

# 2023 Contracts Review GAR vs. RE Forms

GREC Course #75554  
Real Estate Academy of America  
GREC School #6915

Handout #1 of 3  
Table of Differences



Presented by: Dana Sparks  
[Dana@MaximumOneRealty.com](mailto:Dana@MaximumOneRealty.com)  
[www.KeepMoreCommission.com](http://www.KeepMoreCommission.com)

Real Estate Academy of America \* 3 Hrs for CE Credit \* GREC Course #75554

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 Contract Review: GAR vs. RE Forms GREC Course #75554

This is a Classroom / Virtual / Remote Broadcast of an approved in-class course, is 3 hours in duration, and is approved by the Georgia Real Estate Commission for the purpose of Continuing Education (CE.) There are no pre-requisites to receive credit for this course. You may ONLY take one Virtual CE class at a time or with overlapping times regardless of the school offering the course in order to get CE credit for either course.

Your instructor(s) for this course will be: Dana Sparks

This course does NOT have required homework not any required written examination.

Attendance policy:

All students must be on-time and present for all remote / virtual broadcast instruction hours in order to receive **credit for this course. Roll call and documentation of Student's Real Estate License Number will be conducted via a "Chat Function" at the beginning and end of each session, and after all breaks.**

Continuing Education Notice:

Students may only receive credit for a specific course number once every twelve months. If you have already received credit for this course within the last twelve months, you are invited to attend but will not receive additional credits.

Prohibition of Recruitment:

No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the school premises. Report promptly any effort to recruit on behalf of a brokerage firm by anyone including a fellow student to the Director of Georgia Real Estate Academy, Dana Sparks 678-580-6880, the Coordinator of Georgia Real Estate Academy, Heidi Kelly, 770-919-8825 ext. 306, [CE@RealEstateAcademyofAmerica.com](mailto:CE@RealEstateAcademyofAmerica.com) or the Georgia Real Estate Commission.

GAR Contract vs. RE Forms Contract:

Issue	GAR	Paragraph	RE Forms	Paragraph
Date on Forms	Current Calendar Year – updated semi-annually January & May-ish		Dated the last year form was revised	
Fill In the Blanks	Page 1 of Contract		Throughout the Contract	
# of Pages	9		5 + 9 pages of <b>“Standard Terms”</b> Total = 13	RE100 – Contract RE1 – Standard Terms
Forms	Specific Forms for Variety of Situations		Multi-Use Forms	i.e. Amendment to Contract may be used to Amend Brokerage, Purchase, Lease, etc.
Purchase & Sale Contract				
Issue	GAR	Paragraph	RE Forms	Paragraph
Names of Parties	Signature Page		Front Page & Signature Page	
Signatures / Initials	Bottom of 1 <sup>st</sup> Page Signature Page		Initial Every Page Sign Signature Page	
Sale Price	Numerals	F201 – A2	Numerals & Words	RE100 - 2
Closing Cost – Amount	Specific Amount	F201 – A3	Amount OR Percentage of Sale Price	RE100 - 5
Holder of Earnest Money	If Attorney, <b>REQUIRES GAR F510 as Exhibit AND F511 as Agreement Signed by Closing Attorney</b>	F201 – A6	Nothing noted if it <b>is not the Seller’s or Buyer’s Broker</b>	RE100 - 3
Form of Earnest Money	Check, ACH, Cash, Wire Transfer	F201 – A7	Check, Certified Funds, Money Order, Cash	RE100 - 3
Due Diligence <b>Period / “Buyer’s General Right to Terminate”</b>	Negotiate Time Frame & fee for Due Diligence Option is \$10 – Never changes hands	F201 – A8	Negotiate Time Frame for this Contingency	RE100 - 6
<b>“Additional”</b> Option Money for Due Diligence (High Competition)	Negotiate Additional Fee for Due Diligence Option – in addition to the \$10	F201 – A8 – goes directly from Buyer to Seller	Only the \$10 – Never changes hands – no provision for additional	Not addressed

Purchase & Sale Contract				
Issue	GAR	Paragraph	RE Forms	Paragraph
Labels for Brokers	“Seller’s” vs. “Listing” & “Buyer’s” vs. “Selling”	Throughout	“Seller’s” Broker & “Buyer’s” Broker	Throughout – since beginning of forms in 2012
Additional Information & Further Explanations to Purchase & Sale Agreements				
Additional Info & Explanations	Begins on Paragraph B	Purchase & Sale - & Most of the Forms	A bit throughout Contract	Mostly in “Standard Terms” – RE1
Deed	Limited Warranty	F201 - B1a	Limited Warranty	RE1 - 1
Title	Good & Marketable	F201 - B1a & b	Good & Marketable	RE1 - 1
Closing Costs – Use by Buyer - Commission added in 2023	Mortgage lender /Buyer may use for any costs incl Buyer-owed commission & unused sums go back to Seller	F201 – 3a	Any purpose whatsoever – merely at the discretion of the Buyer	RE1 – 5.5
Prorations	Fees to be prorated based on estimates & any differences to be negotiated directly between parties once actual bills come out. Prorations include appeals & liabilities	F201 – B3c	Fees to be prorated based on estimates & any differences to be negotiated directly between parties once actual bills come out. Parties may choose in writing to not prorate or prorate as of possession vs. Closing	RE1 – 5.2
Liability for Ad Valorem Property Tax	Liability is with Buyer as of closing – i.e. Buyer must pay county & city taxes based on actual bill if they close based on estimate or property tax under appeal	F201 – B3c	Not addressed	

Purchase & Sale Contract

Issue	GAR	Paragraph	RE Forms	Paragraph
Delay in Closing <b>IMPORTANT DIFFERENCE</b>	8 Day Unilateral Right to Extend	F201 – B4a  Right to extend by either party – specific issues & may only be used once per contract	Must be Extended by Mutual Agreement UNLESS there is a Lender Delay or additional costs imposed upon Seller & Buyer sends Notice (then Seller may terminate or continue)	RE1 – 6.3.2  Termination Right by Seller – specific issues & procedures
Closing Attorney Firm	Buyer Chooses Represents Lender	F201 – B5	Buyer or Seller Chooses Represents Lender	RE100 - 4
Attorney if No Loan	Attorney represents Buyer – CHECK with Attorney! NOT legal representation if there is a dispute	F201 – B5	Party to select is negotiated in contract No Mortgage, then Negotiate which party shall <b>“SELECT” Closing Attorney</b>	RE100 - 4
Earnest Money Deposit	5 Banking Days	F201-B6	3 Banking Days	RE100 – 3.1
Form of Earnest Money & Fees	Holder must approve form (i.e. <b>most won't accept</b> ACH or cash app) & Holder may charge Buyer a Fee if incurred by Holder	F201 – B6	Not addressed	
Buyer Default on EM – Time to Cure	3 Banking Days	F201 – B5	3 Calendar Days	RE1 – 3.3
If No Cure	Seller may Terminate within 7 days of Notice of No Cure			

Purchase & Sale Contract

Issue	GAR	Paragraph	RE Forms	Paragraph
Disbursement of Earnest Money	Same in Both - Except if Holder disburse \$600+ to Seller, Holder may request W9 from Seller If No Agreement of <b>“Release” of T&amp;R</b> <ul style="list-style-type: none"> <li>• 10 Day Letter</li> <li>• Interplead</li> </ul> Note: If Cash & Attorney is Holder – ONLY interplead	F201 – B7 F201 – B7b	Same as GAR	RE1 – 3.4
Utilities	Seller to turn on utilities	F201 – B8c	Negotiate Buyer or Seller to turn on utilities.	RE100 - 7
<b>Point of Practice:</b> If Utilities Not On, Add This Stipulation: <b>“Buyer’s Due Diligence (General Right to Terminate) Period to begin upon Binding Agreement (Acceptance) Date &amp; Extend for ____ days after Buyer’s receipt of written notification from Seller that utilities are on and operational.”</b>				
Inspection by <b>Buyer &amp; Buyer’s</b> Representatives	Right to Inspect Property Buyer may enter - from Binding Through Closing Duty to Inspect Neighborhood	F201 – B8a - c	Duty to Inspect Buyer may enter - from Binding Through Closing	RE100 – 7.1
Damage from Inspection	Hold Broker & Seller Harmless Buyer to repair any damage caused by inspections & indemnify Brokers & Seller	F201 – B8d	Hold Broker Harmless Buyer to repair any damage caused by inspections <b>“Inspection” =</b> others hired by Buyer	RE100 – 7  RE100 – 12.9.8
Contingencies in Purchase & Sale	Due Diligence Only	F201 – A8 & B8	<b>Buyer’s Right to Terminate (= DD)</b> Appraisal Contingency Financing Contingency MUST CHECK BOX	RE100 – 6 & RE1 - 6

