seller Brokerage – F101

- ▶ ¶B4b – Sharing Commission with Co-op Broker – only if specified

Leading Commission prior to the construction of a lease, leasehold, or lease with an option to purchase.

b. **Sharing of Broker's Commission with Cooperating Broker:** If specified in Section A herein, 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, if any, referenced in Section A herein. There may be times when the Broker may not pay the cooperating broker the full amount of the commission as set forth in Section A herein. If this Agreement specifies that no commission is being paid by the Seller's Broker to the cooperating broker, then no such commission obligation shall exist.

Concrete Commission on Lease: Notwithstanding the above, if Seller lease real property or enter into a leasehold lease or lease

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## Changes 5/1/22 – Buyer Brokerage – F110

- ▶ ¶B4a – Commission – may be paid commission more than amount specified in Buyer's Brokerage Agreement – from Seller or Bonus

### 4. Commission.

a. **Buyer's Commission Obligation in Purchasing Real Property:** The obligation of Buyer to pay Broker the Commission shall be offset by any commission paid to Broker by either seller's broker or seller. Buyer's Commission obligation shall exist even if the closing of the transaction occurs after the term of this Agreement has expired. Buyer shall additionally be responsible for paying the Commission if Buyer defaults under this Agreement or if Buyer enters into a Contract to Purchase during the Protected Period on certain properties as explained in the Protected Period section below. Nothing herein shall prevent Broker from being paid a commission in excess of the commission reflected herein, or from being paid a bonus, if the same is offered by the seller or seller's broker. Buyer agrees that any commission to be paid by the Buyer shall be shown on the settlement statement and collected by the closing attorney as a pre-condition to Buyer closing on the purchase of real property so long as the same is permitted by Buyer's mortgage lender, if any, buyer and broker agree that the closing attorney may rely on this provision to collect and disburse any commission to be paid by Buyer.

b. **Commission on Property Sold For Sale By Owner ("FSBO"):** In the event Buyer purchases, leases, lease to purchase or

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## Changes 5/1/22 – Mutual Termination of Brokerage Agreement – F152

- ▶ ¶13 – Removed verbiage about protection Period with mutual termination

3. Upon the mutual termination of the Agreement, the parties shall have no further rights or responsibilities to one another other than the following which the parties agree shall expressly survive the termination of the Agreement. *[Select all that apply. The boxes not marked shall not be a part of the Agreement.]*

- Simultaneously with the execution of this Agreement, Client shall pay Broker \$\_\_\_\_\_ to reimburse Broker for the fees, costs and expenses incurred by Broker in connection with the Agreement.
- Client shall pay Broker \$\_\_\_\_\_ in full and final settlement of any and all claims, causes of action, suits and damages of Broker arising out of or relating to the Agreement.
- Other: \_\_\_\_\_

Removed verbiage about Protection Period - No Commission Protection with Mutual Termination

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## Changes 5/1/22 – Residential Lease – F913

- ▶ ¶B13b – Early Termination by Landlord – No Fee due upon certain conditions

Notwithstanding any provision to the contrary contained herein, Landlord shall owe no early termination fee to Tenant if Landlord's early termination is due to a default under the Lease by the Tenant or the Premises becoming uninhabitable due to an event of destruction as set forth in Section C(7) of this Lease.

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## Changes 5/1/22 – New Special Stipulations

### ▶ SS110 – No Commission Owed by Buyer

**SS 110 NO COMMISSION OWED BY THE BUYER** NEW - 5/1/22  
Notwithstanding any provision to the contrary contained in this Agreement, Broker shall not look for Buyer to pay any portion of Broker's Commission pursuant to this Exclusive Buyer Brokerage Engagement Agreement.

### ▶ SS528 – Contingency for Receiving Condo Questionnaire

**SS 528 CONTINGENCY FOR RECEIVING CONDOMINIUM QUESTIONNAIRE** NEW 5/1/22  
If the Property is a condominium unit, and if the Buyer is obtaining a loan to purchase the Property, this Agreement shall be contingent upon the condominium in which the unit is located being eligible for financing and approved by Buyer's lender. If Buyer obtains written notice from Buyer's lender indicating that (1) it is declining Buyer's loan application because the condominium in which the unit is located is ineligible for financing or (2) Buyer's lender is unable to determine whether the condominium in which the unit is located is eligible for financing because the HOA or management company for the condominium has not provided sufficient information for the lender to make such a determination, then Buyer may terminate this Agreement by providing written notice to Seller, along with the notice from Buyer's lender, within      days from the Binding Agreement Date. If Buyer timely provides such notice, then Buyer shall be entitled to the return of their earnest money. If Buyer does not timely provide such notice, then the contingency contained in this paragraph shall be waived and of no further force or effect. This contingency is applicable irrespective of whether there is any loan, financing, or all cash, contingency exhibit attached hereto and shall survive the expiration, waiver, or satisfaction of the same.

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## And Now.....

### ▶ On to 2023!



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# 2023 Changes

- ▶ Not a ton of changes
- ▶ Two New Forms
- ▶ No new Special Stipulations

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### 2023 GAR Forms Changes

The following pages will list the changes to the forms in the entire GAR Form Library. Paragraph numbers on the left, are the original numbers of the '23 in the previous years' (2022) form.

**CB22 Protect Yourself When Buying a Home to be Constructed**  
 ... Added that brokers should be reviewed along with CRE

**F101 Exclusive Seller Brokerage Engagement Agreement**  
 ... New **9A7 Lead-Based Paint Disclosure** - subsequent to renumbered  
 ... New **9B10 Impact** - moved some modified language from **9B10**; subsequent to renumbered  
 ... **9B10** **Statement of Broker's Commission with Cooperating Broker** - removed repetitive language; added language address when buyer's broker is not a participant in MLS where property is listed  
 ... New **9B7 Lead-Based Paint Disclosure** - slightly modified language moved here from **9C1 Seller's Property Disclosure Statement**; subsequent to renumbered  
 ... **Seller's Property Disclosure Statement** - moved language addressing lead-based paint to new **9B7 Lead-Based Paint Disclosure**; added "know"  
 ... New **9C-90 Use of Initial "NA"**

**F104 Non-Exclusive Seller Brokerage Engagement Agreement**  
 ... New **9A7 Lead-Based Paint Disclosure** - subsequent to renumbered  
 ... New **9B10 Impact** - moved some modified language from **9B10**; subsequent to renumbered  
 ... **9B10** **Statement of Broker's Commission with Cooperating Broker** - removed repetitive language; added language address when buyer's broker is not a participant in MLS where property is listed  
 ... New **9B7 Lead-Based Paint Disclosure** - slightly language moved here from **9C1 Seller's Property Disclosure Statement**; subsequent to renumbered  
 ... **Seller's Property Disclosure Statement** - moved language addressing lead-based paint to new **9B7 Lead-Based Paint Disclosure**; added "know"  
 ... New **9C-90 Use of Initial "NA"**

**F110 Exclusive Buyer Brokerage Engagement Agreement**  
 ... New **9C1700 Use of Initial "NA"**

**F113 Non-Exclusive Buyer Brokerage Engagement Agreement**  
 ... New **9C1700 Use of Initial "NA"**

**F122 Exclusive Leasing Listing Agreement**  
 ... New **9B10 Impact** - moved some modified language from **9B10**; subsequent to renumbered  
 ... New **9A490 Use of Initial "NA"**

**F125 Non-Exclusive Leasing Listing Agreement**  
 ... New **9B10 Impact** - moved some modified language from **9B10**; subsequent to renumbered  
 ... New **9A490 Use of Initial "NA"**

**F128 Exclusive Leasing Management Agreement**  
 ... **9C-90 Use of Initial "NA"** - moved language to subsection (i) that manager can collect percentage of early termination fee;  
 ... New **9B10 Impact** - subsequent to renumbered  
 ... New **9C1700 Use of Initial "NA"**; subsequent to renumbered

**F201 Purchase and Sale Agreement**  
 ... **9A4 Closing Date and Possession** - changed "or" to "upon"; added "OR"  
 ... **9B10 Buyer's Contribution at Closing** - added additional item  
 ... **9B10** **Items Paid to Buyer** - added additional item  
 ... **9B10** **Right to Extend the Closing Date** - modified language regarding extending closing when financing contingency has expired  
 ... **9B5 Closing Law Firm** - removed language regarding all cash method of payment; added language regarding closing law firm responsibilities  
 ... **9B10** **Right to Inspect Property** - revised to **Buyer's Right to Inspect Property**; bolded section regarding property used as a multiplex/retail laboratory; moved language from **9B10(1)** to this subsection; moved other language to subsection (b)  
 ... **9B10** **Duty to Inspect Neighborhood** - revised to **Buyer's Right to Inspect Neighborhood**; rephrased  
 ... **9B10** **Buyer's Inspection, Right, Confine, Through Closing** - some slightly modified language from **9B10(a)** moved here  
 ... **9B10** **Controlled "As-Is" Unless This Agreement is Subject to Due Diligence Period** - Subsection deleted; language moved to other subsections  
 ... **9B10** **Buyer's Inspection Information Obligations** - some slightly modified language from **9B10(a)** moved here; subsection added  
 ... **9B10** **Right to Inspect Property** - new **9B10** - modified language  
 ... **9B10** **Buyer's Inspection and Right to Inspect** - some language from **9B10(a)** moved here  
 ... **9B10** **Due Diligence Period** - some language from old **9B10(1)** moved here  
 ... **9B10(1)** **Buyer's Right to Inspect** - moved here; subsequent to renumbered  
 ... **9B10(1)** **Buyer's Inspection and Right to Inspect** - added additional language  
 ... **9B10(1)** **Buyer's Inspection and Right to Inspect** - added special stipulation reference number  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - subsequent to renumbered  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - added additional items that survive closing  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - moved modified language about use of NA to new **9C-90**  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - added new **9C-90**  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - added new **9C-90**

