

# EXCLUSIVE BUYER BROKERAGE AGREEMENT



2011 Printing

## State law prohibits Broker from representing Buyer as a client without first entering into a written agreement with Buyer under O.C.G.A. § 10-6A-1 et. seq.

For and in consideration of the mutual promises contained herein and other good and valuable consideration; \_\_\_\_\_ as buyer (hereinafter referred to as "Buyer"), and \_\_\_\_\_ as broker and its affiliated licensees (hereinafter collectively referred to as "Broker") do hereby enter into this Agreement ("Agreement"), this date of \_\_\_\_\_.

1. **Exclusive Agreement.** Buyer hereby agrees to hire Broker to act as Buyer's exclusive real estate broker to assist Buyer in locating, and to the extent authorized elsewhere herein, negotiating the purchase or exchange of real property on behalf of Buyer. Buyer warrants that Buyer is not a party to any other current buyer brokerage engagement agreement, exclusive or non-exclusive, and that all previous buyer brokerage agreements entered into between Buyer and any other real estate brokerage have either been terminated or have expired and not been renewed.
2. **Term.** The term of this Agreement shall begin on the date of \_\_\_\_\_ and shall continue through the date of \_\_\_\_\_, unless otherwise terminated in accordance with this Agreement.
3. **Broker's Duties to Buyer.** Broker's sole duties to Buyer shall be to:
  - A. make all disclosures required by law;
  - B. attempt to locate property suitable to Buyer for purchase;
  - C. comply with all applicable laws in performing its duties hereunder including the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq; and
  - D. *[Select one. The box not checked shall not be a part of this Agreement.]*
    - 1. Assist to the extent requested by Buyer in negotiating the terms of and filling out a pre-printed real estate purchase and sale agreement; or
    - 2. Not assist in negotiating the terms of or filling out a pre-printed real estate purchase and sale agreement and/or counteroffer.
4. **Buyer's Duties.** Buyer agrees to:
  - A. be reasonably available to see property with Broker or property for which Broker has arranged Buyer to see;
  - B. timely respond to communications from Broker;
  - C. provide Broker with accurate and complete information;
  - D. inspect and become familiar with any potentially adverse conditions and conditions of special concern to Buyer relating to the physical condition of any property in which Buyer becomes interested, any improvements located thereon and the neighborhood surrounding such property;
  - E. become familiar with the terms of any purchase agreement and other documents which Buyer may sign and comply with the duties and deadlines contained therein;
  - F. work exclusively with Broker (and not with any other real estate broker or licensee) in identifying, previewing and seeing property for purchase by Buyer (since if Buyer identifies, previews or sees property with another broker or fails to disclose to the listing broker that Buyer is working with Broker) a commission will likely not be paid to Broker by the listing broker and Buyer shall be responsible for the same;
  - G. disclose to Broker at the commencement of this Agreement whether Buyer previously worked with any other real estate broker and the addresses of the properties, if any, Buyer made an offer to purchase or for which Buyer may owe a commission to another broker if Buyer now purchases; and
  - H. not contact or see a property listed For Sale By Owner ("FSBO") without first giving Broker a reasonable opportunity to contact the owner and attempt to enter into an agreement with the owner to pay Broker a commission should Buyer purchase the owner's property.
5. **Retainer Fee.** In entering into this Agreement Buyer has paid Broker a Retainer Fee of \$ \_\_\_\_\_ which shall be non-refundable except as follows. In the event Buyer purchases real property in a transaction in which Broker is paid a commission, the Retainer Fee shall be refunded to Buyer by Broker at the closing of the transaction. Otherwise, the Retainer Fee shall be retained by Broker to partially offset Broker's costs and compensate Broker for Broker's time in providing real estate brokerage services to Buyer.

**6. Commission.**

**A. Broker's Entitlement to Commission.** If during the term of this Agreement (or during the Protected Period after the termination or expiration of this Agreement) Buyer enters into a contract for the purchase and sale (including a Lease/Purchase Contract), option (including a Lease/Option Contract), or exchange of real property, with the seller thereof, Buyer agrees that Broker shall be entitled to the following commission ("Commission"):

*[Select one or more of the following sections below. The sections not marked shall not be a part of this Agreement]:*

\_\_\_\_\_ percent (%) of the sales price;

\$ \_\_\_\_\_;

(Other) \_\_\_\_\_.

