

# 2016 REVISIONS TO THE GAR FORMS

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Well, it's that time of year again where we discuss the changes that will appear in the 2016 GAR Forms. As always, the GAR Forms Committee has been hard at work trying to improve our GAR Forms and keep them the best in our industry. This article will discuss some of the more important changes for 2016.

## 1. GAR FORM F50, SELLER'S PROPERTY DISCLOSURE STATEMENT

One of the major accomplishments of the GAR Forms Committee was a major overhaul of the Seller's Property Disclosure Statement. For several years now, the GAR Forms Committee has been working to shorten and simplify the Seller's Property Disclosure Statement. How best to do this has been the subject of an ongoing debate that has largely revolved around whether the purpose of the Disclosure Statement should be limited to a disclosure of latent defects in the property or whether it should also cover past repairs and details regarding the systems and fixtures in a property. Both types of information can be useful to buyers and help prevent claims. However, in an effort to shorten and simplify the Disclosure Statement, the Forms Committee eliminated some of the questions that were focused on the systems and fixtures in the property particularly in cases where the information could be easily determined from an inspection of the property.

So, for example, there is no longer a question in the Disclosure Statement about whether the property contains low-flow toilets since this information can usually be easily determined by simply looking at the inside of the toilet tank. Similarly, the lengthy disclosure of the condition of each heating and air conditioning system serving the property was replaced with a shorter and simpler question on whether any part of the heating and air conditioning system is in need of repair or replacement. The view of the Forms Committee was that unless the Seller's Property Disclosure Statement was shortened and simplified, it might be hard to continue to get the overwhelming percentage of sellers to fill it out.

The Committee also reformatted the Seller's Property Disclosure Statement to make it easier to line up the questions with the space where the questions are to be answered. The new form now puts a box around every question on the Seller's Property Disclosure Statement making it much easier for the eye to travel to the correct spot to answer the question. When the question does not have a "yes" or "no" answer, the "yes" and "no" boxes are shaded to make it clear that it is not a "yes" or "no" question. Most importantly, the box for "Do Not Know" was eliminated from the form leaving only a place on the form to answer "yes" or "no". This was largely done to prevent some sellers from checking "Don't Know" on the entire Seller's Property Disclosure Statement. The directions for the Disclosure Statement now clearly states that all questions should be answered to the "actual knowledge and belief" of the seller. In theory, with this as the standard for answering questions, all questions should be capable of being answered "yes" or "no". Whether it works this way in practice is yet to be seen. Even though the seller is directed to answer all questions on the Statement, some sellers may choose to leave some questions blank if they truly do not know the answer to the question. There will still be an explanations section of the Disclosure Statement (now more conveniently located throughout the Seller's Property Disclosure Statement) where "yes" answers and presumably the reason for leaving a question blank can be given. Hopefully, sellers will find the Disclosure Statement shorter and easier to fill out.

The Statement also tries to explain more clearly to buyers that caveat emptor or buyer beware is the law in Georgia and that buyers must carefully inspect the properties they are buying.

## 2. REVISED GAR FORM F64, FINANCING CONTINGENCY EXHIBIT

The Financing Contingency Exhibit was also significantly revised for 2016. The first major change was to eliminate the obligation of the buyer to apply for a mortgage loan within a set number of days from the Binding Agreement Date. In its place, the GAR Forms Committee added language obligating the buyer to apply promptly for the mortgage loan or loans described in the exhibit such that the buyer could fulfill his or her financial obligations under the agreement. This change was made because the Committee had received a large number of complaints that the old approach left too many buyers in breach of contract when they inadvertently missed the deadline by a day or two to apply for a mortgage. The new approach eliminates this risk to buyers. Buyers are still obligated to promptly inform the seller of the names of the lenders from whom they have sought a Loan Estimate and the name and contact information of the lender to whom they have given a Notice to Proceed with Loan Application. Part of the thinking of the GAR Forms Committee was that requiring buyers to apply for a mortgage loan within a set number of days was generally inconsistent with the wide open nature of the Due Diligence Period and the Financing Contingency Period. The GAR Forms Committee is including two different stipulations in its Forms package for those REALTORS® who still want to require that the mortgage loan be applied for within a defined period of time.

The second major change in the Financing Contingency relates to when the buyer must provide the seller with a letter of loan denial. For many years, the Financing Contingency Period has provided that this must be done before the end of the Financing Contingency Period. The GAR Forms Committee was worried that in trying to comply with all of the new lender regulations in the marketplace, some lenders may not provide loan denial letters to buyers (for them to pass on to their sellers) as quickly as they once did. This could leave buyers in breach of contract for a delay over which some buyers will have limited control. As a result, the Committee decided to give the buyer seven (7) days from the termination of the Purchase and Sale Agreement to provide the seller with a letter of loan denial. This would be the case even if the termination is on the last date of the Financing Contingency.

