



# EXCLUSIVE BUYER BROKERAGE AGREEMENT



2016 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 exclusive buyer brokerage engagement agreement and that all previous exclusive buyer brokerage engagement 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. **Fair Housing Disclosure.** Buyer acknowledges that Broker is committed to providing equal housing opportunities to all persons. While Broker may show Buyer properties of a type or in any specific geographical area requested by Buyer, Broker may not steer buyers to particular areas based upon race, color, religion, national origin, sex, familial status, disability, sexual orientation or gender identity.

6. **Retainer Fee. [NOT TO BE COLLECTED IN A SHORT SALE TRANSACTION.]** 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, upon the expiration of this Agreement, 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.

THIS FORM IS COPYRIGHTED AND MAY ONLY BE USED IN REAL ESTATE TRANSACTIONS IN WHICH Thomas LeCain IS INVOLVED AS A REAL ESTATE LICENSEE. UNAUTHORIZED USE OF THE FORM MAY RESULT IN LEGAL SANCTIONS BEING BROUGHT AGAINST THE USER AND SHOULD BE REPORTED TO THE GEORGIA ASSOCIATION OF REALTORS® AT (770) 451-1831.

**7. 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.

**8. 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.

**9. 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.

**10. 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.)

**11. 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.

**12. 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:

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**13. 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.

**14. 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.

- 15. 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
- 16. Arbitration.** All claims arising out of or relating to this Agreement and the alleged acts or omissions of any or all the parties hereunder shall be resolved by arbitration in accordance with the Federal Arbitration Act 9 U.S.C. § 1 et. seq. and the rules and procedures of the arbitration company selected to administer the arbitration. Upon making or receiving a demand for arbitration, the parties shall work together in good faith to select a mutually acceptable arbitration company with offices in Georgia to administer and conduct the arbitration. If the parties cannot mutually agree on an arbitration company, the company shall be selected as follows. Each party shall simultaneously exchange with the other party a list of three arbitration companies with offices in Georgia acceptable to that party to administer and conduct the arbitration. If there is only one (1) arbitration company that is common to both lists, that company shall administer and conduct the arbitration. If there is more than one arbitration company that is common to both lists, the parties shall either mutually agree on which arbitration company shall be selected or flip a coin to select the arbitration company. If there is not initially a common arbitration company on the lists, the parties shall repeat the process by expanding their lists by two each time until there is a common name on the lists selected by the parties. The decision of the arbitrator shall be final and the arbitrator shall have authority to award attorneys' fees and allocate the costs of arbitration as part of any final award. All claims shall be brought by a party in his or her individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Notwithstanding anything to the contrary contained herein, this agreement to arbitrate shall not apply to: (1) any claim regarding the handling and disbursement of earnest money; and (2) any claim of Broker regarding the entitlement to or the non-payment of a real estate commission hereunder.
- 17. 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.
- 18. Referrals.** Should Buyer seek to purchase real property in an area with which Broker is unfamiliar, Buyer hereby authorizes Broker to refer Buyer to another broker or licensee for brokerage or relocation services. Buyer acknowledges and agrees that Broker may receive a valuable consideration for the referral.
- 19. 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 licensees of Broker. Broker and each of Broker's licensees shall be deemed to have only actual knowledge of such properties.
- 20. 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.
- 21. Survival.** The commission rights of Broker and the commission obligations of Buyer set forth herein shall survive termination or expiration of this Agreement.
- 22. 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.
- 23. 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.
- 24. Time of Essence.** Time is of the essence of this Agreement.
- 25. Brochures.** Brochures referenced herein are prepared courtesy of the Georgia Association of REALTORS®. The recommendations are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Buyers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected.

**26. Receipt by Buyer of Consumer Protection Brochures.**

- A. Buyer  has OR  has not received a copy of the GAR brochure entitled "Protect Yourself When Buying a Home".
- B. Buyer  has OR  has not received a copy of the GAR brochure entitled "What Buyers Should Know About Flood Hazard Areas and Flood Insurance".

