

# Sales Contracts

Chapter 11

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# 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
- Contingencies and Conditions
- Risk of Loss

## 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.
- ▶ **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
- 1/2 of Escrow fee
- Conveyance tax
- Unpaid taxes
- Deed preparation
- HARPTA & FIRPTA
- 60% of Title Insurance

## **Buyer:**

- Points To Lender
- Homeowner warranty
- 1/2 of escrow fee
- Buyer's broker fee
- Condo transfer fee
- Most recording fees
- Draft mortgage & note
- 40% of Title Insurance

# 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

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Purchase Contract

Counter Offer

Cooperating Broker's Separate  
Agreement

Seller's Real Property Disclosure  
Statement

# Additional Hawaii Standard Form Documents

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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