**Purchase & Sale Contract**

Issue	GAR	Paragraph	RE Forms	Paragraph
Repairs	Good & workmanlike manner prior to closing	F201 – B8i	Good & workmanlike manner 3 days prior to closing	RE1 – 7.3
<p><b>Point of Practice:</b> At time that Buyer &amp; Seller negotiate for Repairs is the time to address what happens if the Seller fails to complete repairs. If this is not addressed now, difficult to get a signed Amendment later and a Buyer may NOT necessarily just terminate. See various Repair Stipulations in <b>Georgia Real Estate Academy Document “Special Stipulations to Consider – 2022” &amp; check with your Broker or Closing Attorney.</b></p>				
<p><b>Point of Practice:</b> Consider the following Special Stipulation: <b>“At closing from Seller’s Proceeds, Seller to pay \$ _____ to __ (Name of vendor chosen by Buyer)_____.”</b>  <b>THIS stip does not impact a Buyer’s Loan &amp; gives Buyer control – avoids many negative issues at closing!</b></p>				
Broker/Agent Limits of Authority	Broker owes no duty outside of what is described in Buyer Brokerage or Listing Agreement 2023 – NEW Reference to having BOTH sides but NOT Dual Agency	F201 – B10a	Buyer & Seller have not relied on any given or implied advice from Broker/Agent	RE1 – 8.3
Broker/Agent Disclaimer	*Buyer/Seller – not relied on advice or representations of Broker. *Special Stips – Parties approve *Agent-Answers to questions are from information provided by Seller	F201 – B10c	Broker owes No Duty Greater Than what is in Brokerage Agreements & BRETТА (OCGA 10-6a-1)	RE1 - 8
<p><b>Point of Practice:</b> To answer Public Questions, Use GAR F325 Broker Information Disclosure – states question, answer, source of answer &amp; no guarantee</p>				
Notice by Email	Receipt = When Sent even if not opened	F201 – C1b	Receipt = When sent	RE1 – 11
Change of Address – Notice	Address / Email Address / Fax Number on signature page in contract – or subsequently changed	F201 – C1b	If no notification, <b>then = “received”</b> Change of address must be 5 banking days Notice	RE1 - 11

Purchase & Sale Contract				
Issue	GAR	Paragraph	RE Forms	Paragraph
Remedy of Seller Upon Default by Buyer	Seller's sole remedy shall be to retain the earnest money as full liquidated damages.	F201 – C2a	Seller to get Earnest Money as Liquidated Damages	RE1 - 10.1 (change as of 2019) Used to say <b>“Any remedy under the law”</b>
Remedy of Buyer Upon Default by Seller	1) to sue for specific performance OR 2) terminate the contract with the return of Earnest Money.	F201 – C2b	Accept Earnest Money OR Sue Seller for Specific Performance. No actual damages	Standard Terms – Paragraph 10.2
Remedy for Broker	Commission that would have been earned	F201 – C2c	Commission that would have been earned	RE1 – 10.3
Condition of Property	As of OFFER Date <b>“substantially same condition” *</b> <b>“clean &amp; free of trash &amp; debris &amp; personal property of Seller not identified as remaining”</b>	F201 – C3	<b>As of “Acceptance”</b> (Binding) Date <b>“same condition normal wear &amp; tear excepted”</b> Broom clean all garbage, debris & personal property & belongings removed	RE1 – 7.3
Damage to Property before Closing	Buyer or Seller may terminate. If no termination Seller has 1 year to restore property & transaction must close within that 1 year or within 7 days from property being restored. As of OFFER Date	F201 – C3	Buyer may terminate OR Buyer may buy with all Insurance Proceeds being transferred to Buyer. As of <b>“Acceptance” Date.</b>	RE1 – 7.4
Changes or Termination of Contract	Any Changes of Agreement to terminate must be done in writing & signed by parties	F201 – C4e	Termination defined & references right to do so per separate provisions in Agreement	RE1 – 12.9.13
Assignment of Contract	May NOT be assigned without <b>Seller’s permission</b>	F201 – C4e	Not referenced	



Purchase & Sale Contract				
Issue	GAR	Paragraph	RE Forms	Paragraph
<b>Point of Practice:</b> If Buyer know Buyer will assign, use GAR Special Stipulation SS 611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT Seller consents to Buyer <b>assigning this Agreement to another buyer (“Assignee”)</b> and having Assignee become the buyer thereunder.				
<b>Point of Practice:</b> If Assignment, also use GAR F279 – Assignment Agreement – signed by Investor & End Buyer AND GAR F735 – Amendment to Assign Agreement – signed by Seller & Investor (NEW in 2023)				
Extension of Deadlines	No automatic extensions if they fall on weekend or Federal Holiday EXCEPT Closing Date	F201 – C4f	Only extensions referenced pertain to New Construction	RE1 – 7.2.5
FIRPTA Affidavit New in 2023	Foreign Investment in Real Property Tax Act	F201 – C4g	Not Referenced	
GAR Forms Use	No party required to use Courts may rule against contract despite intent of parties Must be authorized user	F201 – C4h	Not Referenced	
No Authority to Bind	Agent is NOT POA for Client	F201 – C4j	<b>“Party” does NOT</b> include Broker/Agent	RE1 – 12.9.10
Objection to Binding Agreement Date	May be resolved by Parties in writing, court, Holder of EM Objection MUST be addressed within 1 day of Notice of BAD	F201 – C4j - I	Binding Agreement <b>Date = “Acceptance Date”</b>	RE1 – 12.9.1
<b>Point of Practice:</b> Get on the same page immediately regarding Binding Agreement Date – Earnest Money is potentially at stake upon termination. See GAR F733 – <b>“Binding Agreement Date Confirmation Amendment”</b>				
Rules for Interpreting Agreement	Hierarchy of control: Pre-printed → Handwritten → Exhibit → Special Stipulation	F201 – C4m	Exhibits shall prevail over contract Stipulations prevail over exhibits	RE100 – 9 – Exhibits & Stipulations
Appraisal Gap Stipulation & FHA / VA Loan	Amendatory Clause supersedes over any Stipulation	F201 – C4m	FHA & VA Exhibit shall control	RE200 – FHA Exhibit RE201 – VA Exhibit

Purchase & Sale Agreement				
Issue	GAR	Paragraph	RE Forms	Paragraph
Statute of Limitations	2 years from date of claim	F201 – C4n	Not referenced	
Survival of Closing	*Commission *Title *Written warranties of Seller – property & neighborhood * Buyer indemnification if damage from inspection (NEW in 2023) *Condemnation of Property * <b>Attorney’s fees</b> *Ad Valorem Property Taxes *Any obligation parties agree shall survive <b>(Use Magic Phrase)</b> * <b>Seller’s interest in</b> warranties, service contracts, etc. a	F201 – C4b	<b>“the provisions of the contract shall survive closing.”</b>	RE1 – 12.7
<b>Point of Practice:</b> <b>“Magic Phrase” = “This provision shall survive closing.”</b> – this phrase then ties that agreement between the parties into the survival items per the GAR contract. Important to use when negotiating for Home Warranties & Repairs.				
Time is of the Essence	Dates are firm	F201 – C4q	Dates are firm	RE1 – 12.6
Binding Contract (same definition)	<b>“Binding Agreement”</b>	F201 – C5b	<b>“Accepted Contract”</b>	RE1 – 12.9.1
<b>Point of Practice:</b> The party making the last offer or counter offer is the party that BINDS the contract.				
Usage & Definition of Days	Days = Calendar Days <b>“Business” &amp; “Banking” Days =</b> Mon – Fri except Federal Holidays	F201 – C5a & d & e	<b>“Days” = Calendar Days</b> <b>“Banking Days” =</b> Mon – Fri except Federal Holidays	RE1 – 12.9.3
Wire/Cyber Fraud	CyberFraud Disclaimer Hold Harmless & Liability not greater than Commission paid or \$100 if no commission	F201 – C6 F201 – C7	Wire Fraud Disclaimer & Hold Harmless No specific liability amount for <b>“cyber fraud”</b>	RE100 – 8.5

