

2024 GAR Contract Dissection

GREC Course #77063

Instructor:

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

CE Course Sponsored by: Maximum One Realty Companies – www.KeepMoreCommission.com

Handouts available for Download:

- www.eAGENTweb.com
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CE Credit Offered Through:
Real Estate Academy of America
GREC School #6915

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

- ▶ **Real Estate Academy of America (GREC School #6915)** with end date of renewal being December 31, 2026, presents to you the following course of study:
 - ▶ **2024 GAR Contract Dissection – GREC Course #77063**
 - ▶ This is a Virtual / Remote Broadcast of an approved in-class course, is 3 hours in duration, and is approved by the Georgia Real Estate Commission for the purpose of Continuing Education (CE.) There are no pre-requisites to receive credit for this course. You may ONLY take one Virtual CE class at a time or with overlapping times regardless of the school offering the course in order to get CE credit for either course.
 - ▶ Your instructor(s) for this course will be: **Dana Sparks, Qualifying Broker of Maximum One Greater Atlanta, REALTORS®**
 - ▶ This course does NOT have required homework not any required written examination.

Notice to Students Cont'd.

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

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

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

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Online CE Calendar & Handouts

- ▶ Go to:
www.RealEstateAcademyofAmerica.com OR
- ▶ www.registerforREclasses.com – select a geographic location (select "Marietta" for Master Training Calendar)

- ▶ Handouts, if any, available at:
- ▶ www.eAGENTweb.com
- ▶ Select "Training Videos"
- ▶ Scroll down page for Class & Handouts

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2024 GAR Contract Dissection

- ▶ This class focuses on General Contract Practice &:
 - F201 – Purchase & Sale Agreement
 - F404 – Conventional Loan Contingency Exhibit
 - F407 – FHA Loan Contingency Exhibit
 - F410 – VA Loan Contingency Exhibit
 - F401 – No Financing Contingency Exhibit
 - F522 – Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM (“T&R”)
- ▶ This class touches on:
 - F249 – Counter Offer
 - F322 – Community Association Disclosure
 - F510 – Closing Attorney as Holder of Earnest Money
 - F511 – Agreement of Closing Attorney to be Holder
 - F601 – Sale or Lease of Buyer’s Home Contingency

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- ▶ Bonus material included in handouts:
 - Ministerial Acts – Handout
 - All About Seller’s Disclosures
 - All About Real Estate Agent’s Disclosures
- ▶ Additional CE classes offered through the Real Estate Academy of America include:
 - 2024 GAR Brokerage Agreements & Other Forms

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General Information

- GAR's intent is to keep transactions together
- Changes made for consistency among forms
- Changes made based on market & practice
- GAR revises forms at beginning of year & then Mid-year Review - 5/1/22 last year!
- Universal changes apply across forms
- GAR's forms are licensed & agents must pay each year to use - either in REALTOR® dues or paying GAR directly
- GAR forms may NOT simply be given to public to use

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GAR Legal Helpline

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

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General Contract Reminders

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

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General Contract Reminders

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

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General Contract Reminders

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

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General Contract Reminders

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

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F201 – Purchase & Sale Agreement

- ▶ Paragraph A – Fill in the Blanks
- ▶ Page 1 of 10 F201, Purchase and Sale Agreement, Page 1 of 10, 01/01/24
 - Must therefore include ALL pages when sending – NOT just signature page
- ▶ ¶A1b – Legal Description – Required in addition to an address
- ▶ ¶A4 – Closing Date – Must be Specific – not “on or before”
 - For a “meeting of the minds” between the parties

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F201 – Purchase & Sale Agreement

- ▶ ¶6 – Holder of Earnest Money
 - Brokerage or Closing Attorney
 - If Closing Attorney,
 - Additional Forms (F510 WITH the Contract & F511 AFTER Binding) & Time Frames
 - If Cash Transaction, consider Broker as Holder – if dispute over EM if contract terminates – Attorney MUST interplead the EM into Court
- ▶ Check with Holder of Earnest Money – Form of funds must be acceptable to Holder
 - Policies on Form of funds
 - Holds on personal checks
 - Amounts accepted per form
 - Allow LONGER time frame if Wire

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F201 – Purchase & Sale Agreement

- ▶ Form of Earnest Money – See Notes on “EM Points of Practice” that follow
 - Form acceptable to Holder
- ▶ ¶A7 – Time Frame for Buyer to “remit” = send/deliver Earnest Money to Holder
 - Buyer’s Agent is in possession when writing offer
 - Holder has on deposit from a previously terminated contract
 - OR
 - ____ days from Binding Agreement Date

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Earnest Money Points of Practice

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

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Earnest Money Points of Practice

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

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Earnest Money Points of Practice

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

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Earnest Money Points of Practice

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

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F201 – Purchase & Sale Agreement – A8 Due Diligence Period

- 8. Inspection and Due Diligence.** *Do NOT put in 0 Days - give Buyer at LEAST 1 day to "sleep" on it*
- a. **Due Diligence Period:** Property is being sold subject to a Due Diligence Period of _____ days from the Binding Agreement Date.
 - b. **Option Payment for Due Diligence Period:** In consideration of Seller granting Buyer the option to terminate this Agreement, Buyer:
 - (1) has paid Seller \$10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged; plus
 - (2) shall pay directly to Seller additional option money of \$_____ by check ACH or wire transfer of immediately available funds either as of the Offer Date; **OR** within _____ days from the Binding Agreement Date. Any additional option money paid by Buyer to Seller shall (subject to lender approval) or shall not be applied toward the purchase price at Closing and shall not be refundable to Buyer unless the Closing fails to occur due to the default of the Seller.

- ▶ Due Diligence Period = Buyer Right to Terminate = Mini Option Contract
 - Never put 0 days – at least give Buyer time to sleep on it
 - Because Buyer may terminate, this creates a mini option contract within the broader context of the Purchase & Sale
 - Therefore the \$10 consideration is for that reason but never changes hands

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F201 – Purchase & Sale Agreement A8 – Due Diligence Period cont'd

- ▶ “Additional” Option Money
 - In addition to the \$10
 - NOT Earnest Money
 - Non-Refundable (unless Seller defaults)
 - Goes directly from Buyer to Seller
 - Negotiate if it’s accounted for as part of Buyer’s cash to close (i.e. Buyer get credit for this amount on Closing Statement)
 - Only use in a competitive situation to entice Seller to take Buyer’s offer over competing offers

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F201 – Purchase & Sale Agreement

10. Brokerage Relationships in this Transaction.

<p>a. Buyer's Broker is <u>Brokerage Firm</u> and is:</p> <p>(1) <input type="checkbox"/> representing Buyer as a <u>client</u>.</p> <p>(2) <input type="checkbox"/> working with Buyer as a <u>customer</u>.</p> <p>(3) <input type="checkbox"/> acting as a <u>dual agent</u> representing Buyer and Seller.</p> <p>(4) <input type="checkbox"/> acting as a <u>designated</u> agent where: <u>Name of Agent working with Buyer</u> has been assigned to exclusively represent Buyer.</p>	<p>b. Seller's Broker is <u>Brokerage Firm</u> and is:</p> <p>(1) <input type="checkbox"/> representing Seller as a <u>client</u>.</p> <p>(2) <input type="checkbox"/> working with Seller as a <u>customer</u>.</p> <p>(3) <input type="checkbox"/> acting as a <u>dual agent</u> representing Buyer and Seller.</p> <p>(4) <input type="checkbox"/> acting as a <u>designated</u> agent where: <u>Name of Agent working with Seller</u> has been assigned to exclusively represent Seller.</p>
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- ▶ Brokerage Relationships
 - REQUIRED to be disclosed by License Law
 - If found listing in FMLS then Listing Broker MUST have Client relationship with Seller (per FMLS rules)
 - Dual Agency – Check with Broker’s Policy
 - Designated Agency
 - Customer Relationship

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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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F201 – Purchase & Sale Agreement

has been designed to exclusively represent buyer has been designed to exclusively represent seller

c. **Material Relationship Disclosure:** The material relationships required to be disclosed by either Broker are as follows:

Relative, Business Partner, Past Client, etc.

