

Sales Contracts

Chapter 11

Contract is Voluntary Agreement

Statute of frauds requires these in writing:

- Agreement for sale of real property.
- Lease for more than one year.
- Contract not performed within one year.
- Employing agent to buy, sell or lease.

Contract Types

- Unilateral
 - A promise is made by one party;
- Bilateral
 - Both parties agree to do something;
- Valid
 - One that has all of the essential elements required by law;
- Voidable
 - Is one that is valid, however, it is able to be voided by one party;
- Unenforceable
 - Valid contract that is incapable of such proof as required by law;
- Enforceable
 - Valid contract that is capable of such proof as required by law;
- Void
 - An agreement that produces no legal obligation;
- Executory
 - A valid contract that is yet to be fully performed;

Essential Elements of a Contract

- Offer and Acceptance
- Consideration
- Contractual Ability
- Legal Purpose
- Description of the Property
- Signatures of the Parties

Possibilities Once Offer is Made:

- Acceptance of the Offer;
- Withdrawal of the Offer;
- Counter Offer;
- Expiration;
- Rejection of the Offer;
- Termination by Death or Insanity
- Change of Law

Consideration Valuable consideration must accompany any contract in order to make it valid and enforceable.

Contractual Ability All parties to a valid contract should be of sound mind and legal capacity to enter into contracts.

- Contingencies and Conditions
- Risk of Loss

Contingencies Often contracts are made contingent upon the happening of certain events ie. subject to buyer obtaining financing etc.

Risk of Loss passes to the buyer at close of escrow or possession whichever occurs first.

Breach of Contract by Seller;

Buyer may:

- Bring an action for damages.
- Sue for specific performance.

Breach of Contract by Buyer;

Seller may:

- Bring an action for damages.
- Retain earnest money as liquidated damages.
- Tender a deed in escrow and sue.

Statute of Limitations

- **Two years;** for libel, slander, forfeitures or damages to people or property.
- **Four years;** for fraud or mistake.

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- **Six years;** for action on recovery of debt.
- **Ten years;** circuit/district court judgment.
- **Twenty years;** adverse possession or prescriptive easement.

Contracts

- Assignment of Contract
 - Assignor sells his interest to the assignee;
- Agreement of Sale
 - A type of owner financing;
- Options
 - A written unilateral contract;

Working With the Buyer

- Will the buyer qualify financially?
- Will the property qualify?
- Have the buyer prequalified by a lender;
- Lender will look at buyers:
 - Employment;
 - Assets;
 - W2 statements;
 - 2 years tax returns;
 - FICO score;

Typical Closing Costs

Seller:

- Loan payoff
- Broker's commission
- ½ of Escrow fee
- Conveyance tax
- Unpaid taxes
- Deed preparation
- HARPTA & FIRPTA
- 60% of Title Insurance

Buyer:

- Points To Lender
- Homeowner warranty
- ½ of escrow fee
- Buyer's broker fee
- Condo transfer fee
- Most recording fees
- Draft mortgage & note

Module #4 Outline

- 40% of Title Insurance

Purchase Contract the Purchase Contract is considered one of the most important documents in a real estate transaction.. Most of the controversies involving real estate agents arise out of improperly drawn contracts.

Plain Language Act requires that every written agreement for the sale of property, in which the sales price is less than \$25,000 be written in plain language using common every day words.

Seller's Real Property Disclosure

- Sellers must disclose all material facts;
- Seller Disclosure Law effective July 1, 1995 (HRS-508D)
- Seller provides disclosure within 10 days;
- Buyer has 15 days to rescind;
- Buyer must acknowledge receipt of disclosure in writing;

Sellers Must Make Disclosure that:

- Are within knowledge or control of seller;
- Are disclosed by recorded document from the Bureau of Conveyances;
- Can be observed from visible, accessible areas;

Every Disclosure Statement Shall:

- Notify the buyer to consider obtaining an inspection or expert advice;
- Notify the buyer that the disclosure statement is from the seller and not the seller's agent;
- Notification of the buyer's rescission rights;

Exemptions to Disclosure:

- Court approved sales,
 - foreclosure and probate;
- Sales to a co-owner;
- Sales to relatives;
- Fee conversion;
- Offerings under a public offering statement;
- Timeshare units under a disclosure statement;
- Vacant land, unless the owner knows of any problems;

Hawaii Association of Realtors Forms

Purchase Contract

Counter Offer

Cooperating Broker's

Separate Agreement

Seller's Real Property

Disclosure Statement

Additional Hawaii Standard Form Documents

Chapter 12

Agents should be familiar with:

Chapter 11 Forms:

- Purchase Contract
- Counter Offer
- Cooperating Broker's Separate Agreement
- Seller's Real Property Disclosure Statement

Chapter 12 Forms:

- "As Is" Addendum
- Leasehold Addendum
- Oceanfront Addendum
- Early Occupancy
- Plain Language
- Lead Paint