# Class 1 – Key Terms

**Real Property** - Any subset of land that has been legally defined and the improvements to it have been made by human efforts

**Personal Property** - Private property that is movable, as opposed to real property or real estate.

**Bill of Sale** - States what personal property the seller will convey to the buyer along with the sale of the real property that is on the purchase agreement.

**Statute of Frauds** – Requires that contracts be signed with sufficient evidence. E.g. Contracts that cannot be performed in one year, transfer of an interest in land, sales of goods of $500 or more, and when it involves transfer of debt.

**Fixture** – Items that were once personal property but have become real property because they have either been attached to the land or building in a somewhat permanent manner or are intended to be used with the land and building on a permanent basis. Examples: Furnaces, garage door openers, etc.

**Trade Fixture** – A piece of equipment on or attached to the real estate which is used in a trade or business.

**Bundle of Sticks** – A common way of explaining the complexities of property ownership. \* Possession \* Use \* Enjoyment \* Disposal

**Present Possession** – Entitles its owner to immediate enjoyment of the rights to the estate.

**Fee Simple Estate** – The freehold estate that represents the most complete form of ownership of real estate.

**Life Estate** – A freehold estate that lasts only as long as the life of the owner of the estate or the life of some other person. Upon the death of that person, the property reverts back to the original grantor (transferor of property), his or her heirs, or any other designated person.

**Freehold Estate** – Lasts for an indefinite period of time; that is, there is no definitely ascertainable date on which the estate ends.

**Leasehold estate** – Expires on a definite date. Implies the right to possess and use the property owned by another for a period of time.

**Future Possession** – These estates do not convey the right to enjoy the property until some time in the future.

**Reversion** – When the holder of an estate in land (the grantor) conveys to another person (a grantee) a present estate in the property that has fewer ownership rights than the grantor’s own estate and retains for the grantor or the grantor’s heirs the right to take back, at some time in the future, the full estate that the grantor enjoyed before the conveyance.

**Remainder** – When the grantor of a present estate with fewer ownership rights than the grantor’s own estate conveys to a third person the revisionary interest the grantor or the grantor’s heirs would otherwise have in the property upon termination of the grantee’s estate.

**Deed** – Usually a title is conveyed from one person (grantor) to another (grantee) by means of a written instrument called a deed.

**Requirements For A Valid Deed** - Parties, Land Described, Signed by Grantor, Delivery, and Recording / Filing

**General Warranty Deed** – (1) In lawful possession of the property and all property rights, (2) that no other individuals or entities have an ownership interest in the property, and (3) that the title is unencumbered or free of imperfections (with any specific exceptions notes: e.g., easements, leases, or liens). The seller may be liable if the buyer incurs a loss because of title imperfections.

**Special Warranty Deed** – Makes the same warranties as a general warranty deed except that it limits their application to defects and encumbrances that occurred only while the grantor held the title to the property. Unlike general warranty deeds, those in a special warranty deed do not apply to title problems caused or created by previous owners.

**Quitclaim Deed** – Offers the grantee the least protection. Such a deed simply conveys to the grantee whatever rights, interests, and title that the grantor may have in the property. No warranties are made about the nature of these rights and interests or of the quality of the grantor’s title to the property.

Seller / grantor –

Buyer / grantee –

**Actual Knowledge** – Actual knowledge is what the term implies i.e. actually knowing something. I may have actual knowledge of a hole in my driveway that is a hazard but may not be readily visible. If I have that actual knowledge then I am duty bound to take steps to warn of that danger or to otherwise protect people from it according to injury attorney Brien Roche.

**Constructive Knowledge** – I have constructive knowledge if it is something that I could reasonably be expected to know of. If a contractor that I hired dug that hole in my driveway then I will be deemed to have constructive knowledge of the hole even though I may not have actual knowledge of it. My obligation to respond may be the same as if I had actual knowledge.

**Acknowledgement** – Acknowledgement involves a public official, frequently a notary public.

**Jurat** – The name given to that part of an affidavit containing the actual oath or affirmation.

**Legal Description** - Written words which delineate a specific piece of real property.

Lot / block description – Found when you have a platted section of property. Each block is divided into lots, found in residential neighborhoods.