Purchase & Sale Agreement				
Issue	GAR	Paragraph	RE Forms	Paragraph
Broker / Agent Liability	Not greater than amount of commission or if No commission, then not greater than \$100	F201 – C7	Limited to amount of commission per the transaction	RE1 – 8.3
Technology & Privacy	Seller Brokerage Agreement – Marketing paragraph – “ <b>Seller</b> acknowledges other Brokers & Buyers may take photos or <b>video...</b> ”	F101 – B3b & c “ <b>images</b> ” – new in 2023	Disclaimer & Buyer waiver of claims against Seller for any recordings of Buyer in home	RE1 – 9.1
Consumer Brochures & Disclosures				
GAR		RE Forms		
CB01 The <b>ABC’s of Agency</b> CB04 Lead-Based Paint Pamphlet CB07 Mold Pamphlet <b>CB08 EPA Home Buyer’s and Seller’s</b> Guide to Radon Pamphlet CB10 Protect Yourself When Selling Real Property CB16 What to Consider When Buying a Home in a Community with a Homeowners Association (HOA) CB19 What to Consider When Buying a Home in a Condominium CB22 Protect Yourself When Buying a Home to be Constructed CB25 What Buyers Should Know About Flood Hazard Areas and Flood Insurance CB28 What Buyers and Sellers Should Know About Short Sales and Distressed Properties CB31 What New Landlords Need to Know About Leasing Property F316 Lead-Based Paint Exhibit F319 Disclosure Information Concerning Lead Upon Transfer of Residential Property – 42 U.S.C. § 4852(d) F322 Community Association Disclosure Exhibit <b>F325 Broker’s Information Disclosure</b> F328 DeKalb County Plumbing Disclosure		RE140 Disclosure of Information on Lead-Based Paint <b>RE141 EPA’s Protect Your Family from Lead in Your Home</b> <b>RE142 EPA’s A Brief Guide to Mold, Moisture, and Your Home</b> RE143 DeKalb County Plumbing Disclosure Exhibit <b>RE144 EPA’s A Citizen’s Guide to Radon</b> RE145 Home Selling- The Process RE146 Home Buying- The Process RE147 Renting Property- The Process RE148 Transactions Involving Out of State Residents		
<b>Point of Practice:</b> Get appropriate Brochures / Disclosures to your Clients & Customers				

Loan Contingencies				
Issue	GAR	Paragraph	RE Forms	Paragraph
Cash or Not Contingent Upon Financing	Separate Exhibit	F401 – No Financing Contingency Exhibit	In Contract – Just <b>Don't Check Box for</b> Financing Contingency	RE100
Financing Contingencies	Separate Exhibits	F404 – Conventional F407 – FHA F410 - VA	Included in Contract EXCEPT FHA & VA No USDA	RE100 - Contract RE200 – FHA RE201 - VA
Terms & Time Frames of Loan Contingencies	On the Loan Exhibits	F404 - Conv F407 - FHA F410 - VA	All Time Frames on the Purchase & Sale Agreement FHA – Terms on Exhibit VA – Terms on Exhibit	RE 100 – 6  RE 200 – FHA RE201 - VA
Termination Based on Financing	Termination Notice within negotiated time frame Loan Denial Letter within 7 days	ALL	Termination Notice & SIMULTANEOUS Loan Denial Letter	RE1 – 6.3.1
Loan Denial Letter May NOT Be Based on itemized Reasons or Buyer fails to meet terms of Contingency & will Default & Lose Earnest Money	<b>“SOLELY ON...”</b> *Lack of Cash to Close (i.e. Down Payment or CC) *Failure to Sell/Lease Home (if not contingency agreed to) *Not provided docs to Lender timely *Purchases Made After Binding that lower Credit *Property not appraising unless subject to appraisal contingency *Lender not completing loan in time	ALL Loan Contingencies – 7 & 8	*Lack of cash to close *Loan app Not Timely Submitted *Failure to Sell/Lease Home (if not contingency agreed to) <b>*Buyer's Conduct</b> After Acceptance	RE1 – 6.3.1.2
<b>Point of Practice:</b> If Buyer is getting Down Payment Assistance, MUST add a Special Stipulation making contract contingent upon Buyer getting those Funds by a certain date & if NOT, then Buyer may terminate under no Penalty.				

Loan Contingencies				
Issue	GAR	Paragraph	RE Forms	Paragraph
Loan Denial Letter for FHA & VA Loans	Does not include provision about appraisal	See notes below about Amendatory Clause		
Financing Contingency – Seller Right to Terminate	AFTER end of contingency period, Seller may request Evidence of <b>Buyer's</b> Ability to close	ALL – 8 - 10	Repair costs per Appraisal exceed negotiated amount	RE200 – FHA Loan RE201 – VA Loan
Repair Costs Exceed Negotiated Amount	Seller required to get estimates & send to Buyer, parties negotiate, if no agreement, contract terminates	F407 (FHA Loan) & F410 (VA Loan) - 16	Seller may terminate	RE200 RE201
Appraisal Contingency Time Frames	Conventional – Negotiated FHA – Day of Closing VA – Day of Closing	ALL	Conventional – Negotiated FHA – Day of Closing VA – Day of Closing	RE100 – 6.2 RE200 RE201
Failure to Appraise: Conventional Loan	Buyer must submit amendment to Seller to sell for lower price or Buyer buys at contract price. If Seller accepts, Buyer must buy; if Seller rejects Buyer may buy or terminate –	F404 – 11  Specific Time Frames Involved	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	RE1 – 6.2
<b>Point of Practice:</b> “Appraisal Gap” Stipulation only enforceable for Buyer getting Conventional Loan				
<b>Point of Practice:</b> ANY Buyer may always bring additional cash to close a contract if the appraisal comes in low even with no Special Stipulation				
Failure to Appraise: FHA Loan	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	F407 – 12  Value – Specific \$ Amount	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	RE200 – 1 <sup>st</sup> paragraph  Value – Specific \$ Amount

Loan Contingencies

Issue	GAR	Paragraph	RE Forms	Paragraph
Failure to Appraise: VA Loan	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	F410 – 12  Value – Reasonable Value as established by VA	Buyer may terminate at sole discretion Either party may propose Amendment to other party to re-negotiate Sale Price	RE201 – 1 <sup>st</sup> paragraph  Value – Reasonable Value as established by VA
<b>Point of Practice:</b> “Appraisal Gap” stipulation is NOT enforceable if Buyer is getting FHA or VA Loan per Amendatory Clause which is a Federal Regulation & stated in paragraph 11 on GAR FHA & VA Loan Exhibits as well as in RE Forms FHA & VA Loan Exhibits.				
Costs Associated with FHA / VA / USDA Loan	If costs exceed negotiated amount, Seller required to get estimates then Buyer & Seller negotiate who will pay difference; no agreement then contract terminates	F407 – FHA F410 - VA	If costs exceed agreements in contract, Seller may unilaterally terminate	RE1 – 6.3.2
VA Loan Exhibit 1 <sup>st</sup> Termite Letter may be paid by Buyer – NEW in 2023	Clearance Letter 90 days prior to close & potentially repair any previous damage from termites.	F410 - 15	Seller to pay costs associated with VA Loan that Buyer not allowed to pay	RE201 – “Seller Obligations” #2

