

Seiler School of Real Estate

MODULE #4 OUTLINE

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
- 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 Credit 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
- 40% of Title Insurance

Seller's Real Property Disclosure

- Sellers must disclose all material facts;
- Seller Disclosure Law (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

Students should be familiar with:

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

Additional Hawaii Standard Form Documents**Chapter 12**

Students should be familiar with:

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

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