Sales Associate Course

Chapter Eleven

Contracts
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
Elements of a Valid Contract

- 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
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 has paid part of the purchase price, and
   a. Taken possession
   or
   b. 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 Contract**
  - 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 Contract
  - An agreement has been reached
  - Obligations have not been met or performed

- Executed Contract
  - Parties have kept all promises and performed all obligations
Contracts

- **Formal Contract**
  - Written
  - Under seal
    - The initials L.S. or the word seal

- **Informal Contract**
  - Oral
  - Parol
Void vs. Voidable Contracts

- Void Contract
  - Not legal – unenforceable

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

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

- 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
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
Disclosures Required in Sales Contracts

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

- 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
Types of Listing Contracts

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)
Types of Listing Contracts

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

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 that one day before closing
Net Listings

- 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
Calculating a Brokerage Commission

- Single percentage commission
- Calculated as a percentage of the full sale price
- Sale Price x % = commission
  - E.g. with a sale price of $250,000 and a 6% commission, the commission would be
    - $250,000 X 6% = $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{align*}
200,000 \times 5\% &= 10,000 \\
50,000 \times 6\% &= 3,000 \\
\text{Total} &= 13,000
\end{align*}
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Broker’s Right to Receive Compensation

- 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
Termination of a Listing

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

- 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
Requirements for Option Contracts

- In writing to be enforceable
- Price and terms stated
- Length of time
- Legal description
- Consideration
Contract for Deed

- Also called
  - Agreement for Deed
  - Land Contract
  - Conditional Sales Contract
  - Installment Sales Contract
- Deed will be delivered when paid in full or stipulated portion
- Seller has legal title
- Buyer has equitable title
- Financing Device