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# Analysis of Key Changes To GCAAR Documents

**29 Sep 2015**

**Analysis of Changes in 10/2015 Version**

Roy L. Kaufmann

Jackson & Campbell, P.C.

A well-formatted, printable .pdf of this article is available here.

**GCAAR SALES CONTRACT (GCAAR FORM 911)** [1]

**General Comments**

The new *GCAAR Sales Contract* (here, we will call it the "Contract", formerly called the "Regional Sales Contract") to be implemented on October 1, 2015, is designed to be used in Montgomery County, Maryland and the District of Columbia. It is no longer useable in Virginia where the Northern Virginia Association of Realtors created its new Regional Sales Contract for Virginia, effective January 1, 2015.

The Contract eliminates some redundancy found in prior versions and has fewer pages.

The analysis focuses on the changes from the prior versions.

**Contract's Introduction**

The "time is of the essence" clause has been moved to the very top of the Contract from a much later page where the clause was obscured. The purpose was to communicate to the parties the importance of the deadlines in the Contract.

The words "Contract Date" were changed to "Date of Offer" to avoid confusion with the Date of Ratification which

becomes the operative date of the contract.

**1. REAL PROPERTY**. Many of the blank fields were removed because they were not used or applicable.

**3. PRICE AND FINANCING**. Many sophisticated agents were already changing the older versions of the Contract to convert the hard dollar figures of the loan amounts to percentages, so that the numbers could change during the loan process without requiring an amendment to the contract or changes to the later provisions of the Contract. The new

**4. DEPOSIT**. With the advent of ZipForm and other electronic systems, often the offer is presented and a physical check is not present. The Contract now has a provision

Contract embraces this flexibility and percentages are now used.

**(CONTINUED)**
**ANALYSIS OF KEY CHANGES TO GCAAR DOCUMENTS**

**5. FUNDS DUE AT SETTLEMENT**. There are times when the Seller needs to deliver money at closing. While an "assignment of funds" is not routinely a part of residential transactions, GCAAR determined that the use of this might be problematic, so the Contract provides that it cannot be used without consent of "all parties to the transaction" (which GCAAR believes includes Real Estate Agents/Brokers).

**6. SETTLEMENT**. The prior version said "… settle…on, or with mutual consent before, _____ (date). The underlined language is removed in the new version. Parties may agree to amend their Contract in many ways, including the date of settlement, however they must do so with an actual amendment to the contract. The prior language made the inference that the parties might move the settlement date around without amending the Contract, which was not a good practice.

**9. INCLUSIONS/EXCLUSIONS**. The Contract has deleted the duplicate listing of the checkboxes about what personal property conveys and what utilities are present. They will now be listed only on the Disclosure and Addendum (GCAAR Form 911).

**10. HOME WARRANTY.** The offer of a Home Warranty has been moved to Section 10.

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**ANALYSIS OF KEY CHANGES TO GCAAR DOCUMENTS**

**12. WOOD DESTROYING INSECT INSPECTIONS.** The words “termite inspections” has been replaced with “wood destroying insects” , the obligation has been shifted to the buyer, and the report must not be older than 60 days prior to Settlement.

**13. LEAD-BASED PAINT REGULATIONS.** The clause was amended to clarify that the Buyer may declare the Contract void *at any time until* i) the Buyer has acknowledged receipt of the Lead Paint Forms including the EPA pamphlet and the DC form, if applicable, and has either exercised the opportunity to incorporate a Lead-Based Paint Inspection Form or waived that right.

The Federal Disclosure form is GCAAR #907, and it also contains the ‘acknowledgement of receipt’ by the Buyer to which this paragraph refers.

The DC Disclosure form is GCAAR #917, and it also contains the ‘acknowledgement of receipt’ by the Buyer to which this paragraph refers.

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**17. TITLE.** In a clause that needed more substantive attention, the only change was to include the possibility of conveying by "Personal Representative's Deed.

**27. DISCLOSURES TO PARTIES.** The disclosures have been consolidated to this one section and a particular disclosure as to the availability of title insurance has been included.

**31. NOTICES.** Resale packages for condos and co-ops may be delivered electronically. References to electronic signatures on the Contract have been deleted since they are now explicitly permitted under federal law.

**INCLUSIONS/EXCLUSIONS DISCLOSURE AND ADDENDUM (GCAAR FORM 911)**

Mounting brackets for electronic devices now convey by default.

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**JURISDICTIONAL DISCLOSURE AND ADDENDUM FOR WASHINGTON D.C. (GCAAR FORM 1313)**

This form is shorter and better organized because the clauses that were common to both Maryland and D.C. contracts have been merged into the base Contract.

Part I - 3. TENANCY. The time frame of the representation from Seller about whether there were tenants has been changed from the date of execution of the Contract to "the time Seller decided to sell".

Part II – 2. RECORDATION AND TRANSFER TAXES. A provision was added about the District's Tax Abatement Program as well as a checkbox for the Buyer to indicate whether an application for the Program will be filed.

**MONTGOMERY COUNTY JURISDICTIONAL ADDENDUM TO GCAR AND MAR SALES CONTRACT (GCAAR FORM 1312)**

The language relating to District of Columbia properties has been removed and many of the provisions have been moved into the base Contract. There are now two separate addenda – one for use with the GCAAR contract and one for use with the MAR Contract. The result is a much shorter document.

**ADDENDUM OF CLAUSES – A (GCAAR FORM 1332-A)**

The prior "Addendum of Clauses" was an expansive potpourri that included matters that were very uncommon. There is now an Addendum "A" of more common situations, and an Addendum "B" for the more uncommon. A few changes to the clauses:

**2. HOME INSPECTION CONTINGENCY.** The GCAAR task force noted confusion in earlier versions. Now it has been clarified that a Seller may not exercise an option to void when it first responds to a Buyer's notice under section 2(A).

**3. GENERAL INSPECTION CONTINGENCY.** The GCAAR task force thought it prudent to underscore to buyers that this particular clause did not give the buyers a right to negotiate (only to void). An interesting perspective.

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**4. ADDITIONAL AS-IS PROVISIONS**. The heading was changed to add the word "Additional". The base contract has an "as-is" clause (see Section 7 of the base contract which provides checkmarks of "Date of Offer" or "Date of Home Inspection"), so the word "Additional" was added to make it even more "as is". There were no other changes.

**ADDENDUM OF CLAUSES – B (GCAAR FORM 1332-B)**

4. **CONTINGENT UPON SELLER PURCHASING ANOTHER HOME.** The provision was clarified such that the contingency would continue to either the inspection date or a date when Seller notifies Buyer that the contingency is removed.
5. **THIRD PARTY APPROVAL:** Emphasis added not to use this clause for short sales.

A PDF version of this document is available for download here.

[1] The GCAAR documents are copyrighted and only for use by its members.

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