

2020 GAR Contracts Update



What's In, What's Out, and Why

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"I have not found the secret to success but I have found the secret to failure and that is try to please everyone."

-Anonymous

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What are the objectives of the Forms Committee?

Protect the legal liability of REALTORS®

Protect the production of REALTORS®

Create an inclusive forms package which is as much proactive as reactive

Whenever possible, simplify, clarify and unify

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"A camel is a horse which was created by a committee."

-Author Unknown

"A committee is a cul-de-sac in which ideas are lured and then quietly strangled."

-Author Unknown

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Why does the GAR Forms Committee **CONTINUALLY** change the forms?

If change is...

- ...allowed by technology
- ...mandated by case and statutory law
- ...compelled by mistakes by licensees creating potential liability...

...WHY NOT?

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True or False

If there is any ambiguity in a contract, the courts will typically construe the contract most strictly against the party who prepared the contract.

TRUE

DO NOT practice law!

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True or False

If a complete and accurate legal description is not available at the time of negotiating an agreement, the legal description should be added as an amendment as soon as possible after receipt.

FALSE

- Can't breath life into a void contract.
- Georgia courts becoming increasingly intolerant of contracts without good legal descriptions.
- Letter of intent?

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True or False

In the event a buyer has concerns about the value of a property, it would be appropriate for the buyer's agent to write and insert a special stipulation giving the buyer the right to terminate in the event he or she is not satisfied with the report from an appraiser.

FALSE

- Providing one person the unilateral right to terminate has no mutuality and is void.
- If you are not an attorney, be careful writing special stipulations!

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F20 Purchase and Sale Agreement

- Divided into 3 sections
 - A. Key Terms and Conditions
 - B. Corresponding Paragraphs
 - C. Other Terms and Conditions
- Section B corresponds exactly to Section A for ease of explanation and understanding

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¶A.1. Purchase and Sale

- Sets forth the express intent of the buyer and seller to, well, buy and sell.....
- As simple as this paragraph is, it may be the most important in the entire agreement

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¶A.1. a. and b. Property Identification and Legal Description

- Property Identification
 - MLS Number, Tax I.D. Number, Address
- Legal Description
 - Attached
 - Condominium
 - Referenced to Deed Book, Page and County
 - Reference to Plat Book

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¶A.2. Purchase Price of Property

- Numbers only; be careful of faxes and typos
- Payment is cash with no contingencies unless appropriate Exhibits attached

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¶A.3. Closing Costs/Seller's Contribution

- Numbers only

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True or False

A contract states that it will close on July 15th. The contract neither closes nor is extended in a timely fashion. The contract becomes null and void and the obligations of the parties automatically terminate.

FALSE

Termination is not automatic. This date is a "default" date, not a "termination" date. When a contract does not close by the agreed upon date in the contract, the contract must be terminated (preferably by using F522).

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¶A.4 Closing and Possession

- Check your calendar!
- This is a default date, not a termination date
- Provides for possession at closing or after closing at a specific time. If after, use F219 Temporary Occupancy Agreement

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¶A.5. Holder of Earnest Money

- Can be anyone other than non brokerage licensee
- If it is the closing attorney, use F510 and F511

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¶A.6. Closing Attorney/ Law Firm

- Buyer has right to choose

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¶A.7. Earnest Money

- Check, cash or wire transfer
- Paid as of offer date, within ____ days of Binding Agreement Date or other

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Binding agreement date is March 23, 2020. The contract calls for 14 day due diligence period. What day and time does due diligence end?

April 6, 2020 Midnight (11:59 p.m.)

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¶A.8. Inspection/Due Diligence

- Insert number of days or N/A
- If N/A, this is an “As Is” contract
- An amount over and above the phantom \$10 can be negotiated. If not, insert N/A

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¶A.9. Lead Based Paint

- Either check was or was not built prior to 1978
- Should a seller ALWAYS execute a Lead Based Paint Exhibit at the time of listing?

