



# SALES ASSOCIATE COURSE

## **CHAPTER 11**

### Contracts



## **Definition of a Contract**

- An agreement between two or more competent parties that creates an obligation to do, or not to do a particular thing
- Does not have to be in writing



# Elements of a Valid Contract

- **Lawful subject**
  - Must have a legal purpose to be enforceable



# Elements of a Valid Contract

## Agreement

- **Offeror** gives an offer
- **Offeree** receives an offer
- Meeting of the minds
  - Parties must reach agreement on all terms of a contract
- An offer becomes a contract when accepted and acceptance is communicated to all parties







# Elements of a Valid Contract

## Consideration

- Each party must be obligated by including some form of consideration
- Two types
  - **Valuable consideration** - money or something equivalent
  - **Good consideration** - love and affection



- Two or more competent parties
  - Legal age
  - Sane and sober
- **Voidable contract**
  - Contract between an adult and a minor
  - At the option of the minor
  - The adult is bound by the agreement
  - Minor is incompetent under the law

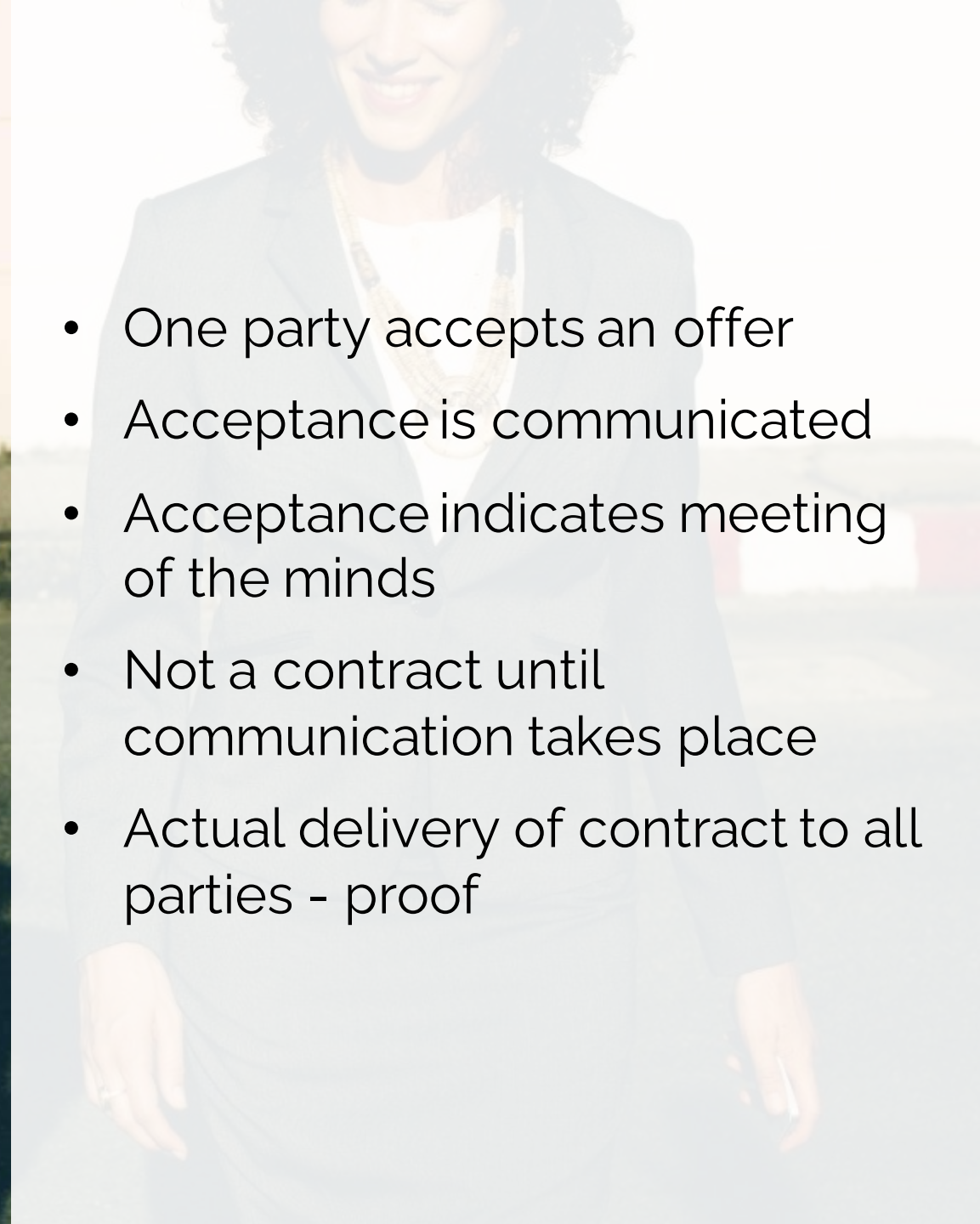
## Elements of a Valid Contract







# Creation of a Contract

- 
- One party accepts an offer
  - Acceptance is communicated
  - Acceptance indicates meeting of the minds
  - Not a contract until communication takes place
  - Actual delivery of contract to all parties - proof

