

# Protect Yourself When Buying a Home

## *Suggestions for the Prospective Homebuyer*



2020 Printing

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.

There 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.

***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.

***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.

***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.

***Have the home inspected for termites and other wood destroying organisms and obtain an Official Georgia Wood Infestation Inspection 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 Inspection 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.

**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.

Websites exist that identify certain (but not necessarily all) homes which have been used to manufacture methamphetamine and/or certain other illegal substances. Websites also exist to help identify if a registered sex offender resides in the neighborhood.

Repairs to a home can range from simple cosmetic fixes to repairs done as the result of substantial damage. Some repairs require, and some do not require, a permit from the governmental jurisdiction in which the property is located. Major systems replacement, certain renovations, and/or structural additions to the main dwelling require a permit in Georgia. Permits are issued to ensure public safety and are sometimes completed with the issuing of a certificate of occupancy ("CO") or other documentation showing that the responsible governmental entity has inspected and approved the work. Specific information about permitting requirements for the property you are considering buying may be found online at <https://dca.ga.gov>.

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, quality of repairs and renovations, permitting issuance, 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.

Sellers are required to disclose known latent defects in a home; but as a buyer, before completing the purchase of a home, you are encouraged to use reasonable diligence to investigate the property you are buying for issues of special concern to you.

**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.

**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.

**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.

**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.

**Beware of Cyber Fraud.** Fraudulent e-mails attempting to get you to wire money to criminal computer hackers are increasingly common in real estate transactions. Under this scam, computer hackers fraudulently assume the online identity of the actual mortgage lender, closing attorney, and/or real estate broker with whom you are working in the real estate transaction. Posing as a legitimate company, they then direct you to wire money to them. In many cases, the fraudulent e-mail is sent from what appears to be the authentic webpage of the legitimate company responsible for sending the wiring instructions.

You should use great caution in sending or receiving funds based solely on wiring instructions sent to you by e-mail. Independently verifying the wiring instructions with someone from the company sending them is the best way to prevent fraud. In particular, you should treat as highly suspect any follow up e-mails you receive from a mortgage lender, closing attorney, and/or real estate broker directing you to wire funds to a revised account number. Never verify wiring instructions by calling a telephone number provided along with a second set of wiring instructions since you may end up receiving a fraudulent verification from the computer hackers trying to steal your money. Independently look up the telephone number of the company who is supposed to be sending you the wiring instructions to make sure you have the right one.

**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.

**Assume the property you are viewing has audio/video surveillance devices in operation.** Surveillance technology has advanced to the point where it cannot be seen and more homes have it than ever before. This means that when buyers tour a property they should act and speak in a manner which reflects that they are being recorded. Conversations should be kept to a minimum and should be of a nature which does not harm the buyer's negotiating position. The property is not the place to discuss the terms of the offer the buyer is considering. Buyers should not do or say anything that could jeopardize the buyer's negotiating position or alienate the seller.

**Test Your Drinking Water for Lead.** Buyers should test their drinking water to confirm that it does not contain unhealthy levels of lead. Water service lines are sometimes constructed of lead or include lead solder which can leach into the water. Lead is a toxic metal, a strong poison and a serious health hazard, particularly for children. If buyers determine during a due diligence period that there are unhealthy levels of lead in the drinking water, buyers may negotiate for the replacement of water service lines which contain lead.

**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!

# The ABC's of Agency: Understanding Real Estate Brokerage Relationships in Georgia



2020 Printing

Real estate brokers are licensed professionals trained to help consumers buy, sell, or lease real property. The business relationship between real estate brokers and consumers can take many forms, each of which is called a brokerage relationship. This brochure describes the types of brokerage relationships most commonly offered by real estate brokers. Hopefully, the brochure will make it easier for consumers to make informed choices on how best to work with a real estate broker. It should be noted that real estate brokers are not required to offer all of the brokerage relationships described in this brochure. Instead, each real estate broker is free to decide which of these relationships he or she will offer.

**Real Estate Brokerage Generally.** As a general rule, only licensed real estate brokers can be paid a fee to help consumers buy, sell, or lease property. Many brokers have licensed real estate salespersons, commonly known as real estate agents, who act on behalf of the broker in helping consumers buy, sell, or lease property. While real estate agents can be employees of the real estate broker, most act as independent contractors. Real estate brokers often incorporate or set themselves up as limited liability companies or partnerships. All brokerage firms, however, are required to have a responsible or a qualifying broker. In the majority of real estate transactions, the consumer interacts only with his or her real estate agent and not the real estate broker. The real estate broker in those instances works behind the scenes to solve problems and support, supervise and assist his or her agents.

**Clients vs. Customer. Customer in Brokerage Relationships.** All brokerage relationships fall into one of two broad categories: (a) broker-client relationships; and (b) broker-customer relationships. In a broker-client relationship, the real estate broker is representing the client and is acting as his or her legal agent in buying, selling, or leasing property. In Georgia, a broker-client relationship can only be formed by the parties entering into a written agreement. The agreement must explain, among other things, how the broker will be paid, the duty of the broker to keep client confidences, and the types of client or agency relationships offered by the broker.

The other type of brokerage relationship is known as a broker-customer relationship. With this type of relationship, the broker is not representing the customer in a legal or agency capacity. However, the broker can still work with the customer and help him or her by performing what are known as ministerial acts. These include, for example, identifying property for sale or lease, providing pre-printed real estate form contracts, preparing real estate contracts at the direction of the customer, and locating lenders, inspectors, and closing attorneys on behalf of the customer. The different types of brokerage relationships within each of these categories are discussed below.