▶ Material Relationship

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

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F201 – Purchase & Sale Agreement ¶B – FURTHER EXPLANATIONS

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

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Title – Purchase & Sale – B1

B. FURTHER EXPLANATIONS TO CORRESPONDING PARAGRAPHS IN SECTION A.

- GAR F816 - "Notice"
1. Purchase and Sale.
 - a. Warranty: Seller warrants that at the time of closing Seller will convey good and marketable title to said Property by limited warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements (other than any driveway or walkway) do not encroach; (3) declarations of condominium and declarations of covenants, conditions and restrictions of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement.
 - b. Examination: Buyer may examine title and/or obtain a survey of the Property and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement without penalty upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.
 - c. Title Insurance: Buyer hereby directs any mortgage lender involved in this transaction to quote the cost of title insurance based upon the presumption that Buyer will be obtaining an enhanced title insurance policy since such a policy affords Buyer greater coverage.
 - ▶ **Good & Marketable Title**
 - = insured by title company at regular rates
 - ▶ **Limited Warranty Deed**
 - ▶ **Buyer must assume any leases**
 - Include / Reference copy of lease in contract
 - Negotiate to transfer security deposit to New Owner
 - Notify Tenant of new account of Security Deposit
 - ▶ **Buyer Title Objections**
 - Notice (GAR F816 – SIGNED by Buyer) Cure, Termination rights

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Closing Costs – Purchase & Sale – B3

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.

▶ Seller Pays

- Negotiated contribution to Buyer's Closing Costs (¶A3)
 - Buyer's Lender will use for costs
 - Buyer may ALSO use if Buyer required to pay their own Broker Commission – depends on amount of commission Buyer obligated to pay in Buyer Brokerage Agreement vs. Co-op Commission &/or Seller-paid Commission to Buyer's Agent
 - Listing Agent: In Seller Net Sheet, just subtract entire contribution
- Seller-Side attorney's fees
- Cost to cure title
- Costs if not attending
- Costs for pay-off of proceeds

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Closing Costs – Purchase & Sale – B3

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.

▶ Buyer Pays

- Transfer Tax
- Cost to search title & tax records
- Cost to prepare deeds
- All other costs related / required to close transaction
- Any other title fees
- Post-Closing fees

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Closing Costs – Purchase & Sale – B3

Prorations: Ad valorem property taxes, community association fees, solid waste and governmental fees and utility bills for which service cannot be terminated as of the date of closing shall be prorated as of the date of closing. Notwithstanding any provision to the contrary, in the event ad valorem property taxes are based upon an estimated tax bill or tax bill under appeal, Buyer and Seller shall, upon the issuance of the actual tax bill or the appeal being resolved, promptly make such financial adjustments between themselves as are necessary to correctly prorate the tax bill. In the event there are tax savings resulting from a tax appeal, third party professional costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal for the year in which the Property is sold shall be deemed assigned to Buyer at closing. The liability to the county and if applicable, city, in which the Property is located for ad valorem real property taxes for the year in which the Property is sold shall be assumed by Buyer upon the Closing of the Property. Buyer agrees to indemnify Seller against any and all claims of the county and if applicable, city, for unpaid ad valorem real property taxes for the year in which the Property is sold.

- ▶ Prorations
 - Closing Attorney bases taxes & all fees based on information available at time of closing (MAY be last year's property tax bills)
 - If THIS year's taxes or other fees are different, Buyer & Seller agree to settle up between themselves

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Closing & Possession – Purchase & Sale Agreement – B4

4. **Closing Date and Possession.** Unilateral Extension for these 3 reasons ONLY
- 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.

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

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Closing & Possession – Purchase & Sale Agreement – B4

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

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Notes on 8 Day Unilateral Extension

- ▶ This is ONLY a GAR Contract provision – NOT a law in Georgia
- ▶ Remember parties may extend closing date by Amendment for as many times as they agree
 - "Amendment to Change Closing & Possession Date" – F716
- ▶ If Closing date falls on weekend or Federal Holiday it automatically gets extended to next business day – per ¶C4f – "Extension of Deadlines"

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

- Agent Point of Practice: When Binding on GAR contract, never schedule Closing Date on Friday – if 8 Day Unilateral used, it will automatically extend contract for 10 or 11 days

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8 Day Unilateral May turn into 10 or 11 Days

January 2024						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1	2	3	4	5	6
7	8 <small>New Year's Day</small>	9	10	11	12	13
14	15 <small>Martin Luther King Jr. Day</small>	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

- ▶ If original Closing = 1/5/24 & 8 Day Unilateral Extension → 8 Days = 1/13/24 = Saturday
- ▶ Next day 1/14/24 is Sunday & next day 1/15/24 is MLK Day - Federal Holiday → Closing automatically extends
- ▶ Sooooo.... Closing Date now = 1/16/24 = 11 Days
- ▶ ONLY happens when original Closing Date is Friday

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Closing & Possession – Purchase & Sale Agreement – B4b & c

b. Keys and Openers: At Closing, Seller shall provide Buyer with all keys, door openers, fobs, access cards, codes and other similar equipment allowing access to the Property, the community, and community amenities. In the event Seller is required to return the above items to a third-party, Seller shall provide Buyer with instructions on how to contact the third-party to obtain such items.

c. Devices and Fixtures: Except as set forth above, if a system, device, or fixture conveyed with the Property ("Device") cannot be operated without a specific controller, then not later than time of possession, Seller will provide Buyer with all controllers which are required for the operation of the Devices. Seller will also provide Buyer with all Device credentials, including but not limited to usernames and passwords, for all Devices including access and guest codes OR Seller may reset Devices to factory defaults and provide Buyer with default credentials for all Devices. Seller will terminate Seller's administrative access and any access granted to a third-party. The cost of transferring third-party support to these Devices and confirming that Seller's and/or third-parties' administrative access is terminated is the responsibility of the Buyer.

- ▶ Keys & Openers – Access to property AND Community
- ▶ Devices & Fixtures – Technology & Homes – Seller to provide logins/codes/controllers or reset to factory
- ▶ Seller to terminate their admin access & notify Buyer of 3rd parties with access

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Closing Law Firm – Purchase & Sale – B5

5. **Closing Law Firm.** Buyer shall have the right to select the closing attorney to close this transaction, and hereby selects the closing attorney referenced herein. In all cases where an individual closing attorney is named in this Agreement but the closing attorney is employed by or an owner, shareholder, or member in a law firm, the law firm shall be deemed to be the closing attorney. If Buyer's mortgage lender refuses to allow that closing attorney to close this transaction, Buyer shall select a different closing attorney acceptable to the mortgage lender. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing. 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.