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¶A.10. Brokerage Relationships in the Transaction

- Makes agency disclosure as required by BRRETA
- **ALWAYS** a listing broker and selling broker

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¶A.10.a. Selling Broker

- Buyer is client
- Buyer is customer
- Broker acting as dual agent
- Broker acting as designated agent

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¶A.10.b. Listing Broker

- Seller is client
- Seller is customer
- Broker acting as dual agent
- Broker acting as designated agent

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¶A.10.c. Material Relationship Disclosure

- Required if there is a relationship which could interfere with duty to represent the client
- Family, personal or business
- If unsure, disclose!

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True or False

An offer must include a stated period of time for acceptance or there is no mutuality.

FALSE

An offer does not require an automatic termination if not accepted. Also, there is never mutuality (meeting of the minds; agreement of the parties) in an offer.

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True or False

If a time limit for the offer is stipulated, not only does the offer have to be accepted within that time period but it must also be communicated to the offeror within the stated period of time.

PROBABLY TRUE

If parties performed after communication, this would likely constitute a ratification

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¶A.11. Time Limit of Offer

- Not required
- “Reasonable period of time” if not completed
- F285 Unilateral Notice to Withdraw Offer

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Initials of Parties

- Only page of F201 with initial blocks
- If parties in full agreement, both should initial
- DO NOT use page one (1) to counter offer. Use F249.
- Should seller initial if countering?
- Consider creating a conformed copy (SS622) if agreement created with counters

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¶B.1. Purchase and Sale/Title

- Seller shall provide a limited warranty deed
- Buyer has right to examine title

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¶B.2. Purchase Price and Method of Payment

- All cash at closing; immediately available funds, typically wire transfer
- Not contingent on financing
- Back to back closings

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¶B.3. Closing Costs and Proration's

- Buyer pays all closing costs except fees to clear title or extra costs resulting from seller not attending closing
- Seller makes contribution
- Ad valorem taxes, community association fees, solid waste, governmental fees and utility fees are prorated at closing
- Costs of tax appeal deducted before prorating
- Pending tax appeal assigned to Buyer

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¶B.4. Closing and Possession

- Either party can unilaterally extend for 8 days
- Limited reason for extension
- Use F270 prior to or on day of closing to extend
- Once used, right to extend terminates

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¶B.5. Holder of Earnest Money

- Deposit within 5 Banking days from binding agreement or receipt, whichever is later
- Check must clear before return
- Buyer has 3 banking days if check not honored or not paid
- Seller has 7 days to terminate if not default not cured

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¶B.6. Closing Attorney/ Law Firm

- Buyer has legal right to choose firm
- Attorney represent lender, except for cash sale
- Cash sale, attorney represents buyer

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¶B.7. Earnest Money

- a. Entitlement to Earnest Money (Buyer)
 - No contract
 - Contingency or condition not met
 - Seller default
 - Proper termination
 - Closing

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¶B.7. Earnest Money

- b. Disbursement of Earnest Money
 - Closing
 - Written agreement
 - Court order
 - No contract
 - Reasonable interpretation
 - 10 day written notice

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¶B.7. Earnest Money

- c. Interpleader
 - Unresolved dispute
 - Holder files interpleader suit
 - Holder will be reimbursed and may deduct costs
 - Loser pays attorney's fees and court costs.

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¶B.7. Earnest Money

- d. Hold Harmless
 - Holder CYA

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TRUE OR FALSE

When using the F201 Purchase and Sale Agreement, the buyer has the right to extend the due diligence period for up to seven (7) days if it is necessary to consult with an expert, such as a Professional Engineer.

FALSE!

This would be true only if the Right To Request Repairs exhibit were included

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¶B.8. Inspection and Due Diligence

- a. Buyer has right to inspect property
- b. Buyer has duty to inspect neighborhood; Sex Offender Registry and National Clandestine Laboratory Register
- c. Warranties will be transferred to buyer by seller
- d. Property is sold "as-is" subject to due diligence

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¶B.9. Lead-Based Paint

Attach Exhibit F316 if any portion of property was constructed prior to 1978

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¶B.10. Agency and Brokerage

➤ Provides agency definitions and consent

B.10.c.Disclaimer

You may have thought that was me, but it wasn't. If it was, and I don't think it was, that was not what I said. If that is what I said, and I don't think it was, that was not what I meant. If you can prove that was what I meant, than you misunderstood the premise of my position. That is my story and I am going to stick to it!!!

