



# Definitions Guide

## AAR PURCHASE AGREEMENTS

Consistency is key when defining important terms for the consumer. Below is a list of definitions of important terms in the Alabama Association of REALTORS® Purchase Agreements. This guide can be used for an in-office refresher or to provide to consumers.

*This guide is intended for informational purposes only and does not constitute legal advice. If legal advice is needed, please consult an attorney.*

**Appurtenance(s)** – A permanent improvement or right that is attached to a property and remains with it when it is sold. Examples include: fences; swimming pools; easements; mineral rights.

**Arbitration** – A dispute resolution process that takes place outside of court. A neutral third party, called an arbitrator, takes both the law and the facts of the case into account and makes a binding decision (a decision the parties are legally required to follow).

**Assignment** – A process in which the original buyer of a property transfers their rights/ obligations under the Purchase Agreement to a secondary buyer before closing. The original buyer is called the *assignor*, and the secondary buyer is called the *assignee*. If the assignor successfully assigns the property, assignee is the person who will come to the closing and take possession of the property. If the assignor does not successfully assign the property, the assignor must fulfill their obligations under the Purchase Agreement. A common example of an assignment is wholesaling. Under Alabama law, the assignor must notify the seller 1) that (s)he intends to market the property for assignment and 2) if the assignment is successful, what the effective date of the assignment is, at least 3 business days prior to the effective date. The assignor must also notify the assignee of the nature of the assignor's interest in the property (i.e., that the assignor holds an equitable interest that is being transferred).

**Broker Compensation Offer** – An offer by a buyer or seller to pay the other party's broker's fee(s). Typically, the offer is made by the seller for the buyer's broker's fees, but the reverse is also possible. Neither party is required to offer broker compensation, but the opposite party may choose to end Purchase Agreement negotiations if an agreement for broker compensation can't be reached.

**Contingency** – A condition that must be met before the property's sale will be finalized. For example, an inspection contingency requires that an inspection be performed (within a given timeframe) and that any repairs requested by the buyer be made, or the buyer has the right to cancel the contract (within a given timeframe).

**Discount Points** – A fee paid to a lender to reduce the interest rate on a mortgage. Typically, one discount point is equal to 1% of the loan amount and each point usually lowers the interest rate by 0.125% to 0.25%. Sometimes also called "mortgage points" or "prepaid interest points".

**Earnest Money** – A money deposit made by a buyer to show the buyer's good faith intention to purchase a property. Earnest money is not required under Alabama law but is often included as part of an offer to purchase. Under Alabama law, if a buyer makes an earnest money deposit but the parties don't execute a Purchase Agreement, the earnest money may be returned to the buyer. However, if a Purchase Agreement is executed but later terminated, if a real estate licensee holds the earnest money, Alabama law requires that the licensee receive either 1) a mutual release signed by both the buyer and the seller or 2) a court order before the licensee may release the earnest money to either party. If earnest money will be held by someone who does not hold a real estate license (such as a title company), AAR recommends asking them about their procedures for releasing earnest money.



# Definitions Guide Continued

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**Financing Deadline** – As it is used in the AAR Purchase Agreements, this is the date by which the buyer must be “cleared to close” by their lender. If the parties would like to set an additional checkpoint – such as a deadline by which the buyer must have firm commitment letter from their lender – that information may be added to the “Additional Provisions” paragraph.

**Force Majeure** – An unexpected major event or circumstance that prevents one or both parties from being able to fulfill their obligations under the Purchase Agreement. Such events could include a natural disaster, war, pandemic etc. Under the AAR Purchase Agreement, such an event pauses the contract for an amount of time agreed upon by the parties.

**General Warranty Deed** – A type of deed that guarantees the seller has a clear title to the property. This type of deed protects the buyer from title defects by holding the seller responsible for any liens or claims against the property.

**Interplead/ Interpleader** – A type of legal action that determines who has a legal right to claim property held by a third party. In the context of the Purchase Agreement, an interpleader action is seen when a real estate licensee holds earnest money that there is a dispute over. In that case, the court determines whether the buyer or seller (or both) has a right to claim the earnest money. The AAR Purchase Agreement allows the real estate licensee to deduct court costs, attorney fees, and similar expenses related to the interpleader action from the earnest money.

**Joint Tenancy with Right of Survivorship** – *Joint tenancy* refers to a type of ownership where multiple people each have an equal interest in a property. *Right of survivorship* means that if one of the owners passes away, the other owners inherit the deceased owner’s share of the property (rather than the deceased owner’s share going to his/her estate). For example, if two people each own half of a property as joint tenants with right of survivorship and one of them passes away, the surviving person would then own 100% of the property.

**Mediation** – A dispute resolution process that takes place outside of court. A neutral third party, called a mediator, helps the parties communicate and reach a mutual agreement. This mutual agreement is sometimes then memorialized in the form of a contract.

**Mortgagee Title Insurance** – A type of insurance that protects the *lender* from title-related issues.

**Owner’s Title Insurance** – A type of insurance that protects the *buyer (owner)* from title-related issues.

**Seller Concession** – A sum of money paid by the seller to go toward the buyer’s expenses, such as inspections or closing costs. A seller is not required to agree to a seller concession, but a buyer may choose to end Purchase Agreement negotiations if an agreement can’t be reached over a seller concession.

**Statutory Warranty Deed** – A type of deed that warrants that title is clear for the time that the seller owned the property. This type of deed does not consider any issues that occurred before the seller took title to the property.

**Tenancy-in-Common** – A type of ownership where multiple people each own an interest in a property. Their shares may be equal or unequal. With tenancy-in-common, if an owner of the property passes away, their share of the property goes to their estate/heirs, rather than to the other owners. For example, if two people each own a 50% share of a property as tenants-in-common and one of them passes away, the surviving person would still only own 50% of the property (and the other 50% of the property would pass to the deceased owner’s estate/ heirs).

**Title Abstract** – A summary, compiled by an attorney, of a property’s full ownership history.

**Title Opinion** – An analysis, prepared by an attorney, of a property’s current ownership status.

**Quitclaim Deed** – A type of deed that transfers property ownership from the seller to the buyer without guaranteeing the validity of the title.