While not required, the custom in Georgia is for the seller to pay the commissions of the real estate brokers. This obligation is usually created in a listing agreement between the seller and the listing broker. Generally, these agreements require the listing broker to share the commission it receives with the selling broker working with or representing the buyer in the transaction. Therefore, except as provided below, the Commission shall be paid by the Seller. In the event Seller does not pay the Broker the full amount of the Commission, Buyer  shall or  shall not pay Broker the difference at closing between Broker's Commission and the commission actually paid to Broker.

**B. Separate Commission on Lease.** Notwithstanding the above, if Buyer leases property or enters into a lease/purchase contract during this Agreement, Buyer shall also pay Broker a separate leasing commission (except where the commission is paid by the Landlord) in the amount of \_\_\_\_\_ and as follows:

Notwithstanding any provision to the contrary contained herein, the payment of a leasing commission (including in lease purchase transactions) shall not relieve either Seller or Buyer from paying any sales commission they may owe in a purchase and sale transaction.

**C. Commission on Property Sold For Sale By Owner ("FSBO").** In the event Buyer purchases property that is being sold by owner ("FSBO") without a broker and the owner is unwilling to pay Broker its Commission at or before the closing, Buyer agrees to pay Broker its Commission at or before the closing.

**D. Buyer Default.** Buyer agrees to immediately pay Broker its Commission in the event any of the following occur:

1. Buyer defaults under a contract to purchase (or exchange) real property under which Broker would have been paid a commission had the transaction closed;
2. Without the prior consent of Broker, Buyer agrees with a seller to mutually terminate a contract to purchase or exchange real property under which Broker would have been paid a commission had the transaction closed; or
3. Buyer defaults under this Agreement resulting in Broker not being paid a commission to which Broker would otherwise have been entitled.

**7. Protected Period and Commission.** In the event that during the Protected Period, as that term is defined below, following termination or expiration of this Brokerage Agreement, Buyer purchases, contracts to purchase or exchange, leases or lease purchases any property which during the term of this Agreement was submitted to, identified or shown to Buyer by Broker or for which Broker provided information about to Buyer, then notwithstanding any provision to the contrary contained herein, Buyer shall pay Broker at closing or the commencement of any lease, if applicable, the commission or commissions set forth above. The term "Protected Period" shall refer to the \_\_\_\_\_ day period following the earlier of either: (a) the expiration of this Agreement; or (b) the date that the Agreement is terminated upon the mutual, written consent of the Broker and Buyer. In addition, if this Agreement is terminated by Buyer without the express, written consent of Broker, the Protected Period shall be the time period referenced above plus the number of days remaining on the term of the Agreement at the time it was terminated early without the express written consent of Broker. In such event, the Protected Period shall commence from the date this Agreement was terminated early without the express, written consent of Broker. For the purposes of this paragraph, the term "Buyer" shall include Buyer, all members of the Buyer's immediate family, any legal entity in which Buyer or any member of Buyer's immediate family owns or controls, directly or indirectly, more than ten percent (10%) of the shares or interests therein, and any third party who is acting under the direction or control of any of the above parties rights and obligations set forth herein shall survive the termination or expiration of this Agreement.

**8. Limits on Broker's Authority and Responsibility.** Buyer acknowledges and agrees that Broker:

- A. may show property in which Buyer is interested to other prospective buyers;
- B. shall not be responsible to advise Buyer on any matter including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of the property; the condition of the property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to the property; mold; hazardous or toxic materials or substances; termites and other wood destroying organisms; the tax or legal consequences of this transaction; the availability and cost of utilities or community amenities; the appraised or future value of the property; any condition(s) existing off the property which may affect the property; the terms, conditions and availability of financing; and the uses and zoning of the property whether permitted or proposed. Buyer acknowledge that Brokers are not experts with respect to the above matters and that, if any of these matters or any other matters are of concern to them, they should seek independent expert advice relative thereto. Buyer acknowledges that Broker shall not be responsible to monitor or supervise any portion of any construction or repairs to property and that such tasks clearly fall outside the scope of real estate brokerage services;
- C. shall owe no duties to Buyer nor have any authority on behalf of Buyer other than what is set forth in this Agreement;
- D. shall not be responsible for insuring that Buyer complies with the duties and deadlines contained in any purchase agreement entered into by Buyer and that Buyer shall be solely responsible for the same; and
- E. 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, than a sum not to exceed one hundred dollars;

- F. shall be held harmless by Buyer from any and all claims, causes of action, or damages arising out of or relating to:
1. inaccurate and/or incomplete information provided by Buyer to Broker;
  2. earnest money handled by anyone other than Broker; or
  3. any injury to persons and/or loss of or damage to property.
- G. shall have no authority to bind Buyer to any contract or agreement.

