

THE COUNSELORS GUIDE

A Comparison of the MAR and GCAAR Contracts

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DIFFERENCES BETWEEN THE MAR (Version 10/07) and the REGIONAL (Version 9/06) CONTRACTS

The following is a brief summary and comparison of some important provisions in the Maryland Association of Realtors® Contract (MAR Contract, Version 10/07) and the Greater Capital Area Association of Realtors® Regional Contract (Regional Contract, Version 9/06). This guide is intended to highlight some of the significant differences between the two Contracts, but is not intended to be all inclusive. In no event should this take the place of reading each Contract and obtaining legal advice should you have any questions. Counselors Title, LLC, does not advocate the use of one Contract over the other. MAR recommends use of its Contract for any residential property located within the State of Maryland and GCAAR recommends use of the Regional Contract or the MAR Contract in Montgomery County, Maryland (both Contracts are valid and carefully drafted by each Board). In the District of Columbia and much of Virginia, the only Board approved Contract is the Regional Contract. For Realtors® and their clients, the ultimate decision of which Contract form to use is one that is determined by the particulars of each transaction, local customs, and the market.

REAL PROPERTY DESCRIPTIONS

MAR CONTRACT:

Paragraph 4: Only describes the Property as street address and county.

Paragraph 5: Describes the type of ownership interest being conveyed (i.e. fee simple or leasehold).

REGIONAL CONTRACT:

Paragraph 1: Property description includes street address and legal description (including: Tax ID, lot, block, subdivision, etc.).

PROPERTY CONDITION

MAR CONTRACT:

Paragraph 21: Requires that all appliances and systems (including mechanical systems) be in “working condition” at settlement. All other items in the Property are conveyed in “AS IS” Condition. The Buyer has the right to do a final inspection of the Property within 5 days prior to settlement.

REGIONAL CONTRACT:

Paragraph 7: Buyer accepts the Property in the condition as of the Contract Date, unless otherwise provided in the Contract. Seller “warrants” systems will be in “normal working order” as of the Possession Date. The Regional Contract does not include “mechanical systems” (e.g. windows, doors and locks). Paragraph also requires that Seller will have all utilities in service unless otherwise agreed.

Paragraph 15: Calls for the Buyer to have a final inspection of the Property within 5 days of settlement or delivery of possession.



TERMITE INSPECTION

MAR CONTRACT:

Paragraph 18: Buyer, at their expense, is to have the Property inspected by a Maryland licensed pest control company to determine if there is termite and/or other wood destroying insect infestation and/or damage caused by current or past wood destroying insect activity. The provisions of the paragraph apply to the residence, any attached or detached garage, any outbuilding located within 3 feet of the residence or garage, and any fence that originates within 3 feet of the home or garage (up to a maximum of 10 linear feet of the nearest portion of the fence to the residence or garage). The Seller is required to have any infestation treated and repair ANY damage caused by wood destroying insects, regardless of whether the damage is deemed cosmetic or structural. However, the Seller's required liability for repairs and treatment costs are limited to a cap of 2% of the Sales Price. If the costs exceed this sum, either the Buyer or Seller may cancel the Contract, unless the other party agrees to pay the costs in excess of 2%. Timeframes for notices, in the event such costs are in excess of the cap, are set forth in the paragraph.

REGIONAL CONTRACT:

Paragraph 16: Allows the parties to negotiate who will pay for and coordinate a termite inspection of the Property. The provisions of the paragraph apply to all dwelling(s), and/or garage(s) within the Property [excluding fences or shrubs not abutting dwelling(s) or garage(s)]. As with the MAR Contract, the inspection is required to be completed by a pest control company. In the event that the report indicates active infestation or structural damage, the Seller, at the Seller's expense, will be required to repair and/or treat as indicated, regardless of the cost. Seller is not required to repair any non-structural damage.



APPRAISAL & FINANCING

MAR CONTRACT:

Appraisal: The MAR Contract does not provide for an appraisal contingency. In order to incorporate an appraisal contingency, the parties should execute a separate addendum to the Contract. GCAAR has provided for an appraisal contingency in the Addendum of Clauses (GCAAR # 1332 Paragraph 9).

Paragraph 9: Sets forth the specified financing that Buyer is seeking to obtain. If financing is FHA or VA, the MAR Contract requires that a separate addendum be completed and attached (see Montgomery County Jurisdictional Addendum GCAAR #1312).