Let's look at the examples below to better understand how this will work.

**Example #1:** A buyer has a 30 day Financing Contingency beginning on May 1. The buyer is verbally turned down for the loans within the first two weeks of the loan contingency period. The buyer sends a letter to the seller terminating the contract due to a failure of the buyer to obtain the loans specified in the Purchase and Sale Agreement. How long does the buyer have to get a loan denial letter to the Seller?

**Answer:** The buyer has seven (7) days to get the loan denial letter to the seller. Therefore the buyer would have until the end of the day on May 21 to get the loan denial letter to the seller.

**Example #2:** The buyer has a 30 day Financing Contingency beginning on May 1. The buyer works hard to obtain mortgage financing but is unable to do so. The buyer finally terminates the contract on May 30 when the buyer is told verbally that the buyer's loan request was denied. How long does the Buyer have to get the loan denial letter to the seller?

**Answer:** The buyer has seven (7) days from the date the buyer terminated the contract to get the letter of loan denial to the seller. Therefore, the buyer would have until the end of the day on June 6 to provide the letter of loan denial to the seller. This is the case even though the Financing Contingency ended on May 30.

With the letter of loan denial not having to be provided until after the Purchase and Sale Agreement is terminated, this does mean that disputes regarding whether the Purchase and Sale Agreement was properly terminated due to the failure of the financing contingency will, in

some cases, be postponed for a week after the contract has been terminated. This will likely delay the return of the earnest money unless the buyer can expedite the delivery of the loan denial letter.

Finally, the Financing Contingency Exhibit was revised to make it clear that if the buyer agrees to apply for a loan with a specific lender, the loan denial letter must be from that lender. Also, the loan denial letter must be for the loan or loans for which the buyer agreed to apply.

### **3. CHANGES TO GAR FORM F20, PURCHASE AND SALE AGREEMENT**

Most of the changes to the Purchase and Sale Agreement for 2016 were made in anticipation of TRID (or the TILA RESPA Integrated Disclosure). First, the number of days that the contract could be unilaterally extended was changed from seven (7) to eight (8) days. Second, a new provision was added in which the buyer and seller both consent to the closing attorney preparing and distributing to all parties in the real estate transaction and their brokers an American Land Title Association (“ALTA”) Estimated Settlement Statement – Combined.

One of the major effects of closing attorneys becoming vendors of mortgage lenders under TRID is that they are obligated to preserve confidential information of the borrower to the same extent as the lender. This has led to an industry wide discussion of what is considered confidential information and whether the seller is allowed to see the buyer’s side of the Closing Disclosure. While most experts have recommended against such an approach, they also recognize that a review of the information in the Closing Disclosure by all parties and their REALTORS® is a great way of ensuring that there are no mistakes. In response to this, the American Land Title Association convened a group of industry experts to prepare a settlement statement that did not contain confidential information. This resulted in the creation of the ALTA Estimated Settlement Statement – Combined. It is expected that most closing attorneys will incorporate this form into their closings and provide a copy of the same to all of the parties in the transaction and their brokers. Nevertheless, to help ensure that closing attorneys felt comfortable providing this information to all parties, the GAR Forms Committee decided to include a consent by the buyer and seller to the closing attorney preparing and distributing this form to all parties in the transaction and their REALTORS® and allowing all parties to use the form for their various uses.

Section B8 of F20 was modified to clarify when the buyer is entitled to a return of his / her earnest money. Specifically, the word “unexpired” was added to the second basis for the buyer to receive back his / her earnest money so that it now reads:

(2) failure of any unexpired contingency or condition to which this Agreement is subject. The failure of a contingency is when it does not occur.

So, for example, a financing contingency would fail if the buyer does not get financing. If the contingency has already expired, it no longer applies to the transaction at hand. Adding the word “unexpired” simply clarifies that the contingency still has to be in effect to fail.

### **4. REVISED BROCHURE: FORM B2, PROTECT YOURSELF WHEN BUYING A HOME**

This brochure was revised to warn buyers about a scam where buyers receive a second and false set of wiring instructions regarding where to wire funds to purchase property. Buyers who fall prey to this scam often wire money which they intended to use to buy a home to fraudsters where it is incapable of being recovered. Buyers are, therefore, warned to check with the closing attorney if they receive more than one set of wiring instructions.

The brochure was also revised to warn buyers about companies whose advertisements make them appear to be connected to the government who offer to obtain for the buyer a

recorded copy of a deed for a fee. Since most closing attorneys offer to provide buyers with a copy of a deed at no cost to the buyer, the brochure explains that buyers do not need to incur this expense.