**27. 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.

**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 \_\_\_\_\_.

Buyer Acceptance and Contact Information

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1. \_\_\_\_\_  
Buyer's Signature

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer's Address for Receiving Notice

\_\_\_\_\_  
Buyer's Cell Phone Number

\_\_\_\_\_  
Buyer's E-mail Address

\_\_\_\_\_  
Buyer's Home Phone Number

\_\_\_\_\_  
Buyer's Business Telephone

\_\_\_\_\_  
Buyer's Fax Number

**Broker/ Broker's Affiliated Licensee Contact Information:**

\_\_\_\_\_  
Broker

\_\_\_\_\_  
Broker or Broker's Affiliated Licensee Signature

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

\_\_\_\_\_  
MLS Office Code

\_\_\_\_\_  
Brokerage Firm License Number

\_\_\_\_\_  
E-Mail

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

Member of: \_\_\_\_\_ of REALTORS®

2. \_\_\_\_\_  
Buyer's Signature

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer's Address for Receiving Notice

\_\_\_\_\_  
Buyer's Cell Phone Number

\_\_\_\_\_  
Buyer's E-mail Address

\_\_\_\_\_  
Buyer's Home Phone Number

\_\_\_\_\_  
Buyer's Business Telephone

\_\_\_\_\_  
Buyer's Fax Number

\_\_\_\_\_  
Broker's Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Fax #



2016 Printing

# Protect Yourself

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## when buying a home

### Suggestions for the Prospective Homebuyer

This brochure was prepared courtesy of the Georgia Association of REALTORS® to help buyers with the home buying process. The recommendations herein are general in nature and are not intended to be exhaustive.

Some of the recommendations may not apply to specific properties. Buyers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected in buying a home.

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here are few things in life as exciting as buying a home. However, since homes are one of the largest purchases most of us will ever make, buyers should take reasonable steps to protect themselves in the home buying process. This brochure contains some general suggestions on how buyers can do this.

**1. *Read and keep a copy of any signed contract.*** A purchase and sale agreement is a legally binding contract. It should be read in its entirety by the buyer before it is signed to ensure that it reflects the business agreement of the parties. Verbal promises not included in the contract are generally unenforceable. Buyers should comply with all time deadlines in a contract since missing a deadline can leave the buyer in breach of contract. Getting an early start on arranging such things as inspections and financing is the best way for buyers to avoid missing deadlines. The buyer should also keep a complete copy of any contract that he or she has signed in the event a dispute arises regarding the authenticity of the contract.

**2. *Have the home inspected by a professional home inspector.*** Home inspectors help buyers evaluate the condition of the home based upon one or more visual inspections of the property. Most homes have at least a few items that will need to be repaired and/or replaced. A professional home inspector can assist in identifying these items by performing an inspection of the property. Requests for repairs are normally received more favorably by sellers when the need for the repairs has been documented in the report of a professional home inspector. Many home inspectors are members of professional associations that, among other things, require their members to perform a standardized inspection of the property. Buyers are encouraged to ask inspectors about their qualifications and expertise in inspecting homes before selecting an inspector.

**3. *Inspect the neighborhood in which the home is located.*** The neighborhood in which a home is located can be as important as the home itself. Buyers should familiarize themselves with the neighborhood in which the homes they are considering buying are located to determine if there are any objectionable conditions nearby. If buyers go far enough away from any home, they will eventually discover some neighborhood condition that they wish were not there. What those conditions are and how far away they need to be from a house before they are no longer a concern is a decision that only the buyer can make. For example, a nearby grocery store may be a convenience for some buyers and a disruptive commercial use for others. Buyers can also contact local governmental planning officials to determine what changes, if any, are anticipated in a neighborhood over time.