Other Forms				
Issue	GAR	Paragraph	RE Forms	Paragraph
Counter Offer	Verbiage – once counter initiated, no going back	GAR 249	Only one counter offer form to be signed	RE110
<b>Seller's</b> Disclosure Form	<b>No “Don’t Know”</b> option No Year for systems age except for HVAC or when installed. Fixtures Checklist - Seller indicates what items are to be removed	F301	<b>Has “Unknown”</b> as an option Has year systems were installed & material defect Nothing regarding fixtures/items remaining with the property or Seller taking	RE130 RE112 – Bill of Sale Special Stip – <b>“Seller to Remove Fixtures Prior to Closing”</b>
<b>Seller's</b> Disclosure of Latent Defects	Designed for Non-Occupant Sellers – but may be used by occupant owners	F302	No separate short form	
Community Association Exhibit	Undisclosed fees or increases in fees to be paid by Seller at closing	F322 – throughout form	If any changes in fees, Seller has 3 days to disclose to Buyer; any initial fees NOT disclosed or changes in fees not disclosed to be paid by Seller at closing	RE136 – 5
Sale or Lease Contingency Exhibit	More Seller influence over information <b>regarding Buyer's</b> Current Home / Property	F601	More general contingency	RE251
Amendment During DD / <b>Buyer's Right to Terminate</b>	Option to terminate Due Diligence upon agreement <b>Due Diligence period acts as Time Limit of this Amendment –</b>  ONLY Amendment in GAR with a Time Limit	F704 * Verbiage from RE Forms is available in GAR as SS 302 – <b>“Amend to Address Concerns as Terminate”</b>	Option to terminate contract if No agreement	RE262 * NOTE: If Seller writes a Counter Amendment & parties sign, Buyer must Withdraw first Amendment RE 263 GAR F285

Other Forms				
Item	GAR	Paragraph	Re Forms	Paragraph
Temporary Occupancy Agreement for Seller After Closing	Only a Tenant at Sufferance per diem	F219 - 9	<b>“Usage Fee”</b> – Seller pays Buyer at Closing & Tenant at Sufferance per diem	RE255 - 2
Closing Attorney as Holder of Earnest Money  <u>If all cash &amp; there is a dispute, attorney’s sole remedy is to interplead the funds</u>	GAR Form F510 – <b>“Closing Attorney Acting as Holder of Earnest Money”</b> (signed by parties with Binding Agreement) & GAR Form F511 – <b>“Agreement of Closing Attorney to Serve as Holder of Earnest Money”</b> (signed by attorney within 3 business days of receipt of Binding Agreement)	F510 – Signed by Buyer & Seller with Binding Contract & F511 – Signed by Attorney within 3 business days of receipt of Binding Agreement & Buyer has 2 Business Days to get contract to Attorney	No Contractual Form	Concern: Closing Attorney does NOT sign contract to no obligation to perform responsibilities as <b>“Holder”</b> as outlined in the contracts
Termination & <b>Release “T&amp;R”</b>	BOTH issues addressed on one form	F522 – Unilateral Termination & Proposed Agreement to Release F519 – Mutual T&R	Termination on one form & Agreement to Release Trust Funds on a Separate Form	RE263 – Notice to Terminate RE212 – Agreement to Disburse Trust Funds
Contract Designed to Protect	Quiz: ??????		Quiz: ??????	



## General Differences

### Purchase & Sale Agreements

- GAR Purchase & Sale – Fill-**In the Blanks & “Legal-ese”**
  - “A” – Key Terms & Conditions
  - “B” – Corresponding Paragraphs for Section A
  - “C” – Other Terms & Conditions
- RE Forms
  - Contract for Purchase – Fill in the Blanks
  - Standard Terms – “Legal-ese”

### General Contract Reminders

- ▶ Legal Description is required – Street Address alone is not a sufficient legal description (per License Law)
- ▶ Parties must get a copy of everything they sign (per License Law)
- ▶ Make sure Closing Attorneys & Lenders get copies of ALL Exhibits & Amendments
- ▶ Do not leave any blanks
- ▶ Fill in blanks or Use “N/A” or “\$o” & on Counter Offer use “N/C” (= No Change)
- ▶ **Do NOT use “TBD” – does not reflect “Meeting of the Minds” which is required for enforceability**
- ▶ If contract is subject to financing, all the terms of the financing MUST be completed (per License Law)
- ▶ As an Agent, do not hold Earnest Money – **must get to Broker “as soon after receipt as practically possible” (per License Law)**
- ▶ Complete Brokerage address & your email address &/or Fax Number on signature page – may be your Branch Office vs. Corporate Address (Send Notice of change of any of these)
- ▶ Complete your License Number & Firm License Number (per License Law)
- ▶ Complete Agency Representation Disclosures in contract (per License Law)
- ▶ Follow up on Earnest Money Receipt & DEPOSIT – request proof of deposit – regardless of who named Holder is in the contract & regardless of which side of the contract you represent
- ▶ All Buyer & Seller Signatures Required
- ▶ Do not miss any initial spaces
- ▶ Contact Information Required for Customers (Email OR Fax OR Address – for Notice Purposes)
- ▶ Limit Special Stipulations
- ▶ Use the pre-printed Stipulations available from GAR & RE Forms in the Special Stipulation library
- ▶ Do Not write/use a Special Stipulation for an issue already addressed elsewhere in the contract
- ▶ Consult with your Broker &/or an Attorney before writing any Special Stipulations on your own
- ▶ Peruse the GAR & RE Forms Libraries for Other Useful Forms & Special Stipulations

Thank you!

- ▶ Remember to confirm all Contract Questions with your Broker!
  - ▶ Please refer any legal questions to the GAR Legal Helpline or an Attorney
  - ▶ Please attend Additional Courses: [www.registerforREclasses.com](http://www.registerforREclasses.com) & select a geographic area ...  
**select “Marietta”** for master calendar of Virtual Classes
  - ▶ Video recordings & Handouts (if they exist) are available: [www.eAGENTweb.com](http://www.eAGENTweb.com) & select  
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- 
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**REAL ESTATE ACADEMY**  
of AMERICA



# Special Stipulations to Consider

## Contents: Special Stipulations to Consider

**Due Diligence - When You Need Seller to Do Something to Prevent Buyer From Spending Money Unnecessarily But Still Give Buyer Termination Rights & Protect Their Earnest Money:** (Authored by Dana Sparks, Qualifying Broker, Maximum One Greater Atlanta, REALTORS®)..... 3

FOR EXAMPLE: Let’s say the utilities aren’t on in the property & Buyer needs Seller to turn them on for Inspection & Appraisal. How do you not run out of the Due Diligence Period because utilities aren’t on & not yet have Buyer pay for inspection? Another situation would be if the Buyer is waiting on the Seller to return the completed Community Association Disclosure or Seller’s Property Disclosure.” ..... 3

**“Appraisal Gap” Buyer to Bring Cash for Difference Between Low Appraisal & Contract Price:** (Authored by Ameer Davis of Davis & Associates)..... 3

**Seller Consideration for Buyer Appraisal Gap – Proof of Funds**..... 4

**“Appraisal Gap” Buyer to Bring Cash for Difference Between Low Appraisal & Contract Price:** (Authored by Seth Weissman of Weissman Law)..... 4

**Appraisal Gap Stipulation with Obligation for Seller to Agree to Lower Sale Price:** ..... 4

**Buyer Brokerage Commission – GAR 2022**..... 5

**Additional Option Money for DD with Seller Termination Rights:**..... 5

**Discrete Parcels Sold as an Assemblage: authored by Ameer Davis of Davis & Associates** ..... 5

**Buyer Terminates Prior to End of Due Diligence & Prior to Sending Earnest Money to the Holder**..... 6

**GAR SPECIAL STIPULATIONS - 2022** ..... 6

    SS 220 BUYER WARRANTS THAT USE OF LAND WILL QUALIFY FOR PREFERENTIAL TAX TREATMENT .... 6

    SS 317 REPAIRS MADE BY SELLER DURING THE TRANSACTION..... 6

    SS 611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT..... 6

**NEW GAR Special Stipulations as of May 1, 2022** ..... 7

    SS110 – No Commission Owed by Buyer ..... 7

    SS 528 CONTINGENCY FOR RECEIVING CONDOMINIUM QUESTIONNAIRE..... 7

**GAR SITUATIONS & SPECIAL STIPULATIONS – November 2021** ..... 7

**Seller to Transfer Security Deposit and Prorate Rent as of day of closing:** authored by Ameer Davis of Davis & Associates ..... 9

**Seller to provide Buyer a copy of Tenant’s lease agreement(s):** authored by Ameer Davis of Davis & Associates..... 10

**Seller desires to remove Buyer’s right to access through closing:** authored by Ameer Davis of Davis & Associates..... 10