**F210 Lot Purchase and Sale Agreement**  
 ... **9A4 Closing Date and Possession** - changed "or" to "upon"; added "OR"  
 ... **9B10 Buyer's Contribution at Closing** - added additional item  
 ... **9B10** **Items Paid to Buyer** - added additional item  
 ... **9B10** **Right to Extend the Closing Date** - modified language regarding extending closing when financing contingency has expired  
 ... **9B5 Closing Law Firm** - removed language regarding all cash method of payment; added language regarding closing law firm responsibilities  
 ... **9B10** **Right to Inspect Property** - revised to **Buyer's Right to Inspect Property**; bolded section regarding property used as a multiplex/retail laboratory; moved language from **9B10(1)** to this subsection; moved other language to subsection (b)  
 ... **9B10** **Duty to Inspect Neighborhood** - revised to **Buyer's Right to Inspect Neighborhood**; rephrased  
 ... **9B10** **Buyer's Inspection, Right, Confine, Through Closing** - some slightly modified language from **9B10(a)** moved here  
 ... **9B10** **Controlled "As-Is" Unless This Agreement is Subject to Due Diligence Period** - Subsection deleted; language moved to other subsections  
 ... **9B10** **Buyer's Inspection Information Obligations** - some slightly modified language from **9B10(a)** moved here; subsection added  
 ... **9B10** **Right to Inspect Property** - new **9B10** - modified language  
 ... **9B10** **Buyer's Inspection and Right to Inspect** - some language from old **9B10** moved here  
 ... **9B10** **Due Diligence Period** - some language from old **9B10(1)** moved here; subsequent to renumbered  
 ... **9B10(1)** **Buyer's Right to Inspect** - added additional language  
 ... **9B10(1)** **Buyer's Inspection and Right to Inspect** - added special stipulation reference number  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - subsequent to renumbered  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - added additional items that survive closing  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - moved modified language about use of NA to new **9C-90**  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - added new **9C-90**  
 ... **9C-90** **Buyer's Inspection and Right to Inspect** - added new **9C-90**

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**F213 Land Purchase and Sale Agreement**  
...  
196(a) **Option Date and Termination** - changed "or" to "and"; added "OR"  
196(a) **Seller's Contribution at Closing** - added additional item  
196(b) **Buyer Pay for Buyer** - added additional item  
196(c) **Right to Extend the Closing Date** - modified language regarding extending closing when financing contingency has expired  
196(d) **Closing Law Firm** - removed language regarding all cash method of payment; added language regarding closing law firm responsibilities  
196(e) **Right to Inspect Property** - referred to Buyer's Right to Inspect Property; revised section regarding property used as a neighborhood laboratory; moved language from 910(d)(1) to this subsection; moved other language to subsequent subsection  
196(f) **Right to Inspect Neighborhood** - referred to Buyer's Right to Inspect Neighborhood; reworded  
196(g) **Buyer's Inspection Rights Continue Through Closing** - some slightly modified language from 910(i) moved here  
196(h) **Payment Held "As-Is"** - Unless this Agreement is Subject to Due Diligence Period - Subsection deleted; language moved to this subsection  
196(i) **New 910(b) Buyer's Inspection Information Obligations** - some slightly modified language from 910(i) moved here  
196(j) **Right to Inspect Property** - removed language  
196(k) **New 910(b) Due Diligence Period** - some language from old 910(d) moved here  
196(l) **New 910(b) Buyer's Due Diligence** - some language from old 910(d)(1) moved here; subsequent subsections renumbered  
196(m) **Buyer's Inspection and Representations** - removed language  
196(n) **Buyer's Inspection** - removed language  
196(o) **New 910(d) USCA Section** - subsequent subsections renumbered  
196(p) **Section of Agreement** - new 910(a) added additional items that survive closing  
196(q) **Termination** - new 910(a) - removed modified language about use of N/A to new 910(a)  
196(r) **Definitions** - added new 910(a) line of initials "N/A"  
...  
**F219 Temporary Occupancy Agreement for Seller After Closing Exhibit**  
119 Updated form to be provided  
119 Added additional language  
119 New 911 all subsequent subsections  
119 New 911 added additional language regarding holding over  
119 New 911  
...  
**F228 New Construction Purchase and Sale Agreement**  
194(a) **Seller's Contribution at Closing** - added additional item  
194(b) **Buyer Pay for Buyer** - added additional item  
194(c) **Right to Extend the Closing Date** - modified language regarding extending closing when financing contingency has expired  
196 **Closing Law Firm** - removed language regarding all cash method of payment; added language regarding closing law firm responsibilities  
196(a) **Right to Inspect Property** - added additional language  
196(b) **Right to Inspect Neighborhood** - referred to Buyer's Right to Inspect Neighborhood; reworded  
196(c) **Buyer's Inspection Rights Continue Through Closing** - added special stipulation reference number  
196(d) **Payment Held "As-Is"** - removed language  
196(e) **Termination** - new 910(a) - removed modified language about use of N/A to new 910(a)  
196(f) **Definitions** - added new 910(a) line of initials "N/A"  
...  
**F240 Option Agreement**  
...  
Changed "may" to "between" in initial section  
119 Paragraph 1(a) up and now renumbered new 911 Option - removed language to write out dollar amount; removed language; new 911 Option Period - renumbered language for buyer to pay option payment to seller; moved language about seller having a right to fulfil obligations to this 911; new 911 Terms of the Option - removed time of day for option to expire; new 911 Option and Sale Agreement  
119 Second paragraph now 911 Exercise of Option  
119 Third paragraph now 911 Option Commission - removed language to write out dollar amount; changed "contingently" to "upon"  
119 Fourth paragraph split up and now renumbered; new 911 - Title of Exhibit; new 911 - Warranty; new 911 - Agreement  
119 Section of all Exhibits; new 911 - Language; new 911 - Corrections, Law and Interpretation - added additional language  
119 Added lines for contact information for buyers and sellers to give notice  
...  
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**F243 Option Agreement to Purchase Leased Property Exhibit**  
194(a) **Seller's Contribution at Closing** - added additional item  
194(b) **Buyer Pay for Seller at Closing** - renumbered to Seller's Contribution at Closing; added additional item  
194(c) **Right to Extend the Closing Date** - modified language regarding extending closing when financing contingency has expired  
196 **Closing Law Firm** - removed language regarding all cash method of payment; added language regarding closing law firm responsibilities  
196(a) **Right to Inspect Property** - added additional language  
196(b) **Right to Inspect Neighborhood** - added special stipulation reference number  
196(c) **New 910(b) Buyer's Due Diligence** - subsequent subsections renumbered  
196(d) **Option to Extend Closing Date** - new 910(a); updated form number from F700 to F723  
196(e) **Section of Agreement** - new 910(a); added additional items that survive closing  
...  
**F301 Seller's Property Disclosure Statement Exhibit**  
101 **Fixtures Checklist** - added language about property that can be removed or taken must be with buyer's consent if under contract  
...  
**F302 Seller's Disclosure of Latent Defects & Fixtures Checklist**  
101 **Fixtures Checklist** - added language about property that can be removed or taken must be with buyer's consent if under contract  
...  
**F304 Seller's Property Disclosure Statement (Condominium) Exhibit**  
101(1) **Option** - new 911 and 911(a) slightly reworded question from 911(a); subsequent subsections renumbered  
101(2) **Structural Items, Additions and Alterations** - moved slightly modified question to former 911  
101(3) **Fixtures Checklist** - added language about property that can be removed or taken must be with buyer's consent if under contract  
...  
**F322 Community Association Disclosure Exhibit**  
141 **Trust of Association in Which Buyer Will Be Becomes a Member** - added additional option  
...  
**F401 All Cash Sale Exhibit**  
111 **Revised No Financing Contingency Exhibit**  
111 **All Cash Sale** - deleted; replaced with new 911 Method of Payment  
111 **Verification of Funds** - modified language slightly; steps intended for fund to be in US Dollars; new subsection C  
...  
**F404 Conventional Loan Contingency Exhibit**  
111 **Added "Not greater than"** to both pages (only "Interest Rate [at par]")  
111 **New Section - Length of Time for Buyer to Insure a Reduction in the Sales Price Based Upon a Loan Approval** - 911; subsequent subsections renumbered  
111 **Financing Contingency** - new 911 reworded first sentence; modified language about providing loan denial letter; added clarifying language about Appraisal Contingency  
111 **Appraisal Contingency** - new 911 removed blank as it is now addressed in 911; reworded sentence  
...  
**F407 FHA Loan Contingency Exhibit**  
111 **Added "Not greater than"** to both pages under "Interest Rate [at par]"  
111 **New Section - Length of the Financing Contingency Period** - 911; subsequent subsections renumbered  
111 **Financing Contingency** - modified language about providing loan denial letter; added clarifying language about Appraisal Clause  
111 **New 911 (Last of clause "911")** - subsequent subsections renumbered  
111 **Financing Contingency** - new 911 added language about when the property does not appraise  
111 **Financing Contingency** - new 911; added additional language that there is no penalty to buyer  
...  
**F410 VA Loan Contingency Exhibit**  
111 **Added "Not greater than"** to both pages under "Interest Rate [at par]"  
111 **New Section - Length of the Financing Contingency Period** - 911; subsequent subsections renumbered  
111 **Financing Contingency** - new 911 reworded first sentence; modified language about providing loan denial letter; added clarifying language about Appraisal Clause  
111 **VA Rules and Regulations, Terminate Letter** - new 911; reworded section  
...  
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**F413 USDA-RD Loan Contingency Exhibit**  
111 **Added "Not greater than"** to both pages under "Interest Rate [at par]"  
111 **New Section - Length of the Financing Contingency Period** - 911; subsequent subsections renumbered  
111 **Financing Contingency** - new 911 reworded first sentence; modified language about providing loan denial letter; added clarifying language about Appraisal Contingency  
...  
**F601 Sale or Lease of Buyer's Property Contingency Exhibit**  
101 **Buyer claims on the sale of the other property** - added language  
...  
**F604 Back-Up Agreement Contingency Exhibit**  
101 **Revised section to include number of back-up agreements ahead as well as primary buyer and broker identifies**  
101 **Added new language of back-up agreements in higher positions**  
101 **Added new language of back-up agreements in higher positions in two spots; changed "Secondary Agreement" to "Back-Up Agreement"**  
101 **Revised and added new language of back-up agreements in higher positions**  
101 **Added new language of back-up agreements in higher positions in two spots**  
...  
**F605 Addendum to Back-Up Agreement - NEW FORM**  
...  
**F716 Amendment to Change Closing/Possession Date**  
101 **Definition** - changed "through" to "through to Buyer"; slightly modified language of options A and C  
...  
**F735 Amendment to Assign Agreement - NEW FORM**  
...  
**F840 Estimate of Cost to Buyer**  
111 **Changed "Other" to "Escrow Commission"**  
111 **Added additional lines for "Rent", "Security Deposit" and "Seller's Contribution"; renumbered subsequent lines**  
...  
**F901 Rental Application**  
...  
Added language to introduction  
...  
**F913 Lease for Residential Property**  
101 **Disclaimer** - new subsection (d) page Disclaimer  
101 **New 910(a) - Georgia Landlord Tenant Handbook**  
...  
**CF01 Commercial Exclusive Seller Brokerage Engagement Agreement**  
101 **New 910(a) clause** - removed some modified language from 910(a); subsequent subsections renumbered  
101(a) **Buyer's Commission** - subsequent subsections renumbered  
101(b) **Buyer's Commission** - subsequent subsections renumbered  
101(c) **Limit on Broker's Liability** - slightly reworded  
101(d) **New 910(a) line of initials "N/A"**  
...  
**CF04 Commercial purchase and Agreement**  
101 **Title Examination** - added "Title Examination Period"  
101(a) **Warranty** - revised deleted; added items to new 910(a)  
101(b) **Examination** - section moved to new 910(a); subsequent subsections renumbered  
101(c) **Right to Extend the Closing Date** - modified language regarding extending closing when financing contingency has expired  
101(d) **Closing Law Firm** - removed language regarding all cash method of payment; added language regarding closing law firm responsibilities  
101(e) **Right to Inspect Property** - removed language  
101(f) **New 910(b) Buyer's Due Diligence** - subsequent subsections renumbered  
101(g) **Warranty of Seller** - new 910(a); added additional items  
101(h) **Buyer's Inspection and Representations** - added language to match language in the other purchase and sale agreement  
101(i) **Section of Agreement** - added additional items that survive closing  
101(j) **Termination** - added new 910(a) line of initials "N/A"  
101(k) **Definitions** - added new 910(a) line of initials "N/A"  
...  
**CF24 Exclusive Commercial Leasing Listing Agreement**  
111 **Added "Not greater than"** to both pages under "Interest Rate [at par]"  
111 **New Section - Length of the Financing Contingency Period** - 911; subsequent subsections renumbered  
111 **Financing Contingency** - new 911 reworded first sentence; modified language about providing loan denial letter; added clarifying language about Appraisal Clause  
111 **Appraisal Contingency** - new 911 removed blank as it is now addressed in 911; reworded sentence  
111 **New 910(a) line of initials "N/A"**  
...  
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**CF25 Commercial Open Listing Agreement (For Leases)**  
...  
New 910(a) clause - moved some modified language from 910(a); subsequent subsections renumbered  
...  
**CF28 Commercial Exclusive Leasing/Management Agreement**  
...  
New 910(a) clause - moved some modified language from 910(a); subsequent subsections renumbered  
...  
New 910(a) line of initials "N/A"; subsequent subsections renumbered  
...  
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## Forms Highlighted Today