- ▶ Buyer shall choose Closing Attorney
- ▶ Closing Attorney represents Lender
- ▶ Closing Attorney must be acceptable to Lender

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Closing Law Firm – Purchase & Sale – B5

- ▶ Cash or No Financing, Attorney shall “represent” Buyer
 - Not in terms of “legal representation” if there is a dispute between Buyer & Seller or dispute over Title issues
- ▶ Attorney Represents Buyer in terms of:
 - Preparing Closing docs
 - Clearing Title
 - Conducting Closing
 - Disbursing Funds
 - Recording Deeds
 - Issuing Owner's Title Policy
- ▶ Georgia requires Closing Attorney disclose which party they represent – most have own document signed at closing
- ▶ Any other issues – Party must sign separate Agreement to “hire” attorney

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

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

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

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

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

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

- ▶ Not received of NSF
 - Holder send Notice of Default to Buyer & Seller
 - Buyer has 3 Banking days to cure
 - If no Cure, Seller has 7 days to Terminate

- ▶ If Seller does NOT terminate, then transaction continues with \$0 Earnest Money
 - Make sure Lender knows
 - Make sure Closing Attorney knows

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Disbursement of Earnest Money – Purchase & Sale – B7

7. Earnest Money.

a. **Entitlement to Earnest Money:** Subject to the paragraph below, Buyer shall be entitled to the earnest money upon the: (1) failure of the parties to enter into a binding agreement; (2) failure of any unexpired contingency or condition to which this Agreement is subject; (3) termination of this Agreement due to the default of Seller; or (4) termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement. Otherwise, the earnest money shall be applied towards the purchase price of the Property at Closing or if other funds are used to pay the purchase price then the earnest money shall be returned to Buyer.

b. **Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: (1) the Closing of the Property; (2) a subsequent written agreement of Buyer and Seller; (3) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (4) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that: 1) Holder first gives all parties at least ten (10) days notice stating to whom and why the disbursement will be made, and 2) no interpretation shall be made by Holder dividing the earnest money between Buyer and Seller. Any party, real estate licensee or any other person having knowledge of or an interest in the disbursement of the earnest money may object to or provide information regarding the proposed disbursement by giving written notice of the same to Holder within the above referenced notice period.

"10
Day
Letter"

Objections not timely made in writing shall be deemed waived. If Holder receives an objection or other information and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. Holder shall disburse the earnest money to Seller by check in the event Holder: (1) makes a reasonable interpretation of the Agreement that the Agreement has been terminated due to Buyer's default; and (2) sends the required ten (10) day notice of the proposed disbursement to Buyer and Seller. The above-referenced check shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Holder may require Seller to sign a W-9 before issuing a check to Seller for liquidated damages of \$600 or more. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain and are not a penalty.

c. **Interpleader:** If an earnest money dispute cannot be resolved after a reasonable time, Holder may interplead the earnest money into a court of competent jurisdiction if Holder is unsure who is entitled to the earnest money. Holder shall be reimbursed for and may deduct its costs, expenses and reasonable attorney's fees from any funds interpleaded. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees, court costs and the amount deducted by Holder to cover Holder's costs and expenses from the non-prevailing defendant.

d. **Hold Harmless:** All parties hereby covenant and agree to: (1) indemnify and hold Holder harmless from and against all claims, injuries, suits and damages (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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Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ NO ISSUES:
- ▶ Buyer entitled to Earnest Money
 - Buyer never goes under contract
 - Buyer fails to meet an agreed-upon contingency & sends notice prior to expiration of contingency time frame
 - Termination by Seller default
 - Upon closing
- ▶ Written agreement signed by Buyer & Seller directing Holder how to disburse
 - “T& R” – GAR F522 – Unilateral Notice to Terminate & Proposed Agreement to Disburse Earnest Money
 - Parties may agree to divvy up the funds in any manner (i.e. 100% to one party, 50% / 50% to each party, 70%/30%, etc.) but NOT the Holder

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Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ ISSUES: (if contract terminates & both DON'T sign the release portion of the T&R)
- ▶ Reasonable Interpretation of contract by Holder = “10 Day Letter”
 - Holder send Notice to both parties of intent to disburse
 - Must wait 10 days from date of Notice sent to parties for any objections from parties/agents/others
 - These funds are TIED UP during this time & may NOT be used for another contract
 - Funds disbursed AFTER the 10 days FROM the date of the Notice
 - (2024) Any party with interest in funds may send information to Holder & may object
 - (2024) Holder may NOT split up the Earnest Money

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Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ Interpleader Action = Lawsuit between the Parties
 - Holder may interplead if too much money or too complicated of an issue
 - Costs money to hire an attorney to interplead
 - Court costs to interplead
 - These costs are deducted from the earnest money
 - Loser must pay winner's legal fees & cover any amount deducted from EM to cover Holder's costs
 - Gets expensive and may be more than the earnest money (approx. \$750 – \$3,000+ ... depends on attorney's fees, county, attorney cost to send Notice, etc.)
- ▶ Court Order
- ▶ “Hold Harmless” agreement to not sue Holder for decision

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Inspection & Due Diligence – Purchase & Sale – B8

8. **Inspection and Due Diligence.** Due Diligence = BUYER option to terminate for ANY or NO reason with no penalty (EM returned)
- 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.
 - 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.
 - 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 and all parts of the house to be accessible, including basements, attics, and crawlspaces 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. Notwithstanding the above, this indemnification obligation shall not apply to damage resulting from defects in the Property uncovered during the inspection of the Property.

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Inspection & Due Diligence – Purchase & Sale – B8 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. Consider negotiating ___ days PRIOR to Closing

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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ = Buyer right to terminate for any or no reason
- ▶ ONLY Buyer right to terminate NOT Seller termination right
- ▶ Many things a Buyer will investigate to help make the decision to terminate or go through with contract
- ▶ Buyer may ask Seller to address some concerns with the property
- ▶ Buyer may have Due Diligence Period even if Seller is selling "as-is"

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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ Buyer has right to inspect property (even if Seller is selling “as-is”) & neighborhood
- ▶ Buyer & Buyer’s Representatives have rights to enter property through closing – with prior notice to Seller
- ▶ Buyer agrees to hold Seller & Both Brokers harmless should there be any damage to property or injuries – Buyer to repair property to condition it was prior to inspecting
- ▶ Lead Paint Evaluation – Buyer has this right per the EPA – BUT LBP Disclosure (GAR F316) MUST be available to Buyer PRIOR to going Under Contract

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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)
 - 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
- ▶ 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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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ Due Diligence = Buyer's option to terminate the contract with NO penalty (i.e. keep Earnest Money) for any or no reason
 - Must send Termination Notice (GAR F522 – Unilateral Notice to Terminate) prior to expiration of DD period
- ▶ Termination vs. Release of Earnest Money
 - These are TWO SEPRATE contractual issues
 - Termination may be Unilateral
 - Release of Earnest Money requires BOTH Buyer & Seller signatures agreeing to terms of Release
 - If no Agreement, see previous sections regarding disbursement of Earnest Money

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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ Seller must disclose “latent material defects”
EVEN if selling “as is”
 - Defects in property
 - Seller (or Agent) aware of defects
 - Defects could NOT have been discovered by Buyer by “reasonable inspection”
 - Difficult to prove

- SEE BONUS SLIDES AT THE END OF PRESENTATION

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Inspection & Due Diligence – Purchase & Sale – B8

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

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Inspection & Due Diligence – Purchase & Sale – B8

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

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Negotiated Repairs

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

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Negotiated Repairs

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

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Negotiated Repairs

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

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

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

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

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

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Brokerage Relationships – Purchase & Sale – B10