Metes & bounds description –

**Reservations from Conveyance** – What you’re not selling, such as the mineral rights.

**Exceptions to** **Title** – If there are for example easements that will remain this would be an exception.

**Consideration** – $1, love and affection, etc.

Grantor’s warranty –

Abstract & legal opinion –

**Title Insurance** – Developed to cure the inadequacies of title validation accomplished through an abstract and legal opinion. Title insurance does all that a carefully drawn abstract and a well-considered opinion by a competent lawyer are expected to do. In addition, it adds the principle of insurance to spread the risk of unseen hazards among many property owners.

Title commitment –

**Escrow** – Disburse funds as trust. Gather closing documents.

**Title Policy** – Two types of policies

1. **Owner’s Policy** – Insures the interest of a new property owner.
2. **Lender’s (or mortgagee) Policy** – Insures the interests of the mortgagee.

**Government Restrictions on Property** – (1) The right to regulate emanates from the “police powers of the state,” which are based on the protection of the health, safety, and general welfare of its citizens. (2) Zoning ordinances, allowable uses, height restrictions, parking requirements, and building codes, permits, and inspections. (3) The state usually retains control over water or riparian rights, mineral rights, eminent domain, and the like, while the federal government regulates housing and loan discrimination, interstate land sales and securities, and environmental restrictions.

**Private Restrictions on Property** – Limit the use of property by all subsequent owners of that property. Property owners may use such restrictions to achieve personal or business objectives.

# Class 2 – Key Terms

Cash sale –

Financing –

**Promissory Note** – A document which serves as evidence that debt exists between a borrower and a lender and usually contains the terms under which the loan must be repaid and the rights and responsibilities of both parties.

**Amount** – Generally the face amount of the note, which is usually advanced in total when the loan agreement is executed.

**Interest Rate** – This could be a fixed rate of interest or an adjustable rate.

**Maturity** – At which time all remaining amounts due under the terms of the loan are to be repaid.

**Terms of Payment** – The dollar amount, due dates, and number of payments to be made by the borrower.

**Application of Payments** – Usually are made first to cover any late charges/fees/penalties, then to interest, and then to principal reduction.

**Default** – Occurs when a borrower fails to perform one or more duties under the terms of the note.

**Late Fees** – Specifies any grace periods during which late payments can be made up (usually with penalties) without the lender declaring that the borrower is in default (forbearance period).

**Prepayment** – Allows the borrower to make early payments, or to repay the loan, in part or fully before maturity.

**Nonrecourse** – A provision in the note under which it will not hold the borrower personally liable in the event of a default. In this case, the lender may only bring an action to force the sale of the property serving as security for the loan. The borrower is released of personal liability.

**Recourse** – The borrower is personally liable for payment of all amounts due under the terms of the note.

**Loan Assumability** – This clause indicates under what conditions, if any, a borrower will be allowed to substitute another party in his place, who will then assume the responsibility for remaining loan payments.

**Opportunity to Cure** – Time period within which the party in default has an opportunity to cure the default and continue with performance of the contract.

**Acceleration** – Making all payments due immediately.

**Usury Savings Clause** – Attempt to negate the effect of interest payable under a financing arrangement that may result in the imposition of usurious charges.

Secured / unsecured creditor –

**Deed of Trust** – A deed wherein legal title in real property is transferred to a trustee, which holds it as security for a loan (debt) between a borrower and lender

Grantor/Borrower; Beneficiary/Lender –

Trustee –

Lien priority –

**Power of sale** – A clause written into a mortgage authorizing the mortgagee (lender) to sell the property in the event of default, in order to repay the mortgage debt.

**Future Advance Clause / Dragnet Clause** – A clause in a mortgage deed stating that a mortgage secures all the debts that the mortgagor may at any time owe to the mortgagee.

**Due-On-Sale/Transfer Clause** - A clause in a loan or promissory note that stipulates that the full balance of the loan may be called due (repaid in full) upon sale or transfer of ownership of the property used to secure the note.

**No Further Encumbrances Clause** – This is a mortgage provision giving the lender the option to accelerate the debt if the borrower mortgages the real estate further without obtaining the consent of the lender.

Insurance requirement –

**Subordination** – The action or state of subordinating or of being subordinate.

Assumption –

Subject to –

**Additional Property Clause / Mother Hubbard Clause** – a provision to the effect that the mortgage secures all the debts that the mortgagor may at any time owe to the mortgagee. In this sense it is also termed as anaconda clause or dragnet clause.

