**Chapter 1**

**Mini Review**

1. A void contract has no legal status >> **True**
2. Mistakes are commonly grouped under three categories: common, mutual and bilateral >> **False** [Common, mutual and unilateral]
3. If consideration contravenes the law, then the contract is unenforceable >> **True**
4. If a seller counters a buyer's offer, the original buyer's offer may still be accepted by the seller (despite the counter offer) if proper notice of his/her intent is given >> **False** [A buyer's offer is ended upon the rejection of that offer and subsequent counter offer by the seller]
5. Fraud not only destroys the contract, but also can give rise to damages >> **True**
6. A contract cannot be binding without consideration >> **False** [A contract can be made binding without consideration if a seal is used]
7. Innocent misrepresentation involves a statement by one party of a material fact that is known to be untrue >> **False** [An innocent misrepresentation involves a statement that is untrue, but is honestly believed to be true]
8. Various remedies are provided for a breach of contract including rescission, damages and specific performance >> **True**
9. The court will assess both the existence and adequacy of consideration when a dispute arises concerning contract enforceability >> **False** [The court addresses only the existence of consideration, not its adequacy]
10. Privity of contract refers to the legal concept that, generally, only parties to the contract can enforce it or be bound by it >> **True** [A person is said to be 'not privy to the contract,' as he or she is not a party to that contract]
11. The Statute of Frauds requires that all contracts involving real estate must be drafted on an agreement of purchase and sale approved by the Real Estate Council of Ontario >> **False** [The Statute of Frauds only states that contracts, including real estate contracts, must be in writing to be enforceable at law. The statute does not require a standardized form approved by the Real Estate Council of Ontario]
12. Tort liability is defined as a breach of duty involving a contract, such as an accepted agreement of purchase and sale >> **False**
13. A contract can only be terminated by the mutual agreement of the parties >> **False** [Mutual agreement is only one of five methods of terminating an agreement]
14. Non est factum can be pleaded by a person who misunderstands a contract but nevertheless signs it. However, such a pleading may not have merit if that individual was negligent in not reading the contract. Therefore, he or she has no real defence >> **True**
15. The Vendors and Purchasers Act sets out provisions that are deemed statutorily to be included within an agreement of purchase and sale >> **True**
16. A seller representation agreement is a standard form approved by the Real Estate Council of Ontario >> **False**
17. Failure to disclose a material latent defect could invalidate a contract. A material latent defect is one that is readily observable to the casual observer >> **False** [A material latent defect is NOT readily observable to the casual observer and may significantly impact enjoyment of the property]

**Active Learning Exercise:**

|  |  |
| --- | --- |
| Smith signs an agreement that amounts to price fixing, this contract has | no lawful object |
| The fact that parties must be legally capable of entering into contracts is referred to as | capacity of the parties |
| An agreement set aside by the court is referred to as | rescission |
| When an offended party can make a choice between performing or not performing a contract, the contract is said to be | voidable |
| When parties misunderstand each other and are at cross purposes when it comes to a contract, this situation is referred to as a | mutual mistake |
| Compensation for losses arising from a breach of contract is referred to as | damages |
| Complete the following phrase: Old consideration is | no consideration |
| When a person does not act with free will, he/she is often said to be under | duress or undue influence |