- ▶ ¶A10 – Must disclose Agency relationship –
Unfair Trade Practices (OCGA 43-40-25b⁽³⁰⁾)
- ▶ Public is Client – MUST sign Brokerage Agreement – OCGA 10-6A-1 (BRETТА)
 - Seller signs Listing Agreement
 - F101 – Exclusive or F104 – Non-Exclusive
 - Buyer signs Buyer Brokerage Agreement
 - F110 – Exclusive or F113 – Non-Exclusive
- ▶ Public is Customer by Default – Agreements Describe Relationship
 - Seller signs Authorization to Show Unlisted Property
 - F107
 - Buyer signs Agreement to work with Buyer as Customer
 - F116

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Brokerage Relationships – Purchase & Sale – B10

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

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Brokerage Relationships – Purchase & Sale – B10

- ▶ Consumer Brochures – ALWAYS SEND APPROPRIATE BROCHURES TO CLIENTS / CUSTOMERS

CBs GAR CONSUMER BROCHURES

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

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Brokerage Relationships – Purchase & Sale – B10b

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 commission, the party owing the commission shall pay any shortfall at closing. The acceptance by the Broker(s) of a partial real estate commission at the closing shall not relieve the party owing the same from paying the remainder after the closing (unless the Broker(s) have expressly agreed in writing to accept the amount paid in full satisfaction of the Broker(s) claim to a commission). The Brokers herein are signing this Agreement to reflect their role in this transaction and consent to act as Holder if either of them is named as such. This Agreement and any amendment thereto shall be enforceable even without the signature of any Broker referenced herein. The broker(s) are express third-party beneficiaries to this Agreement.

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

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Brokerage Relationships – Purchase & Sale – B10b

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

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Brokerage Relationships – Purchase & Sale – B10c “Disclaimer”

▶ .

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

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Brokerage Relationships – Purchase & Sale – B10c

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

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Brokerage Relationships – Purchase & Sale – B10c

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

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Time Limit – Purchase & Sale – A11 & B11

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

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

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

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Time Limit – Purchase & Sale – A11 & B11

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

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Notice – Purchase & Sale – C1

1. Notices:

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

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

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Notice – Purchase & Sale – C1

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

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

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Notice – Purchase & Sale – C1

- ▶ If Client Relationship – Broker or agent or staff may accept Notice for Buyer or Seller
 - So public email not needed on purchase & sale but IS needed on Listing Agreement or Buyer Brokerage Agreement for your Broker
- ▶ If Dual Agency – Notice must also be sent to clients themselves
- ▶ If Designated Agency – Notice must be sent to specific agent representing party

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Notice – Purchase & Sale – C1

- ▶ If Customer Relationship – Notice must also be sent to Buyer or Seller directly
 - So that info required to be on contract (address OR fax OR email)
 - Must ALSO communicate with agent with whom the Customer has chosen to work (i.e. still can't "cross a sign")
 - GAR F816 – "Notice" – for general Notice – only one siggy
- ▶ NOTE: Agent may NOT sign Notice on behalf of Buyer or Seller – see ¶C4j "No Authority to Bind"

j. **No Authority to Bind:** No Broker or affiliated licensee of Broker, by virtue of this status, shall have any authority to bind any party hereto to any contract, provisions therein, amendments thereto, termination thereof or to notices signed by Broker but not the party. However, if authorized in this Agreement, Broker shall have the right to accept notices on behalf of a party (but not send notices from Broker on behalf of a party unless they are signed by the party). Additionally, any Broker or real estate licensee involved in this transaction may perform the ministerial act of filing in the Binding Agreement Date. In the event of a dispute over the Binding Agreement Date, it shall be resolved by a court or arbitrator having jurisdiction over the dispute, by the written agreement of the Buyer and Seller, or by the Holder but only in making a reasonable interpretation of the Agreement in disbursing earnest money.

Default – Purchase & Sale – C2

2. Default.

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

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

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Default – Purchase & Sale – C2

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

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Risk of Damage to Property – Purchase & Sale – C3

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

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

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Other Provisions – Purchase & Sale – C4

NEW 2024
e. **Entire Agreement, Modification and Assignment:** This Agreement constitutes the sole and entire agreement between all of the parties, supersedes all of their prior written and verbal agreements and shall be binding upon the parties and their successors, heirs and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement may not be amended or waived except upon the written agreement of Buyer and Seller. Any agreement to terminate this Agreement or any other subsequent agreement of the parties relating to the Property must be in writing and signed by the parties. This Agreement may not be assigned (SS611) or listed for sale in a multiple listing service by Buyer prior to Closing except with the written approval of Seller which may be withheld for any reason or no reason. Any assignee shall fulfill all the terms and conditions of this Agreement, including but not limited to, the obligation to pay any real estate commission owed by the assignor.

- ▶ No outside agreements, binding upon heirs & permitted assignees
- ▶ Amendments must be in writing & signed by Seller(s) & Buyer(s)
- ▶ Termination must be in writing

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Other Provisions – Purchase & Sale – C4e – NOTES ON ASSIGNMENT

- ▶ **Assignment** – (C4e) – Seller **MUST** agree in writing if Buyer wants to assign contract (i.e. Investor)
- ▶ **Contract Must Include Seller’s Written Permission for Buyer to Assign contract**
 - **SS 611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT** “Seller consents to Buyer assigning this Agreement to another buyer (“Assignee”) and having Assignee become the buyer thereunder.”
 - If Special Stip not included & contract is Binding, parties may amend contract with **GAR F735 – Amendment to Assign Agreement (NEW in 2023)**

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Assignment Cont’d

- ▶ **NOTE TO AGENT INVESTORS:**
- ▶ Use this Special Stipulation – to stay in compliance with License Law: **Unfair Trade Practices (OCGA 43-40-25b⁽⁹⁾)**
- ▶ Acting in the dual capacity of agent and **undisclosed principal** in any transaction
- ▶ **SS 104 AGENT’S INTENT TO RESELL PROPERTY**
- ▶ All parties acknowledge that Buyer/Agent is a real estate licensee under the laws of Georgia and is acting as a principal in this transaction. Seller acknowledges that in agreeing to the sales price of the Property set forth herein: (1) Seller has had the opportunity to seek an independent appraisal or other independent expert advice regarding the value of the Property; (2) Seller is not relying upon the advice of Buyer or other licensees in the real estate brokerage firm with which Buyer is affiliated, and; (3) Buyer may resell the Property now or in the future at a higher price.

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Assignment Cont'd

- ▶ If assignable, assignee may NOT list in MLS without written approval of Seller (NEW in 2024)
- ▶ Seller does not have to agree to assign
- ▶ Assignee fulfills all terms of contract including commission
- ▶ Then when Buyer #1 finds Buyer #2 to Assign the Contract to use:

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Assignment Cont'd

- ▶ Assignor & Assignee then Sign an Agreement
 - **GAR F279 – Assignment of Purchase & Sale Agreement Rights** = Agreement between Assignor “Buyer #1” (i.e. Original Investor Buyer who has signed contract with Seller) and Assignee “Buyer #2” (i.e. end Buyer who will live in property)
 - Outlines DIFFERENT Price between Buyer #1 & Buyer #2
 - Seller does not sign this
 - ▶ Assignor & Assignee ALSO Sign GAR F280 – Notice to Seller of Assignment of Purchase & Sale Agreement (NEW in 2024)
 - And send THIS form to Seller
 - Seller does not sign
- Just informs Seller whom actual occupant Buyer will be

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Other Provisions – Purchase & Sale – C4

- ▶ Entire Agreement, Modification (C4e) – After contract is binding it may ONLY be changed in writing & signed by the parties – Amendments & Termination

- ▶ Extension of Deadlines (C4f) – addressed with 8 Day Unilateral Extension
 - All time frames end on that date – EVEN if weekend or Holiday
 - EXCEPT for Date of Closing – automatically moves to next “Business” day