- ▶ F201 – Purchase & Sale Agreement
- ▶ F401 – All Cash Exhibit
- ▶ F404 – Conventional Loan Contingency Exhibit
- ▶ F407 – FHA Loan Contingency Exhibit
- ▶ F410 – VA Loan Contingency Exhibit
- ▶ F301 – Seller’s Property Disclosure Statement
- ▶ F304 – Seller’s Property Disclosure Statement (Condominium)

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## Forms Highlighted Today

- ▶ F322 – Community Association Disclosure Exhibit
- ▶ F601 – Sale or Lease Contingency Exhibit
- ▶ F604 – Back-Up Agreement Contingency Exhibit
- ▶ F101 – Exclusive Seller Brokerage Agreement
- ▶ F219 – Temporary Occupancy Agreement for Seller After Closing
- ▶ F240 – Option Agreement

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## NEW Forms – 2023

- ▶ F605 – Addendum to Back-Up Agreement
- ▶ F735 – Amendment to Assign Agreement

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## Additional Changes in 2023

- ▶ New Construction Forms
- ▶ Commercial Forms
- ▶ Estimate of Cost to Buyer – F840
- ▶ Option Agreement – F240 – completely re-organized
- ▶ Option Agreement to Purchase Leased Property – F243
- ▶ Make sure to view “2023 GAR Forms Changes” – available wherever you access your contract forms (MLS, Broker, etc.)

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## Purchase & Sale – F201

- ▶ Possession– ¶A4 – Changed language to coincide with an actual closing vs. a meeting at the closing attorney’s office – in case transaction doesn’t actually close
- ▶ This change reflected in Amendment to Change Closing Date/Possession – F716
- ▶ 2023

4. Closing Date and Possession. **to reflect an actual closing of transaction – in case it doesn't actually close**  
Closing Date shall be \_\_\_\_\_ with possession of the Property transferred to Buyer  
 upon Closing OR  \_\_\_\_\_ days after Closing at \_\_\_\_\_ o'clock  AM OR  PM (attach F219 Temporary Occupancy Agreement).

- ▶ 2022

4. Closing Date and Possession.  
Closing Date shall be \_\_\_\_\_ with possession of the Property transferred to Buyer  
 at Closing OR  \_\_\_\_\_ days after Closing at \_\_\_\_\_ o'clock  AM  PM (attach F219 Temporary Occupancy Agreement).

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## Purchase & Sale – F201 Closing Costs – ¶B3

- ▶ Seller’s Contribution – added Seller responsible for fees for “pay off & handling & delivery of pay off”
- ▶ Buyer’s Contribution – added Buyer responsible for “all other title fees & post-closing fees”

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## 2022 vs. 2023

▶ 2023:

3. **Closing Costs.**

a. **Seller's Contribution at Closing:** At closing, Seller shall make the referenced Seller's Monetary Contribution which Buyer may use to pay any cost or expense of Buyer related to this transaction, including without limitation, any commission obligations of Buyer. Buyer acknowledges that Buyer's mortgage lender(s) may not allow the Seller's Monetary Contribution, or the full amount thereof, to be used for some costs or expenses. In such event, any unused portion of the Seller's Monetary Contribution shall remain the property of the Seller. The Seller shall pay the fees and costs of the closing attorney: (1) to prepare and record title curative documents; (2) for Seller not attending the closing in person; and (3) pay off and proceeds handling and delivery.

b. **Items Paid by Buyer:** At closing, Buyer shall pay: (1) Georgia property transfer tax; (2) the cost to search title and tax records and prepare the limited warranty deed; (3) all other costs, fees and charges to close this transaction, except as otherwise provided herein; and (4) all other title fees and post-closing fees.

▶ 2022:

3. **Closing Costs.**

a. **Seller's Contribution at Closing:** At closing, Seller shall make the referenced Seller's Monetary Contribution which Buyer may use to pay any cost or expense of Buyer related to this transaction, including without limitation, any commission obligations of Buyer. Buyer acknowledges that Buyer's mortgage lender(s) may not allow the Seller's Monetary Contribution, or the full amount thereof, to be used for some costs or expenses. In such event, any unused portion of the Seller's Monetary Contribution shall remain the property of the Seller. The Seller shall pay the fees and costs of the closing attorney: (1) to prepare and record title curative documents and (2) for Seller not attending the closing in person.

b. **Items Paid by Buyer:** At closing, Buyer shall pay: (1) Georgia property transfer tax; (2) the cost to search title and tax records and prepare the limited warranty deed; and (3) all other costs, fees and charges to close this transaction, except as otherwise provided herein.

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## Purchase & Sale – F201

### Right to Extend Closing Date – ¶B4

▶ Clarified – 8 Day Unilateral Right to Extend may be used through closing date – even AFTER expiration of Financing Contingency

▶ 2023

4. **Closing Date and Possession.**

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

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## Notes About 8 Day Unilateral Extension

- ▶ May ONLY be used for reasons specified
- ▶ May ONLY be used ONE time per transactions – NOT one time per side
- ▶ Either party may use for any of those specified reasons
- ▶ i.e. Seller may use for a loan issue & Buyer may use for a Title issue
- ▶ If Lender delay is caused by Buyer – may NOT use
- ▶ If Title issue is a lien – may NOT use

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## Purchase & Sale – F201 Closing Law Firm Representation ¶B5

- ▶ Pop Quiz: Whom does Closing Attorney Represent?
- ▶ Answer: “Follow the Money!”
  - Lender – if there is a Loan
  - Buyer – if there is no Loan
- ▶ BUT.... Closing Attorney does NOT
  - Represent one of the parties legally should there be a dispute
  - Does not warrant the title in absence of any signed agreement specifying that
- ▶ Closing Attorney DOES:
  - Prepare docs
  - Clear Title per Title Insurance standards
  - Record deeds
  - Issue Title insurance

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## Purchase & Sale – F201

### Closing Law Firm Representation ¶B5

- ▶ 2022

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

- ▶ 2023

5. **Closing Law Firm.** Buyer shall have the right to select the closing attorney to close this transaction, and hereby selects the closing attorney referenced herein. In all cases where an individual closing attorney is named in this Agreement but the closing attorney is employed by or an owner, shareholder, or member in a law firm, the law firm shall be deemed to be the closing attorney. If Buyer's mortgage lender refuses to allow that closing attorney to close this transaction, Buyer shall select a different closing attorney acceptable to the mortgage lender. In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the Buyer in preparing the Closing documents, attempting to clear title of the Property to the satisfaction of the title insurance company, conducting the Closing, disbursing funds according to the settlement statement signed by the parties and closing attorney, timely recording deeds and issuing an owner's title insurance policy. Other than those services specifically listed above, nothing herein shall obligate the closing attorney to perform other legal services, including, but not limited to, certifying or warranting title of the Property, for the Buyer, except pursuant to a separate engagement agreement signed by the closing attorney and the Buyer.