# Statute of Frauds

## Transfer of a right or interest in land

Must be in writing to be enforceable

- Purchase and sale contract
- Lease over a year
- Option contract

## 2 Exceptions

1. Title has transferred to Buyer
  2. Buyer had paid part of the purchase price
- And**
3. Taken Possession
- Or**
4. Made Improvements

## ***Failure to Comply:***

*Not illegal - contract may be unenforceable*







## **Statute of Limitations**

- Time periods for contract enforcement
  - Parol (oral) contract – 4 years
  - Written contracts – 5 years

# Express vs Implied Contract

- **Express** (expressed)
  - 100% of terms and conditions are agreed either:
    - Orally
    - In writing
- **Implied**
  - All of the terms are not stated
  - May be implied from the actions of the parties







# Bilateral vs Unilateral Contract

## Bilateral

- **Two** parties are obligated to perform
- e.g. sales contract

## Unilateral

- **Two** parties
- Only **One** is obligated to perform
- e.g. option contract

# Executory vs Executed Contract

- **Executory**

- An agreement has been reached
- Obligations have not been met or performed

- **Executed**

- Parties have kept all promises and performed all obligations





# Contracts

A close-up photograph of a young woman with voluminous, dark, curly hair. She is smiling broadly, showing her teeth, and looking upwards and to the right. She is holding a silver smartphone to her ear with her right hand. She is wearing a light-colored, possibly white, blazer over a dark green top. The background is blurred, suggesting an outdoor setting with architectural elements.

- **Formal**
- Written
- Under seal
  - The initials L.S. or the word seal
- **Informal**
- Oral
- Parol

## **Void**

- Not legal – unenforceable

## **Voidable**

- Valid – may be enforceable
- One party may void contract
- Reasons
  - Material fact not disclosed
  - Minor & adult are parties to contract
  - Incompetent party



# **Void vs Voidable Contracts**



# Contract Negotiation

## Offer and Counteroffer

1. Offer is made by offeror
2. Received by offeree
3. Offeree changes offer and becomes offeror (counteroffer) This in effect "kills" the previous offer
4. New offeree can accept, reject or present counteroffer – becomes offeror

## Applied

1. Seller offers home for sale
2. Buyer sees sign
3. Buyer makes offer less than full price
4. Seller counters with different price





# Termination of Offers

- **Acceptance** - offer becomes a contract when communicated
- **Withdrawal** - offeror may end an offer at will
- **Rejection** - offeree says "no" or makes a counteroffer
- **Lapse of Time** - offer usually has an expiration date
- **Death or Insanity** - terminates an offer
- **Destruction of Property** - if house burns down, offer is ended



- **Performance** - all obligations
- **Breach** – fail to meet obligations
- **Revocation** - party terminates the contract
- **Renunciation** – mutual consent
- **Lapse of Time** – “time is of the essence”
- **Abandonment** – “walk away”



## **Contract Termination**



# Legal Remedies for Breach



- **Suit for Cancellation**
  - Wronged party may sue for cancellation
- **Suit for Specific Performance**
  - Sue in court to enforce performance
- **Suit for Damages**
  - Liquidated Damages - amount of money noted in contract
  - Unliquidated damages – not specified in contract – decided in court



# Assignment of Contracts

## Assignment

- Transfer of rights and obligations
  - **Assignor** - person transferring the rights to another
  - **Assignee** - person receiving the rights from another
- Assignor remains ultimately responsible for performance





# Real Estate Sales Contract

## Parties

- **Vendor** – seller
- **Vendee** – buyer

## Essential elements

- Meeting of the minds  
(offer and acceptance)
- Consideration
- Competent parties
- Legal subject matter



- The preparation of contracts for another is practicing law
- Real Estate licensee may prepare
  - Listing Agreement
  - Sale Contract
  - Standardized Option Contract
  - Buyer Representation Agreement
- Leases
  - **May fill in the blanks only**
  - Approved by the Florida Supreme Court
  - Not to exceed 1 year



**Right to Prepare Contracts**



# AS IS Contract

- Sellers must disclose material defects not readily observable to buyers
- Standard sales contract – seller agrees to expend a percentage of funds to effect repairs
- As is contract – seller does not agree to a stated percentage of repairs. Buyers can cancel for any reason.
- Johnson vs. Davis



- Seller disclosure – material facts affecting value
- Lead-based paint disclosure
- Radon disclosure
- Energy-Efficiency Rating disclosure
- Property tax disclosure



## **Disclosures Required in Sales Contracts**



# **Disclosures Required in Sales Contracts**

- Foreign investment in real property tax act (FIRPTA) disclosure
- Homeowners' association disclosure
- Timeshare Purchase and Sale Agreement
- Cooperative Resale disclosure