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Other Provisions – Purchase & Sale – C4

- ▶ FIRPTA Affidavit (C4g) – deals with US taxes & foreign Buyer

- ▶ GAR Forms (C4h) – No party is required to use GAR forms & Courts may interpret contract differently from the contract or intentions of the Buyer & Seller
 - License Law: Must present ALL written offers
 - GREC Rule 520-1-.10
 - OCGA 43-40-25
 - OCGA 10-6A

- ▶ Governing Law & Interpretation (C4i) – Contract must adhere to laws of Georgia & times in Georgia & if any part is unenforceable – JUST that part is severed – i.e. rest of contract enforceable

- ▶ No Authority to Bind (C4j) – Brokers / Agents may not sign anything or send emails that will bind the public to the terms of this contract – Need the Buyer / Seller signatures

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Issues & Dispute Over Binding Agreement Date

- ▶ C4j – Broker MAY fill in Binding Agreement Date as a ministerial act
- ▶ If dispute – Resolved by Court Arbitrator or written Agreement between Buyer & Seller or Holder making reasonable interpretation to disburse Earnest Money
- ▶ C4k – Notice of Binding Agreement Date = Accepting Party send Notice of Acceptance to Offering Party
 - Generally speaking... If using Offer & Counter Offer Forms, the agent whose name is pre-printed at bottom would be side that binds
- ▶ FYI Binding Agreement Date = Day 0 for counting days for contingency time frames

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Dispute Over Binding Agreement Date

- ▶ C4l – Objection to Binding Agreement Date = POTENTIALLY CHANGES THE BINDING AGREEMENT DATE
 - Party who object has 1 day to send Notice of Objection to the other Party (GAR F816 – Notice)
 - To be resolved by written agreement of parties
 - Point of Practice – Get your Brokers involved
 - If NO objection then the date entered on Purchase & Sale is agreed to be the Binding Agreement Date
- ▶ GAR F733 – Binding Agreement Date Confirmation Amendment
- ▶ If none entered, then contract is still enforceable

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Other Provisions – Purchase & Sale – C4

- ▶ C4m – Rules for Interpreting Agreement
 - i.e. hierarchy of terms governing transaction
 - Formerly spelled out under “Exhibits & Special Stipulations” sections
- ▶ Pre-Printed → Typed → Handwritten →
- ▶ Exhibits → Special Stipulations
 - So do NOT write a Special Stipulation that addresses an issue already covered in P&S or in an Exhibit
- ▶ FHA & VA Amendatory Clause (= Appraisal Contingency) shall CONTROL over any Exhibit or Special Stipulation
 - i.e. an “Appraisal Gap” stipulation in a contract where Buyer is getting FHA or VA loan has NO bearing on the contract – is NOT enforceable
 - Reference to NEW paragraph in 2024 FHA & VA Loan Exhibits

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Other Provisions – Purchase & Sale – C4

- ▶ Survival (C4o) – Very Specific – i.e. obligations are legally binding upon parties until completed
- ▶ If a provision does NOT survive closing, obligation to perform ends at closing

- 10 Specific Issues

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; ⑧ the section on devices and fixtures; ⑨ Seller's liability for not timely removing items from the Property that Seller agreed to remove; and ⑩ any obligations which the parties herein agree shall survive the Closing or may be performed or fulfilled after the Closing. #8 & #9 are new in 2024 #10 - Use if needed: "This provision shall survive closing"

- ▶ Point of Practice: Use the “Magic Phrase” when needed (i.e. repair issues, warranty issues, etc.)
 - See item #10

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

- ▶ Commission
- ▶ Warranty of Title
 - Limited Warranty Deed (time of Seller's ownership)
- ▶ Seller's written representations of property & Neighborhood
 - Many Sellers won't complete Seller's Property Disclosure – but must still legally disclose known latent material defects – but does not have to be on any specific form
- ▶ Buyer's indemnification obligations arising out of inspections

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

- ▶ If property has been Condemned
- ▶ Attorney's Fees
- ▶ Prorations of property Taxes
- ▶ Devices & Fixtures (NEW in 2024)
- ▶ Seller's liability for not removing items (NEW in 2024)

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

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

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Definitions – Purchase & Sale – C5

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

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Definitions – Purchase & Sale – C5

- ▶ Business Days (C5d) – Monday – Friday and no Federal Holidays
 - Same as “Banking Days” in the GAR contract
 - If contract just says “Days” = Calendar days (Saturdays & Sundays & Federal Holiday are included)
- ▶ Client (C5e) – Signed a Brokerage Agreement
 - Regardless of relationship with the public person
 - Relationship = Material Relationship NOT Client relationship

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Definitions – Purchase & Sale – C5

- ▶ Closing (C5f) – NEW in 2024 –
 - Seller tenders deed
 - Buyer pays consideration
 - Parties sign documents from closing attorney
 - Parties fulfill agreements
 - Closing is “consummated” when Closing Attorney:
 - Has received all paperwork, funds & approvals
 - Directs funds to be disbursed & deeds to be recorded
- ▶ Customer (C5g) – Default relationship – not signed Brokerage – ministerial acts only
- ▶ Day (C5e) – Calendar Day through 11:59pm
- ▶ Material Relationship (C5f) – must disclose
 - i.e. family, business relationship, past client, etc.
 - If you have to ask yourself if it is a “material relationship” then you should probably disclose

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Cyber-Fraud – Purchase & Sale – c6

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

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Contract Tip: “Beware of Cyber Fraud”

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

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Heightened ID Procedures & Covenant Not to Sue – Purchase & Sale – C7 – NEW in 2024

- ▶ FRAUDSTERS are impersonating property owners to illegally sell commercial or residential property. Sophisticated fraudsters are using the real property owner's Social Security and driver's license numbers in the transaction, as well as legitimate notary credentials, which may be applied without the notary's knowledge.
- ▶ See Handout from American Land Title Association

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Limit of Broker's Liability – Purchase & Sale – C8

8. **LIMIT ON BROKER'S LIABILITY.** BUYER AND SELLER ACKNOWLEDGE THAT BROKER(S):
- SHALL, UNDER NO CIRCUMSTANCES, HAVE ANY LIABILITY GREATER THAN THE AMOUNT OF THE REAL ESTATE COMMISSION PAID HEREUNDER TO BROKER (EXCLUDING ANY COMMISSION AMOUNT PAID TO A COOPERATING REAL ESTATE BROKER, IF ANY) OR, IF NO REAL ESTATE COMMISSION IS PAID TO BROKER, THEN THE SUM OF \$100; AND
 - NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY IN EXCESS OF \$100 FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD.

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

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Exhibits & Special Stipulations – Purchase & Sale – C8

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

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

All Cash Sale Exhibit (F401)*

Removed hierarchy language due to new paragraph C4k

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

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Signatures & Binding Agreement Date

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

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Conventional Loan Contingency – F404

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

1. **Application.** Buyer shall promptly apply for and in good faith seek to obtain the conventional loan or loans described below (“Loan(s)”) such that Buyer can fulfill Buyer’s obligations hereunder prior to the expiration of this Conventional Loan Contingency.
 [Select A. or A. and B. below. Any box not selected shall not be a part of this Agreement. All Loan terms must be filled in.]

2024 - Removed Column "Source of Loan"

<input type="checkbox"/> A.	FIRST MORTGAGE LOAN	Loan Amount	Term	Interest Rate (at par)	Rate Type
		_____% 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"/> 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

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Conventional Loan Contingency – F404

- ▶ Approved Mortgage Lender

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

Approved Mortgage Lender(s)

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

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Conventional Loan Contingency – F404

3. Length of the Financing Contingency Period. The length of the Financing Contingency Period in Section 7 below shall be ___ days from the Binding Agreement Date.
4. Length of Time for Buyer to Request a Reduction in the Sales Price Based Upon a Low 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 the Binding Agreement Date.