**To Survive Closing** ..... 10

**To Accept a Contract AFTER the Time Limit:** - authored by Shawn Horan of Horan Law Group, PC..... 11

**Seller Warrants Seller Disclosure Form** – authored by Ameer Davis of Davis & Associates ..... 11

**How to Complete a T&R When Earnest Money has Not Yet Been Remitted:** ..... 11



# Special Stipulations to Consider

<b>Escalation Clause:</b> .....	11
I would also suggest you add to Escalation Clause:.....	11
<b>Escalation Clause Version 2</b> .....	11
<b>Seller Strategies if Buyer wants to Extend Closing</b> .....	12
<b>Multiple Email Addresses – One on Contract &amp; Another Used in Practice – Formerly GAR SS 263:</b> .....	12
<b>Contractual Time Frames in Short Sale or When Making Due Diligence Contingent Upon a Certain Situation</b> (i.e. Utilities Being Turned On or Seller’s Completion of Community Association Exhibit) .....	13
<b>Repair Issues:</b> - authored by Ameer Davis of Davis & Associates.....	13
<b>Repair Issues – Alternative:</b> (from the RE Forms Special Stipulations).....	13
<b>GAR SS 302 AMENDMENT TO ADDRESS CONCERNS AS NOTICE TO TERMINATE</b> .....	13
<b>Protect Your Selling-Side Commission on New Construction</b> .....	14
<b>Down Payment Assistance Funds:</b> .....	14
<b>Amendment to Address Concerns as Notice to Terminate</b> (GAR SS302) :.....	14
<b>Agent Acting as Principal:</b> (from the RE Forms Special Stipulations).....	14
<b>Updates to HOA Letters:</b> - authored by Ameer Davis of Davis & Associates .....	14
<b>Notification to “Bad” Fax /Email:</b> (from the RE Forms Special Stipulations).....	14
<b>Additional Stip for Seller Occupancy After Closing</b> .....	15
Variation:.....	15
<b>Listing Special Stipulations</b> .....	15
<b>Conformed Copy = “Clean Copy” – GAR SS622</b> .....	15
<b>Contractual Time Frames in Short Sale</b> .....	16
<b>Common Issues to Consider:</b> (See GAR Special Stipulations) .....	16
<b>Buying a Property with a Tenant in Place Who is Supposed to Vacate</b> .....	16
<b>Special Stipulation: Agent Contribution towards Repairs if Seller is Netting \$0.00</b> - Compliments of Ameer Davis, Attorney at Law 770.426.5440.....	17
Special Stipulation:.....	17
Scenario: .....	17
<b>Buyer Wants to Buy a Condo &amp; There is Current &amp; Ongoing Litigation Involving the Association</b> (i.e. on-going litigation between the Association and the Insurance Co in connection with the roof replacement. As per one of the board members, they are almost at a resolution but I need a special stp to cover my client.) – authored by Ameer Davis of Davis & Associates.....	17

**Check with your Broker prior to using any of these  
Special Stipulations in your contracts.**



### **Due Diligence - When You Need Seller to Do Something to Prevent Buyer From Spending Money Unnecessarily But Still Give Buyer Termination Rights & Protect Their Earnest Money: (Authored by Dana Sparks, Qualifying Broker, Maximum One Greater Atlanta, REALTORS®)**

FOR EXAMPLE: Let's say the utilities aren't on in the property & Buyer needs Seller to turn them on for Inspection & Appraisal. How do you not run out of the Due Diligence Period because utilities aren't on & not yet have Buyer pay for inspection? Another situation would be if the Buyer is waiting on the Seller to return the completed Community Association Disclosure or Seller's Property Disclosure."

"Due Diligence to begin upon Binding Agreement Date & extend for \_\_\_\_\_ days after Buyer's receipt of written notification that all utilities are on and operational."

This way, if Seller never performs (i.e. turns on utilities) then Buyer will never have to pay for an inspection AND Buyer may terminate based on DD. IF you write "DD to begin when Buyer does XYZ..." then if Seller never does XYZ, Buyer may never terminate because DD has not yet BEGUN!

### **"Appraisal Gap" Buyer to Bring Cash for Difference Between Low Appraisal & Contract Price: (Authored by Ameer Davis of Davis & Associates)**

"All parties hereby acknowledge that any Appraisal Contingency is hereby amended to reflect the following terms: If any appraisal is for less than the purchase price, Buyer shall be responsible to deliver any additional funds needed for closing to satisfy the difference between the lower appraised value and the agreed upon purchase price of the Property up to an amount not to exceed \$\_\_\_\_\_ ("The Variance"). Any difference in appraised value and the purchase price that is equal to or lesser than the Variance will not be grounds to terminate this Agreement. However, if the difference in appraised value and the purchase price is greater than the Variance, Buyer is subject to the terms outlined in the Appraisal Contingency Clause of this Agreement and has the right, but not the obligation, to terminate this Agreement without penalty. Buyer will have 3 days from receipt of notice of appraised value, resulting in the Variance being greater than the variance agreed upon herein, to terminate. If buyer does not terminate within 3 days, buyer shall be deemed to waive the right to terminate and will bring additional funds above original variance value to close. This stipulation, if conflicting with any exhibit, addendum, or preceding paragraph, shall control."



### **Seller Consideration for Buyer Appraisal Gap – Proof of Funds**

Listing Agents, remember that if a Buyer agrees to bring cash for the difference between a Low Appraisal & the contract Sale Price, that Buyer's cash outlay is ON TOP of the cash they already have to bring for their down payment for the portion the Lender will lend AND any pre-pays & escrows! So, don't waste time by simply accepting a contract with an appraisal gap stipulation, consider asking for Proof of Funds to COVER this Gap on top of cash already allocated / required for home purchase!

For verbiage, check out paragraph 2 on GAR Cash Exhibit – F401 or check with a closing attorney.

### **“Appraisal Gap” Buyer to Bring Cash for Difference Between Low Appraisal & Contract Price: (Authored by Seth Weissman of Weissman Law)**

“In the event the property does not appraise for at least the purchase price, Buyer agrees to pay Seller at closing the difference between the sales price and the appraised value in cash and not use the failure of the Property to appraise for the purchase price as a basis to either terminate this Agreement or ask for a reduction in the sales price. Notwithstanding the above, if the difference between the sales price and the appraised value of the property is more than \$\_\_\_\_\_, Buyer shall have the right but not the obligation to terminate this Agreement provided that the Buyer gives Notice to the Seller within \_\_\_\_\_ days of receiving the appraisal of the property in which case Buyer shall be entitled to the return of the Buyer's earnest money. If Buyer does not terminate the Agreement within the time frame, Buyer's right to terminate on this basis shall be waived and Buyer shall pay cash to Seller at the closing for the entire difference between the appraised value and the sales price of the property.”

### **Appraisal Gap Stipulation with Obligation for Seller to Agree to Lower Sale Price:**

"Should the property appraise for less than the contract sales price, at closing, Buyer agrees to pay \$\_\_\_\_\_ cash above the appraised value "variance" up to the contract sales price. Should this difference "variance" still fall below the contract sales price, Seller agrees to sell at the new price including this \$\_\_\_\_\_ cash overage. Buyer shall have 3 days from receipt of notice of appraised value resulting in an appraised value more than the Variance (i.e. there is still a gap between the contract Sale Price and appraised value plus Buyer's cash overage) to deliver copy of Appraisal to Seller along with an Amendment to Sale Price reflecting this new contract sale price (appraisal value plus cash amount Buyer agrees to pay at closing.) Should Seller not agree in writing (by signing the Amendment to Sale Price and delivering signed Amendment to Buyer) to this new Sale Price within 3 days after receipt of copy of Appraisal and Amendment, Buyer



## Special Stipulations to Consider

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reserves the right to terminate this contract in writing with Notice sent to Seller through Closing Date of contract with no penalty and full refund of earnest money. Should Buyer not send copy of Appraisal plus Amendment to Sale Price to Seller at least 7 days prior to Closing Date, Buyer agrees to pay contract sale price with no changes despite the appraised value of the property."

### **Buyer Brokerage Commission – GAR 2022**

- ▶ Do not leave this blank nor put in \$0.
- ▶ Consider entering a % of Sale Price or \$\_\_\_\_\_ and then on a transaction by transaction basis, amend the Buyer Brokerage Agreement if they wish – AFTER the Buyer is under contract & specifically identifying a property & commission to be received from Seller side
- ▶ i.e. *“At the closing of 123 Lucky Street, Buyer to pay Maximum One Realty Greater Atlanta \$0.00 as the Brokerage will accept commission of \_\_\_\_\_% of Sale Price solely from Listing Broker.”*

### **Additional Option Money for DD with Seller Termination Rights:**

All parties acknowledge and agree that upon acceptance of the contract, Buyer shall pay a nonrefundable option payment for seller to take property off market for a period equivalent to the due diligence period herein. The option fee shall be \$\_\_\_\_\_ payable to seller(s). Said option money shall be separate and apart from the Earnest money stated herein. Should buyer fail to pay said money within 2 days of binding agreement date, seller shall have 5 days in which to terminate the contract or seller shall have waived the right to the option money.