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## Purchase & Sale – F201

### Inspection & Due Diligence ¶B8

- ▶ Tweaked & added new language – impress upon Buyer importance of various inspections
- ▶ 2022

8. **Inspection and Due Diligence.** **Lead-Based Paint Info with Termination Rights for Buyer - added 5/1/22**

a. **Right to Inspect Property.** Upon prior notice to Seller, Buyer and/or Buyer's representatives shall have the right to enter the Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test, appraise and survey the Property. If any portion of the Property was built prior to 1978, the Lead-Based Paint Exhibit (F316) is hereby attached as an Exhibit to the Agreement. Buyer shall have the right to conduct a lead hazard evaluation within ten (10) days from the Binding Agreement Date (or other mutually agreed upon time period) and to terminate this Agreement without penalty upon notice to Seller if lead-based paint and/or lead hazards are found (unless these rights are waived by Buyer in the Lead-Based Paint Exhibit (F316)). If the Lead-Based Paint Exhibit (F316) gives Buyer the right to terminate this Agreement if lead-based paint or lead hazards are found and such notice of termination is not given within ten (10) days from Binding Agreement Date (or other mutually agreed upon time period), the right to terminate for lead-based paint and/or lead hazards shall be waived. The above right to enter the Property shall include the time period after the end of any Due Diligence Period to, among other things, and without limitation, conduct inspections, surveys and evaluations, meet contractors and vendors, measure for renovations and confirm that any agreed upon repairs have been made and the Property otherwise remains in the same condition. Seller shall cause all utilities, systems and equipment to be on so that Buyer may complete all inspections. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages relating to the exercise of these rights and shall promptly restore any portion of the Property damaged or disturbed from testing or other evaluations to a condition equal to or better than the condition it was in prior to such testing or evaluation. If Buyer is concerned that the Property may have been used as a laboratory for the production of methamphetamine, or as a dumpsite for the same, Buyer should review the National Clandestine Laboratory Register – Georgia at [www.dea.gov](http://www.dea.gov).

b. **Duty to Inspect Neighborhood.** In every neighborhood there are conditions which different buyers may find objectionable. Buyer shall have the sole duty to become familiar with neighborhood conditions that could affect the Property such as landfills, quarries, power lines, airports, cemeteries, prisons, stadiums, odor and noise producing activities, crime and school, land use, government and transportation maps and plans. It shall be Buyer's sole duty to become familiar with neighborhood conditions of concern to Buyer. **If Buyer is concerned about the possibility of a registered sex offender residing in a neighborhood in which Buyer is interested, Buyer should review the Georgia Violent Sex Offender Registry available on the Georgia Bureau of Investigation Website at [www.gbi.georgia.gov](http://www.gbi.georgia.gov).**

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## Purchase & Sale – F201 Inspection & Due Diligence ¶B8

### ▶ 2022 cont'd

- c. **Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof (and at Buyer's expense, if there is any cost associated with said transfer), Seller's interest in any existing manufacturer's warranties, service contracts, termite treatment and/or repair guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
- d. **Property Sold "As-Is" Unless this Agreement is Subject to Due Diligence Period:**
  - (1) **General:** Unless the Property is being sold subject to a Due Diligence Period referenced herein, the Property shall be sold "as-is" with all faults. Even if the Property is sold "as-is" Seller is required under Georgia law to disclose to the Buyer latent or hidden defects in the Property which Seller is aware and which could not have been discovered by the Buyer upon a reasonable inspection of the property. The inclusion of a Due Diligence Period herein shall: (a) during its term make this Agreement an option contract in which Buyer may decide to proceed or not proceed with the purchase of the Property for any or no reason; and (b) be an acknowledgement by Seller that Buyer has paid separate valuable consideration of \$10 for the granting of the option.
  - (2) **Purpose of Due Diligence Period:** During the Due Diligence Period, Buyer shall determine whether or not to exercise Buyer's option to proceed or not proceed with the purchase of the Property. If Buyer has concerns with the Property, Buyer may during the Due Diligence Period seek to negotiate an amendment to this Agreement to address such concerns.
  - (3) **Notice of Decision Not To Proceed:** Buyer shall have elected to exercise Buyer's option to purchase the Property unless prior to the end of any Due Diligence Period, Buyer notifies Seller of Buyer's decision not to proceed by delivering to Seller a notice of termination of this Agreement. In the event Buyer does not terminate this Agreement prior to the end of the Due Diligence Period, then: (a) Buyer shall have accepted the Property "as-is" subject to the terms of this Agreement; and (b) Buyer shall no longer have any right to terminate this Agreement based upon the Due Diligence Period.
- e. **Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.

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## Purchase & Sale – F201 Inspection & Due Diligence ¶B8

- 8. **Inspection and Due Diligence. Re-organized, tweaked for clarification & expanded**
  - a. **Buyer's Right to Inspect Property:** Unless otherwise specified herein, the Property is being sold in "as-is" condition with any and all faults. Therefore, Buyer and/or Buyer's representative(s) have the right to carefully inspect the Property to make sure it meets the needs of the Buyer. If Buyer is concerned that the Property may have been used as a laboratory for the production of methamphetamine, or as a dumpsite for the same, Buyer should review the National Clandestine Laboratory Register – Georgia at [www.dea.gov](http://www.dea.gov).
  - b. **Buyer's Right to Inspect Neighborhood:** In every neighborhood there are conditions which different buyers may find objectionable. Buyer is solely responsible for becoming familiar with neighborhood conditions of concern to Buyer that could affect the Property such as landfills, quarries, power lines, airports, cemeteries, prisons, stadiums, odor and noise producing activities, crime and school, land use, government and transportation maps and plans. If Buyer is concerned about the possibility of a registered sex offender residing in a neighborhood in which Buyer is interested, Buyer should review the Georgia Violent Sex Offender Registry available on the Georgia Bureau of Investigation Website at [www.gbi.georgia.gov](http://www.gbi.georgia.gov).
  - c. **Buyer's Inspection Rights Continue through Closing:** Upon prior notice to Seller, Buyer and/or Buyer's representatives shall have the continuing right through Closing to enter the Property at Buyer's expense and at reasonable times to, among other things, and without limitation, conduct inspections, examinations, evaluations, appraisals, surveys and tests, meet contractors and vendors, measure for renovations, determine the condition of the Property and confirm that any agreed upon repairs have been made. Seller shall cause all utilities, systems and equipment to be on so that Buyer may complete all inspections.
  - d. **Buyer's Inspection Indemnification Obligations:** Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages related to the exercise of the above inspection rights by Buyer and Buyer's representatives, and Buyer shall promptly pay Seller the actual cost to restore any portion of the Property damaged or disturbed from testing or other evaluations to a condition equal to or better than the condition it was prior to such testing or evaluations.

NEW

## Purchase & Sale – F201 Inspection & Due Diligence ¶B8

### ▶ 2023 cont'd

- e. **Lead-Based Paint Hazard Evaluation:** If any portion of the Property was built prior to 1978, the Lead-Based Paint Exhibit (F316) is hereby attached as an Exhibit to the Agreement. Buyer shall have the right to conduct a lead hazard evaluation within ten (10) days from the Binding Agreement Date (or other mutually agreed upon time period) and to terminate this Agreement without penalty upon notice to Seller if lead-based paint and/or lead hazards are found (unless these rights are waived by Buyer in the Lead-Based Paint Exhibit (F316)). If the Lead-Based Paint Exhibit (F316) gives Buyer the right to terminate this Agreement if lead-based paint or lead hazards are found and such notice of termination is not given within ten (10) days from Binding Agreement Date (or other mutually agreed upon time period), the right to terminate for lead-based paint and/or lead hazards shall be waived.
- f. **Due Diligence Period:** if the Property is being sold subject to a Due Diligence Period, then: a) this Agreement shall be an option contract during which time Buyer shall have the option, for any reason or for no reason, to terminate this Agreement upon notice to the Seller given prior to the expiration of the Due Diligence Period, in which case Buyer shall be entitled to a return of Buyer's earnest money without penalty; b) Buyer may, during the Due Diligence Period, seek to amend this Agreement to address any concerns Buyer has with the Property or this Agreement; and c) if Buyer has not terminated this Agreement as set forth above, Buyer shall accept the Property in "as-is" condition, subject to any amendment to this Agreement to address concerns agreed to by the parties.
- g. **Seller's Duty to Disclose:** Seller shall disclose to Buyer any and all known latent or hidden defects in the Property that could not be discovered by the Buyer during a reasonably careful inspection of the Property.
- h. **Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof (and at Buyer's expense, if there is any cost associated with said transfer), Seller's interest in any existing manufacturer's warranties, service contracts, termite treatment and/or repair guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
- i. **Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to Closing unless otherwise agreed to in writing by the Buyer and Seller.