- ▶ Time Frames for Financing Contingency & “Appraisal” Contingency – separate paragraph
– Financing Contingency = Seller gives Buyer ___ days from BAD to convince a Lender to lend them money to buy the house
- ▶ Appraisal Contingency = Buyer has __ days from BAD to propose Amendment to Seller for Lower Appraised Sale Price

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Conventional Loan Contingency – F404

- ▶ Buyer may apply for a different loan BUT

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

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

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Conventional Loan Contingency – F404

7. **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 Buyer's rights under the Appraisal Contingency section of this Agreement, provided that the same has not expired. **Financing Contingency is DIFFERENT from Appraisal Contingency.**

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

- ▶ If Buyer can't convince Lender to lend them money, they must terminate the contract prior to 11:59pm on the last day of time frame
- ▶ AND prove it with a Loan Denial Letter – see following information
- ▶ Financing Contingency – based on Buyer
- ▶ Appraisal Contingency – based on property

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Conventional Loan Contingency –

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

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

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

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

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Conventional Loan Contingency – F404

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

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Conventional Loan Contingency – F404

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

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Conventional Loan Contingency – F404

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

Right of Seller to Request Evidence of Buyer's Ability to Close

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Conventional Loan Contingency – F404

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

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶13

13. 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 by the end of the time period set forth in Section 4 above, 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. If Buyer does not seek a reduction in the sales price, Buyer shall be obligated to purchase the Property for the price agreed to by the parties in the Agreement. 2024

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F404, Conventional Loan Contingency Exhibit, Page 2 of 3, 01/01/24

If Low Appraisal, if Buyer does not give Seller option to reduce Sale Price, Buyer obliged to close at higher contract price - obligation now spelled out.

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶11

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

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶13

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

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶13

- ▶ Buyer not required to ask Seller to reduce Sale Price based on low appraisal BUT.... If Buyer does not send Seller copy of Low Appraisal & propose Amendment to Reduce Sale Price, then Buyer MUST BUY at the contract sale price regardless of the low appraisal
- ▶ i.e. Buyer would bring additional cash for the difference between low appraisal & contract price

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NOTE about Conventional Loan Contingency – F404

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

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FHA Loan – F407

- ▶ Same as Conventional up to....
- ▶ NO time frame for “Appraisal Contingency”
- ▶ Loan Denial information in Financing Contingency paragraph
 - No reference to a Low Appraisal
 - i.e. a Low Appraisal is covered in the Amendatory Clause and not an issue for a Buyer to terminate under “Financing Contingency”
- ▶ Then the Same until Amendatory Clause Paragraph – ¶12

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FHA Loan – F407

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 forth the appraised value of Property of not less than \$ Fill in with Numbers ("Minimum Appraised Value"). 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. **Note: If Seller counters with higher Sale Price, Buyer must counter & reference THIS paragraph with a Sale Price that matches Counter Offer.**

- ▶ Amendatory Clause = Appraisal
 - No time frame so appraisal contingency protection for Buyer's Earnest Money in FHA goes THROUGH day of closing
 - MUST fill in dollar amount – remember Buyer to counter this if sale price gets changed in a Seller counter offer
 - "Amendatory Clause paragraph 12 of FHA Loan Exhibit shall read \$_____."
 - If low appraisal, Buyer may terminate & get Earnest Money back
 - Remember that Amendatory Clause SUPERSEDES any Special Stipulation (i.e. Appraisal Gap Stip)

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FHA Loan – F407

13. **Further Agreement Pertaining to Amendatory Clause.** Notwithstanding the above, 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, Buyer shall immediately provide Seller with written copy of such appraised value. Seller may, but shall not be required to, within five (5) days from the date Buyer delivers notice to Seller of the appraised value, reduce the purchase price of the Property to the appraised value upon notice to Buyer ("New Sales Price"). In such event, the parties shall immediately prepare and sign an amendment to this Agreement reflecting the New Sales Price and deliver a signed copy of the same to the other party. Buyer and Seller shall then close this transaction at the amended sales price. All other provisions in the Agreement shall remain unchanged. The Amendatory Clause in Section 12 above shall remain in full force and effect even if the Financing Contingency Period has expired.

- ▶ NEW in 2024
- ▶ If Low Appraisal, Buyer MUST give Seller option of selling it to Buyer at the lower appraised value
- ▶ Buyer must inform Seller of lower appraised value
- ▶ Seller has 5 days to agree & if so, Buyer MUST close
- ▶ If Seller says no, Buyer may terminate & get back EM

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FHA Loan – F407

14. **Mortgage Insurance Premium.** The FHA up-front _____ percent (%) mortgage insurance premium shall be paid by Buyer as follows: [select one]

A. in full at Closing,

OR

B. added to the loan amount and financed. (If this box is checked, then the term "loan amount" as used herein shall mean the amount set forth in the Purchase and Sale Agreement plus the FHA mortgage insurance premium so financed; the monthly payments will increase accordingly.)

Get this information form Buyer's Lender

15. **When Mortgage Insurance Premium Is Paid.** Buyer is aware that a monthly mortgage insurance premium shall be included in the regular monthly mortgage payments.

16. **Seller shall pay the following lender fees:** Tax Service Fees.

These costs are included OR are in addition to any closing costs that Seller may have agreed to pay in accordance with the Seller's Contributions at Closing paragraph.

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FHA Loan – F407

▶ FHA–Appraisal / Lender Required Repairs

17. **Repairs Required in FHA Commitment.** Any repairs required in the FHA Commitment shall be completed and paid for by _____ Buyer or Seller prior to Closing provided such repairs do not exceed \$ _____ 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 without penalty to the Buyer. If Buyer agrees to pay the excess amount, the same shall be paid by Buyer to Seller at Closing. Contract may automatically TERMINATE & Buyer gets EM back

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FHA Loan – F407

- ▶ Appraisal / Lender required repairs – paragraph 16
- ▶ Negotiate who will pay & amount that party is willing to pay
- ▶ If actual repairs exceed the amount negotiated
 - Seller must get 3rd party estimate & send to Buyer
 - Buyer & Seller must agree who will pay overage within 3 days of when Seller sent Estimate
 - If no written agreement (via Amendment) within that time frame, then this contract terminates

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FHA Loan – F407

- ▶ Seller Required Fees
 - Tax Service Fees – paragraph 15
 - Lender–required inspection of Septic & well – paragraph 17
 - Lender–required Home warranty if less than 1 year old – paragraph 18
- ▶ Property MAY be required by FHA to be connected to public Sewer – amount & obligation negotiated by Buyer & Seller – paragraph 19
- ▶ Arm’s Length Transaction = no relationship between Buyer & Seller – paragraph 21

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VA Loan – F410

- ▶ Same as Conventional & FHA through Loan Denial Paragraph & then paragraph 12 = Amendatory Clause = Appraisal Contingency

★ 12. **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.

NEW 2024 13. **Further Agreement Pertaining to Amendatory Clause.** Notwithstanding the above, if the VA Notice of Value ("NOV") of the Property is less than the purchase price, Buyer shall immediately provide Seller with a copy of the NOV. Within five (5) days from the date Buyer delivers such notice, Seller may, but shall not be required to, reduce the purchase price of the Property to the value stated in the NOV of the Property ("New Sales Price") upon notice to Buyer. In such event, the parties shall immediately prepare and sign an amendment to this Agreement reflecting the New Sales Price and deliver a signed copy of the same to the other party. Buyer and Seller shall then close this transaction at the amended sales price. All other provisions in the Agreement shall remain unchanged. The Amendatory Clause in Section 12 shall remain in full force and effect even when the Financing Contingency Period has expired.