Seller financing –

Contract for deed / installment contract –

# Class 3 – Key Terms

**Default** – A failure to fulfill a contract, agreement, or duty, especially a financial obligation such as a note.

**Opportunity to cure** – Time period within which the party in default has an opportunity to cure the default and continue with performance of the contract

**Workout** – Used to describe the various activities undertaken to deal with a mortgagor who is in financial trouble. There are six alternatives to consider in a workout:

1. Restructuring the mortgage loan
2. Transfer of the mortgage to a new owner
3. Voluntary conveyance of the title to the mortgagee (lender)
4. A “friendly foreclosure.”
5. A prepackaged bankruptcy.
6. A “short sale” with the lender agreeing to a sales price less than the loan balance.

**Restructure** – Loans can be restructured in many ways. Such restructuring could involve lower interest rates, accruals of interest, or extended maturity dates.

**Extension Agreement** – Seek permission from the mortgagee to extend the mortgage terms for a period of time.

**Novation** – A legal process where one party transfers the responsibility of the loan agreement to someone else.

**Deed in Lieu of Foreclosure** – The conveyance to the mortgagees in exchange for a release from the mortgage debt.

**Short Sale** – A sale of real estate in which the proceeds from the sale fall short of the owed balance on a loan secured by the property sold. In a short sale, the mortgage lender agrees to discount the mortgage loan balance because of an economic or financial hardship on the part of the mortgagor.

**Specific Performance** – An order of a court, which requires a party to perform a specific act, usually what is stated in a contract

**Remedies for Default in a Purchase Contract**

**Seller’s Remedies**

1. Specific performance
2. Sue for damages
3. Terminate and receive earnest money

**Buyer’s Remedies**

1. Specific Performance
2. Sue for damages
3. Terminate and receive earnest money
4. Extend Time for Performance

**Remedies for Default in a Lease**

**Tenant Remedies for Landlord Default**

1. Request repairs
2. Terminate

**Landlord Remedies for Tenant Default**

1. Terminate Possession, but not lease
2. Terminate Lease
3. Sue for damages
4. Enter Premises & Perform Obligations
5. Lockout
6. Holdover
7. Terminate Electricity
8. Report to Credit Agencies

**Acceleration of Rent** – All rent owed is due upon receipt.

**Lock Change** – A landlord may only exercise a lock-out if your lease allows your landlord to do so. The landlord must always provide you with a key to re-enter the residence. A landlord may temporarily prevent you from entering your leased premises only when (1) your rent is not completely paid and only if the landlord follows very strict rules and promptly allows you back in the premises; (2) there is an emergency situation and the landlord needs to conduct bona fide repair, or (3) you have abandoned the premises.

**Lis pendens** – A written notice that a lawsuit has been filed concerning real estate, involving either the title to the property or a claimed ownership interest in it.

**Eviction** – A lawsuit filed by a landlord to remove persons and belongings from the landlord's property.

**Mitigation of Damages / Duty to Relet** – The landlord does not need to re-let the premises in order to satisfy the duty to mitigate.

**Alternate Dispute Resolution (ADR)** – Refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration.

**Mediation** – A voluntary dispute resolution process; all parties must consent to participate in good faith and work toward a mutually agreeable resolution. Mediating parties are not bound to resolve their dispute (although mediated settlements, once reached, can be made binding if the parties decide to draft a contract called a settlement agreement). Mediations are not "decided" in favor of one party or another; rather, the mediator simply facilitates the negotiation process.

**Arbitration** - A dispute resolution process in which a neutral party (the arbitrator) hears a dispute between one or more parties and, after considering all relevant information, renders a final decision in favor of one of the parties. Arbitration decisions may be either binding or non-binding, depending on the terms of the arbitration agreement. Binding arbitration decisions may be confirmed by a court and carry the same significance as a court judgment.

# Class 4 – Key Terms

**Judicial Foreclosure** – To sue on the debt, obtain judgment, and execute the judgment against the property of the mortgagor. In a judicial foreclosure, property subject to attachment and execution is not limited to the mortgaged property. This judgment may be levied against any of the mortgagor’s property not otherwise legally exempt from execution.