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## Purchase & Sale – F201 Brokerage & Agency – ¶B10

### ▶ Added information should Broker have Both sides – one as Client & other as Customer

- 10. **Brokerage Relationships in this Transaction.** Added reference to Broker having Both Sides - Client & Customer
  - a. **Agency Disclosure:** No Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq.;
    - (1) **No Agency Relationship:** Buyer and Seller acknowledge that: a) if they are not represented by Brokers in a client relationship, they are each solely responsible for protecting their own interests, and that Broker's role is limited to performing ministerial acts for that party; and b) if the same brokerage firm is representing one party as a client and working with the other party as a customer, the Broker and all of Broker's affiliated licensees are representing the client.
    - (2) **Consent to Dual Agency:** If Broker is acting as dual agent in this transaction, Buyer and Seller consent to the same and

#### **Review: Types of Agency:**

**Single Agency** – Public has signed a separate Brokerage Agreement  
Broker has Client Relationship with Buyer or Seller

**Dual Agency** – Legal with Disclosure & Consent but MUST check your  
Broker's Policy (One Broker & One Agent)

Broker has Client Relationship with BOTH Buyer & Seller & only ONE  
agent is working with both sides

**Designated Agency** – One Broker & Two Agents

Broker has Client Relationship with BOTH Buyer & Seller & TWO  
agents are working one with each side

**Both Sides – NOT Dual Agency** – Can be tricky – check your Broker's Policy  
Broker has Client Relationship with one side & Customer

Relationship with other side

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## Purchase & Sale – F201 Other Provisions– ¶C4

- ▶ ¶C4e – Added reference to Special Stip #661 regarding Assignment by Buyer to another Buyer
- ▶ NEW ¶C4g – FIRPTA Affidavit

**New** g. **FIRPTA Affidavit:** Unless Seller is a "foreign person", as that term is defined in Section 1445(f)(3) of the Internal Revenue Code, Seller shall deliver to the closing attorney at Closing a FIRPTA (Foreign Investment in Real Property Tax Act) Affidavit indicating that Seller is not a "foreign person". If Seller is a "foreign person", additional taxes may need to be withheld at Closing.

- ▶ ¶C40 – Survival – added another item

**Added #4** o. **Survival of Agreement:** The following shall survive the closing of this Agreement: (1) the obligation of a party to pay a real estate commission; (2) any warranty of title; (3) all written representations of Seller in this Agreement regarding the Property or neighborhood in which the Property is located; ~~(4) Buyer's indemnification obligations arising out of the inspection of the Property by Buyer and Buyer's representatives;~~ (5) the section on condemnation; (6) the section on attorney's fees; (7) the obligations of the parties regarding ad valorem real property taxes; and (8) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the Closing.

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## All Cash Exhibit – F401

- ▶ New Name: "No Financing Exhibit"
- ▶ 2022 Name: "All Cash Sale (No Financing Contingency) Exhibit "\_\_\_\_\_"
- ▶ Modified in an attempt to avoid "bait & switch"
- ▶ ¶1 – Method of Purchase – changed from "All Cash Sale"
- ▶ **1. Method of Purchase.**
- ▶ **A. • All Cash Purchase:** Buyer has sufficient liquid assets to purchase the Property in this transaction for "all cash". The Buyer has no right to unilaterally extend the Closing Date for eight (8) days for reason of mortgage lender delay. Notwithstanding the above, Buyer shall have the right to extend the closing date for eight (8) days if the closing attorney is not ready except if the basis for the closing attorney to not be ready is due to or related to the mortgage lender delay.
- ▶ **OR**
- ▶ **B. • Financed Purchase with No Financing Contingency:** Buyer intends to obtain mortgage financing to pay for all or a portion of the sales price of the Property; provided, however, this Agreement shall not be subject to a financing contingency. Even though Buyer is obtaining a mortgage loan, the Buyer has no right to unilaterally extend the Closing Date for eight (8) days for reason of mortgage lender delay. Notwithstanding the above, Buyer shall have the right to extend the closing date for eight (8) days if the closing attorney is not ready except if the basis for the closing attorney to not be ready is due to or related to the mortgage lender delay.

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## All Cash Exhibit – F401

### ▶ 2022

1. **All Cash Sale.** While Buyer has sufficient liquid assets to purchase the Property in this transaction for “all cash”, Buyer:
  - A.  reserves the right to pay all or a portion of the purchase price by obtaining an institutional first mortgage secured by a deed to secure debt on the Property; AND/OR  
 reserves the right to pay all or a portion of the purchase price by obtaining a non-institutional first mortgage or other loan (including a private “hard-money” loan).

OR

- B.  shall not have the right to obtain a mortgage financing to pay for all or a portion of the purchase price of the Property. The Buyer is not obtaining a loan; therefore, the Buyer has no right to unilaterally extend the closing date for eight (8) days for reasons of mortgage lender delay.

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## All Cash Exhibit – F401

- ▶ ¶12 – Verification of Funds – modified & added to 2023
- ▶ **2. Verification of Funds.** Within \_\_\_\_\_ days from the Binding Agreement Date Buyer shall be obligated to provide or cause to be provided to Seller information describing in specific detail the source of all the Buyer’s funds necessary to purchase the Property (“Required Information”). The Required Information shall consist of one or more the following:
  - ▶ **A.** A letter or letters from a trust, stock brokerage firm and/or financial institution holding funds, stocks, bonds and/or other assets (hereinafter collectively referred to as “Assets”) of or on behalf of Buyer and dated subsequent to the Binding Agreement Date stating that Buyer has funds in US Dollars of at least an amount specified in the letter and/or Assets on deposit with the institution of a value specified in the letter, that are sufficient to allow Buyer to complete the purchase of the Property;
  - ▶ **B.** An account statement or statements from the trust, stock brokerage firm and/or financial institution(s) holding funds and/or Assets confirming a specific amount of funds in US Dollars and/or Assets on deposit with the institution. Such account statement must be for the regular time period that such statements are issued immediately preceding the Binding Agreement Date.
  - ▶ **C.** If Option 1 (B) is selected above, a loan commitment letter from a mortgage lender

2. **Verification of Funds.** Within \_\_\_\_\_ days from the Binding Agreement Date Buyer shall be obligated to provide or cause to be provided to Seller information describing in specific detail all of the sources of Buyer’s funds to purchase the Property (“Required Information”). The Required Information shall consist of at least one of the following:
  - A. A letter or letters from a trust, stock brokerage firm and/or financial institution holding funds, stocks, bonds and/or other assets (hereinafter collectively referred to as “Assets”) of or on behalf of Buyer and dated subsequent to the Binding Agreement Date stating that Buyer has funds of at least an amount specified in the letter and/or Assets on deposit with the institution of a value specified in the letter, that are sufficient to allow Buyer to complete the purchase of the Property;
  - B. An account statement or statements from the trust, stock brokerage firm and/or financial institution(s) holding funds and/or Assets confirming a specific amount of funds and/or Assets on deposit with the institution. Such account statement must be for the regular time period that such statements are issued immediately preceding the Binding Agreement Date.

## Conventional Loan Contingency Exhibit - F404

- ▶ In ALL Loan Exhibits: Reference to Interest Rate changed to “at par” and “Not Greater Than \_\_\_%”

<input type="checkbox"/> A.	FIRST MORTGAGE LOAN	Loan Amount	Term	Interest Rate (at par)	Rate Type	Source Of Loans Term
		_____% of purchase price	____ years	Not greater than _____% per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable	<input type="checkbox"/> Institutional
<input type="checkbox"/> B.	SECOND MORTGAGE LOAN	_____% of purchase price	____ years	Not greater than _____% per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable <input type="checkbox"/> Interest Only	<input type="checkbox"/> Institutional <input type="checkbox"/> Seller <input type="checkbox"/> Other

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## Conventional Loan Contingency Exhibit - F404

- ▶ Changed language regarding time frames & removed fill-in-the-blank for Appraisal Contingency Time Frame due to new language
- ▶ ¶ 13 - Length of Financing Contingency Period

3. Length of the Financing Contingency Period. The length of the Financing Contingency Period in Section 6 below shall be \_\_\_\_ days from the Binding Agreement Date.

- ▶ 2022

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

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## Conventional Loan Contingency Exhibit – F404

- ▶ **NEW ¶4** – Replaces the fill-in-the blank in 2022 ¶11 for the time frame for the Buyer to request Seller to sell at lower appraisal price
- ▶ **4. Length of Time for Buyer to Request a Reduction in the Sales Prices Based Upon a Loan Appraisal.** The time period for Buyer to request a reduction in the sales price of the property, if it appraises for less than the purchase price of the property, as set forth in Section 13 below, shall be \_\_\_\_ days from Binding Agreement Date.
- ▶ 2022

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

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## Conventional Loan Contingency Exhibit – F404

- ▶ **¶5** – Language describing that transaction is contingent upon financing – removed time frame & clarified & modified
- ▶ 2023

6. **Financing Contingency.** Buyer shall have a financing contingency period equal to the number of days set forth in Section 3 above to determine if Buyer has the ability to obtain the Loan(s) described above ("Financing Contingency Period"). Buyer shall be deemed to have the ability to obtain the Loan(s) unless prior to the end of the Financing Contingency Period, Buyer: a) notifies Seller that Buyer is terminating the Agreement because Buyer has been turned down for the Loan(s) and b) provides Seller within seven (7) days from the date of such notice a letter of loan denial from a mortgage lender based upon the mortgage lender's customary and standard underwriting criteria ("Loan Denial Letter"). The Loan Denial Letter and mortgage lender issuing the Loan Denial Letter must meet all of the requirements set forth elsewhere in this Exhibit but may be provided to Seller after the Financing Contingency Period has ended if the above-referenced seven (7) day period to provide the Loan Denial Letter falls outside of the Financing Contingency Period.

- ▶ Notwithstanding the above, the end of the Financing Contingency Period shall not limit the Buyer's rights under the Appraisal Contingency section of this Agreement, provided that the same has not expired.