### **Discrete Parcels Sold as an Assemblage: authored by Anee Davis of Davis & Associates – MUST Spell Out the Legal Descriptions**

In Contract Under “Legal Description” type “See Stips” then add the following as a Special Stipulation:



## Special Stipulations to Consider

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The conveyance of property herein includes multiple tracts of land being purchased as an assemblage. Said tracts are described as follows: (1) that tract being fully described in Deed Book \_\_, Page \_\_, \_\_ county real property records. Said parcel being \_\_ acres and being tax parcel identification number \_\_ according to the \_\_ county tax commissioner's office; (2) that tract being fully described in Deed Book \_\_, Page \_\_, \_\_ county real property records. Said parcel being \_\_ acres and being tax parcel identification number \_\_ according to the \_\_ county tax commissioner's office; and (3) that tract being fully described in Deed Book \_\_, Page \_\_, \_\_ county real property records. Said parcel being \_\_ acres and being tax parcel identification number \_\_ according to the \_\_ county tax commissioner's office. Each parcel set out is also being more clearly described in those deeds attached hereto as Exhibits “ \_\_, \_\_ and \_\_ ”

**Note:** In the alternative, you can also insert each of the legal descriptions instead of the deed books and pages.

### **Buyer Terminates Prior to End of Due Diligence & Prior to Sending Earnest Money to the Holder**

- ▶ If Earnest Money is addressed in the creation of a contract, it must be addressed in the Termination of a contract EVEN if EM not yet sent
- ▶ “Earnest Money not yet remitted per contract to be retained by Buyer.”

## **GAR SPECIAL STIPULATIONS - 2022**

**SS 220 BUYER WARRANTS THAT USE OF LAND WILL QUALIFY FOR PREFERENTIAL TAX TREATMENT** Buyer warrants that Buyer's use or ownership of the Property will qualify for continuation of the preferential tax treatment of the Property as agricultural property. If Buyer is found to no longer qualify for the same, Buyer shall indemnify and hold Seller harmless from and against all liability for rollback taxes. This warranty shall survive Closing.

**SS 317 REPAIRS MADE BY SELLER DURING THE TRANSACTION** Seller will obtain any required permits and/or certificates for the completion of the repairs/construction as is made part of this Agreement and provide Buyer with applicable documentation.

**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.





## NEW GAR Special Stipulations as of May 1, 2022

**SS110 – No Commission Owed by Buyer** - 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.

### SS 528 CONTINGENCY FOR RECEIVING CONDOMINIUM QUESTIONNAIRE

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, wavier, or satisfaction of the same.**

## GAR SITUATIONS & SPECIAL STIPULATIONS – November 2021

Below are special stipulations for a variety of situations that can occur during the home sale process. Cut and paste the special stipulations below to modify the Purchase & Sale Agreement to fit your client’s situation. For a full explanation of these stipulations, read Seth Weissman’s article “*Special Stipulations for All Occasions*,” in the [Winter 2021 issue of Georgia REALTOR® magazine \(p. 12\)](#).

**SITUATION:** **Changing the time deadline** for obligations to be performed from midnight to 9:00 P.M.

**STIPULATION:** *“All time deadlines set forth herein shall expire at \_\_\_\_\_  a.m. OR  p.m. on the day of the deadline.”*

**SITUATION:** **Allowing notices to be sent via text**

**STIPULATION:** *“Notwithstanding any provision to the contrary contained herein, notices by text shall expressly be permitted in this Agreement provided that the party receiving the text has provided a cell phone number below, all*



## Special Stipulations to Consider

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*other terms of the notice provision are met, and the sender saves a copy of the text. The text shall be deemed signed by the party sending the text if the sender types their name at the end of the text or the notice is attached to the text and that notice is signed. The notice shall be deemed delivered when it is received on the receiving device of the party to whom it was sent, and not when it is opened. The name of the party who is consenting to receiving notices by text and their phone number is set forth below:"*

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### **SITUATION:** Cleanliness of house at closing

**STIPULATION:** *"Seller agrees that not more than three days prior to the Closing, all carpeted areas in the house shall be steam cleaned by a professional carpet cleaning company, all non-carpeted areas shall be swept clean and mopped (with areas with hardwood floors being damp mopped), all toilets, sinks, kitchen and sink counters, bathtubs, showers, ovens and stovetops shall be cleaned such that dirt and stains, to the extent reasonably possible, are removed and all dirt and hand marks around door handles on doors and on door frames shall be cleaned. Seller agrees to have removed all personal property from the Property at least four (4) hours prior to Closing to make it easier for Buyer to do a final walk-through of the Property."*

### **SITUATION:** Buyer warrants that buyer doesn't have other nearby property under contract.

**STIPULATION:** *"Buyer warrants that Buyer is not currently a party to any other purchase and sale contract to buy real property within \_\_\_\_\_ miles of the Property and will not contract to purchase any other property within \_\_\_\_\_ miles from this Property during the pendency of this Agreement. If Buyer breaches this warranty, Seller may terminate this Agreement due to Buyer's breach upon notice to Buyer. Buyer acknowledges that Seller will be significantly damaged as a result of such breach and Buyer and Seller agree that Seller shall be entitled to keep Buyer's earnest money as liquidated damages (even if not all of the conditions or contingencies in the Agreement have been fulfilled), or if the Due Diligence Period has not yet expired, it being agreed that the amount is a reasonable pre-estimate of Seller's actual damages and is not a penalty."*

### **SITUATION:** Getting a copy of the covenants and determining whether the property is subject to easements and covenants.

<b>STIPULATION:</b>	<b>Option</b>	<b>1</b>
<i>"Seller agrees to provide Buyer within _____ days from the Binding Agreement Date with a complete and current set of all covenants, Declarations of Covenants, Conditions, Restrictions and Easements, Declarations of Condominium and other similar documents binding the Property."</i>		
<b>Option</b>		<b>2</b>
<i>"Seller shall within three days of the Binding Agreement Date provide Buyer with</i>		



## Special Stipulations to Consider

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*a copy of the Owner's Title Policy or Lender's Title Policy Seller, if any, received when Seller closed on the purchase of the Property."*

**SITUATION:** Paying cash for the difference between the appraised price and the sales price.

**STIPULATION:** *"In the event the Property does not appraise for at least the purchase price, Buyer agrees to pay Seller at closing the difference between the sales price and the appraised value in cash and not use the failure of the Property to appraise for the purchase price as a basis to either terminate this Agreement or ask for a reduction in the sales price. Notwithstanding the above, if the difference between the sales price and the appraised value of the Property is more than \$\_\_\_\_\_, Buyer shall have the right, but not the obligation, to terminate this Agreement provided that Buyer gives notice to Seller within \_\_\_\_ days of receiving the appraisal of the Property, in which case Buyer shall be entitled to the return of Buyer's earnest money. If Buyer does not terminate the Agreement within this time frame, Buyer's right to terminate on this basis shall be waived and Buyer shall pay cash to Seller at the closing for the entire difference between the appraised value and the sales price of the Property."*

**SITUATION:** Right of buyer to terminate agreement if amendment to address concerns is not agreed upon.

**STIPULATION:** *"In the event Buyer and Seller have not agreed in writing to an Amendment to Address Concerns with Property where a fully-signed copy of the same is delivered to Buyer and Seller by 11:59 p.m. on the last day of the Due Diligence Period, this special stipulation shall serve as notice from Buyer to Seller of Buyer's decision to terminate this Agreement immediately thereafter and prior to the end of the Due Diligence Period."*

**SITUATION:** Condition of systems and appliances.

**STIPULATION:** *"Seller agrees that as of the date of Closing, all systems in the Property, including, but not limited to, the HVAC, electrical, plumbing, roofing, sewer and structural and all fixtures and appliances remaining in the Property shall be in good working order and repair."*

**Seller to Transfer Security Deposit and Prorate Rent as of day of closing:** authored by Ameer Davis of Davis & Associates

Seller agrees to credit to buyer at closing all security deposits paid as part of the lease agreement and to prorate the monthly rent through the date of closing.