#### **5. NEW BROCHURE: GAR FORM B8, WHAT NEW LANDLORDS NEED TO KNOW ABOUT LEASING PROPERTY**

A major accomplishment of the GAR Forms Committee for 2016 is the creation of a brochure on what property owners should know before leasing their properties. Leasing of houses is increasingly used by sellers as an alternative to selling, particularly when the seller cannot realize the price for which the seller had hoped. In one brochure, sellers are taught most of what they need to know about leasing. Some of the major topics included in the brochure are as follows:

- a. *Confirm that leasing is permitted.*
- b. *Conduct a thorough background check of the tenant.*
- c. *Fair housing laws apply to rentals.*
- d. *Have a written lease.*
- e. *Evicting a tenant is not necessarily a quick process.*
- f. *Possession of the property belongs to the tenant.*
- g. *Be careful in selling a leased property to a tenant.*
- h. *Contractors performing work on property should be insured.*
- i. *Landlords need special insurance.*
- j. *Follow all Georgia mandated procedures applicable to landlords.*

#### **6. NEW FORM: GAR FORM 148, CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

For 2016, the GAR Forms Committee revised its existing confidentiality agreement and created a new one. The form entitled Confidentiality Agreement, GAR Form F142, is to be used when there is a desire to keep offers confidential. Considering that sellers are entitled to shop offers, it is surprising that this form is not used more frequently. For 2016, this form was revised so that both offers and counteroffers can be kept confidential by the buyer and the seller.

The GAR Forms Committee also created a new form entitled Confidentiality and Non-Disclosure Agreement, GAR Form 148. This form will likely be used more in commercial, rather than residential transactions and will largely be used by sellers who want to keep confidential information about the properties / business they are selling. It is very common for sellers in commercial transactions not to want to release this information without such a confidentiality agreement being signed.

#### **7. GAR FORM C010, BROKER TO BROKER REFERRAL AGREEMENT**

The Referral Agreement (Broker to Broker) was revised to clarify that the commission being shared with the referring broker includes any monetary bonus received by the broker to whom the transaction is referred. The Form was also modified to more clearly state when the referral agreement ends and ties the end date to a specific number of transaction for which the referring broker has completed and been compensated.

#### **8. NEW FORM: GAR FORM F13, AGREEMENT TO WORK WITH TENANT AS A CUSTOMER**

GAR has long had a customer agreement form for use with buyers who do not want to be the client of a REALTOR®. GAR has now created a new customer agreement from that can be used with tenants.

Getting buyers and tenants to sign the customer agreement forms gives the REALTOR® tremendous legal protection. With the new F13, the tenant is agreeing to limit any damages claim against the REALTOR® to the real estate commission actually paid to the REALTOR®. If no commission is paid, the damages claim is limited to \$100. The Agreement also contains an arbitration provision which keeps any disputes out of the courts. In this day and age where people sue others at the drop of a hat, having these protections is tremendously helpful to REALTORS®.

#### **9. GAR FORM F76, REMINDER OF IMPORTANT DATES IN PURCHASE AND SALE AGREEMENT**

The Reminder of Important Dates in Purchase and Sale Agreement was revised to make it more up to date. This form is an extremely valuable tool for agent not to miss or forget important dates. REALTORS® are encouraged to use this Form (or similar ones that REALTORS® have developed on their own).

#### **10. REVISED GAR FORM F124, BINDING AGREEMENT DATE NOTIFICATION**

The Binding Agreement Date Notification was revised to try to make the Form clearer. It includes a revised definition of Binding Agreement Date as “the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement.” This new definition will replace the old definition throughout the GAR Forms.

The new Form contemplates the Binding Agreement Date being filed out by someone other than a party. There is also a place for the buyer and seller to sign that they are in agreement with regards to the Binding Agreement Date. Finally, there is language incorporating the Binding Agreement Date into the Agreement for which the Notification is given and shall control over any other conflicting Binding Agreement Date previously included elsewhere in the Agreement.

#### **11. REVISED GAR FORM F3, AUTHORIZATION TO SHOW UNLISTED PROPERTY**

The Authorization to Show Unlisted Property form was revised to make it applicable to both the sale and lease of property. This change was made to broaden the potential uses of this form.

#### **12. NEW FORM: GAR FORM F24, CONSTRUCTION EXHIBIT**

This exhibit had been deleted from the GAR Forms library because much of what had been in this form was incorporated into the New Construction Purchase and Sale Agreement, GAR Form F23. However, it was brought out of retirement and reinstated for 2016 because some REALTORS® wanted to use this form with non-GAR new home contracts.

#### **CONCLUSION**

Hopefully, the changes which have been made will help protect REALTORS® and get transactions closed. REALTORS® with ideas for changes are encouraged to submit them to the GAR Forms Committee for consideration. Under the leadership of Pat Johnson, the Committee carefully considered every request for a change last year. With Karen Loftus as the new Chair of the Committee, this approach is sure to continue.