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## Conventional Loan Contingency Exhibit – F404

### ▶ 2022

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

- ▶ **NOTE:** The Financing Contingency & Appraisal Contingency are completely SEPARATE
  - **Financing Contingency** – Lender’s assessment of Buyer’s ability to pay back loan
  - **Appraisal Contingency** – If Lender made a bad decision on lending \$\$, then this is assessment if collateral is valuable enough to pay back lender what he lost in exercising bad judgement with Buyer

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## Conventional Loan Contingency Exhibit – F404

- ▶ ¶11 – Appraisal Contingency – Removed Time Frame & re-worded to reference time frame agreed upon between Buyer & Seller in new ¶4
- ▶ 2022

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

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

- ▶ 2023 – in place of yellow above states: “by the end of the time period set forth in Section 4 above”

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## FHA Loan Contingency Exhibit – F407

- ▶ NOTE: FHA & VA changes are same as Conventional EXCEPT for Reference to Appraisal Contingency
  - FHA & VA Insured Buyers – Earnest Money is protected on a LOW Appraisal per the Amendatory Clause – a Federal regulation
  - Amendatory Clause prevails REGARDLESS of any Special Stipulation in contract or Amendment
- ▶ Listing Agents – DON'T be tricked by “Appraisal Gap” stipulation if Buyer is getting a government insured loan – that stip is NOT enforceable

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## FHA Loan Contingency Exhibit – F407

- ▶ Changes to Interest Rate language
- ▶ NEW ¶3 – Length of Financing Contingency
- ▶ ¶6 – Financing Contingency – similar to conventional but references “Amendatory Clause” vs. “Appraisal Contingency”
- ▶ 2023

~~6. **Financing Contingency.** Buyer shall have a financing contingency period equal to the number of days set forth in Section 3 above to determine if Buyer has the ability to obtain the Loan(s) described above (“Financing Contingency Period”). Buyer shall be deemed to have the ability to obtain the Loan(s) unless prior to the end of the Financing Contingency Period, Buyer: a) notifies Seller that Buyer is terminating the Agreement because Buyer has been turned down for the Loan(s) and b) provides Seller within seven (7) days from the date of such notice a letter of loan denial from a mortgage lender based upon the mortgage lender’s customary and standard underwriting criteria (“Loan Denial Letter”). The Loan Denial Letter and mortgage lender issuing the Loan Denial Letter must meet all of the requirements set forth elsewhere in this Exhibit but may be provided to Seller after the Financing Contingency Period has ended if the above-referenced seven (7) day period to provide the Loan Denial Letter falls outside of the Financing Contingency Period. Notwithstanding the above, Buyer’s right under the Amendatory Clause shall exist even after the Financing Contingency Period has expired.~~ Removed fill-in-the blank, modified, clarified separation of Financing vs. Amendatory clause (appraisal)

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## FHA Loan Contingency Exhibit – F407

### ▶ 2022

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

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## FHA Loan Contingency Exhibit – F407

- ▶ ¶ 12 – Amendatory Clause – added language that if Seller agrees to sell at lower appraisal value, then Buyer is obligated to buy

### ▶ 2023

- ▶ **12. Amendatory Clause.** It is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given in accordance with HUD/FHA requirements a written statement by the Federal Housing Commissioner or a Direct Endorsement lender setting less than \$\_\_\_\_\_. Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable. If the written statement by the Federal Housing Commissioner or a Direct Endorsement Lender sets forth an appraised value of the Property that is less than the minimum appraised value set forth in this amendatory clause, Seller may reduce the purchase price to an amount equal to such actual appraised value and the parties shall close at such lower purchase price with appropriate adjustments to the sales Agreement. This amendatory clause shall apply even when the Financing Contingency Period has terminated.

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## FHA Loan Contingency Exhibit – F407

### ▶ 2022

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

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## FHA Loan Contingency Exhibit – F407

- ▶ ¶16 – Repairs Required in FHA Commitment – just added clarifying language regarding Buyer getting Earnest Money back if any excess cost is not negotiated between the Buyer & Seller

### ▶ 2022

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

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

↑  
"without penalty to the Buyer"

- ▶ 2023 – NOW ¶16 – was 15 & “without penalty”

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## VA Loan Contingency Exhibit F410

- ▶ Same Changes as FHA Exhibit
  - Interest Rate
  - Financing Contingency
  - Amendatory Clause
  - Repair cost overage & no agreement, Buyer may terminate & will get EM back
  
- ▶ ¶15 (was 14) Re-Worded Termite Paragraph

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## VA Loan Contingency Exhibit F410

- ▶ ¶15 Re-Worded Termite Paragraph
  - Was ¶14
  - Choice of Who pays for Termite Letter
  - Seller pays for any re-inspection to check on fixed damage
  
- ▶ 2023

**15. VA Rules and Regulations: Termite Letter.** An Official Georgia Wood Infestation Report ("Termite Report") meeting the requirements of Georgia law and dated within 90 days prior to Closing, indicating that the Property is free of infestation from termites and other wood destroying organisms shall be obtained by and at the sole expense of  Buyer or  Seller. The VA Notice of Value will be conditioned upon the preparation of the above-referenced Termite Report meeting the above requirements. In the event the Property is not free of infestation from termites and/or other wood destroying organisms, Seller shall immediately cause the Property to be treated or retreated such that a Termite Report meeting the requirements of Georgia law indicating that the Property is free of infestation from termites and other wood destroying organisms can be issued within 90 days prior to the Closing. Any reinspection fee necessitated by Seller correcting infestation from termites and/or other wood destroying organisms shall be paid for by Seller. Buyer and Seller acknowledge that the Property may not meet VA's Minimum Property Requirements if it contains damage from a previous infestation of termites and/or other wood destroying organisms. In such event, Seller shall obtain a written estimate from a contractor to repair such damage and provide a copy of the same to Buyer. If the parties are unable to reach a written agreement as to the repair of this damage within three (3) days of the date that the contractor's estimate is provided by Seller to Buyer, then this Agreement shall automatically terminate.

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## VA Loan Contingency Exhibit F410

▶ 2022

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

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## USDA Loan Contingency Exhibit F413

- ▶ Same Changes as Conventional Exhibit
  - Interest Rate
  - Length of Financing Contingency
  - Financing Contingency language change
  - Appraisal Contingency reference to other new paragraph

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## Seller's Property Disclosure Statement Exhibit – F301

- ▶ ¶D – Fixtures Checklist – added language about changes only with Buyer's consent
- ▶ 2022

D. FIXTURES CHECKLIST  
**Directions on HOW TO USE:** It is often unclear what constitutes a fixture which remains with the Property versus personal property which does not remain with the Property. To avoid disputes, Seller shall have the right to remove all items on the checklist below that are left blank. THE ITEMS ON THE CHECKLIST BELOW THAT ARE CHECKED OR MARKED SHALL REMAIN WITH THE PROPERTY. All items remaining with Property shall include remotes and/or all accessories necessary for use. Unless otherwise indicated, if an item is left blank, the Seller may remove all of that item from the Property. For example, if "Refrigerator" is left blank, Seller may remove all Refrigerators on the Property. This checklist is intended to supersede the common law of fixtures with regard to the items below. The common law of fixtures shall apply to all items not on this checklist. Seller shall remove all items left blank below prior to closing or the transfer of possession, whichever is later. Seller shall lose the right to remove those items not timely removed but shall remain liable for the cost of Buyer having to dispose of such items provided that Buyer disposes of them within 30 days after Closing. In removing items, Seller shall use reasonable care to prevent and repair damage to the area where the item was removed.

Items identified as remaining with the Property shall mean those specific items as they existed in the Property as of the Offer Date. No such item shall be removed from the Property unless it is broken or destroyed. In the event such item is removed, it shall be replaced with a substantially identical item, if reasonably available. If not reasonably available, it shall be replaced with a substantially similar item of equal quality and value, or better. The same or newer model of the item being replaced in the same color and size and with the same functions or better shall be considered substantially identical. This section entitled "Fixtures Checklist" shall survive Closing.

2023 – added "Once the Seller's Property is under contract, the items that may be removed and taken by the Seller, as reflected in this Seller's Property Disclosure Statement, may only be amended with the written consent of the Buyer of the property."

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## Seller's Property Disclosure Statement (Condominium) Exhibit – F304

- ▶ ¶C1 – General – 2 new questions
  - (a) What year was the building in which Unit is located originally built? \_\_\_\_\_
  - (b) What year was the Declaration of Condominium first recorded? \_\_\_\_\_
- ▶ ¶C3 – Structural Items – reworded
  - (a) Is the condominium a condominium conversion?
  - If yes, what year was it converted? \_\_\_\_\_

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## Community Association Disclosure Exhibit – F322

- ▶ ¶A1 – Added option to type of Association

- ▶ 2022

A. KEY TERMS AND CONDITIONS

1. TYPE OF ASSOCIATION IN WHICH BUYER WILL OR MAY BECOME A MEMBER (Select all that apply. The boxes not selected shall not be a part of this Exhibit)
- |   |   |
|---|---|
| <input type="checkbox"/> Mandatory Membership Condominium Association | <input type="checkbox"/> Mandatory Membership Age Restricted Community  |
| <input type="checkbox"/> Mandatory Membership Community Association   | <input type="checkbox"/> All units are occupied by person 62 or older.  |
| <input type="checkbox"/> Mandatory Membership Master Association      | <input type="checkbox"/> At least 80% of the occupied units are occupied by at least one person who is 55 years of age or older |
|   | <input type="checkbox"/> Optional Voluntary Association   |

- ▶ 2023 – ADDED

- ▶  Voluntary Transitioning to Mandatory (Buyer shall be a
- ▶  voluntary or  mandatory member)

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## Sale or Lease of Buyer's Property Contingency Exhibit – F601

- ▶ ¶3A – Added language prohibiting Buyer from terminating if property sells for price other than listed
- ▶ 2022

3. The Agreement is contingent upon the occurrence of the following on or before \_\_\_\_\_ ("Contingency Period"). [Select A. and/or B. Any section not selected shall not be a 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 listing for sale with a real estate broker at a list price of not more than \$ \_\_\_\_\_ until it is either sold and closed or the Contingency Period expires.

- ▶ 2023 – Added

- ▶ (Nothing herein shall give the Buyer an ability to terminate the Agreement if the Property sells for an amount greater than the list price.)