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¶B.11. Time Limit of Offer

➤ If offer has not been accepted within time frame AND proper notification provided, the offer expires.

➤ If time limit expires, should the F285 Unilateral Notice to Withdraw Offer still be used?

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True or False

Legal notification, as stipulated in the GAR Purchase and Sale Agreement, always requires physical receipt to be effective.

FALSE

➤ ¶C.1.b. states "A notice to a party shall be deemed to have been delivered...(3) in the case of delivery electronically, on the date and time the written notice is electronically sent..."

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¶C.1. Notices

➤ a. Writing

➤ b. Delivery

➤ In person

➤ Delivery service (courier, overnight, or certified or registered U.S. Mail)

➤ Fax transmission

➤ E-mail

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¶C.1. Notices

➤ c. Notice to broker notice to client

➤ Only agent designated to represent in designated agency

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¶C.1. Notices

➤ Fax or E-mail notice to licensee

➤ Must be shown in signature page of agreement

➤ No fax number/E-mail address

➤ Notice to broker not notice to customer

➤ SS108

➤ Send original if requested

➤ Fax/E-mail signature same as original

➤ Address, E-Mail or Number for Receiving

➤ Must be provided on the signature page

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True or False

When installing in a contract a liquidated damage clause, such as "In the event purchaser elects not to close, earnest monies shall be forfeited as full liquidated damages to seller", there must be an attempt to estimate probable damages.

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TRUE

When installing in a contract a liquidated damage clause, such as "In the event purchaser elects not to close, earnest monies shall be forfeited as full liquidated damages to seller", there must be an attempt to estimate probable damages, the attempt must fail, and this cannot be construed a penalty .

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¶C.2. Default

- A. Rights of Seller
 - Sole remedy is take earnest money
- B. Rights of Buyer
 - Sue for specific performance or terminate
- C. Rights of Broker
 - Defaulting party shall pay brokerage commission as liquidated damages

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¶C.3. Risk of Damage to Property

- Same condition
- Clean/free debris and personal property
- Damage – 14 days to **TERMINATE!**
- 7 days to close

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¶C.4. Other Provisions

- a. Condemnation
- b. Consent to Share Non-Public Information
- c. Duty to Cooperate
- d. Electronic Signatures
- e. Entire Agreement, Modification and Assignment
- f. Extension of Deadlines
- g. GAR Forms

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¶C.4. Other Provisions

- h. Governing Law and Interpretation
- i. No Authority to Bind
- j. Notice of Binding Agreement Date
- k. Statute of Limitations
- l. Survival of Agreement
- m. Terminology
- n. Time of Essence

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¶C.5. Definitions

- Banking Day
- Binding Agreement Date
- Broker
- Business Day
- Material Relationship

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**¶C.6. WARNING TO BUYERS AND SELLERS:
BEWARE OF CYBER-FRAUD**

- Sign of the times.... ☹

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¶C.7. LIMIT ON BROKER'S LIABILITY

- Broker liability capped at amount of commission to be paid, or if no commission agreement, \$100

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¶C.8. Exhibits and Addenda

- Provides for a check list of Exhibits attached
- Exhibits control printed matter
- Special stipulations control exhibits and printed matter
- Additional Special Stipulations are or are not attached
- Don't have conflict....it's a concept!

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Signature Page

- Name (printed and signed) of buyer and seller along with contact information
- Name of selling and listing brokerage firms and agent along with contact information
- MUST have license number for brokerage firm and agents
- MUST have binding agreement date

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Salient Points For 2020

- ❖ NEVER give one person the unilateral right to terminate in a bilateral contract
- ❖ ALWAYS include a valid legal description
- ❖ ALWAYS use the F249 to counter an offer; NEVER use page one (1) of the F201
- ❖ ALWAYS use Exhibits and Special Stipulations to complete agreement and protect YOUR client

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Salient Points For 2020

- ❖ ALWAYS include brokerage firm and agent license numbers
- ❖ CONSIDER using Conformed Copy of Agreement (SS622) special stipulation after completing agreement with counters

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Tom Gillett
404-372-1969
Institute of Real Estate Training
The Tom Gillette Company, Inc.

www.iret.info

thomasgillett@bellsouth.net

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