**Non-Judicial Foreclosure** – Doesn’t require a lawsuit \* Not all states have this \* Must have a “Power of Sale”

**Deficiency** – Any deficit remaining after a foreclosure and sale of the property is known as a deficiency judgment.

Initial foreclosure considerations: title review, appraisal, bid price, environmental concerns,

Status of the debtor, designation of trustee or substitute trustee

Step 1 – default of the borrower

Step 2 – default notice / opportunity to cure

Step 3 – notice to IRS

Step 4 – notice of acceleration / notice of sale

Step 5 – sale

Common law notice requirements: demand for payment, notice of intent to accelerate;

notice of acceleration

Statutory requirements: posting, filing, serving

Acceleration –

Alternatives to non-judicial foreclosure: lawsuit on note or guaranty, judicial foreclosure,

Deed in lieu of foreclosure, collection of rents, appointment of a receiver

Number of days to cure residential default prior to acceleration

Fair Debt Collection – number of days’ notice of claim

Number of days that notice must be posted prior to foreclosure date

Number of days’ notice that must be given to the District Director if an IRS lien exists

**When are foreclosures held: date / time** – First Tuesday of every month.

**Where are foreclosures held** – County Courthouse.

**Who conducts foreclosures** – Licensed auctioneer chosen by the lender.

**Who are permitted bidders** – Anyone!

**What is an adequate bid price** – Anything!

**What duty is owed to the debtor at the sale** – Nothing.

**Junior lien status after foreclosure** – They are extinguished and the liens are removed from the property title.

**Trustee** – Refers to any person who holds property, authority, or a position of trust

Substitute trustee –

# Class 5 – Key Terms

Lease –

**Right to possession, use, enjoyment** – Bundle of sticks.

**Lessor** – Owner of the property.

**Lessee** – Tenant of the property, not the owner.

**Why is most business real estate leased?**

* More cost-effective than owning
  + Owning would require a large commitment of capital to purchase.
  + A purchase would “put the user in the real estate business,” That is, the tenant would have to take the risk of owning and also have the real estate business “know how” to lease, collect rent, maintain, and insure the property.
* Owning would reduce operating flexibility.
* Removes focus from its core business activities by having to maintain the property, etc.

Residential v. Commercial -

**Elements of a Typical Lease:**

**Parties** – Namely the lessor and lessee. The date of the lease agreement, occupancy date, identification of area to be leased, and the length of the lease term.

**Rent** – The base or minimum rent and any methods that will be used to calculate and adjust future rent. Description of any concessions and other inducements to be provided to the tenant by the landlord.

**Security Deposit** – Deposits and any indemnities and guarantees from third parties or co-signers.

**Condition of the Property** – Condition of the leased premises to be provided to the occupant on the move-in date, including any tenant improvements.

**Uses for the Property** – Allowable uses of the property, restrictions on occupancy, and prohibitions regarding future changes in the use of the property.

**Payment of Expenses** – The responsibility for payment of specific expenses by the lessee and/or the lessor.

**Assignment / Subletting** – Any restrictions on assignment or subletting of any of the leased space by the tenant.

**Common Area Maintenance (CAM)** – Responsibility for maintenance and repair of the tenant’s space and of the general premises.

**Alterations** – Any restrictions on alterations or improvements to the property by the tenant.

**Default / Remedies**

**Insurance**

**Renewal Options**

**Guarantees**

**Types of Rent Structure**

**Flat Rate** – Rent maintains the same (or flat) for the term of the lease.

**Step-Up / Rent Escalation Clause** – Provides that rent will increase at the end of a specified time interval and in specific amounts during the term of the lease.

**Percentage Based** – Rent may be fully or partially determined by an indicator of retail sales performance. For example, some leases in shopping centers may include a provision for rent to be partially based on the tenant’s sales volume.

**Rentable** – Rentable office space means the usable square feet of the office space plus a pro-rata share of building common areas. Pro-rata means that tenants pay for these common areas in proportion to the amount of space they lease in the building.

**Usable Area** – For a partial-floor lease, this includes all office space plus any storage or private restrooms. There are no exclusions for columns, recessed entries, or the like, either--column space is fair game in the calculation of total usable square feet.

**Lease Term:**

Fixed Term -

**Month-to-month lease term** - A type of rental agreement. Month-to-month tenancy is based upon the idea that the lease is renewed at the end of each month. If the renter decides to leave at the end of the month, then he/she/they may do so without breaking the lease.

