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REALTOR®

FALL ISSUE • 2025

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spending
SMARTER

where to **ALLOCATE** your
MARKETING DOLLARS in **2025**

•PLUS•

Midyear Changes to the GAR Forms

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{ OUR MISSION }

*Empowering Our Members for Success and
Enhancing the Quality of Life in Our Communities*



Midyear ReFORMs

Fortunately, the number of midyear changes to the 2025 GAR Forms package was small compared to last year when many changes were needed to address compensation issues resulting from the NAR settlement agreement. This article will review the major changes that were made.

{1} CONSUMER BROCHURES — REVISED

Both the Protect Yourself When Selling Real Property brochure (GAR Form CB10) and the Protect Yourself When Buying Real Property (GAR Form CB13) brochures were revised to add a new section on broker compensation. The new section includes an explanation that a broker's compensation is negotiable and also discusses the circumstances when a seller may want to pay the buyer's broker's compensation.

{2} EXCLUSIVE SELLER BROKERAGE ENGAGEMENT AGREEMENT — REVISED {GAR Form F101}

a. Delayed Marketing (Section A.4.b.)

A new NAR-mandated acknowledgment and waiver was added to the Exclusive Seller Brokerage Engagement Agreement that if the seller is delaying the public marketing of the seller's property, the seller may not maximize number of offers the seller receives or the price offered to buy the property. As of the end of September 2025, buyers will also be given the option to market their properties in one of three ways including the marketing choices set forth below:

1. Immediate Public Marketing Option

With this option, the Property is immediately marketed to the public. Within one (1) day of beginning marketing the Property to the public, the listing will be filed with the MLS where it will be visible to MLS participants and distributed through Internet Data Exchange ("IDX") where all members of the MLS can display the listing on their public-facing websites. The broker may also market the property through syndication to various third-party websites.

2. Office Exclusive Marketing Option

With this option, the Property is initially marketed through an office exclusive period of a set number of days during which time the Property is neither marketed publicly nor shared on the MLS. However, the Property is marketed through the brokerage firm with which the Property is listed during this period.

3. Delayed Marketing Exempt Option

With this option, the marketing of the Property through the IDX and syndication is delayed for a set number of days. However, the listing will still be available to other MLS participants so that they can inform their customers and clients about the listing. The listing will not appear on an MLS public-facing website or on websites like **Realtor.com**, **Zillow** and **Homes.com**. The maximum period where marketing is delayed is set by the MLS (and such maximum period shall control in the event the days filled in above exceeds the maximum). During the delayed marketing period, the seller's broker can market the listing consistent with the seller's wishes and the listing may appear on the broker's website. Such listings are considered active listings, and the Property may be shown to potential buyers.

b. Limit on Broker's Liability (Section C.4.)

The Exclusive Seller Brokerage Engagement Agreement was also modified to limit the liability of seller's brokers to sellers if they inadvertently give the seller incorrect information. Specifically, the new language provides that the brokers should have no liability for providing incorrect information to the seller, so long as the broker does not have actual knowledge that the information is false and discloses the source of the in-

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formation. This language tracks similar language in the Brokerage Relationships in Real Estate Transactions Act ("BRRETA") that protects sellers providing incorrect information to buyers. To be able to prove that the sellers' brokers fulfilled their obligations in this new section, sellers' brokers should always answer questions in writing citing the source of their information so that they have a written record of compliance.

c. Liability for Misinformation (Section B.3.c.)

The Exclusive Seller Brokerage Engagement Agreement was modified to provide that the buyer would indemnify and hold the buyer's broker harmless from any, and all claims, causes of action, or damages arising out of or relating to the buyer's negligence or intentional wrongdoing. So, for example, let's say that a buyer in touring an empty house turns a faucet on and then forgets to turn it off, resulting in the house being flooded. If the seller then sues both the buyer and the buyer's broker for the damage, the buyer's broker can seek to have the buyer hold the buyer's broker harmless.

**{3} BROKERAGE ENGAGEMENT
AGREEMENTS MODIFIED TO GIVE BROKERS
GREATER LEGAL PROTECTIONS**

The limit on broker's liability section of the brokerage engagement agreements gives REALTORS® some of the best legal protections they have by limiting the liability of brokers to either the compensation they were paid, or if no compensation is paid, then \$100. This section was modified to provide that the limitation of liability survives the termination of this Agreement. This change was made to try to prevent a client from terminating the brokerage engagement agreement and then arguing that the broker now had unlimited liability because the agreement in which the limitation of liability was included had now been terminated.

**{4} PURCHASE AND
SALE AGREEMENT — REVISED
{GAR Form F201}**

a. Closing Costs section modified (Section A.3.)
The closing cost section of the Purchase and Sale Agreement was modified to provide that the seller must pay for the closing attorney to obtain, prepare and record title curative documents, payoffs, and es-toppel letters.

b. Examination section modified (Section B.1.b.)

The title examination section was modified to clarify that the seller will be deemed to have satisfied title objections raised by the buyer if the seller can deliver good and marketable title to the property which, for all purposes, means the title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions. In other words, if the buyer can get a title policy that does not have any exceptions other than standard exceptions, at regular rates, then the buyer cannot argue that a title objection gives the buyer the right not to purchase the property.

**c. Compensation of Brokers section
(Section B.10.b.)**

The compensation section of the Purchase and Sale Agreement was modified to clarify that the brokers compensation is to be paid in full at the closing, shown on the settlement statement and disbursed by the closing attorney upon the consummation of the closing. With this clarification, payment of the broker's compensation remains a pre-condition to a real estate purchase and sale transaction closing.

d. Default section revised (Section C.2.a.)

