



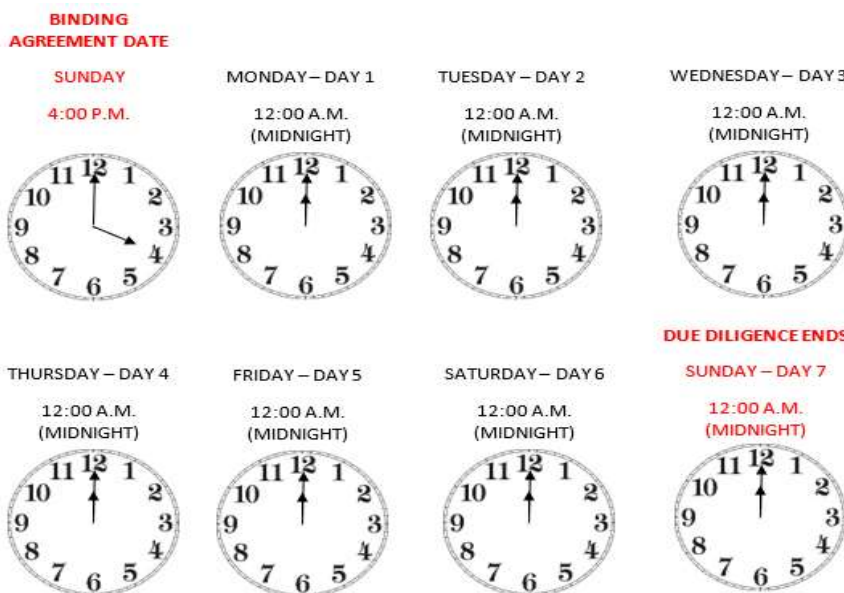
COUNTING THE DAYS... HOW TO COUNT DAYS FROM THE BINDING AGREEMENT DATE

The GAR Legal Helpline receives many common questions, but can you guess the most frequent one? If you guessed, “How do I properly count days from the Binding Agreement Date?” – you would be correct. Sophisticated REALTORS® normally count days in consultation with their calendars to ensure that no mistakes are made. Others, like myself, use the highly regarded “fingers and toes” method of counting days, trying hard never to set a deadline greater than the number of digits available to them on their hands and feet. Either way, agents understandably want to make sure that they count days correctly so that no deadlines are missed.

When we think about days, there are a few basic rules to keep in mind. First, a day is a calendar day unless the contract specifically references that days are business days. So, if a party has a 10-day Due Diligence Period, that would refer to 10 calendar days. If the Due Diligence Period were 10 business days, the contract would need to include a special stipulation such as “Buyer shall have a Due Diligence Period equal to ten (10) business days from the Binding Agreement Date”.

The GAR Purchase and Sale Agreement defines both a “business day” and a “banking day” as being weekdays excluding Saturday, Sunday, and federal holidays. A day is also the entire day. So, for example, if a person has a ten (10) day Due Diligence Period from the Binding Agreement Date, it would end at midnight on the tenth day after the Binding Agreement Date. The fact that the Binding Agreement Date is at four o’clock in the afternoon would not alter the fact that the Due Diligence Period ends ten (10) days later at midnight.

So, how exactly should REALTORS® count days? The key is to remember that you are counting from a particular day. So, let’s say the Binding Agreement Date is on a Sunday at 4:00 p.m. and the buyer has a seven (7) day Due Diligence Period. In starting to count days to when the Due Diligence Period ends, Monday is one day from Sunday, Tuesday is two days from Sunday, and so on until seven (7) days from Sunday have been counted out. This would result in the Binding Agreement Date ending the following Sunday at the end of the day at midnight.



Sometimes words other than “from” are used in setting time deadlines. We see deadlines being described as “until”, “through” or “within” a particular date. Georgia statutes provide that “until” a certain date includes that day when used in a statute. In other words, if a state statute requires a person to take some action and they have until April 15 to do it, they would have all of April 15 to complete the action. The Georgia Supreme Court has held that the same meaning should be used in contracts unless the parties clearly intended otherwise.

In drafting special stipulations, using phrases like “until and through”, “until and including”, “through and including” or “within and including” help avoid any confusion as to the date by which an action must be taken.

Some REALTORS® do not like the fact that deadlines end at midnight. This is particularly the case with the Due Diligence Period where many sellers’ brokers patiently stay up until midnight to see if the buyer has or has not terminated the contract. The GAR Forms Committee tried to address this concern by drafting Special Stipulation #627 which provides: “All time deadlines set forth herein shall expire at ____ a.m. or p.m. on the day of the deadline”. This special stipulation allows a midnight deadline to be moved up to any other time frame agreeable to both parties.

Time deadlines under the GAR Forms are always based on the time in Georgia (USA). The GAR Purchase and Sale Agreement specifically states in the Governing Law and Interpretation section that “All references to time shall mean the time in Georgia (USA)”. So, for example, if a buyer is moving to Georgia from California, and they decide to accept a counteroffer that expires at 1:00 p.m. in the afternoon, this means that it would need to be accepted by 1:00 p.m. Eastern time in order to create a binding agreement rather than 1:00 p.m. Pacific (California) time.

The other question that regularly comes up in this area is what happens if a time deadline such as the end of the Due Diligence Period or the end of the Financing Contingency falls on a Saturday, Sunday, or federal holiday? Does this give the buyer an extra day to complete the tasks contemplated by these sections? The answer to this question is no. The GAR Purchase and Sale Agreement specifically provides in the Extension of Deadlines section that “no time deadline under the Agreement shall be extended by virtue of it falling on a Saturday, Sunday or federal holiday except for the date of Closing”.

This sometimes means that an eight-day right to unilaterally extend the closing date in certain circumstances turns into a closing that occurs 10 or even 11 days later. So, for example, let’s say that the buyer unilaterally extends the closing date for eight days because the mortgage lender is not ready to close. The new closing now falls on a Saturday and the following Monday is a federal holiday. This means that the closing would be pushed back until the following Tuesday which is the next day that is not a Saturday, Sunday, or federal holiday. In that situation, the eight -day extension actually becomes an eleven 11-day extension.

In summary, meeting time deadlines is extremely important to all REALTORS®. Following the suggestions in this article will hopefully ensure that deadlines are not missed and that disputes over when deadlines end will not occur.