**Exercise 2 Consideration: s**Identify whether consideration is present or not in the following situations.

1. Seller Smith pays $68,750 for home renovations to Builder Anderson >> **Present**
2. Seller Smith agrees not to open a pizza business to compete with Buyer Jones’ newly acquired pizza business that was sold by Smith to Jones. In return for this agreement, Jones pays Smith $20,000 >> **Present**
3. Assume Jones paid Smith $1.00 rather than the $20,000 in Question 2.2. Is consideration present or not present? >> **Present**
4. Assume no money changed hands in Question 2.2, but the agreement was signed under seal. Is consideration present or not present? >> **Not Present**
5. Seller Smith sells his home for $225,000 to Buyer Jones, but does not include any chattels. Subsequently, Jones and Smith agree that all recreation room furniture will be included, but do not sign an agreement to that effect. Is consideration present or not present regarding the furniture? >> **Not Present**
6. Seller Smith sells his auto for $16,400 to Jones and agrees to be paid in shares from an illegal business venture in which Jones is involved. >> **Not Present**
7. Mutual agreement in a contract requires that there must be an offer, an acceptance and a communication of that acceptance. Which of the following is NOT a requirement of acceptance? >> **Communicated by personal delivery to the offeror**.
8. Which of the following does NOT result in a lack of genuine intention during a contractual undertaking? This question requires that the incorrect option be identified **>> Specific Performance.**
9. If a contract has been terminated by breach and the injured party has done part of what was promised, that individual is entitled to reasonable value for what has been done. Which of the following best describes this right? >> **Right to quantum meruit**
10. Which of the following is a correct statement regarding consideration? >> **If a promise is made under seal, no consideration is necessary to make it binding**
11. Which of the following is NOT a correct statement? This question requires that the incorrect option be identified **>> A minor’s right to avoid a contract is extinguished immediately once he/she reaches the age of majority**
12. A salesperson has a prospect interested in a property. The buyer notices water stains on the basement walls. Without any further investigation, the salesperson assures the buyer that there is no problem. After closing, the buyer discovers a major leakage problem that will prove costly to repair. How is the salesperson’s representation best described? >> **Negligent misrepresentation**

**Exercise 4 Minors**

Salesperson Lee of ABC Realty Inc. recently conducted an open house for his principal, Seller Smith. A young couple inspected the property and then made a subsequent appointment at the brokerage office. Several salespersons, following that visit, remarked that the couple looked barely out of their teens. Lee dismissed the comments and proceeded to obtain an offer which was subsequently accepted by Seller Smith. If the couple were in fact under 18, comment on the following:

1. Can the contract be enforced? Briefly support your answer with reference to contract law.

Real estate contracts with minors (infants) are generally voidable, sometimes void and never binding on the infant. Therefore, a contract involving the young couple could not be enforced. (Note: The word generally has been emphasized as registrants are reminded that some exceptions can apply; e.g., necessities of life and the enforceability of the contract if such an agreement was clearly in that person’s best interests.)

1. What would occur if either or both buyers turned 18 prior to closing? Be specific.

Under normal circumstances, a minor (infant) might avoid the contract for a reasonable period of time after the age of majority. If a contract is ratified after the age of majority, the right to avoid the contract has disappeared.

1. If the couple lied to Lee, saying that they were over 18, but in reality were minors, describe how this would or would not change your answer to 1**4?**

Whether or not the minors have purported to be over 18 is immaterial. The answer in **4.1** remains the same.

**Exercise 5 Scenarios**

1. An offer is presented to Seller Smith on his rental property. Smith and his son have never lived in the property. Smith accepts the offer but adds the words adjacent to his signature: *I accept the above offer subject to approval by my son*. The son does not agree with the price and an argument ensues that continues well past the irrevocable date. The buyer argues that, despite the disagreement, a valid contract exists because the offer was signed within the irrevocable period, the son was not on title and Smith’s written words do not constitute a formal condition in the offer. Does a valid contract exist? Support your answer with reference to contract law.

No contract exists. Acceptance must be complete and definite in its terms. A conditional acceptance is given and, therefore, does not meet acceptance criteria. Note: The salesperson could have clarified the matter by inserting a proper condition in the offer

1. Salesperson Garcia of ABC Realty Inc. presents an offer for $233,500 to Seller Smith who refuses the price but counters with a signback at $242,000. The counter offer has an irrevocable date to the buyer of 11:59 p.m. that same evening. Garcia returns to the buyer who ultimately agrees verbally at 11:55 p.m. to the counter offer. Garcia gets the buyer’s initials on the agreement just after midnight. Is this a valid contract? Support your answer with reference to contract law.