**Seller to provide Buyer a copy of Tenant's lease agreement(s):**  
authored by Amee Davis of Davis & Associates

All parties acknowledge and agree that the sale of this property is contemplated upon the current Tenant's remaining the property after the date of closing. Sellers will provide Buyer a full copy of all lease agreements, extensions and/or modifications to lease within 3 days of binding agreement date. Should seller not provide a copy of lease as required herein, buyer may terminate the contract. Buyer will have 3 days from receipt of lease documents to review. Should Buyer, for any reason, desire to terminate this agreement due to any unacceptable terms in lease to Buyer, Buyer will receive full refund of earnest money. Buyer may terminate within 6 days after receipt of Lease Agreement or Buyer waives the right to terminate the agreement due to unacceptable lease terms.

**Seller desires to remove Buyer's right to access through closing:**  
authored by Amee Davis of Davis & Associates

All parties acknowledge and agree that Buyer shall have access to property as defined in Paragraph B (8)(a) Inspection and Due Diligence, through the expiration of the Due Diligence period as agreed upon herein. However, upon the expiration of the Due Diligence period, Buyer shall have the right to request access to the property with 48 hour advance written request to seller. Seller shall have the sole right to allow or deny access to the property during this time. However, this in no way shall prohibit the buyer from access to the property within 2 days of the closing date (or any extension thereof) to enter the property for a walk through prior to the closing of the transaction.

**To Survive Closing**

"This provision shall survive closing" in GAR Contract in order for these issues to survive closing (For items such as repairs, Purchase of Home Warranty, etc.)



## Special Stipulations to Consider

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### **To Accept a Contract AFTER the Time Limit: - authored by Shawn Horan of Horan Law Group, PC**

"This counter offer is being executed by all parties to evidence their intent to be bound by the terms contained in the purchase and sale agreement dated \_\_\_\_\_, and agreed to by all parties on \_\_\_\_\_. All parties agree that the binding agreement date and time for this purchase and sale agreement is \_\_\_\_\_."

### **Seller Warrants Seller Disclosure Form – authored by Ameer Davis of Davis & Associates**

Seller's Disclosure Form attached herein states \_\_\_\_\_ (i.e. property is on sewer & not septic)\_\_\_\_\_ and Seller warrants this information. This disclosure and Seller warranty of this information shall survive closing.

### **How to Complete a T&R When Earnest Money has Not Yet Been Remitted:**

If Earnest Money is addressed in the creation of a contract, it must always be addressed in the termination of a contract EVEN IF the Buyer has not yet remitted the funds. Regardless of where the funds are regarding remittance or deposit, Earnest Money is still a part of the contract. So, if you write a Termination & Release prior to the Buyer's obligation to remit the funds, you would simply state,

- **GAR Contract: "Buyer to retain Earnest Money not yet remitted per paragraph A7b**
- **RE Forms Contract: "Buyer to retain Earnest Money not yet remitted per paragraph 3.1."**

### **Escalation Clause:**

Buyer to pay \$\_\_\_\_\_ (\$500 or \$1,000 or whatever amount) above highest received verifiable offer not to exceed a total sale price of \$\_\_\_\_\_ (top sale price Buyer is willing to pay or is qualified to pay for the house) with contractual proof of next highest offer.

### **I would also suggest you add to Escalation Clause:**

All parties agree to execute a conformed copy of the Binding Agreement reflecting the final contractual price and terms.

### **Escalation Clause Version 2**

\*\* In the event that the seller receives one or more additional bona fide offers to purchase the property with terms acceptable to the Seller, but which result in net proceeds of sale payable to the Seller equal to or greater than the net proceeds of sale payable to seller under this offer, then the sales price stated in this Offer shall automatically increase to an amount which generates net proceeds of sale to Seller equal to **\$0.00** in excess of the highest net proceeds of sale generated in such Other Offers.



## Special Stipulations to Consider

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\*\*The sales price under this offer shall in no event exceed a cap of **\$00,000**.

\*\*In the event that Other Offers cause the escalation of the Sales Price of the Offer, the Seller will provide the buyer with a copy of sufficient documentation to justify the Sales Price increase and the buyer acknowledges that the Escalating Factor of this Offer and the Escalating Factors of Other Offers may result in multiple escalations and, in some cases, escalation to the Cap.

\*\*The terms contained herein are for the use and purpose of obtaining a mutually agreeable Sales Price and shall be deemed satisfied and will terminate upon ratification of a Contract for the above referenced property.

\*\*Buyer acknowledges and affirms that this Offer and Escalation Clause has been made of his own volition and at his own discretion and both Buyer and Seller agree to hold agents and their Brokers harmless with regard to negotiation of the Sales Price. In the event Other Offers are presented on this Property, Buyer acknowledges that a copy of the documents constituting the Offer may be provided to the parties making such Other Offers.

\*\*In the event the Seller agrees to accept a Sales Price within the terms of this Offer and pursuant to the Escalation clause, the Seller will submit to the Buyer a copy of this Offer with the Sales price adjusted according to the escalation provisions contained herein, having been fully executed by the Seller ("Counteroffer"). Acceptance of the counteroffer will occur upon counter signature and initial of the modified terms of this Offer, by the Buyer, and delivery to the Seller of the fully ratified Contract.

### **Seller Strategies if Buyer wants to Extend Closing**

- Decrease Seller's contribution to Buyer's Closing Costs
- Transfer Earnest Money to MX1 if it is held by another Broker or Closing Attorney
- Add kick out provision – so that Seller may solicit back-up contract (& change to CK in MLS)
- Can't ask for additional "non-refundable EM" – "EM" is not non-refundable... instead
  - "Buyer shall deposit \$\_\_\_\_\_ with Maximum One Realty Greater Atlanta (or Maximum One Greater Atlanta, REALTORS.) If Buyer fails to close for any reason, Seller may retain all Earnest Money & additional deposits as liquidated damages and such shall not be considered, deemed or implied as a penalty."

### **Multiple Email Addresses – One on Contract & Another Used in Practice – Formerly GAR SS 263:**

All parties agree that all e-mail notices sent to \_\_\_\_\_ shall be sent to both of the following e-mail addresses \_\_\_\_\_ and \_\_\_\_\_. Provided that notice is sent to both email addresses, notice shall be deemed given when it is first received at either of the above email addresses.



## **Contractual Time Frames in Short Sale or When Making Due Diligence Contingent Upon a Certain Situation (i.e. Utilities Being Turned On or Seller's Completion of Community Association Exhibit)**

All time frames in contract & and Exhibits begin upon Binding Agreement Date and extend to specified number of days per provision after Buyer's receipt of written approval of terms of short sale from Seller lien holder(s.)

### **Repair Issues: - authored by Ameer Davis of Davis & Associates**

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

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

The parties agree that the repairs Seller has agreed to complete under the Contract may not be complete as of the date of Closing. In that event, no later than \_\_\_\_ days after Closing (the "Repair Completion Date") Seller shall complete all repairs to the property herein. It is understood and agreed that Seller, in showing of good faith, shall deposit at Closing \$\_\_\_\_\_ (the "Repair Funds") with \_\_\_\_\_ (the "Security Holder") as security for completion of said repairs. As long as Seller completes or causes to complete all repairs no later than midnight of the Repair Completion Date, the Repair Funds shall be returned to Seller within \_\_\_\_ days of the Repair Completion Date or submission of proof of the repairs to Buyer, whichever comes first. Should Seller fail to timely complete said repairs, Buyer shall be entitled to Repair Funds as liquidated damages. Should a dispute arise as to the disbursement of the Repair Funds, the Security Holder shall be entitled to the same rights, remedies, indemnities, etc. As any escrow agent or holder of Earnest Money described in the Contract.

### **GAR SS 302 AMENDMENT TO ADDRESS CONCERNS AS NOTICE TO TERMINATE**

In the event this Amendment to Address Concerns with Property is not accepted by Seller and delivered back to Buyer prior to the end of the Buyer's Right to Terminate as set forth in the Due Diligence provision of the Agreement, this Amendment to Address Concerns with Property shall serve as notice of termination of this Agreement upon expiration of the Right to Terminate period as set forth herein



## Special Stipulations to Consider

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### **Protect Your Selling-Side Commission on New Construction**

If you buy a house being constructed ("New Construction") you agree that the Selling Broker commission shall be a part of the original offer prior to signing that offer. If the transaction turns in to a Lease, you agree to pay Maximum One Realty Greater Atlanta (or Maximum One Greater Atlanta Realtors) a commission of \$ \_\_\_\_\_ for valuable services rendered within 2 Banking days of signing lease.