**4. *Have the home inspected for termites and other wood destroying organisms and obtain an official Georgia Wood Infestation Report that can only be prepared by a licensed pest control company.*** Buyers should have the home they are buying inspected by a licensed Georgia pest control company for evidence of termites and other wood destroying organisms (including powder post beetles, wood boring beetles, dry wood termites and wood decay fungi). The inspection should be done even if the home has a transferable termite warranty since these warranties normally contain exclusions. As a result, buyers can understand risks they may be assuming in this area by having an inspection performed. Obtaining an official Georgia Wood Infestation Report will identify the areas in the house where there is evidence of both active and previous infestation from termites and other wood destroying organisms. Buyers should also review any termite warranty being transferred by the seller to determine what is covered and the cost of maintaining the warranty. Some termite warranties cover both retreatment and repair while others are limited only to re-treatment.

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**5. Thoroughly investigate the property.** There are many other tests and studies buyers can do in deciding whether to purchase a property. These include, for example, a radon test to determine if the home has elevated levels of radon, mold tests to determine if the property has high levels of certain kinds of dangerous mold, well water tests when the property is served by well water and septic system inspections when the property is served by a septic system.

Homes should also be tested for lead-based paint. Normally, this is only an issue in homes built prior to 1978 (since after this time lead-based paint sales were prohibited). Ingestion of lead-based paint chips or particles can cause lead poisoning, a serious health condition, particularly in children. Buyers of older homes should read the EPA brochure entitled "Protect Yourself from Lead in Your Home". Renovators of older homes should read the EPA's Renovate Right brochure and other related materials.

Many factors can affect the value of a property and the ability of an owner to use and enjoy it. These include, for example, the school district in which the property is located, whether the property is subject to flooding, the availability and cost of property insurance, whether the property is subject to recorded covenants and the nature of those covenants, the governmental jurisdiction in which the property is located and whether the property is on an historic registry or in a special tax or zoning district. Websites exist to determine if a home was used to illegally manufacture methamphetamine (which generates environmental contaminants) and whether registered sex offenders reside in the neighborhood. Before buying a home, buyers are encouraged to use reasonable diligence to investigate the properties they are buying for issues of special concern to them.

**6. Get a survey of the property.** Buyers are encouraged to get surveys of the properties they are considering buying so that they know where the exact boundary lines of the properties are located. Buyers should request that the survey identify the location of any easements of record, whether there are encroachments onto or off of the property and whether the property is in a flood plain. Surveys are not normally done in the sale of condominium units. However, a buyer can review the condominium plat to see the location of the property that is a part of the condominium.

**7. Make sure that an undeveloped lot can be developed.** In most parts of Georgia, lots cannot be developed for residential purposes unless they are properly zoned, have access to a public road and are served by water and sewer. If there is no ability to connect the lot to a public sewer, the buyer should verify that the lot can accommodate a septic system. This is done by having a licensed engineer perform a percolation test and evaluate whether the lot is sufficiently large for a septic tank and field to be installed. Similarly, if the lot is serviced by a well or private water system, the buyer should arrange to have the water tested to confirm that it is safe for drinking. Meeting with the local governmental department which issues building permits is a great way to get information about whether and how a vacant lot can be developed.

**8. Buy an Owner's Title Insurance Policy.** An owner's title insurance policy protects the buyer if a pre-existing title problem is discovered after the closing. Normally, a title insurance policy is purchased and issued at the closing by the closing attorney. A title problem can be as simple as a neighbor claiming to own a small portion of your property based upon a disputed fence line. However, it can also be a serious problem, such as a forged deed, where you could lose the title to your property. Mortgage lenders require the buyer to pay for title insurance covering the lender's interest in the property. However, in a world where there is an increasing amount of identity theft and the forging of documents, title insurance covering the owner is also recommended. There are different types of title insurance policies offered in Georgia. The most comprehensive are sometimes referred to as "enhanced title policies" and in some cases they protect buyers from title claims arising even after the closing date. Since the premium for title insurance is paid only once, it is recommended that buyers obtain the comprehensive policy.