No contract exists. Technically, the counter offer was not accepted until one minute after the time limit set out in the agreement of purchase and sale (i.e., 11:59 pm). More importantly, the acceptance was not communicated to Smith within the allotted time period. The salesperson would have to amend the irrevocable date, counter the offer back to Smith and then communicate acceptance of the counter offer back to the buyer

1. Seller Smith receives an offer for $239,500 on his two-storey residence in Anycity. While anxious to sell, Smith wants to test the market. He countersigns the offer from Buyer Jones for $245,500 with an irrevocable date for the next day. Jones immediately rejects the counter offer. Smith, realizing that he may have lost the buyer, retracts the counter offer and signs the original agreement of purchase and sale at $239,500. Discuss whether Smith has a valid contract. Support your argument with specific reference to contract law

The counter offer, once rejected, is null and void. This is not to say that Smith and Jones could not renew negotiations and ultimately enter into a contract. Salespersons should carefully review the counter offer process with sellers to avoid confusion and potential problems

**Chapter 2**

**Mini Review**

1. Registrants must provide conscientious and competent service to clients, but not to customers >> **False**
2. A registrant who offers an opinion about the value of a client's property must have appropriate education or experience to provide such an opinion >> **True**
3. Brokers and salespersons must be careful not to interfere with client relationships of other registrants >> **True**
4. A salesperson who contravenes Sec. 34: Falsifying Information can face a fine of up to $50,000 >> **True**
5. A seller does not have to give his or her written consent in order for a salesperson to include the following heading on a classified advertisement: New Listing: 84 Weston Court >> **False**
6. A seller must complete a seller property information statement when offering a property for sale, failing which the registrant acting for that seller client would be in violation of Code of Ethics, Sec. 20: Seller Property Information Statement >> **False**
7. A salesperson must disclose the existence and substance of competing offers to every person who is making one of the competing offers >> False
8. A registrant must advise a buyer client of all significant activities undertaken on behalf of that client when representing that client >> **True**
9. A deposit received from a buyer involving a transaction must be placed in the real estate trust account within two days >> **False**
10. Trust funds need not be kept separate from other funds within a brokerage, provided that the brokerage maintains a trust ledger and carries out monthly reconciliation for such funds >> **False**
11. If monies are dispersed from the trust fund in error, the broker of record must ensure that sufficient funds are immediately deposited in the trust account to offset this error >> True
12. A brokerage is only permitted to have one trust account >> **False**
13. A seller's brokerage has the option to retain, for a period of one year only, either a summary document of an accepted offer that results in the purchase of real estate or an actual copy of the accepted offer >> **False** [A seller's brokerage must retain a copy of an accepted written offer in its entirety for at least six years. Copies of an un successful offer, or an equivalent summary document for that unsuccessful offer, must be retained for at least one year]

**Active Learning Exercise:**

1. A salesperson, acting on behalf of his brokerage, is representing both buyer and seller. He advises his seller client to accept an offer from his buyer client, while knowing that a competing offer will net more to his seller client. Which of the following Code of Ethics provisions best applies to this situation?

**Sec. 4: Best Interests**

1. A salesperson, acting on behalf of her brokerage, represents a buyer client and has three available properties that meet the buyer’s requirements. The commission rates offered to a co-operating brokerage for the sale of these properties varies; i.e., 1.5%, 2.5% and 3%. According to the Code of Ethics, she should:

**Introduce the client to all three available properties.**

1. A salesperson, acting on behalf of his brokerage, has received an offer for his seller client’s home from a salesperson with a co-operating brokerage. The registrant delays the presentation of this offer for one day hoping to secure a better offer from another prospective buyer.

