

EXCLUSIVE BUYER BROKERAGE AGREEMENT



SAMPLE

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, this date of _____

1. **Exclusive Brokerage Agreement.** Buyer hereby hires Broker to act as Buyer's exclusive real estate broker and agent to assist Buyer in locating and negotiating the purchase or exchange of real property. Buyer has not entered into a buyer brokerage agreement with any other broker or has terminated any previous buyer brokerage agreement. 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.
2. **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. Buyer acknowledges that the real estate licensees affiliated with Broker are independent contractors of Broker, and are not Broker's employees.
3. **Broker's Duties to Buyer.** Broker's sole duties to Buyer shall be to:
 - A. attempt to locate property suitable to Buyer for purchase;
 - B. assist to the extent requested by Buyer in negotiating the terms of and filling out a pre-printed real estate purchase and sale agreement; and
 - 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.
4. **Buyer's Duties.** Buyer agrees to:
 - A. work only with Broker (and not with any other real estate broker, licensee or seller) in identifying, previewing, and seeing property for purchase by Buyer;
 - B. be available to meet with Broker to see property;
 - C. timely respond to communications from Broker;
 - D. provide Broker with accurate information as requested by Broker (including financial information about Buyer's financial ability to complete the transaction and written authorization to obtain verification of funds);
 - E. inspect and otherwise become familiar with any potentially adverse conditions relating to the physical condition of any property in which Buyer becomes interested, any improvements located on such property and the neighborhood surrounding such property; and
 - F. 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.
5. **Commission.** Broker shall seek to be paid a commission from the listing broker under a cooperative brokerage arrangement or from a prospective seller if there is no listing broker. In the event the prospective seller or listing broker does not pay Broker a commission, then Buyer shall pay Broker at time of closing the following commission [The sections not marked shall not be a part of this Agreement]:
 - \$ _____;
 - (Other) _____;
 - _____ percent (%) of the sales price;
 of all real property in Georgia which Buyer purchases or contracts to purchase during the term of this Agreement whether or not the property has been identified to Buyer by Broker. In addition, if Buyer leases property or enters into a lease/purchase contract during this Agreement, and the landlord does not agree to pay Broker a leasing commission, Buyer shall also pay Broker for the duration of the lease and any renewal or extension thereof a commission of _____ percent (%) of each rental payment paid by Buyer to Landlord there under. Furthermore, in the event that during the _____ day period following termination or expiration of this Brokerage Agreement, Buyer purchases, contracts to purchase, leases or lease purchases any property identified to Buyer by Broker during the term of this Brokerage Agreement, then Buyer shall pay Broker at closing or the commencement of any lease, if applicable, the commission or commissions set forth above (and this provision shall survive the termination or expiration of this Agreement).
6. **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 make all disclosures required by law;
- E. 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
- F. 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).
- G. shall be held harmless from any and all claims, causes of action, or damages arising out of or relating to:
 1. inaccurate and/or incomplete information provided by Broker to Buyer;
 2. earnest money handled by anyone other than Broker; or
 3. any injury to persons on the property and/or loss of or damage to the property or anything contained therein.

7. **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.

8. **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.)

9. **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.

10. **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, landlord agency, and tenant agency. The agency relationship(s), if any, not offered by Broker is/are the following: _____.

11. **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.

12. **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.

13. **Receipt of Faxes and Telephone Calls.** Buyer's current telephone number, facsimile (FAX) number and street address are set forth below. Buyer acknowledges that in buying real property there are time deadlines in which: 1) offers or counteroffers must be accepted; and 2) the various obligations set forth in the purchase and sale agreement must be fulfilled. Buyer therefore agrees: 1) to be available at the below referenced numbers and street address(es) to receive time sensitive information; and 2) to immediately update Broker in writing on changes to any of the above referenced numbers and addresses. Buyer acknowledges that the failure of Buyer to comply with the terms set forth herein could have adverse legal and financial consequences. Buyer further agrees that during the term of this Agreement, and for 18 months thereafter, Broker and companies and persons affiliated with Broker shall have the right, but not the obligation, to contact Buyer at any of the above telephone numbers, email address(es) and/or street address(es) for marketing, advertising, and other business purposes and Buyer expressly consents to the same.

- 14. Notices.** Except as otherwise provided herein, all notices, including offers, counteroffers, acceptances, amendments and demands, required or permitted hereunder shall be in writing, signed by the party giving the notice and delivered either:
- A. in person;
 - B. by an overnight delivery service, prepaid;
 - C. by facsimile transmission (FAX) to Broker and Buyer at their respective FAX telephone numbers identified on the signature page of this Agreement (provided that an original of the notice shall be promptly sent thereafter if so requested by the party receiving the same), or
 - D. by the United States Postal Service, postage prepaid, registered or certified return receipt requested.

The parties agree that a faxed signature of a party constitutes an original signature binding upon that party. Notices shall be deemed to be given as of the date and time they are actually received, except for FAX notices which shall be deemed to have been given and received as of the date and time they are transmitted provided that the sending FAX produces a written confirmation showing the correct date and time of the transmission and the telephone number referenced herein to which the notice should have been sent. All notice requirements referenced herein shall be strictly construed. Any notice sent by FAX shall be sent to such other FAX number as the receiving party may from time to time specify by notice to the party sending the FAX.

- 15. Early Termination.** Broker or Buyer shall have the right to terminate this Agreement at any time by giving the other party written notice; However, such a termination shall not limit Broker's right to collect any commission earned or owing as of the date of termination or to which Broker is entitled to collect herein after the termination of this Agreement. It being expressly agreed that such rights shall survive the termination of this Agreement.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. GAR Forms.** This Georgia Association of REALTORS®, Inc. (GAR) form is provided as a courtesy to the parties. It may only be used in accordance with the licensing agreement of GAR or as may be approved in writing by GAR. It is not required to be used in any transaction, may not fit the needs, goals and purposes of the parties and was not written to provide specific legal protection to the parties. Parties seeking legal advice should consult an attorney. While this form may be altered or modified by the parties, at their own risk, to a specific real estate transaction, this form may not 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.

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

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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.

SAMPLE

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 _____ Buyer's Signature _____

MLS Office Code _____ Brokerage Firm License Number _____ Print or Type Name _____

Broker's Phone# _____ & FAX# _____ Buyer's Signature _____

By: _____ Print or Type Name _____
Broker or Broker's Affiliated Licensee

Print or Type Name _____ Phone # _____ FAX# _____

Agent's Georgia Real Estate License Number _____ Address: _____

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