**At Will** - A tenancy-at-will agreement can be oral or written. A tenancy-at-will agreement is different from a lease because it allows the tenancy to be terminated by either the landlord or the tenant with a written notice to the other party. The notice must be received no later than one full month (or 30 days, whichever is longer) before the date of termination.16 A written contract should be read thoroughly before it is signed.

**At Sufferance** – A tenancy-at-sufferance exists under each of the following circumstances:

1. Under a tenancy-at-will agreement the tenant remains in the apartment after a valid notice to quit from the landlord has taken effect.
2. The landlord has lost the property to eminent domain.
3. The tenant is a sub-lessee who hasn’t vacated after the original tenant’s lease has expired, and the landlord has refused to continue the sub-lessee’s tenancy.
4. The written lease has expired, not been renewed, and the landlord has protested the tenant’s continued occupancy.
5. The landlord has served a notice to quit that terminates the tenancy for breaking a lease covenant or for non-payment of rent.
6. The tenant remains in an apartment after the issuance of a court-ordered eviction.

Renewal Option –

**Holdover** – A situation when a tenant of real estate continues to occupy the premises without the owner's agreement after the original lease or rental agreement between the owner (landlord) and the tenant has expired. The tenant is responsible for payment of the monthly rental at the existing rate and terms, which the landlord may accept without admitting the legality of the occupancy. A holdover tenant is subject to a notice to quit (get out) and, if he/she does not leave, to a lawsuit for unlawful detainer.

Payment of Expenses / Common Area

**Gross / Full Service Lease** – The tenant pays rent only and the property owner provides all services and pays all operating expenses.

**Expense stop** – In order to establish a base line of recoverable expenses at the time the tenant takes occupancy, the lease will generally specify that tenants will pay only a share of increases in recoverable expenses in excess of what is referred to as an expense stop.

**Pass-Through:**

**Single Net** – The tenant pays rent and pays for all operating expenses identified in the lease.

**Double Net** – The tenant pays rent and all operating expenses directly. In addition, the owner “passes through” non-operating expenses such as property taxes and insurance costs to the tenant.

**Triple Net** – Agrees to pay a certain recurring capital outlay for repairs, alterations, and modifications to the interior of the leased building space.

Types of commercial tenant properties

Office -

Industrial / warehouse -

Retail -

Types of Commercial Lease Clauses

**Use** - Tenants must keep the current and future number of employees per square foot at an agreed level.

**Right of First Refusal** – Tenants may have the right to rent contiguous space and/or any space in the building when it becomes available.

Exclusivity / Non-Compete -

Continuous Operation -

**Signage** – Grant one or more tenants the right to display a name inside and/or outside of the building.

**Parking** – Property owner must reserve and/or keep a specified minimum number of spaces relative to rentable square feet currently in the building and relative to leasable space to be constructed in the future.

Landlord reps & Warranties:

Covenant of quiet enjoyment -

Warranty of habitability / suitability -

Maintenance of common areas -

**Tenant responsibilities:**

**Payment of Rent** – Pay on time.

**Duty not to commit waste** - The tenant has a duty to avoid waste to the same extent that any holder of a present interest has a duty to the holder of a future interest to avoid waste

**Constructive Eviction** – a landlord either does something or fails to do something that he has a legal duty to provide (e.g. the landlord refuses to provide heat or water to the apartment), rendering the property uninhabitable. A tenant who is constructively evicted may terminate the lease and seek damages.

Wrongful Eviction –

**Retaliatory Eviction** – Substantive defense and affirmative cause of action that can be used by a tenant against a landlord. If a tenant reports sanitary violations or violations of minimum housing standards, the landlord cannot evict the tenant in retaliation.

Security Deposit –

Normal Wear and tear –

**Tenant** - A tenant is someone with a right to possession of a rental unit under a tenancy agreement.

**Occupant** – An occupant is someone the tenant has allowed to move into the premises and may even share the rent, but the occupant has no rights or obligations under the agreement unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

**Assignment** - the original tenant assigns, or grants, his rights and obligations under the lease entirely to the new tenant, who agrees to accept them.

**Subletting** - A new tenant occupies the lease space, but the original tenant remains liable for the lease obligations.