### **Down Payment Assistance Funds:**

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

### **Amendment to Address Concerns as Notice to Terminate (GAR SS302) :**

In the event this Amendment to Address Concerns with Property is not accepted by Seller and delivered back to Buyer prior to the end of the Buyer's Right to Terminate as set forth in the Due Diligence provision of the Agreement, this Amendment to Address Concerns with Property shall serve as notice of termination of this Agreement upon expiration of the Right to Terminate period as set forth herein

### **Agent Acting as Principal: (from the RE Forms Special Stipulations)**

It is understood and agreed that \_\_\_\_\_ is a licensed real estate agent (or Broker) in the state of Georgia, whose license is held by \_\_\_\_\_, and is acting as a principal in this transaction.

### **Updates to HOA Letters: - authored by Ameer Davis of Davis & Associates**

If transaction does not close by originally scheduled closing date due to no fault of the Seller, Buyer to pay for any required updates to the HOA Letter.

### **Notification to "Bad" Fax /Email: (from the RE Forms Special Stipulations)**

Should Broker(s) identify an email address or fax number in this Contract that is different from the email address of fax number identified as the correct fax number by the MLS of which Broker(s) is a member, it is hereby agreed that should the email address or fax number identified in this Contract fail to deliver a document/notice pertaining to this Contract, then successful delivery of the documents/notices to the email address or fax number identified in the MLS shall be deemed sufficient notice, provided that the





## Special Stipulations to Consider

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sending entity produces a written confirmation showing the correct time and date of the transmission and the email address or fax number referenced herein.

### **Additional Stip for Seller Occupancy After Closing**

All Parties Agree that "YOUR BROKER" shall hold \$\_\_\_\_\_ from seller proceeds in Brokers Trust Account. If Seller vacates property in clean, damage-free condition and free of all trash, personal property and debris, Broker shall release funds to Seller within 10 days of written notice from Buyer to Broker that Property is acceptable. If property is not left in condition acceptable to Buyer, Broker shall disburse said funds to Buyer.

#### **Variation:**

"...Broker shall deduct cost of cleaning, repairing and including but not limited to hauling away trash or debris from the amount Broker is holding and disburse remainder to Seller

### **Listing Special Stipulations**

1. If Seller cancels or withdraws the listing prior to expiration of Listing Agreement for any reason, Seller shall pay \$50 to \_\_\_\_\_(Brokerage)\_\_\_\_\_ an early termination fee & to remove listing from MLS Services.
2. If the property is place Under Contract with a Lease Purchase, Seller shall pay to \_\_\_\_ (Brokerage)\_\_\_\_\_ 1% of Sale Price as Commission for valuable services rendered. This fee shall be paid in certified funds at time of contract acceptance and the remainder of the total commission owed to the Broker shall be paid at the Closing of the transaction. All parties acknowledge that the 1% commission paid at time of Binding Agreement shall be considered earned when contract is Binding and shall be considered payment for contract services rendered as well as procurement of sale and shall not be refundable.
3. If Listing Broker procures a tenant for the property under a lease, Seller shall pay in certified funds the equivalent of one month's rent to \_\_\_\_ (Brokerage)\_\_\_\_\_ at time of Binding Lease. All parties acknowledge that the fee shall be considered earned at the time of contract for procuring Tenant and shall not be refundable. Seller shall have no monthly obligation to Broker and Broker shall not be considered Property Manager; Broker's sole role is to place Landlord and Tenant together
4. At Closing, Seller shall pay to \_\_\_\_\_(Brokerage)\_\_\_\_\_ \$\_\_\_\_\_ Administration fee.

### **Conformed Copy = "Clean Copy" – GAR SS622**

Buyer and Seller acknowledge that the above Agreement is a conformed copy of an Agreement between the parties dated \_\_\_\_\_. In the event of any conflict between this conformed Agreement and the original thereof, all parties agree that the original Agreement shall control.



## Special Stipulations to Consider

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### **Contractual Time Frames in Short Sale**

All time frames in contract & Exhibits begin upon Binding Agreement Date and extend to specified number of days per provision after Buyer's receipt of written approval of terms of short sale from Seller lien holder(s.)

### **Common Issues to Consider: (See GAR Special Stipulations)**

- Repairs by Seller After Loan Approval – SS314
- Home Warranty – SS712
- Termite Letter / Bond – SS326 & 328 & 330
- Septic / Well Inspections or Repairs – SS318 & 742
- Seasonal Items that Cannot be Inspected – SS310
- Rising Interest Rates – especially helpful in New Construction or perhaps Short Sale – SS510
- Agent Acting as Principal – SS102
- Multiple Offers – SS632 (for use in counter offers)
- Amendment to Address Concerns as Notice to Terminate – SS302
- Conformed Copy of Agreement – SS622
- Due Diligence begins when Utilities Turned On – SS331

### **Buying a Property with a Tenant in Place Who is Supposed to Vacate**

How about putting a realistic closing date but add a special stipulation:

"All parties agree that closing date shall be on or before 10 days after Seller provides legal proof that tenant has been successfully evicted and removed from the property. Furthermore, it is agreed that Due Diligence period and financing contingency periods shall expire \_\_\_\_\_ and \_\_\_\_\_ respectively from the date of written notice of the same:..

The latter part gives you the right to back out ANY TIME from binding until 10 days after you receive written notice. That way you don't have to waste any inspection money or appraisal money. Additionally check with lender to see if 10 days will be enough to do title search and appraisal. You may need to change the 10 to something else.



## **Special Stipulation: Agent Contribution towards Repairs if Seller is Netting \$0.00 - Compliments of Ameer Davis, Attorney at Law 770.426.5440**

### **Special Stipulation:**

“Listing Agent (or selling agent) herein has agreed to contribute \$xxx.xx to be used towards \_\_\_\_\_ (i.e. repairs, home warranty, etc). All parties herein acknowledge that listing agent agreed to pay said amount as seller has disclosed that seller will net \$0.00 (zero) dollars or will have to bring funds to closing for the herein reference closing transaction. In the event seller receives any funds from said transaction, the money to be contributed by listing agent will be reduced by the amount of net proceeds to be disbursed to seller. If seller's proceeds are greater than the amount herein agreed to, listing agent will not contribute any funds.”

### **Scenario:**

For example, Selling Agent agrees to pay \$500.00 towards required repairs as Listing Agent has disclosed that seller has to bring funds to the closing table to finalize the closing. Upon arrival at closing, selling agent discovers that seller is actually walking away from the closing transaction with \$35,000.00. By using the above stipulation, selling agent would not then be required to pay for repairs or reduce commissions because seller would have the proceeds to pay for the repairs. If the seller's proceeds at closing were only \$250.00 then the seller would pay \$250.00 and the selling agent would pay \$250.00.

## **Buyer Wants to Buy a Condo & There is Current & Ongoing Litigation Involving the Association (i.e. on-going litigation between the Association and the Insurance Co in connection with the roof replacement. As per one of the board members, they are almost at a resolution but I need a special stip to cover my client.) – authored by Ameer Davis of Davis & Associates**

All parties acknowledge and agree that the homeowner's/condo association (“association”) for the property being sold and referenced herein, is in an active pending lawsuit with the insurance company which provided coverage for any roof damage. Said lawsuit having been filed in the \_\_\_\_\_ court of \_\_\_\_\_ county, Georgia. As a condition precedent to the buyer purchasing said property, Seller agrees that should the lawsuit be ruled not in favor of the Association, and such ruling results in the homeowners having to pay to replace the roofs or result in a special assessment to replace funds for roof payment, Seller shall pay said amounts as required by the Association. Said cost not to Seller not to



## Special Stipulations to Consider

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exceed \$\_\_\_\_\_. Seller to pay sums within \_\_\_\_\_ days of notice from Buyer to Seller of costs assessed by Association. This matter shall specifically survive closing.

**Check with your Broker prior to using any of these  
Special Stipulations in your contracts.**