**9. Consider Purchasing a Home Warranty.** Georgia law does not require the seller of either a new or existing home to provide the buyer with a home warranty. If the seller is not offering a warranty, buyers can purchase a limited warranty on both new and existing homes as a part of the purchase of the home. Buyers should review the terms of any warranty that is offered or purchased to understand what it covers and excludes and how to file a claim.

**10. Be Careful to Avoid Scams.** Scams designed to separate people from their money are on the rise. After a buyer has received instructions from the closing attorney as to where to wire funds, buyers should be highly suspect of any subsequent wiring instructions, particularly if they are different from the original instructions. In many cases, these subsequent wiring instructions are false and could result in the buyer wiring money to fraudsters. Buyers should contact the closing attorney to verify the correct wiring instructions.

**11. Be Careful to Avoid Needless Expenses.** Some companies who can appear to the untrained eye to be conducting official government business also charge fees to obtain a recorded or certified copy of the deed. This is an unnecessary expense since the closing attorney normally provides a recorded copy of the deed to the buyer as part of the closing. However, it can take up to a month or two for the closing attorney to get the recorded deed back from the courthouse.

**12. Choose a REALTOR®.** Not all licensed real estate salespersons (or brokers) are REALTORS®. REALTORS® agree to abide by a Code of Ethics in their dealings with buyers and sellers. REALTORS® are members of the National Association of REALTORS® and participate in a local Board of REALTORS®. REALTORS® typically have valuable knowledge regarding the price at which other homes in a neighborhood sold, how to negotiate various terms in a purchase and sale agreement and the features of different homes. REALTORS® can also provide buyers with and help them fill out a pre-printed purchase and sale agreement form. REALTORS® routinely work with and, upon request, can provide buyers with the names of attorneys, mortgage lenders, home inspectors, termite companies and persons providing other services relating to real estate transactions. Therefore, when buyers need help in finding the right home, they should always choose a REALTOR® first!



2016 Printing

# What Buyers Should Know

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## About Flood Hazard Areas and Flood Insurance

### Flood Information for the Prospective Buyer

This brochure was prepared courtesy of the Georgia REALTORS® to help buyers in Georgia learn more about Flood Hazard Areas and Flood Insurance.

The information herein is general in nature and is not intended to be exhaustive. Some of the information may not apply to specific properties.

Buyers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected.

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1. *In Georgia, it is generally the buyer's obligation to determine if a property is in a flood hazard area.* While the potential for flooding may be more apparent when a property is located close to an ocean, river or stream, flooding can occur in any low lying area or area through which storm water runoff drains. Whether a property is located in a flood hazard area can be determined by having a survey done in which the surveyor is asked to identify the boundaries of any flood hazard areas, reviewing floodplain maps on the national FloodSmart.gov website or checking with your local planning department in the city or county in which you live. Our Georgia courts have ruled that if a portion of a property is in a special flood hazard area, the buyer should reasonably expect that some flooding may occur on the entire property.

2. *The boundaries of flood hazard areas can change over time.* Just because a property was not in a flood hazard area in the past does not mean that it may not be in one today. The boundaries of flood hazard areas can change due to changing weather patterns and a generally increased risk for more severe weather, greater precision in floodplain mapping and increased development in an area that may cause greater storm water runoff than in the past. Rather than relying on seller disclosures in this area, it is best to independently verify whether or not property is located in a flood hazard area.

3. *Properties in flood hazard areas are at risk for different types of flooding.* The baseline standard for flooding, known as the base flood, are properties where there is a one percent annual chance of flood. This is also called the 100 year floodplain. However within this category there are many sub-categories that determine the type of flooding that may occur. So, for example, depending on the location of a property, the flooding may include wave action, be in an area where the property is in a floodway where there is a definable channel of rapidly moving floodwater or be in a shallow floodplain where flooding of 1-3 feet may occur but with no definable floodwater channel. Properties within the 100 year floodplain are categorized as being in a special flood hazard area or zone.