**9. Disclosures.**

- A. Broker agrees to keep confidential all information which Buyer asks to be kept confidential by express request or instruction unless the Buyer permits such disclosure by subsequent word or conduct or such disclosure is required by law. Buyer acknowledges, however, that Seller and Seller's broker may possibly not treat any offer made by Buyer (including its existence, terms and conditions) as confidential unless those parties have entered into a Confidentiality Agreement with Buyer.
- B. Broker may not knowingly give customers false information.
- C. In the event of a conflict between Broker's duty not to give customers false information and the duty to keep the confidences of Buyer, the duty not to give customers false information shall prevail.
- D. Unless specified below, Broker has no other known agency relationships with other parties that would conflict with any interests of Buyer (except that Broker may represent other buyers, sellers, tenants and landlords in buying, selling or leasing property.)

**10. Disclosure of Potentially Fraudulent Activities.**

- A. To help prevent fraud in real estate transactions, Buyer does hereby give Broker permission to report any suspicious, unusual and/or potentially illegal or fraudulent activity (including but not limited to mortgage fraud) to:
1. Governmental officials, agencies and/or authorities and/or
  2. Any mortgage lender, mortgage insurer, mortgage investor and/or title insurance company (and/or their agents and representatives) could potentially be harmed if the activity was in fact fraudulent or illegal.
- B. Buyer acknowledges that Broker does not have special expertise with respect to detecting fraud in real estate transactions. Therefore, Buyer acknowledges that:
1. Activities which are fraudulent or illegal may be undetected by Broker; and
  2. Activities which are lawful and/or routine may be reported by Broker as being suspicious, unusual or potentially illegal or fraudulent.

- 11. Broker's Policy on Agency.** Unless Broker indicates below that Broker is not offering a specific agency relationship, the types of agency relationships offered by Broker are: seller agency, buyer agency, designated agency, dual agency, sub-agency, landlord agency, and tenant agency. The agency relationship(s), if any, not offered by Broker is/are the following: \_\_\_\_\_
- \_\_\_\_\_

- 12. Dual Agency Disclosure.** *[Applicable only if Broker's agency policy is to practice dual agency]* If Buyer and a prospective seller are both being represented by the same Broker, Buyer is aware that Broker will be acting as a dual agent in that transaction and consents to the same. Buyer has been advised that:

- A. In serving as a dual agent, Broker is representing two clients whose interests are or at times could be different or even adverse;
- B. Broker will disclose all adverse, material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from either client which is not otherwise required to be disclosed by law;
- C. Buyer does not have to consent to dual agency and, the consent of Buyer to dual agency has been given voluntarily and Buyer has read and understands the brokerage engagement agreement.
- D. Notwithstanding any provision to the contrary contained herein, Buyer hereby directs Broker, while acting as a dual agent, to keep confidential and not reveal to the other party any information which could materially and adversely affect Buyer's negotiating position.
- E. Broker or Broker's affiliated licensees will timely disclose to each client the nature of any material relationship with other clients other than that incidental to the transaction. A material relationship shall mean any actually known personal, familial, or business relationship between Broker and a client which would impair the ability of Broker to exercise fair and independent judgment relative to another client. The other party whom Broker may represent in the event of dual agency may or may not be identified at the time Buyer enters into this Agreement. If any party is identified after the Agreement and has a material relationship with Broker, then Broker shall timely provide to Buyer a disclosure of the nature of such relationship.

- 13. Designated Agency Disclosure.** *[Applicable only if Broker's agency policy is to practice designated agency]* Buyer does hereby consent to Broker acting in a designated agency capacity in transactions in which Broker is representing Buyer and a prospective seller. With designated agency, the Broker assigns one or more of its affiliated licensees exclusively to represent a prospective seller and one or more of its other affiliated licensees exclusively to represent Buyer.

- 14. Independent Contractor Relationship.** This Agreement shall create an independent contractor relationship between Broker and Buyer. Broker shall at no time be considered an employee of Buyer. If there is an affiliated licensee of Broker directly assisting Broker in marketing and selling the Property, said licensee shall be an:

*[Select all which apply. Any section not selected shall not be a part of this Agreement.]*

- Independent contractor of Broker
- Employee of Broker

- 15. Extension.** If during the term of this Brokerage Agreement, Buyer and a prospective seller enter into a real estate sales contract which is not consummated for any reason whatsoever, then the original expiration date of this Agreement shall be extended for the number of days that the property was under contract.

