

KEY POINT REVIEW

A **valid contract** is a voluntary agreement based on the consent of the parties to the agreement. An offer by one party (**offeror**) is accepted by the other (**offeree**). A contract can be **revoked** by the offeror up to the time of acceptance. The parties must be of **legal age** and able to understand the **nature or consequences** of their actions. The contract must be supported by **consideration**—something of value, which could be love and affection—and must have a **legal act** as its objective.

A contract may be **express** (in words) or **implied** by the conduct of parties and may be required to be **in writing** to be **enforceable** in a court of law. A contract may be **bilateral** (having obligations on both sides) or **unilateral** (a promise by one side that can be accepted by performance of the other side). A contract may be **executed** (all parties have fulfilled their promises) or **executory** (one or both parties still have an act to perform).

A contract is **voidable** if it may be **rescinded** or **disaffirmed** by one or both parties. A contract with a minor is *voidable*. A contract is **void** if one of the essential elements is missing. If a mistake, misrepresentation, fraud, undue influence, or duress occurs, there is no mutual consent or meeting of the minds, which means that an essential element of the contract is missing and the contract is *void*.

A contract may be **discharged** (completed) by

- **performance**, which completes the contract terms;
- **partial performance**, if agreeable to both parties;
- **substantial performance**, depending on circumstances;
- **impossibility of performance** (required acts cannot be legally accomplished);
assignment (transfer of rights to **assignee** or **delegation** of duties, if allowed by the contract);
- **novation** (substitutes a new contract or party for the original);
- **breach** by one of the parties without legal cause, in which case a **liquidated damages clause** may specify the amount the seller will receive if the buyer defaults;
- failure to enforce contract within **statute of limitations**;
- **mutual agreement** of the parties;
- **operation of law**, as when a contract is void from inception;
- **rescission**, which returns the parties to their original pre-contract positions, so any property or funds that have been transferred must be returned; or
- **cancellation**, which also is a termination of the contract.

The written agreements most often used in residential real estate transactions by real estate professionals are **client representation agreements**, **sales contracts**, **options**, **escrow agreements**, **property management agreements**, **leases**, and **owner financing agreements**, such as land contracts or contracts for deed.

A **real estate sales contract** is usually accompanied by an **earnest money deposit**, which may be held in a broker's escrow or trust account until an escrow is arranged to complete a property purchase or the funds are returned to the would-be buyer if there is no sales agreement.

The sales contract usually will identify the **parties** and the **property** that is the subject of the transaction, indicate the amount that the buyer is including with the offer to serve as **earnest money**, how the buyer intends to **finance** the purchase, who will serve as the **closing agent** for the transaction, when the transaction is to **close** and **possession** of the property delivered to the buyer, **fixtures** or other items on the property that are not part of the sale, **personal property** of the seller that will be included in the sale, **inspections** that will be made by the buyer, **seller disclosures** that are required by law, and other provisions.

The **contingencies** included in a sales contract allow the buyer to have an attorney review the contract, secure financing, conduct necessary inspections, and perform other activities.

Amendments and **addendums** can be used to alter the terms of a preprinted contract during the negotiation of the sale or to include additional terms after the contract has been signed by the parties.

An **option** allows the **optionor** (owner) to give the **optionee** the right to purchase the property at a later date at the price fixed in the **option agreement**.

Owner financing can assist a buyer by providing a credit for some or all of the purchase price. A **land contract**, also known as a **contract for deed**, **bond for title**, **installment contract**, **land sales contract**, or **articles of agreement for warranty deed**, must comply with state law. With a **purchase money mortgage**, the buyer receives title to the property immediately but places a security interest on the property in favor of the seller.