



Special Stipulations to Consider

NEW FOR 2021

Option Money with Seller Termination Rights:

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

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

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

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

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



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

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

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

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

Escalation Clause Version 2

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

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

**In the event that Other Offers cause the escalation of the Sales Price of the Offer, the Seller will



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

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

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

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

Remember to Include:

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

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

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

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

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

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

If Earnest Money is addressed in the creation of a contract, it must always be addressed in the termination of a contract EVEN IF the Buyer has not yet remitted the funds. Regardless of where the



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funds are regarding remittance or deposit, Earnest Money is still a part of the contract. So, if you write a Termination & Release prior to the Buyer's obligation to remit the funds, you would simply state,

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

Escalation Clause:

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

I would also suggest you add to Escalation Clause:

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

Seller Strategies if Buyer wants to Extend Closing

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

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

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

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

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



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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.

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

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

GAR SS 302 AMENDMENT TO ADDRESS CONCERNS AS NOTICE TO TERMINATE

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

Protect Your Selling-Side Commission on New Construction

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

Down Payment Assistance Funds:

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

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



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

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

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

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

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

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

Should Broker(s) identify an email address or fax number in this Contract that is different from the email address of fax number identified as the correct fax number by the MLS of which Broker(s) is a member, it is hereby agreed that should the email address or fax number identified in this Contract fail to deliver a document/notice pertaining to this Contract, then successful delivery of the documents/notices to the email address or fax number identified in the MLS shall be deemed sufficient notice, provided that the sending entity produces a written confirmation showing the correct time and date of the transmission and the email address or fax number referenced herein.

Additional Stip for Seller Occupancy After Closing

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

Variation:

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

Listing Special Stipulations

1. If Seller cancels or withdraws the listing prior to expiration of Listing Agreement for any reason, Seller shall pay \$50 to _____ (Brokerage) _____ an early termination fee & to remove listing from MLS Services.
2. If the property is place Under Contract with a Lease Purchase, Seller shall pay to _____ (Brokerage) _____ 1% of Sale Price as Commission for valuable services rendered. This fee shall be paid in certified funds at time of contract acceptance and the remainder of the total commission owed to the Broker shall be paid at the Closing of the transaction. All parties acknowledge that the 1% commission paid at time of



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Binding Agreement shall be considered earned when contract is Binding and shall be considered payment for contract services rendered as well as procurement of sale and shall not be refundable.

3. If Listing Broker procures a tenant for the property under a lease, Seller shall pay in certified funds the equivalent of one month's rent to ___(Brokerage)___ at time of Binding Lease. All parties acknowledge that the fee shall be considered earned at the time of contract for procuring Tenant and shall not be refundable. Seller shall have no monthly obligation to Broker and Broker shall not be considered Property Manager; Broker's sole role is to place Landlord and Tenant together

4. At Closing, Seller shall pay to ___(Brokerage)___ \$___ Administration fee.

Conformed Copy = "Clean Copy" – GAR SS622

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

Contractual Time Frames in Short Sale

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

Common Issues to Consider: (See GAR Special Stipulations)

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

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

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

"All parties agree that closing date shall be on or before 10 days after Seller provides legal proof that tenant has been successfully evicted and removed from the property. Furthermore, it is agreed that



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Due Diligence period and financing contingency periods shall expire ____ and ____ respectively from the date of written notice of the same:..

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

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

Special Stipulation:

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

Scenario:

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

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

All parties acknowledge and agree that the homeowner's/condo association (“association”) for the property being sold and referenced herein, is in an active pending lawsuit with the insurance company which provided coverage for any roof damage. Said lawsuit having been filed in the _____ court of _____ county, Georgia. As a condition precedent to the buyer purchasing said property, Seller agrees that should the lawsuit be ruled not in favor of the Association, and such ruling results in



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the homeowners having to pay to replace the roofs or result in a special assessment to replace funds for roof payment, Seller shall pay said amounts as required by the Association. Said cost not to Seller not to exceed \$_____. Seller to pay sums within _____ days of notice from Buyer to Seller of costs assessed by Association. This matter shall specifically survive closing.

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