REGIONAL CONTRACT:

Paragraph 10 A. (Seller Subsidy): Specifies whether or not the Seller is giving a credit to Buyer and the amount thereof. If lender prohibits Seller from the payment of any portion of the credit, then the credit is reduced to the amount allowed by the lender.

Paragraph 10 B. (Appraisal): Parties MUST specifically select whether or not there is an appraisal contingency. If there is a contingency, then a separate Appraisal Contingency Addendum must be completed and attached as part of the Contract (see Addendum of Clauses GCAAR # 1332 Paragraph 9). If a separate addendum is not attached, there is NOT an appraisal contingency. If there is NOT an appraisal contingency, then the Buyer is obligated to complete settlement regardless of the value of the Property set forth in any appraisal. If the Property does not appraise and the Buyer cannot complete settlement, then the Buyer is in default of the Contract.



APPRAISAL & FINANCING (cont.)

MAR CONTRACT:

Paragraph 10: Requires Buyer to apply for loan and obtain a “written financing commitment” within timeframes as negotiated by the parties. The paragraph does not expressly require Buyer to provide Seller with a copy of the financing commitment. If Buyer does not obtain a written financing commitment within the designated timeframe, Seller has option of declaring Contract “null and void and of no further legal effect”. In the event that the Buyer has diligently pursued Buyer’s financing (as set forth in the Contract) and receives written evidence from a lender of their inability to obtain the financing, the Buyer may declare the Contract null and void by providing the Seller written notice. If either party has declared the Contract null and void, Buyer will have the right to receive a refund of their earnest money deposit.

Paragraph 11: Buyer has the right to pursue alternate financing. However, if Buyer receives a financing commitment for a loan that is different from the financing set forth in Paragraph 9, then the financing contingency is deemed to be satisfied.

Note: If the Montgomery County Jurisdictional Addendum (see GCAAR #1312 Paragraph 11) is used, the terms described in Paragraphs 10 & 12 of the Regional Contract are incorporated and supersede the MAR provisions.



REGIONAL CONTRACT:

Paragraph 10 C. (Financing): Parties MUST specifically select whether or not there is a financing contingency. If there is a financing contingency, its terms are set forth in Option 1. The parties must use Regional Form #100 (GCAAR #100 “Form #100”) to remove the financing contingency. The Buyer and Seller can choose whether or not a “Lender’s Letter” is required to be submitted with Form #100. If a Lender’s Letter is required, the Regional Contract specifically defines what information the Lender’s Letter shall include. If Form #100 and the Lender’s Letter (if required) is not provided to the Seller by the Financing Deadline, the contingency will continue until the Seller gives written notice to the Buyer that the Contract will become void. After such Seller notice, Buyer has three days to provide the Seller with Form #100 along with a Lender’s Letter (if required) or proof of sufficient funds to complete closing without financing, or else the Contract becomes void. If the parties have expressly agreed that there is not a financing contingency, the Buyer’s failure to complete settlement due to lack of financing would constitute a default under the Contract. It also provides that Buyer has provided Seller with sufficient documentation to satisfy Seller that Buyer has been approved for the specified financing or has sufficient funds to complete settlement.

Paragraph 11: Specifies VA and FHA Financing and Appraisal. Although much of the required VA or FHA language is contained in this paragraph, it is recommended that GCAAR - VA (GCAAR #1338) or FHA (GCAAR #1330) addendum be used in conjunction with the Contract.

Paragraph 12: Specifies that Buyer will make application for the specified financing and any lender required property insurance no later than 7 days after Date of Ratification. Buyer expressly grants permission for both the listing agent and Seller to receive loan approval and progress of the loan application information from Buyer’s lender. (No comparable permission for loan information in the MAR).

Paragraph 13: Purchaser has the right to pursue and obtain alternative financing as long as it does not increase the Seller’s costs and does not delay settlement. Alternative financing, however, does not automatically remove the financing contingency as it does in the MAR.

PERSONAL PROPERTY DESCRIPTIONS

MAR CONTRACT:

Paragraph 13: Refers to personal property as “now existing items” and requires the parties to specifically indicate those items which are included in the sale.