4. *The cost of flood insurance will vary based upon the risk of damage resulting from flooding.* Not all buyers pay the same amount for flood insurance. FEMA or the Federal Emergency Management Agency has prepared Flood Insurance Rate Maps ("FIRM") that try to quantify the degree of risk of being in different types of flood hazard zones. The greater the risk of damage from flooding, the more the property owner will pay for flood insurance. There is a National Flood Insurance Program that helps ensure that most properties in a flood hazard area can buy flood insurance. However, the federal government does not sell flood insurance. Instead, this can only be purchased from an insurance professional.

5. *Flood insurance premiums will likely increase.* In 2012, changes were made to the National Flood Insurance Program that will increase the cost of flood insurance. In particular, the law provides for the gradual elimination of a variety of existing federal subsidies for flood insurance. The goal of the changes is for property owners to eventually be charged insurance rates based upon the true risk of damage resulting from flooding. Over time, the properties that will likely see the largest increases are properties with severe repetitive losses, properties where flood losses have exceeded the value of the property and properties improved over 30% of fair market value. Since some of the anticipated increases in flood insurance premiums may be significant, buyers are encouraged to get a price quote from an insurance professional early in the home buying process.

6. *Flood insurance does not necessarily pay for all damage to a property.* A standard flood insurance policy only pays for direct physical damage to a property caused by flooding. On 1-4 residential buildings there is a policy coverage limit of \$250,000 through the National Flood Insurance Program. This means that if a \$750,000 house is flooded, the insurance will only pay \$250,000 of that damage. In addition, damage to personal property in the property is capped at \$100,000 under the National Flood Insurance Program. Subject to certain limitations, excess flood insurance is available through private insurance companies.

**7. *There are some properties where flood insurance is not available.*** In 1982, a federal law was passed restricting development on land designated as being a part of a coastal barrier resource system. In Georgia, most coastal barriers are dunes and other land near oceans that act as a buffer to protect properties further inland against flooding. Houses built in a Coastal Barrier Resource System (“CBRS”) area are only eligible for flood insurance if the house was built prior to 1982.

How the improvements on a property located in a flood hazard area are constructed can also sometimes have a bearing on the buyer’s purchasing decision. If the improvements are elevated off the ground and do not include a basement, the actual risk of flooding may be much lower than if the improvements are constructed on grade.

**8. *Common flood zone designations.***

- AO - River or stream flood hazard areas in the 100 year floodplain where there is a chance of shallow flooding
- AE - Areas within the 100 year floodplain
- V - Coastal areas in the 100 year floodplain where there is an additional hazard associated with storm waves
- AH - Areas within the 100 year floodplain where there is a risk of shallow flooding usually in the form of a ponding water
- B and X (shaded) - Areas between the 100 and 500 year floodplain
- C and X (unshaded) - Areas of minimal flood hazard above the 500 year flood level

**9. *Should I avoid buying a property in a flood hazard area?*** Only a buyer can decide whether the benefits of living near water outweigh its risks. Living near water is viewed by most Americans as highly desirable. Water creates many opportunities for outdoor recreation, is aesthetically pleasing to look at and is generally viewed as having a calming effect on people. As a result, waterfront properties typically command far higher sales prices than non-waterfront properties. The tradeoff in living near water is an increased risk of flooding.

Ordering a CLUE Report (Comprehensive Loss Underwriting Exchange Report) provides a 7 year insurance loss history of a home including losses by flooding. This report can be ordered through an insurance professional or purchased directly. Reviewing this report gives buyers valuable information on the frequency of flooding and the type of damage, if any, resulting from flooding. As such, a CLUE Report can help a buyer evaluate the risks and rewards of buying a home in a flood hazard area. Not all properties in a flood hazard area flood while others flood on a regular basis.

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