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VA Loan – F410

- ▶ Same as FHA but no price identified so must appraise for Contracted Sale Price
- ▶ Remember that Amendatory Clause SUPERSEDES any Special Stipulation (i.e. Appraisal Gap Stip)
- ▶ If Low Appraisal, Buyer MUST give Seller option to sell it at the lower appraised value & if Seller agrees, Buyer must close

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VA Loan – F410

- ▶ Lender-Required Repairs – paragraph 14
 - Must be paid for by Seller
 - Amount negotiated in Exhibit
 - If price exceeds this, same process as in FHA Exhibit

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VA Loan – F410

16. 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 in addition to any Contribution at 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.

- ▶ REQUIRED Termite Letter
 - Buyer or Seller must provide termite clearance letter
 - Letter dated within 90 days of closing
 - If active infestation, then Seller must treat or retreat in order to provide this clearance letter

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VA Loan – F410

- If property is damaged from PREVIOUS infestation, Lender may require that damage to be repaired
 - Seller to get estimate & send Notice of amount to Buyer
 - Buyer & Seller must decide who will pay
 - If they don't agree in writing on an Amendment within 3 day of Seller's Notice, then contract terminates

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

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Special Stipulations – Especially if Condo / Townhouse Community

- ▶ **SS 526 FHA/VA Development Approval**

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

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No Financing Contingency Exhibit – F401

- ▶ Use if Buyer using cash
- ▶ OR getting loan but willing to risk earnest money if they don't get loan OR Hard-Money Loan
- ▶ BUT.... If Buyer is getting loan, there is NO right to use 8 Day Unilateral Extension if Lender is delayed or Attorney delayed due to Lender delay
- ▶ Verification of Funds time frame
- ▶ Options to negotiate between Buyer & Seller
- ▶ Option to include Appraisal Contingency

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

- ▶ Notice of Termination is Unilateral (only ONE party needs to sign)

Unilateral Notice to Terminate

Only ONE side must sign - other sign does not have to "agree"

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

a. Buyer's right to terminate during the Due Diligence Period set forth in the Agreement; **No explanation needed**

b. the failure of the following contingency to which the Agreement is subject: i.e. "Financing Contingency"

c. the following default under the Agreement by Buyer Seller:
i.e. check box for "Buyer" & type "Buyer failed to close as of last contract closing date"

d. other lawful reason: For example - cloud on title that cannot be resolved by closing

1 _____ Date

2 _____ Date

Additional Signature Page (F267) is attached.

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

Proposed Disbursement of Earnest Money

"Release" of Earnest Money

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

Amount of Earnest Money & Side & Name of Party - i.e. "\$5,000 to Buyer - Dana Sparks"

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

1 Buyer _____	Date _____	AND	1 Seller _____	Date _____
2 Buyer _____	Date _____		2 Seller _____	Date _____
<input type="checkbox"/> Additional Signature Page (F267) is attached.			<input type="checkbox"/> Additional Signature Page (F267) is attached.	

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

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

- ▶ Once a contract is terminated, it's terminated
 - Unless revived in writing - GAR F290 "Agreement to Reinstate Contract"

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

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

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Earnest Money & Termination

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

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Earnest Money & Termination

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

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Earnest Money & Termination

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

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Earnest Money & Termination

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

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Earnest Money & Termination

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

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Mutual Termination of Purchase & Sale – F519

- ▶ **Contract Tip:** Parties may use **GAR Form: F519 Mutual Agreement to Terminate Purchase & Sale & Disburse Earnest Money** (includes negotiated payment to Brokers)
- ▶ Remember that contract is NOT terminated until ALL 4 parties sign – Buyer / Seller / Both Brokers – so DON'T use if Buyer against a deadline & needs to terminate to protect EM

A. Selling Broker: 1. Amount to be Paid by Seller to the Selling Broker under the Agreement: \$ _____ 2. Amount to be Paid by Buyer to the Selling Broker under the Agreement: \$ _____	B. Listing Broker: 1. Amount to be Paid by Seller to the Listing Broker under the Agreement: \$ _____ 2. Amount to be Paid by Buyer to the Listing Broker under the Agreement: \$ _____
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Counter Offer – F249

This is a Counteroffer to or modification of, as the case may be, (hereinafter collectively "Counteroffer") the unaccepted original offer set forth in the Purchase and Sale Agreement dated _____ including all exhibits attached hereto or incorporated by reference therein ("Original Offer") for property located at: _____, Georgia _____ ("Property").

- A. **Previous Counteroffers Rejected.** The party making this Counteroffer acknowledges that in doing so: 1) it constitutes a rejection of the Original Offer as presented and all previous counteroffers; 2) the Original Offer and all previous counteroffers are no longer available for acceptance; 3) no previous counteroffer(s) shall be considered a part of any agreement between the parties; and 4) nothing requires the other party to continue the negotiations.
- B. **Relationship between Original Offer and This Counteroffer.** The Original Offer is hereby incorporated by reference into this Counteroffer. However, the terms of this Counteroffer shall modify and control over any conflicting or inconsistent provisions contained in the Original Offer.
- C. **Effect of Accepting This Counteroffer.** When this Counteroffer is signed by the Buyer and Seller and a copy of the same is delivered to both parties, the Original Offer as modified by this Counteroffer constitutes a legally binding agreement. Since the Original Offer (including all exhibits thereto) is incorporated by reference into this Counteroffer, only this Counteroffer needs to be signed to create a legally binding agreement between the parties.
- D. **Clean Copy of Agreement.** At any time prior to closing, either party if so requested by the other shall sign a conformed or "clean" copy of the Agreement combining the terms of Original Offer with the controlling and supplemental provisions of this Counteroffer into one (1) document, including initialing or signing, as the case may be, all exhibits. (Include SS622 Conformed Copy of Agreement in conformed or "clean" copy of Agreement)
- E. **Terms and Conditions.** The following terms and conditions of the Original Offer are modified as follows: [The sections not filled in or marked N/C (for "no change" which shall mean that no change is being proposed to that section of the agreement) shall not be a part of this Counteroffer and shall remain the same as set forth in the Original Offer.]

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Counter Offer – F249

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

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Counter Offer – F249

- ▶ **Contract Tip:** Exhibits that Should Have Seller Initials & Be Available to Potential Buyers for Writing an Offer:
 - F301 – Seller’s Property Disclosure Statement OR
 - F302 – Seller’s Disclosure of Latent Defects & Fixtures Checklist
 - F322 – Community Association Disclosure Exhibit
 - F316 – Lead Based Paint Exhibit – 2023 GAR Seller Brokerage Agreement requires Seller complete this at time of signing Brokerage Agreement
- ▶ See previous Notes on EPA & Lead-Based Paint:
- ▶ Also use CB04 – Lead Based Paint Pamphlet (EPA)
- ▶ EPA fines Brokers / Agents \$18,000 per missing initial/signature

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Counter Offer – F249

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

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Counter Offer – F249

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

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

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

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Community Association Disclosure – F322

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

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Community Association Disclosure – F322

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

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Community Association Disclosure – F322

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

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Community Association Disclosure – F322

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

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Closing Attorney as Holder of EM EXHIBIT- F510

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

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

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Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ Closing Attorney must agree to become Holder within 5 business days of receiving contract – by signing F511

3. **Closing Attorney Must Agree to Become Holder Within Five (5) Business Days of Receiving Entire Contract.** The Closing Attorney named as Holder shall not become the Holder unless within five (5) business days from the date that the Closing Attorney receives the Entire Contract, the Closing Attorney has: a) countersigned the Agreement of Closing Attorney to serve as Holder (GAR Form F511, and sometimes referred to as "Escrow Agreement") without change or modification so except for filling in the blanks contained therein; and b) delivered the same to Buyer and Seller. When this occurs, Closing Attorney's rights and duties as Holder and the timeframe for completing the same shall commence.