REGIONAL CONTRACT:

Paragraph 9: Describes personal property as “currently installed or offered ” and allows the parties to identify those items which are and are not included in the sale. Specifically excludes from conveyance surface or wall mounted electronic components/ devices unless otherwise agreed. Paragraph also includes “AS IS” and Leased Items sections.

Note: GCAAR #911 Inclusions/Exclusions Attachment to Listing Agreement Disclosure and/or Addendum can be used with and serve as an addendum to either the MAR or Regional Contract.

RISK OF LOSS

MAR CONTRACT:

Paragraph 27: States that the risk of loss of the Property rests with the Seller until legal title has passed or until possession has been given to the Buyer, whichever occurs first.

REGIONAL CONTRACT:

Paragraph 18: States that the risk of loss is with the Seller until execution and delivery of the deed at settlement.

Note: The provisions of any Pre- or Post-Settlement Occupancy Agreement would alter the above.

TITLE

MAR CONTRACT:

Paragraph 20: Seller will convey the Property via “Special Warranty” deed. If there are title defects, this paragraph gives the Seller the option to cure the defect or Buyer can accept title without the defect being cured or terminate the Contract. If the Seller elects to cure the defect, the Seller has 14 days beyond the date of settlement to resolve the title issue. If Seller is unable to cure the defect(s) within the 14 days, the Buyer has the option of taking title as the Seller can deliver it or terminating the Contract. If the Buyer terminates the Contract due to title defect, the Seller is obligated to pay the Buyer’s title search fees not to exceed .5% of the sales price.

REGIONAL CONTRACT:

Paragraph 19: The type of warranty deed used depends on the jurisdiction in which the Property is located. Paragraph provides a 10 business day extension if title work or survey is not available by the Settlement Date, after which time the Seller has the option of terminating the Contract. Should the title have defects, the Seller has 30 days beyond the Settlement Date to cure any such defects, after which time the Buyer has the option of declaring the Contract void. If either party terminates/declares the Contract void, the Deposit will be returned to the Buyer. The Seller will pay any special assessments and will comply with all orders, requirements, or notices of violations by county, local authority, condominium unit owners’ association, homeowners’ or property owners’ association or actions, against or affecting the Property on the Settlement Date.

MEDIATION VS. OTHER LEGAL REMEDIES

MAR CONTRACT:

Paragraph 13: In the event of any dispute between Buyer and Seller, the MAR Contract requires the parties to mediate any Contract related claim that arises prior to, during or within 1 year following the contract settlement date. Mediation is a non-binding resolution. Compliance with the conclusions reached by the mediation process is voluntary and the mediator has no authority to enforce compliance. This paragraph requires the use of a MAR or other member board mediation system, unless the parties mutually agree to use another mediation service. The costs of the mediation service shall be shared equally by Buyer and Seller. If Buyer or Seller elects to be represented by an attorney, each side pays their own attorney fees. A court action may only be pursued AFTER mediation has been attempted.

REGIONAL CONTRACT:

The Regional Contract provides for Default provisions similar to that of the MAR Contract. However, in the event of a claim related to the Contract or sale of the Property, the Regional Contract does not mandate that the Buyer and Seller go to mediation before or in lieu of pursuing any other legal remedies available to them.





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Gaithersburg, MD 20878
(301) 670-0100
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COMMERCIAL/BUILDER DIVISION

5236 44th Street, NW
Suite 4
Washington, DC 20015
(202) 686-0100
(202) 686-7223 fax

IMPORTANT PHONE NUMBERS

Electric

Allegheny Power (800) 255-3443
Dominion Power (888) 667-3000
NOVEC (703) 335-0500
PEPCO (202) 833-7500

Gas:

Frederick Gas Co. (301) 662-2151
Washington Gas (800) 752-7520

Phone:

Verizon-DC (202) 954-6263
Verizon-MD (301) 954-6260
Verizon-VA (703) 954-6222
Verizon (en español) (202) 954-6250

Water & Sewer:

Alexandria (American Water) (703) 549-7080
Arlington (703) 228-6482
DC WASA (202) 787-2000
Fairfax County (703) 698-5800
Falls Church (703) 248-5071
Frederick City (301) 600-1421
Frederick County (301) 600-2354
Rockville, City of (240) 314-8500
WSSC (301) 206-4001

REALTOR® Associations:

FCAR (301) 663-0757
GCAAR (301) 590-2000
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