## **Broker-Client Relationships:**

(a) **Seller Agency/Landlord Agency:** Seller agency occurs when the real estate broker is representing the seller in selling his or her property. This type of brokerage relationship is created by the seller and the broker entering into a written contract known as a listing agreement. The listing agreement gives the broker, commonly referred to as the listing broker, the right to market the property for sale at a specific price and for a defined period of time. If the broker is successful in finding a buyer ready, willing, and able to purchase the property, the broker would normally be paid a fee or commission upon the closing of the transaction. This fee or commission is often shared with other real estate brokers, under what are known as cooperative brokerage agreements, if they or their agents find the buyer. Seller agency is also sometimes called listing agency. Landlord agency is different from seller agency in that the listing broker is assisting the property owner in leasing rather than selling property.

(b) **Buyer Agency/Tenant Agency:** Buyer agency occurs when the real estate broker represents the buyer in locating and assisting the buyer in negotiating for the purchase of property suitable to the buyer. A buyer agency is created when the buyer enters into an agreement commonly known as a buyer brokerage agreement. A real estate broker can be compensated by one party yet represent another party. Therefore, in some buyer brokerage agreements, the fee or commission received by the buyer's broker is actually a portion of the fee or commission paid by the seller to the listing broker. In these situations, the seller also agrees that the listing broker will share the commission or fee with any buyer's broker who finds a buyer ready, willing and able to purchase the property. With some buyer brokerage agreements, the buyer pays a fee or commission directly to his or her broker. Buyer agency is sometimes referred to as buyer brokerage. Tenant agency is different from buyer agency in that the broker is representing a consumer who is seeking to lease rather than purchase property.

(c) Designated Agency: In some real estate transactions, the real estate agent representing the buyer and the real estate agent representing the seller both work for the same broker or brokerage firm. In such a transaction, the broker may allow each agent to exclusively represent their respective clients. This type of brokerage relationship is known as designated agency. In a designated agency transaction, the designated agent for the buyer owes the same duties to the buyer as if the agent was acting only as a buyer's agent. Similarly, the designated agent for the seller owes the same duties to the seller as if the agent was acting only as the seller's agent. With designated agency, each designated agent is prohibited from disclosing to anyone other than his or her broker any information requested to be kept confidential by the client unless the information is otherwise required to be disclosed by law. Therefore, designated agents may not disclose such confidential information to other agents in the company. The broker is also prohibited from revealing any confidential information he or she has received from one designated agent to the other designated agent, unless the information is otherwise required to be disclosed by law. Confidential information is denied as any information that could harm the client's negotiating position which information the client has not consented to be disclosed. In Georgia, designated agency is denied by state statute not to be dual agency.

(d) Dual Agency: Georgia law allows both parties to agree to have one agent or broker represent them in a real estate transaction at the same time. In other words, the agent or broker has a client relationship with all parties to the transaction without acting in a designated agency capacity. In these situations, neither party is exclusively represented by a designated real estate agent. This type of brokerage relationship is called "dual agency".

Georgia law allows real estate brokers to act as dual agents if they first get the written consent of both parties. The written consent must contain the following: (1) a description of the types of transactions in which the licensee will serve as a dual agent; (2) a statement that as a dual agent, the licensee represents two clients whose interests could be different or even adverse; (3) a statement that the dual agent will disclose all adverse material facts regarding the transaction known to the dual agent to all parties to the transaction except for information that is made confidential by request of another client and that is not allowed or required by law to be disclosed; (4) a statement that the licensee will disclose to each client in the transaction the nature of any material relationship the licensee or his or her broker have with other clients in the transaction other than incidental to the transaction; (5) a statement that the client does not have to consent to the dual agency; and (6) a statement that the client's consent has been given voluntarily and that the client has read and understood the brokerage engagement agreement. This special consent is required because of the potential for conflicts of interest in dual agency transactions.

(e) Subagency: Subagency occurs when one real estate broker is appointed by another real estate broker as a subagent to assist the broker in performing its duties. In a typical Subagency transaction, a listing broker practicing Subagency might appoint the broker working with the buyer as his or her subagent. The broker acting as the subagent would work with the buyer but would represent the seller. The buyer then was the customer of the broker acting as a subagent, but the seller would be his or her client. Subagency relationships between real estate brokers in Georgia, while once the norm, are much less common today.

### **Broker-Customer Relationships:**

(a) Transaction Brokerage: A transaction brokerage relationship is one in which a real estate broker or brokers assists both parties in a real estate transaction but does not enter into a client relationship with, nor represents, either party. In a transaction brokerage relationship, the broker treats both parties as customers and can only perform ministerial acts for either party, including the following: (1) identifying property; (2) providing real estate statistics and information of property; (3) providing preprinted real estate form contracts; (4) acting as a scribe in the preparation of form contracts; (5) locating relevant professionals, such as architects, engineers, surveyors, inspectors, lenders, insurance agents, and attorneys; and (6) identifying facilities such as schools, shopping centers, and places of worship.

(b) Brokers May Help Parties Other Than Their Clients: Brokers who represent one party in a real estate transaction as a client can still help the other party in the transaction by performing ministerial duties for the other party (of the type described under transaction brokerage section). When a real estate broker works with a party as a customer or client, the broker may not knowingly give the party false information.

***Always Choose a REALTOR®.*** This brochure has been prepared as a public service by the Georgia Association of REALTORS®. REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the National Association of REALTORS® and subscribe to its strict Code of Ethics.