**This delay is in contravention of the Code of Ethics, Sec. 24: Conveying Offers**

1. Which of the following statements is correct?

**A registrant must disclose known or ought to be known material facts to a customer**

1. According to the Code of Ethics, a Seller Property Information Statement:

**Is intended to provide information to buyers about the real estate that is being offered for sale.**

1. A listing salesperson is presenting two offers, one for $397,000 that he obtained from a buyer and a second offer for $399,000 obtained by a salesperson from a co-operating brokerage. The listing salesperson agrees to reduce commission by $4,000 to make his offer more attractive, but does not disclose this fact to the other brokerage or its respective buyer.

**The listing salesperson, by not disclosing this fact, is in violation of Sec. 25: Agreement Relating to Commission**

1. A salesperson is showing a property to a prospective buyer. During the showing, the buyer remarks about the vacant land behind the property. The salesperson informs the buyer that this is ‘green space’ even though he knows that a re-zoning application for the land is being finalized. The buyer purchases the property only to discover that a 12-unit apartment complex is scheduled for the site. The buyer takes legal action, as well as filing a complaint with the Real Estate Council of Ontario.

**The salesperson has made an inaccurate representation and, more particularly, is in violation of Sec. 37 of the Code of Ethics**

1. A salesperson places a classified ad for a listed property and includes his registered name and telephone number, but fails to also include the registered name of the brokerage in the ad. Which of the following options best addresses this situation?

**The salesperson is in violation of Sec. 36: Advertising**

**Chapter 3**

**Mini Review**

1. A data input form establishes the **legal** relationship between seller and brokerage, while also setting out property details >> **False**
2. The amount payable to a co-operating brokerage must be included in a seller representation agreement, according to requirements set out in REBBA 2002 >> **True**
3. Listing salespersons are well advised to suggest that sellers remove excluded fixtures prior to showings to avoid misunderstandings >> **True**
4. The OREA *Listing Agreement* requires a holdover provision not to exceed 60 days >> **False** [The OREA Listing Agreement does not set a maximum holdover period. A holdover period should be realistic given particular circumstances. Most residential holdover periods are 60-90 days, but commercial agreements may include longer periods]
5. According to the Code of Ethics, if a listing exceeds three months, the listing brokerage must have the seller's initials in close proximity to the expiry date set out in the representation agreement >> **False**
6. A registrant authorized to bind the listing brokerage must sign and date his or her signature on the representation agreement >> **False**
7. According to REBBA 2002, a brokerage cannot collect a commission based on the difference between the asking and selling prices >> **True**
8. Brokerages are permitted to pay commission or other remuneration to salespersons employed by another brokerage, provided that consent is obtained from that other brokerage pursuant to requirements set out in REBBA 2002 >> **False**
9. The seller must complete a Seller Property Information Statement (SPIS) at the time that a representation agreement is signed with a brokerage >> **False** [Completion of an SPIS is not mandatory]
10. The OREA SPIS Schedule for condominium can also be used for access and shoreline issues >> **False** [The OREA SPIS schedule for condominium is developed solely for use with condominiums. The appropriate schedule for access and shoreline issues is Form 222: Schedule for Water Supply, Waste Disposal, Access and Shoreline.]
11. Transposing information from an original source document to the representation agreement (including the data input form) is a potential source for error in the listing process >> **True**
12. According to errors and omissions claims experience involving rural property, problems with wells and septic systems have been a significant issue over the past few years >> **True**

**Active Learning Exercise:**

|  |  |
| --- | --- |
| SPIS | Not a Warranty Even if Attached to an Agreement |
| Family Law Act | Spousal Consent |
| Cancellation of Listing Agreement | Seller and Listing Brokerage Release Each Other by Agreement |
| Amendment to Listing Agreement | Extend the Expiry Date |
| Mortgage Verification | Written Confirmation of Principal Outstanding |
| Express Authority | A Precise Instruction |
| Exclusive Listing | Sole Right to Sell Property |

**Exercise 3 Regulatory Requirements**

For each of the following scenarios, insert a checkmark to indicate whether the Real Estate and Business Brokers Act, 2002 or the Code of Ethics (CODE) Regulation (Reg. 580/05) applies.