- 2 Types of employment agreement
  - **Find a Purchaser (Florida)**
    - Buyer
      - Ready (now)
      - Willing (agreeable to price and terms)
      - Able (capable of fulfilling contract)
      - Whether it closes or not
  - **Effect a Sale**
    - Transaction must actually close



**Listing Contract**



- Employment contract between an Owner and a Broker
- Does not need to be in writing
  - If written must have:
    - A definite termination Date
    - Legal description
    - Price and terms
    - Fee or commission
    - Signatures
    - Not be automatically renewed
    - Provide Seller with Copy Within 24 Hours



# Listing Contracts



# Types of Listing Contracts

A close-up photograph of a person's hands writing in a white notebook with a black pen. The person is wearing a ring on their left hand. In the background, there is a laptop screen displaying various financial charts, including a world map, a bar chart, and a line graph. The overall scene suggests a professional or financial setting.

## Open Listing

- Unilateral Contract
  - Oral or written
  - Owner agrees to pay commission to any successful broker (procuring cause)
    - Reserves the right to sell without paying a commission
- Only listing that can be given to more than one broker
- May not be placed into Multiple-Listing Service (MLS)

# Types of Listings Contracts

## Exclusive Agency Listing

- Bilateral contract
- Oral or written
- Owner agrees to pay commission to one broker
  - Reserves the right to sell without paying a commission
- Listing broker may cooperate with other offices and share commission
- May be placed into Multiple-Listing Service (MLS)





## **Exclusive Right of Sale Listing**

- Bilateral
- Must be in writing
- Owner agrees to pay commission to one broker
  - Regardless of who sells the property including the owner
- Listing broker may cooperate with other offices and share commission
- May be placed into Multiple-Listing Service (MLS)



## **Types of Listing Contracts**



## **Types of Listing Contracts**

### **Commercial Listing**

- F.S. 475 Part III – Commercial Real Estate Sales Commission Lien Act
  - Lien against net proceeds
  - Deliver within 30 days of contract
  - Not less than one day before closing



- Seller states an acceptable minimum amount
  - Commissions and closing costs are added to arrive at the Listing Price
  - Legal in Florida - should be Avoided
    - Broker can not keep more than Customary Commission for that Office
      - May be considered Unjust Enrichment

## Net Listings





# Calculating a Brokerage Commission

A black and gold calculator is the central focus, resting on a desk. In the background, a silver pen and several papers with numbers and text are visible, creating a professional, business-like atmosphere.

- Single percentage commission
- Calculated as a percentage of the full sale price
- $\text{Sale Price} \times \% = \text{commission}$ 
  - E.g. with a sale price of \$250,000 and a 6% commission, the commission would be
    - $\$250,000 \times 6\% = \mathbf{\$15,000}$



# Commission

- Sliding scale commission
- Charge one percentage for up to a certain amount of the sale price and a different percentage for the remainder
  - E.g. With a sale price of \$250,000 and a commission of 5% on the first \$200,000 and 6% on the remainder, the commission would be

$$\begin{array}{r} \$200,000 \times 5\% = \$ 10,000 \\ \$50,000 \times 6\% = \$ 3,000 \\ \hline \mathbf{\$ 13,000} \end{array}$$



- Based on performance
  - **“Find a Purchaser” (Florida)**
  - **“Effect a Sale”**
- Protection period –
  - Listing expires
  - Seller contracts to sell to someone who was introduced to the property during the listing period
  - Set period of time
  - Does not apply if relisted with another broker



**Broker's Right to Receive Compensation**





## **Termination of a Listing**

- Breach
- Renunciation
- Revocation
- Lapse of time
- Abandonment
- Performance
- Destruction of Property
- Death or Insanity
- Bankruptcy



- **Unilateral**
- An agreement to keep an offer to sell or lease a property open for a specific time and price
- **Optionor** - owner is bound to keep property available
- **Optionee** - has the right, but not the obligation to buy or lease the property

# Option Contracts

An aerial photograph of a city skyline, likely Chicago, during sunset. The sky is a mix of orange, pink, and blue. The city is filled with numerous skyscrapers of varying heights and colors. The title 'Option Contracts' is written in large, white, bold letters across the upper right portion of the image.



- **Unlicensed Person**

- Option with token consideration is a listing in violation of F.S. 475.43
- Valid option – valuable consideration

- **Real Estate Licensees**

- Option with token consideration is a listing
- Valid option must pay valuable consideration

An aerial photograph of a city skyline at sunset, with the sun low on the horizon casting a warm glow over the buildings. The title 'Option Contracts as Listings' is overlaid in large, white, bold text on the right side of the image.

# Option Contracts as Listings





## Requirements for Option Contracts

- In writing to be enforceable
- Price and terms stated
- Length of time
- Legal description
- Consideration (must be valuable consideration)





# Coffee Break

15 Minutes