# Class 6 – Key Terms

**Lien** – Claim against property for payment of a debt or amount owed for services rendered; includes the right to sell the property, if necessary, to obtain payment. The priority of liens – “first in time; first in line.”

**IRS Lien** – Right of Redemption.

**Right of Redemption** – is the right of a debtor whose real property has been foreclosed upon and sold to reclaim that property if they are able to come up with the money to repay the amount of the debt.

**Judgment Lien** – A court ruling that gives a creditor the right to take possession of a debtor's real property if the debtor fails to fulfill his or her contractual obligations. A judgment lien may be made against an individual or business and allows the creditor to access the debtor's business, personal property and real estate, among other assets, to pay the judgment.

**Abstract of Judgment** – A written summary of a judgment which states how much money the losing defendant owes to the person who won the lawsuit (judgment creditor), the rate of interest to be paid on the judgment amount, court costs, and any specific orders that the losing defendant (judgment debtor) must obey, which abstract is acknowledged and stamped so that it can be recorded and made official with the government. The purpose of an abstract of judgment is to create a public record and create a lien or claim if necessary on any real estate property owned or later acquired by the defendant located in the county in which the abstract of judgment is recorded.

**Vendor’s Lien** – A vendor's lien is the right of a seller to repossess the property sold until the buyer makes all payments for the full purchase price. The property is the collateral given as security to the seller for the purchase price. It is sometimes used in connection with a purchase money mortgage on real estate.

**Mechanic’s and Materialmen’s Liens** – A type of lien that gives a security interest in property to someone who supplies materials used during work performed on that property.

**Relation Back Doctrine** – Doctrine of Relation Back is a principle that something done today will be treated as if it were done earlier. This doctrine is applied under certain circumstances. For example, a document held in escrow and then delivered later will be treated as if delivered when it was put into escrow. Delivery of deed to the grantee relates back to the date it was originally deposited with the escrow agent.

**Homestead** – The dwelling house and its adjoining land where a family resides.

**Exempt property** - Exempt property (items that a debtor may usually keep).

**Non-exempt property** – Items that the debtor usually has to give up

Size of urban and rural homestead allowance –

Allowable Liens Against a Homestead:

Purchase money

Home improvement

Taxes

Owelty of partition

Home equity loan

Homeowner’s association dues

Principal / Agent –

Broker / Salesperson –

**Agency by actual authority** – Is authority granted to the agent by the principal, either expressly (written or orally), or by implication (the authority to do what is necessary to carry out actions that were expressly authorized)

**Agency by ostensible authority (by estoppel; by apparent authority)** – A person has apparent authority when he has no actual authority to act, but the principal negligently or deliberately allows it to appear that the actions are authorized. The principal may be liable for acts committed by an apparent agent (or ostensible agent)

**Agency by Ratification** – Approval/adoption of acts performed outside agency relationship; can be expressed or through accepting the benefit of those acts.

Texas Occupations Code –

Texas Real Estate License Act –

Texas Real Estate Commission –

Duties of real estate agent to the principal –

*(these terms will not be on the quiz*)

Duties of principal to an agent

Duties to third parties

**Subagent / Cooperating Broker** - A real estate licensee who provides real estate services to a buyer while actually representing the seller in a real estate transaction.

Buyer’s agent

Intermediary

Listing agreement

**Exclusive right to sell** - Probably 99 percent of real estate listings are this type, where the listing agent has 100 percent control of the transaction.

**Exclusive agency to sell** - Contracts one agent to sell the home. If that agent, or any other licensed cooperating agent finds an acceptable buyer, the seller must pay a sales commission.

**Open agency** - An open listing is almost like a "for sale by owner" listing

**Net listing** - The net listing can be a dangerous and is illegal in some states. Under this agreement, the seller tells their agent the net price they want for their home.

Termination of an agency relationship

Broker’s Recovery Fund

# Class 7 – Key Terms

Contract –

4 Elements of a Contract:

Competent Parties -

Legal Subject Matter -

Consideration -

Mutual Assent -

**Incompetent Parties** - Minor, mentally infirm, under the influence

**Mutual assent / Meeting of the Minds** - Agreement by both parties to a contract. Mutual assent must be proven objectively, and is often established by showing an offer and acceptance (e.g., an offer to do X in exchange for Y, followed by an acceptance of that offer).