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Closing Attorney as Holder of EM EXHIBIT- F510

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

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

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Closing Attorney as Holder of EM EXHIBIT- F510

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

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

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Closing Attorney as Holder of EM EXHIBIT- F510

▶ Notes

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

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Agreement of Closing Attorney to be Holder - F511

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

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Sale or Lease of Property Contingency Exhibit – F601

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

1. Buyer warrants that Buyer owns the real property located at Current Property owned by Buyer (City), _____ (State) _____ (Zip Code) ("Other Property"). Buyer agrees to use Buyer's good faith efforts to sell or lease the Other Property in accordance with the terms of the Agreement prior to the end of the Contingency Period (as that term is defined below).
2. At the time of Offer, Buyer warrants that other Property is: [select all that apply]
 - A. Currently listed with Name of Broker with Listing ("Other Property Seller's Broker");
 - B. Currently under contract with buyer represented by Name of Broker of THAT Buyer ("Other Property Buyer's Broker") with a Closing Date of Fill in Date ("Existing Pending Contract");
 - C. Other: _____

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Sale or Lease of Property Contingency Exhibit – F601

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

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Sale or Lease of Property Contingency Exhibit – GAR F601

3. The Agreement is contingent upon the occurrence of the following on or before either the Closing Date of the Agreement (including any extension thereof) OR Fill in Date if NOT Closing Date _____ ("Contingency Period"). [Select A. and/or B below. 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. (Nothing herein shall give the Buyer an ability to terminate the Agreement if the Property sells for an amount greater than the list price.)

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

4. In the event that the Contingency Period ends without either contingency selected above being fulfilled, then, the Agreement shall terminate at that time. Prior to Seller giving Buyer notice that Seller is exercising the Kick-Out Clause, as that term is explained below, the contingency or contingencies referenced above may be waived by Buyer upon notice to Seller. In such event, the Kick-Out Clause below shall no longer be a part of the Agreement, and Buyer shall have no obligation to deposit additional earnest money.

5. In the event that the Existing Pending Contract is terminated for any reason whatsoever, Buyer shall immediately provide notice of the same to Seller. Buyer shall have the right, but not the obligation, to terminate the Agreement at the same time of the notice, in which case Buyer shall have the right to a refund of earnest money.

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

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

Sale or Lease of Property Contingency Exhibit – GAR F601

- ▶ If contract on Buyer's current home terminates, Buyer must notify Seller of NEW home
- ▶ Buyer may terminate & get Earnest Money back
- ▶ Seller may request Buyer remove ALL contingencies
- ▶ If Buyer doesn't agree, Seller may terminate – Buyer gets Earnest Money back

Sale or Lease of Property Contingency Exhibit – GAR F601

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

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

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Sale or Lease of Property Contingency Exhibit – GAR F601

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

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

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Sale or Lease of Property Contingency Exhibit – GAR F601

7. **Kick-Out Clause in this Transaction.** Select Option 1 **OR** Option 2 below. *[If neither option is selected, Option 2 shall control.]*

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

Better for Seller:

(A) All contingencies and the Due Diligence Period shall no longer be part of the Agreement.

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

Sale or Lease of Buyer's Property Contingency;

Due Diligence Period;

Right to Request Repairs;

any Financing Contingency;

any Appraisal Contingency;

Special Stipulation identified as: _____;

Other: _____;

2024 New **(C)** All unexpired contingencies shall remain a part of this Agreement.


With a Kickout, then Buyer #1 agrees to remove certain contingencies agreed in advance
 ▶ Additional Earnest Money is optional – may put \$0.00

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Agreement to Reinstate Contract – F290

AGREEMENT TO REINSTATE CONTRACT


2024 Printing

_____, ("Buyer") and _____ ("Seller") entered into an Agreement for the purchase and sale of that certain real property known as _____, Georgia _____ with a Binding Agreement date of _____ ("Agreement").

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

WHEREAS, Buyer and Seller now desire to reinstate the Agreement and have it be in full force and effect;

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

- Buyer and Seller mutually agree to reinstate the last fully agreed upon version of the above-referenced Agreement such that it shall again be a legally enforceable contract and binding upon the parties as if it had never been terminated.
- All of the terms, conditions and time periods set forth in the above-referenced Agreement, including the Binding Agreement Date, shall remain in full force and effect except for any changes thereto set forth below which shall control over any conflicting or inconsistent provisions set forth in the above-referenced Agreement.

Check here if any additional pages are attached and incorporated herein.

3. This Agreement to Reinstate Contract shall only be effective when it has been signed by Buyer and Seller and a fully executed copy of this Agreement to Reinstate Contract has been delivered to Buyer and Seller in accordance with the Notice section of the above-referenced Agreement ("Reinstatement Date").

4. If earnest money has been disbursed by Holder, this Agreement shall be contingent upon Buyer paying Holder earnest money of NEW \$ _____ within _____ days from the Reinstatement Date.

2024 By signing this Agreement to Reinstate Contract, Buyer and Seller acknowledge that they have each read and understood this Agreement to Reinstate Contract and agree to its terms.

1 Buyer's Signature _____ 1 Seller's Signature _____
 Print or Type Name _____ Print or Type Name _____
 Date _____ Date _____
 2 Buyer's Signature _____ 2 Seller's Signature _____

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BONUS INFO

- ▶ The Next Few Slides &/or Handouts are intended to be a Reference / Reminder for you as a Licensed Real Estate Agent in Georgia
- ▶ Ministerial Acts – Handout
- ▶ All About Seller’s Disclosures
- ▶ All About Real Estate Agent’s Disclosures

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1

About Seller Disclosures...

- ▶ Sellers in Georgia **DO** need to disclose latent material defects – but may disclose in any manner – NO requirement to complete any specific form
- ▶ §OCGA 51–6–2. When Misrepresentation of Material Fact Actionable as Deceit; Effect of Mere Concealment; Knowledge of Falsehood Essential to Deceit; When Knowledge Implied
 - A. Willful misrepresentation of a material fact, made to induce another to act, upon which such person acts to his injury, will give him a right of action. Mere concealment of a material fact, unless done in such a manner as to deceive and mislead, will not support an action.
 - B. In all cases of deceit, knowledge of the falsehood constitutes an essential element of the tort. A fraudulent or reckless representation of facts as true when they are not, if intended to deceive, is equivalent to a knowledge of their falsehood even if the party making the representation does not know that such facts are false
- ▶ A “latent defect” is basically a hidden problem. The Wex Definitions Team at Cornell Law School describes a latent defect as one that “could not be discovered by reasonable and customary observation or inspection.”

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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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GA Licensed Agent Must ALSO Disclose Known Latent Material Defects

- ▶ 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

- ▶ **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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GA Licensed Agent Must ALSO Disclose Known Latent Material Defects

- ▶ 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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- ▶ **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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Thank you!

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

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

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

Presentation by Dana Sparks,
Qualifying Broker, Maximum One
Greater Atlanta, REALTORS

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