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## Back-Up Agreement Contingency Exhibit – F604

- ▶ Lots of changes....
- ▶ to reference more than one back-up!



- ▶ 2023 – ¶1

- ▶ 1. Buyer and Seller acknowledge that this Agreement is a “back-up” Agreement in \_\_\_\_\_ place behind primary Agreement with a Binding Agreement Date of \_\_\_\_\_ for the purchase and sale of the Property between Seller and Primary Buyer identified as \_\_\_\_\_ (last name of Primary Buyer or authorized signatory) represented by or working with \_\_\_\_\_ (“Primary Buyer’s Broker”) and that back-up Buyer has no right to purchase the Property unless the Primary Agreement and other higher priority back-up agreements, if any and which are more specifically identified on Addendum to Back-Up Contingency Exhibit (F605), attached hereto and incorporated herein, are terminated and Seller gives notice to Buyer of the same.

- ▶ 2022 – ¶1

- ▶ 1. Buyer and Seller acknowledge that this Agreement is a “backup” or “Secondary Agreement” to the primary agreement, which may be amended from time to time, (“Primary Agreement”) with a Binding Agreement Date of \_\_\_\_\_ for the purchase and sale of the Property between Seller and \_\_\_\_\_ (“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.

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## Back-Up Agreement Contingency Exhibit – F604

- ▶ 2023 – ¶2 – Referenced termination if Seller closes with primary or higher back-up

- ▶ 2. Upon the closing of the sale of the Primary Agreement or a back-up agreement in a higher position, this Agreement shall terminate, and Buyer shall be entitled to a refund of Buyer’s earnest money.

- ▶ 2022

- ▶ 2. Upon the closing of the sale of the Primary Agreement, this Agreement shall terminate, and Buyer shall be entitled to a refund of Buyer’s earnest money.

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## Back-Up Agreement Contingency Exhibit - F604

- ▶ ¶13 & ¶14 - Referenced higher back-up contracts
- ▶ 2023
- ▶ 3. Buyer agrees that any amendments to the Primary Agreement or back-up agreement in higher positions shall not alter the priority of this back-up Agreement as a back-up agreement to the Primary Agreement and other back-up agreements in higher positions.
- ▶ 4. Buyer acknowledges that this Back-Up Agreement Contingency shall not give the Buyer a right to examine or be advised of the terms of the Primary Agreement and other back-up agreements in higher positions or any amendments thereof.

### ▶ 2022

3. Buyer agrees that any amendments to the Primary Agreement shall not alter the priority of this Secondary Agreement as a backup agreement to the Primary Agreement.
4. Buyer acknowledges that Buyer shall have no right to examine or be advised of the terms of the Primary Agreement or any amendment thereof.

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## Back-Up Agreement Contingency Exhibit - F604

- ▶ ¶15 - Referenced higher back-up contracts
- ▶ 2023 - after "Primary Agreement" new language added "and all other back-up agreements in higher positions"
- ▶ 2022

5. In the event the Primary Agreement is terminated, Seller shall deliver notice of the same to Buyer, this Agreement shall become primary and no longer subject to this Contingency Exhibit and Buyer and Seller shall close on this Agreement in accordance with its terms and conditions, provided, however, that: (a) notwithstanding anything to the contrary contained herein, all parties agree that the time limits (except the delivery and deposit of Earnest Money) shall 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.


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## NEW FORM – Addendum to Back-Up Agreement – F605

- ▶ Use this if there is MORE THAN ONE Back-Up Contract to identify the hierarchy of each Back-Up

**ADDENDUM TO BACK-UP AGREEMENT  
CONTINGENCY EXHIBIT**

  
2023 Printing

This Addendum is part of the Back-Up Agreement Contingency Exhibit “\_\_\_” of the Agreement with an Offer Date of \_\_\_\_\_ for the purchase and sale of that certain Property known as \_\_\_\_\_, Georgia \_\_\_\_\_.

The following back-up agreements are in higher position than this Back-Up Agreement.

The Primary Back-Up Agreement has a Binding Agreement Date of \_\_\_\_\_ for the purchase and sale of the Property Between Seller and Primary Buyer identified as \_\_\_\_\_ (last name of Primary Buyer or authorized signatory) Represented by or working with \_\_\_\_\_ (“Primary Buyer’s Broker”).

The Second Back-Up Agreement has a Binding Agreement Date of \_\_\_\_\_ for the purchase and sale of the Property Between Seller and Second Buyer identified as \_\_\_\_\_ (last name of Second Buyer or authorized signatory) Represented by or working with \_\_\_\_\_ (“Second Buyer’s Broker”).

The Third Back-Up Agreement has a Binding Agreement Date of \_\_\_\_\_ for the purchase and sale of the Property Between Seller and Third Buyer identified as \_\_\_\_\_ (last name of Third Buyer or authorized signatory) Represented by or working with \_\_\_\_\_ (“Third Buyer’s Broker”).

The Fourth Back-Up Agreement has a Binding Agreement Date of \_\_\_\_\_ for the purchase and sale of the Property Between Seller and Fourth Buyer identified as \_\_\_\_\_ (last name of Fourth Buyer or authorized signatory) Represented by or working with \_\_\_\_\_ (“Primary Buyer’s Broker”).

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## Exclusive Seller Brokerage Agreement – F101

- ▶ NEW ¶A7 – Lead-Based Paint

**7. Lead-Based Paint Disclosure.** Federal law requires disclosure of lead-based paint in homes/residential properties, or a portion thereof, constructed prior to 1978. [select one below]

**NEW Paragraph** a.  A dwelling on the Property, or portion thereof, was constructed prior to 1978, Seller agrees to complete and provide Broker with a signed Lead-Based Paint Disclosure Exhibit (F316) at the same time as the signing of this Agreement and is attached as Exhibit \_\_\_\_\_.

OR

b.  No dwelling on the Property, or portion thereof, was constructed prior to 1978.

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## Lead-Based Paint Disclosures

- ▶ Federal law requires that before being obligated under a contract to buy housing built prior to 1978, buyers must receive the following from the homeseller: (Forms also available at [www.EPA.gov](http://www.EPA.gov))
  - Lead-Based Paint Informational Pamphlet / Disclosure
    - CB04 – Lead Based Paint Pamphlet
    - CB13 – Protect Yourself When Buying a Home
    - F319 – Disclosure Information Concerning Lead Upon Transfer of Residential Property 42 U.S.C. §4852(d)
  - Seller's Disclosure regarding knowledge of Lead-Based Paint in property
    - F316 – Lead Based Paint Exhibit
    - F918 – Lead Based Paint Exhibit (Leases)
    - Seller must sign & make these available to prospective Buyer PRIOR to entering into a contract
- ▶ Seller must allow Buyer (if desired by Buyer) a 10 day risk assessment of LBP

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## Lead-Based Paint Resources

- ▶ EPA – [www.EPA.gov](http://www.EPA.gov)
- ▶ GA Environmental Protection Division – <https://epd.georgia.gov/about-us/land-protection-branch/recovered-materials-and-abatement/lead-based-paint>
- ▶ GA Department of Community Affairs – <https://www.dca.ga.gov/housing/homeless-special-needs-housing/emergency-solutions-grants/esg-resources-current-3>

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## Exclusive Seller Brokerage Agreement – F101

- ▶ New ¶ B3(b) – Images – disclosure to Seller – people may take pics & video

**NEW** **b** **Images:** Seller agrees to remove any personal property prior to listing the Property of which Seller does not want images to be so captured. Broker shall not be liable to Seller if other brokers or buyers take photographs, videos or use other technology to capture and manipulate images of the Property without the permission of the Seller and Broker.

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## May Agent Take Pix or Video to Market Another's Listing?

- ▶ License Law – GREC Rule 520-1-.09
- ▶ “A licensee shall not advertise any real estate for sale unless the licensee has first secured the **written permission** of the **owner**; the **owner's authorized agent** (i.e. Broker) or the owner of a leasehold estate. When such permission is granted, a licensee advertising real estate that is listed with another firm shall clearly and conspicuously disclose the name of the listing firm unless the listing firm has expressly agreed in writing to waive those clear and conspicuous disclosures.”
- ▶ IDX Reciprocity – ONLY extends to Broker & Agent WEBSITES with signed Agreement – this permission does NOT extend to agent's social media sites

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## Exclusive Seller Brokerage Agreement - F101

- ▶ ¶B4(b) - Sharing of Commission & MLS membership
- ▶ 2023
  - b. **Sharing of Broker's Commission with Cooperating Broker:** If specified in Section A herein, 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, if any. There may be times when the Broker may not pay the cooperating broker the full amount of the commission as set forth in Section A herein. If this Agreement specifies that no commission is being paid by the Seller's Broker to the cooperating broker, then no such commission obligation shall exist. Seller's Broker shall have no obligation to pay any cooperating broker who is not a participant of any of the Multiple Listing Service(s) in which the Property is listed a commission unless cooperating broker has negotiated and executed with the Seller's Broker a Co-Op Commission Agreement (F258).
- ▶ 2022
  - b. **Sharing of Broker's Commission with Cooperating Broker:** If specified in Section A herein, 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, if any, referenced in Section A herein. There may be times when the Broker may not pay the cooperating broker the full amount of the commission as set forth in Section A herein. If this Agreement specifies that no commission is being paid by the Seller's Broker to the cooperating broker, then no such commission obligation shall exist.

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## Point of Practice - Get Listing Agent to Sign F258 PRIOR to Showing

**CO-OP COMMISSION AGREEMENT**  
 (TO BE USED PRIOR TO SHOWING)

Georgia REALTORS  
 2022 Printing

RE: Property located at \_\_\_\_\_

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Seller's Broker and Buyer's Broker hereby confirm the co-op commissions to which each will be entitled upon the closing of the above-referenced transaction.