Offer & Acceptance:

Communicated –

Serious –

Definite –

**Termination of Offer:**

**Termination by the Offeror**- First, termination can occur if the offeror directly communicates that he or she is revoking the offer to the offeree. Second, termination can occur if the offeror acts in a manner that demonstrates his or her aversion to maintain the offer, and the offeree is given accurate information of this from a reliable source. Third, if the offer was communicated through some form of publication, the offer can be revoked through the use of some similar means of publication. Under each of these situations, the revocation of the offer goes into effect when it is received by the offeree (or when it is published).

**Termination by the Offeree** - With respect to an offeree, an offer can be terminated through a lapse in time, or through rejection. Let’s explore each one of these possibilities

**Operation of Law** - (i) termination by death or insanity of either party; (ii) termination by a supervening illegality; and (iii) termination by destruction.

**Defenses to Mutual Assent:**

**Fraud** - Misrepresentation occurs where a person makes a material misrepresentation, with scienter/culpable state of mind, with an intent to induce reliance on the false material statement, where plaintiff justifiably relies on the false statement, and where plaintiff suffers a pecuniary loss due to their reliance on the false material statement. A negligent misrepresentation may trigger this defense, as long as the misrepresentation pertains to a material fact.

**Mutual Mistake of Fact** - A party may avoid a contract if there is a mistaken belief about a basic assumption of the contract by both parties, which has a material effect on the agreed performance, and where the adversely affected party bore the major risk of mistake. The normal remedy for mutual mistake is recission or voiding the contract.

**Duress / menace** - Duress entails a wrongful act or threat by one party, which overcomes the free will of the other party to enter or modify the contract. The standard is not a person of reasonable firmness, rather, whether the party in question was in fact coerced. Actions that will constitute duress are acts or threats of action which are abusive or oppressive such as vilence or threats of violence, imprisonment, wrongful taking of property, and threats to breach a contract or to commit wrongful acts. Duress does not include threats of civil litigation.

**Undue Influence** - Undue influence may be an applicable defense where a fiduciary with specialized knowledge who occupies a position of significant confidence with respect to the other party, and who has much more knowledge or experience than the other party, acts pursuant to the special fiduciary relationship to unduly influence or persuade the less experienced party.

**Misrepresentation** - The normal remedy for fraud is recission.

Rules for Construction of Contracts:

Reasonable time

Validity

Four corners doctrine

Interlineations

Against maker

Parol evidence rule

Printed v. typed

Effective date

Executory Contract –

Legal effect of a contract:

Valid

Void –

Voidable –

Unenforceable –

Statute of Frauds -

Laches –

Rules regarding signatures: disabled persons, Signing with an “x”, How names are listed, single, married, business entity

TREC Contract Provisions:

**Earnest Money** - Money paid to confirm a contract.

Financing options -

Title policy -

Survey -

Closing -

“Time is of the essence” -

Contingencies -

Option -

Tax Proration -

Survival of Terms -

# Class 8 – Key Terms

**Closing** – The purpose of the closing, then, is (1) to make final settlement between the buyer and seller for costs, fees, and prorations associated with the real estate transaction prior to the transfer of title, and (2) to finalize the loan agreement between the buyer/borrower and the lender.

Closing of Sale -

Closing of Loan -

Closing of Refinance –

Escrow –

Escrow Agent/Officer –

Closing into Escrow –

Funding / Good funds rule –

Liability of escrow agent –

Closing Checklist –

**Parties to a Closing** – (1) The buyer and seller, (2) any real estate brokers involved, and (3) the settlement agent.

Closing costs typically paid by the buyer/borrower –

Closing costs typically paid by the seller –

Proration of taxes and insurance –

Escrow of taxes and insurance –

**RESPA: Real Estate Settlement Procedures Act** – A law passed by Congress to provide a uniform set of procedures and documents for buyer/borrowers of residential real estate.

Exemptions from RESPA –

**Essential aspects of RESPA** – There are seven areas that are included:

1. Consumer information
2. Advance disclosure of settlement costs
3. Title insurance placement
4. Prohibition of kickbacks and referral fees
5. Uniform settlement statement
6. Advance inspection of uniform settlement statement
7. Escrow deposits

HUD-1 / settlement statement / closing statement –

**Federal Truth –in-Lending Act** – Deals with the costs of mortgage credit, have been a required affecting lenders since 1968.