The default section of the Purchase and Sale Agreement was modified to provide that the seller, after terminating the contract due to a buyer's default, can sue the buyer for any portion of the earnest money that was either not paid, returned for insufficient funds, or for which payment was stopped. This change is an important one because it gives the seller a remedy if the buyer breaches the contract before the earnest money is paid (or after it is paid but is returned for insufficient funds). Now, provided the seller has not otherwise waived their right to do so, the seller can sue the buyer for earnest money that should have been paid, but for whatever reason was not.

**e. Rights of broker clarified in the
event of a default (Section C.2.c.)**

The rights of the broker to collect its compensation was clarified in the midyear changes. The Purchase and Sale Agreement has long provided that any party who breaches the purchase contract and fails to close, agrees to pay the brokers the compensation they would have received if the transaction closed. One challenge in enforcing this provision has been that the parties sometimes do not know the compensation of the bro-

kers they are agreeing to pay in the event they breach the contract. They have raised this as a defense when brokers try to enforce their rights to compensation. To help solve this issue, parties are now entitled to request written disclosure of the amount of compensation that all of the brokers in the transaction will receive, and the brokers are obligated to provide this information upon request. While parties are unlikely to ask about what someone other than their broker is being paid, the fact that they could have asked should help brokers win cases for compensation against a defaulting party.

f. Delays Caused by Emergencies
section revised (Section C.4.c.)

The Delays Caused by Emergency section of the Purchase and Sale Agreement was modified in two ways. First, the maximum number of days the closing date can

showing Compensation Agreement or other agreement for the payment of brokers compensation. Since these agreements are normally entered into prior to entering into a Purchase and Sale Agreement, the GAR Forms Committee did not want the purchase contract to cause these earlier agreements to be terminated by a provision stating that the purchase contract was the entire agreement.

{5} COMMUNITY ASSOCIATION
DISCLOSURE EXHIBIT — REVISED
{GAR Form F322}

A number of changes were made to the Community Association Disclosure Exhibit. First, the directions for filling out the disclosure were revised to provide that the seller's payment obligations were based on the seller's initial disclosures (excluding payment obliga-



Parties are now entitled to request written disclosure of the amount of compensation that all of the brokers in the transaction will receive.

be extended was capped at eight (8) days. The GAR Forms Committee felt that eight (8) days should be enough time to make arrangements to close the transaction, even in an emergency. Second, if the Purchase and Sale Agreement is entered into during an emergency, no deadlines are extended. The logic behind this second change is that no extension should be needed even during an emergency if the parties signed a contract, knowing the emergency exists. In other words, parties should not receive special rights to extend a contract if they entered into it with their eyes open to the existing emergency.

g. Entire Agreement clause modified
(Section C.4.f.)

The entire agreement section of the GAR Purchase and Sale Agreement was modified to exclude any Pre-

tions related to special assessments). This change was made to prevent a seller from disclosing last minute increases that might otherwise relieve the seller from having to pay additional costs at closing. Second, the way annual assessments are paid can now be disclosed in a number of different ways, including per year, per month, per quarter or semi-annually.

The section on Transfer Initiation and Administrative Fees was also reworded for clarity. It now provides that "Buyer will pay \$ _____ for all Transfer, Initiation and Administrative Fees. Seller will pay any Transfer, Initiation and Administrative Fees above this amount". A sentence was also added that "Closing letter fees are not Transfer, Initiation and Administrative Fees and shall be paid by the Seller regardless of the amount disclosed by the Seller ...".

{6} FINANCING CONTINGENCIES — MODIFIED

{GAR Forms F404, F407, and F410}

Some buyers have lost their earnest money when buying a condominium unit or townhome with a master fire and casualty insurance policy because they learn too late that while they were financially qualified, their loan



was denied because the condominium development was not an approved project or the insurance policy did meet lending guidelines. The Financing Contingencies were revised in January so that buyers in this situation can now get back their earnest money all the way up to the closing date if the property is not approved. This section was revised in the midyear changes to clarify that the buyer may only terminate pursuant to this section if the lender's inability to approve the condominium project or master insurance policy (now, collectively defined as "Project Approval") is what is preventing the mortgage loan from being made to the buyer.

{7} SALE OR LEASE OF BUYER'S PROPERTY CONTINGENCY EXHIBIT — MODIFIED

{GAR Form F601}

The Sale or Lease of Buyer's Property Contingency Exhibit was modified in several ways. First, if the buyer enters a contract to sell their existing property after the Binding Agreement Date, they are now obligated to disclose this information promptly to the seller. In this event, the buyer's new contract to sell shall be deemed an Existing Pending Contract subject to the Existing Pending Contract provisions in the exhibit. Prior to this change,

In the modified GAR Form F601, the seller could exercise the kick-out clause even in cases when parties otherwise negotiated that the agreement was not subject to a kick-out clause.

the buyer only had the right to terminate if the Existing Pending Contract was entered into prior to the Binding Agreement Date. Second, the Sale or Lease Exhibit has historically provided that if the buyer does not terminate the contract when their Existing Pending Contract terminates, then the seller had the right to exercise a kick-out clause where buyer was required either to sign an amendment removing all contingencies and due diligence from the agreement or terminate. The seller could exercise the kick-out clause even in cases where the parties otherwise negotiated that the agreement was not subject to a kick-out clause. The new language clarifies that if the buyer opts not to terminate when their Existing Pending Contract terminates, the seller only has the right to exercise the kick-out clause if the parties made the agreement subject to a kick-out clause elsewhere in that contingency and then only to the extent provided elsewhere in the contingency.

CONCLUSION

Our GAR Forms are constantly being revised to make them clearer, address the ever-changing issues affecting real estate transactions, and protect REALTORS®. Hopefully, these changes accomplish these goals.