16. **No Imputed Knowledge.** Buyer acknowledges and agrees that with regard to any property in which Buyer develops an interest, there shall be no knowledge imputed between Broker and Broker's licensees or between the different licenses of Broker. Broker and each of Broker's licensees shall be deemed to have only actual knowledge of such properties.

17. **Governing Law.** This Agreement may be signed in multiple counterparts and shall be governed by and interpreted pursuant to the laws of the State of Georgia.

18. **Survival.** The commission rights of Broker and the commission obligations of Buyer set forth herein shall survive termination or expiration of this Agreement.

19. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the parties. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement and the terms and conditions herein may not be amended, modified or waived except by the written agreement of Buyer. The failure of the parties to adhere strictly to the terms and conditions of this Agreement shall not constitute a waiver of the right of the parties later to insist on such strict adherence.

20. **GAR Forms.** The Georgia Association of REALTORS®, Inc. ("GAR") makes certain standard real estate forms available to its members. These GAR forms are frequently provided to the parties in real estate transactions by the REALTORS® with whom they are working. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.

21. **Notices.**

A. **Communications Regarding Real Estate Transactions.** Client acknowledges that many communications and notices in real estate transactions are of a time sensitive nature and that the failure to be available to receive such notices and communications can have adverse legal, business and financial consequences. During the term of this Agreement, Client agrees to remain reasonably available to receive communications from Broker.

B. **Notices between Broker and Client Regarding this Agreement.** Client and Broker agree that communications and notices between them regarding the terms of this Agreement shall be in writing, signed by the party giving the notice, and may be delivered in person or to any address, e-mail address and/or facsimile number to the person to whom the communication or notice is being given specifically set forth in this Agreement. It is the intent of the parties that those means of transmitting notices for which a party has not provided an address or number shall not be used for receiving notices and communications. For example, if a party has not provided an e-mail address in this Agreement, it shall mean that the party is not accepting notices or communications sent by this means.

C. **Client Contact Information.**

The contact information of Client(s) is set forth below:

_____	Business Telephone: _____
Client Name	_____
_____	Home Telephone: _____
Address for Receiving Notice	_____
_____	Cell Phone: _____
_____	Facsimile Number: _____
_____	E-mail Address: _____
_____	_____
Client Name	Business Telephone: _____
_____	_____
Address for Receiving Notice	Home Telephone: _____
_____	_____
_____	Cell Phone: _____
_____	Facsimile Number: _____
_____	E-mail Address: _____

Client agrees to immediately update Broker of any changes to the above referenced information.

22. **Receipt by Buyer of Consumer Protection Brochure.** Buyer acknowledges that Buyer  has OR  has not received a copy of the GAR brochure entitled "Protect Yourself When Buying a Home" (Form F13).

**SPECIAL STIPULATIONS:** The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph, shall control:

Additional Special Stipulations are  or are  not attached.

**BY SIGNING THIS AGREEMENT, BUYER ACKNOWLEDGES THAT: (1) BUYER HAS READ ALL PROVISIONS AND DISCLOSURES MADE HEREIN; (2) BUYER UNDERSTANDS ALL SUCH PROVISIONS AND DISCLOSURES AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY; AND (3) BUYER IS NOT SUBJECT TO A CURRENT BUYER BROKERAGE AGREEMENT WITH ANY OTHER BROKER.**

RECEIPT OF A COPY OF THIS AGREEMENT IS HEREBY ACKNOWLEDGED BY BUYER.

The above Agreement is hereby accepted, \_\_\_\_\_ o'clock \_\_\_\_\_.m., on the date of \_\_\_\_\_.

\_\_\_\_\_  
Broker

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
MLS Office Code      Brokerage Firm License Number

\_\_\_\_\_  
Broker's Phone#      & FAX#

By: \_\_\_\_\_  
Broker or Broker's Affiliated Licensee

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Agent's Georgia Real Estate License Number

Email Address: \_\_\_\_\_

Member of: \_\_\_\_\_ of REALTORS®

\_\_\_\_\_  
Buyer's Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Buyer's Signature

\_\_\_\_\_  
Print or Type Name