

Contracts Used in Real Estate Practice: Q&A

This document provides a summary of key concepts from the "Contracts Used in Real Estate Practice (Louisiana)" text in a question-and-answer format

Contracts and Agreements

?What is a Listing Agreement

A Listing Agreement is an employment contract between a broker and a seller. The seller agrees to pay the broker a commission in exchange for the broker's efforts to find a buyer for the property on the seller's terms. This agreement typically specifies .the commission amount, the contract's duration, and the terms of the sale

?What is a Buyer Agency Agreement

A Buyer Agency Agreement is a contract where a buyer hires a broker to find a property for them to purchase. The terms regarding the payment of a commission .depend on the specific agreement, as there is no standard practice

What is the difference between a real estate "agent" and a "mandatary" in ?Louisiana

- **Real Estate Agent:** In Louisiana, a real estate "agent" is a licensee who acts under the state's licensing laws in a real estate transaction. The agent's role is to find a buyer for a property, but they do not have the legal authority to bind the .owner or transfer the property themselves
- **Mandatary (Power of Attorney):** A mandatary is a person who is given authority by a principal to handle specific affairs for them. If a broker acts as a mandatary for a property owner, they have the legal authority to act on the owner's behalf, which can include signing the act of sale to transfer the property. The authority .for a mandatary to act regarding immovable property must be in writing

?Are Letters of Intent (LOIs) binding contracts

Letters of Intent (LOIs) are generally not intended to be binding contracts; they are typically used during negotiations to express interest. However, an LOI can be deemed a binding contract if it contains all the essential elements of a contract, such as price, .property description, and a closing date

?What is a Purchase Agreement

A Purchase Agreement is a contract between a buyer and a seller to buy and sell a property at a future time or upon the fulfillment of a condition. This agreement must

specify the property ("thing") and the price, and it gives either party the right to
.demand specific performance

Deposits and Damages

?What is the difference between a "Deposit" and "Earnest Money" in Louisiana

While neither is legally required for a Purchase Agreement, their legal implications
.differ significantly

Deposit: By default, any money given by the buyer to the seller is considered a •
.deposit towards the purchase price

Earnest Money: If a payment is specifically designated as "earnest money," •
either party can withdraw from the contract. If the buyer withdraws, they lose the
earnest money. If the seller withdraws, they must return the earnest money plus
an equal amount to the buyer. This is considered an alternative to performance,
.not a default

?What are Liquidated Damages

Liquidated damages are a pre-determined amount of money that parties agree to as
compensation for non-performance, defective performance, or a delay in
performance. The advantage is that the injured party does not need to prove the
.actual damages they suffered

?What happens in a deposit dispute

If a dispute over the deposit arises, a broker holding the funds must, within 90 days of
the scheduled closing date, either disburse the funds as ordered by a court or take
.(other specific actions outlined by the Louisiana Real Estate Commission (LREC

Contract Clauses and Conditions

?What is an "Inspection and Due Diligence Period

This is a timeframe specified in the Purchase Agreement that allows the buyer to
conduct inspections of the property. It can also be used to look into other matters like
financing. This period is typically the buyer's only opportunity to terminate the
agreement and receive a refund of their deposit for reasons covered in the
.agreement

?What is an "As Is" clause

Simply stating a property is sold "as is" is not enough to waive the seller's warranties
in Louisiana. For a waiver to be effective, it must be explicit, clearly stating that the

buyer waives the warranty of fitness and the guarantee against hidden defects (redhibition), and acknowledging they understand this waiver

?What are suspensive and resolutive conditions

Suspensive Condition: This is a condition based on an uncertain event that must occur before the contract becomes enforceable. A common example is a financing contingency; the purchase agreement is not enforceable until the buyer secures the loan. If the condition is not met despite a good faith effort, the contract is considered null

Resolutive Condition: This condition makes an obligation immediately enforceable, but the obligation ends if an uncertain event occurs. For instance, in an owner-financed sale, if the buyer stops making payments, the seller can "unwind" the sale and take back the property

?What is a "ratchet" clause

A "ratchet" clause links different time periods in a Purchase Agreement. For example, it can state that if the inspection period is extended by 30 days, the closing date will also be automatically extended by 30 days

Property Rights and Restrictions

?What is a predial servitude

A predial servitude is a charge on one property (the servient estate) for the benefit of another property (the dominant estate), and the two properties must have different owners. For example, a right of passage across one property to access another. These servitudes "run with the land," meaning they remain in effect even when the properties are sold to new owners

?What are building restrictions

These are charges imposed by a property owner, typically a developer, as part of a general plan for a subdivision. They govern building standards, uses, and improvements. To be effective against subsequent owners, these restrictions must be recorded in the public record

?How long do you have to enforce a building restriction

An action for an injunction or damages due to a violation of a building restriction must be brought within two years from the start of a "noticeable violation". After this two-year period, the property where the violation occurred is freed from that specific

.restriction

Warranties and Title

?What warranties does a seller generally provide

A seller generally provides three warranties to a buyer: warranty of **title**, warranty of **condition**, and warranty for **fitness of use**

?What is the warranty of title

The seller warrants the buyer against eviction, which is the loss of the property due to a third person's right that existed at the time of the sale. This warranty can be modified by contract with different clauses

Full Warranty: Allows the buyer to sue for the return of the purchase price plus damages if evicted •

.No Warranty: Allows the buyer to sue only for the return of the purchase price •

Peril & Risk": The buyer has no claim for the return of the purchase price, except" •
.for the seller's own personal acts

?What is redhibition

Redhibition refers to the seller's warranty against hidden (redhibitory) defects in the property. A defect is redhibitory if it makes the property useless or so inconvenient that it's presumed the buyer would not have purchased it had they known about the defect. This warranty does not cover defects that were known to the buyer or that a reasonably prudent buyer should have discovered during an inspection

Options and Rights of First Refusal

?What is an Option Contract

An option is a contract that gives one party the right to accept an offer to buy or sell something within a specified time. The option must state the thing and the price and meet the same formal requirements as the sale it contemplates. Accepting the option turns the contract into a binding Purchase Agreement

?What is a Right of First Refusal

This is an agreement where a property owner promises not to sell a property without first offering it to a specific person. The holder of the right must be given the opportunity to buy the property before the owner can sell to someone else. Unless stated otherwise, the holder has 30 days to accept the offer

?What is the main difference between an Option and a Right of First Refusal

An **Option** is the right to *accept* a standing offer, while a **Right of First Refusal** is the
.right to *receive* an offer before anyone else