1. **Commissions Paid By Seller:**  
 The Seller's Broker agrees to share the commission paid by Seller with the Buyer's Broker by paying the Buyer's Broker the following: \$ \_\_\_\_\_ % of the purchase price. (other) \_\_\_\_\_

2. **Commissions Paid By Buyer:**  
 The Buyer's Broker agrees to share the commission paid by Buyer with the Seller's Broker by paying the Seller's Broker the following: \$ \_\_\_\_\_ % of the purchase price. (other) \_\_\_\_\_

3. **General:**  
 A. Neither Broker shall have a claim for a commission against the other Broker in the event a closing does not occur.  
 B. Notwithstanding the above, signing this Agreement shall not constitute a waiver specifically provided for herein, waive or limit the right of the Buyer's Broker or Seller's Broker to challenge, after the closing, either the entitlement to, or the amount of any commission paid or not paid hereunder, or to assert any claim or seek adjustment regarding the same.

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

Additional Special Stipulations (F249) are attached.

Buyer Brokerage Firm: \_\_\_\_\_ Seller Brokerage Firm: \_\_\_\_\_

Broker/Related Licensee Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Broker/Related Licensee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Broker's Phone#: \_\_\_\_\_ Broker's Phone#: \_\_\_\_\_

Broker's FAX#: \_\_\_\_\_ Broker's FAX#: \_\_\_\_\_

REALTOR® Membership: \_\_\_\_\_ REALTOR® Membership: \_\_\_\_\_

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## Multiple Listing Services are Membership Based

### ▶ FMLS –

#### Rule 2 - Duties of FMLS Office

- 2.1 To act as a central processing and distribution point for the benefit of Members.
- 2.2 To receive FMLS Listings and other specified material from Members, process such information and distribute necessary information to Members.
- 2.3 To maintain, on a confidential basis, information and materials related to the business of FMLS. Information and materials related to the business of FMLS shall be made available to Principal Members on a uniform and consistent basis.

### ▶ Gamls

#### Section 1. A multiple listing service is:

- a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and customers and the public
- a means by which authorized participants make blanket unilateral offers of compensation to other participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law)
- a means of enhancing cooperation among participants
- a means by which information is accumulated and disseminated to enable authorized participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers
- a means by which participants engaging in real estate appraisal contribute to common databases

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## Exclusive Seller Brokerage Agreement – F101

- ▶ NEW ¶B7 – Lead Based Paint – corresponds to ¶A7
- ▶ Re-arranged from information from ¶C1 – “Seller’s Property Disclosure Statement” info

**NEW** 7. **Lead-Based Paint Disclosure.** As required by federal law (*Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X*), if any portion of a residential dwelling was built prior to 1978, the Lead-Based Paint Disclosure Exhibit (F316) is hereby attached as an exhibit to this Agreement. The term “residential dwelling” includes any painted fixture or material used therein that was built or manufactured prior to 1978. Broker is hereby authorized to distribute any Lead-Based Paint Exhibit to buyer interested in Property.

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## Exclusive Seller Brokerage Agreement – F101

- ▶ ¶C1 – Seller’s Property Disclosure Statement – added “known” latent defects & moved LBP info to new ¶B7

- ▶ 2023 – ¶C1

1. **Seller’s Property Disclosure Statement.** Georgia Law (O.C.G.A. §51-6-2) requires that a Seller disclose known 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 & Fixtures Checklist. Broker is hereby authorized to distribute the Seller’s Property Disclosure Statement to buyers interested in Property. Seller agrees to promptly update any of the above-referenced disclosure documents through the Closing should any changes occur. **Lead Paint Info moved to B7 above**

- ▶ 2022 – ¶C1

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 & Fixtures Checklist. If any dwelling 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.

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## About Seller Disclosures...

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

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## “Stigmatized” Property

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

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

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

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## GA Licensed Agent Must ALSO Disclose Known Latent Material Defects

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

▶ (1) All adverse material facts pertaining to the physical condition of the property and improvements located on such property including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer; and

(2) All material facts pertaining to existing adverse physical conditions in the immediate neighborhood within one mile of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and plans; zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions. ....

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

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## GA Licensed Agent Must ALSO Disclose Known Latent Material Defects

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

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## Exclusive Seller Brokerage Agreement – F101

- ▶ **NEW ¶C6r** – under “Miscellaneous” – defined “N/A” = “Not Applicable” Also in Buyer Brokerage

- ▶ **2023**

**Use of Initials “N/A”:** The use of the initials “N/A” or “N.A.” in filling out a blank in this Agreement shall mean “not applicable”.

- ▶ **NOTE: Counter-Offer F249 – Use of “N/C”**
- ▶ **If no change, do NOT put “N/A” because that provision DOES apply – just not changed from original offer**

**E. Terms and Conditions.** The following terms and conditions of the Original Offer are modified as follows: *[The sections not filled in or marked N/C (for “no change” which shall mean that no change is being proposed to that section of the agreement) shall not be a part of this Counteroffer and shall remain the same as set forth in the Original Offer.] Do NOT put “N/A”!!!*

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## Temporary Occupancy Agreement for Seller after Closing- F219

- ▶ Lots of Changes!
- ▶ ¶2 – Additional items for Seller to provide Buyer at Closing
- ▶ 2022

2. At the time of closing, Seller shall provide Buyer with one set of keys to the Property. At time of possession, Seller shall turn over all remaining keys, door openers, codes and other similar equipment remaining to the Property in Seller's possession to Buyer.

- ▶ 2023 – Added:
- ▶ “door openers, codes and other similar equipment needed to access the property.”

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## Temporary Occupancy Agreement for Seller after Closing- F219

- ▶ ¶8 – added additional responsibilities for Sellers to maintain the property while occupying
- ▶ 2022

8. Seller shall be liable for the expense of repairing any damage to the Property caused by Seller or Seller's family members, licensees and invitees, excluding normal wear and tear. Buyer, as the new owner, shall be responsible for making all other repairs to the Property.

- ▶ 2023 – at end of above, added:
- ▶ “Notwithstanding the above, Seller agrees to continue to perform all routine maintenance during Seller's temporary occupancy of the Property including by way of example only, cutting the grass, keeping the property clean and free of trash and debris, maintaining pool chemicals and changing filters, lightbulbs and batteries as needed. Seller shall promptly report to Buyer any obvious need for maintenance or repairs to the Property.”

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## Temporary Occupancy Agreement for Seller after Closing- F219

- ▶ NEW ¶9 – Buyer (new owner) right to access property
- ▶ 9. Upon 24 hours advance notice to Seller, Buyer and Buyer's representative(s) shall have the right Monday through Saturday from 9:00a.m. to 8:00p.m. and Sunday from 1:00pm to 6:00pm to access the Property to inspect, repair, and maintain the Property. In addition, Buyer and Buyer's representative(s) may enter the Property at any time to investigate potential emergencies. Evidence of water leaks, fire, smoke, foul odors, sounds indicating the possibility of an injured person or animal and other similar evidence of an emergency shall be sufficient grounds for Buyer and Buyer's Representative(s) to enter Property for this purpose."

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## Temporary Occupancy Agreement for Seller after Closing- F219

- ▶ ¶11 – Added language about Seller's liability to Buyer if Seller fails to timely vacate
- ▶ 2022

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 holdover 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.

- ▶ 2023 – at end of above, added:
- ▶ "The holdover rent is intended to partially compensate Buyer for losses, damages, and expenses, including delaying Buyer's possession, and the additional costs to move associated with the delay, or ability to secure a replacement tenant or causing a sales transaction to be terminated or postponed. If Buyer incurs additional costs due to the delay or loses a prospective tenant or sales transaction because Seller fails to vacate Property upon expiration of this Temporary Occupancy Period, Seller will be liable for such damages as buyer can prove because of Seller's wrongful failure to vacate."

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## Temporary Occupancy Agreement for Seller after Closing- F219

- ▶ NEW ¶15 – Property Insurance – Structure vs. Contents – Parties need to discuss with their insurance companies
- ▶ 15. PRIOR TO THE COMMENCEMENT OF THIS TEMPORARY OCCUPANCY PERIOD, BUYER AND SELLER ARE ADVISED TO CONSLT WITH THEIR RESPECTIVE PROPERTY INSURANCE AGENTS TO CONFIRM THAT THEIR REAL AND PERSONAL PROPERTY, AS THE CASE MAY BE, WILL BE INSURED DURING THE TEMPORARY OCCUPANCY OF THE PROPERTY.”

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## NEW FORM – Amendment to Assign Agreement – F735

- ▶ No copy as of 12/7/22
- ▶ Notes to Remember about Assignment:
  - GAR contracts are NOT assignable without Seller’s Written Permission – ¶C4e in Purchase & Sale
  - Must Use Special Stipulation
  - 610 – “Assignment” or 611 – “Seller Consents to Assignment”

### SS 610 ASSIGNMENT

Except where Seller is either providing owner financing to Buyer to purchase the Property or Buyer is assuming an existing loan on the Property for which Seller remains liable, this Agreement may be assigned by Buyer. In such event, Assignee and Buyer shall remain jointly and severally obligated to perform the terms and conditions of the Agreement.

### SS 611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT

Seller consents to Buyer assigning this Agreement to another buyer (“Assignee”) and having Assignee become the buyer thereunder.

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## Thank you!

- ▶ Remember to Confirm all Contract Questions with your Broker!
- ▶ Please attend Additional Courses:  
[www.registerforREclasses.com](http://www.registerforREclasses.com) – select a geographic area or “Marietta” for ALL Virtual Classes
- ▶ Course Offered through: Real Estate Academy of America (GREC School #6915)
- ▶ Handouts available for download for your personal study use at: [www.eAGENTweb.com](http://www.eAGENTweb.com) .... Select “Training Videos” .. Scroll through page for the class
- ▶ Hosted by: Maximum One REALTORS® Companies
- ▶ Credits to be recorded within 3–5 Business Days
  
- ▶ **Contract Tip Videos: YouTube Channel:**  
**“Real Estate Made Crystal Clear”**
  
- ▶ **Have a joyous & prosperous year helping others with their real estate needs!**

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