1. An unexpired listing agreement existed at the time that a different registrant had the seller sign a second listing agreement. The registrant then attempted to collect commission pursuant to this second agreement. The seller did not agree in writing to pay two commissions but forgot that the first agreement had not expired.

**REBBA**

1. The Anycity market is slow and the salesperson requires a nine-month listing period for the seller’s residential property. The listing is completed and signed by the seller, but no initials are included regarding the extended listing period, as required under the Act and Regulations.

**CODE**

1. The salesperson had a listing signed on March 14th but forgot to provide copies. Realizing his mistake several days later, he called the sellers. Unconcerned, the sellers told him not to bother. The salesperson took no further action.

**CODE**

1. The seller requests that the expiry date on a representation agreement be July 31st, or alternatively June 30th, if he elects to take holidays during July. The salesperson agrees and inserts the two dates in the agreement.

**CODE**

1. The brokerage receives a finder’s fee relating to arranging a mortgage for the buyer, but does not disclose this fact to the seller client.

**CODE**

1. The salesperson completes a representation agreement that includes both the payment of a commission based on a percentage of sale price, along with a flat fee of $2,000.

**REBBA**

**Chapter 4**

**Mini Review**

1. The OREA *Buyer Representation Agreement* provides for commission payment either by the listing brokerage or the seller >> **True** [The form also clearly states that such payment by a seller does not create a representation relationship with that seller]
2. A buyer representation agreement must prominently display the date and provide space for the buyer's initials if the term of the agreement exceeds **four** months >> **False** [The requirement relates to listings exceeding six months, not four. See Sec. 11 of the Code of Ethics]
3. The *Consumer Reporting Act* requires that every person be notified if a consumer report may be referred to in connection with a transaction >> **True**
4. The residential OREA *Buyer Representation Agreement* contains an expanded definition of *purchase* to include the transfer of shares or assets >> **False** [Commercial contains this expanded definition]
5. Indemnification involves the obligation to pay a commission to a real estate brokerage >> **False** [obligation to compensate a real estate brokerage for loss or damage when carrying out lawful acts]
6. A registrant authorized to bind the brokerage must sign and date his or her signature on the buyer representation agreement >> **True**
7. According to REBBA 2002, no legal action can be taken to claim commission or other remuneration unless the person bringing such action was either registered or exempt >> **True**
8. If a buyer is introduced to a property by a brokerage during the listing period, but buys the property following expiration of the holdover period, a commission is due and payable according to the wording of the OREA *Buyer Representation Agreement* >> **False** [The OREA *Buyer Representation Agreement* provides for a holdover provision that is effective for a period stated within that holdover clause and not beyond.
9. A brokerage cannot receive money from anyone other than the client regarding services being provided to that client without his or her consent >> **True**
10. In the commercial court case involving tenant representation outlined in this chapter, the Judge awarded a commission of 6% for the first year and 2½% for subsequent years, based on his determination that these were commission rates generally in effect for the local market >> **True** [Courts typically look for prevailing rates in the marketplace when determining such issues. See REBBA, Subsec. 36(1).
11. Registrants are well advised to avoid making any statements to a buyer client that involve making a prediction or giving absolute assurance >> **True**
12. Failure to disclose the known existence of a past grow operation, within a property being seriously considered by a client, would be a violation of the Code of Ethics >> **True**

**Active Learning Exercise:**

|  |  |
| --- | --- |
| Buyer Registry Service | Toronto Real Estate Board |
| Consumer Report | Notification Required if Report May be Referred to |
| Change Expiry Date | Amendment to Representation |
| Cancellation of Buyer Representation Agreement | Buyer and Brokerage Release Each Other by Agreement |
| Holdover | Remains after Expiration of Agreement |
| Caveat Emptor | Let the Buyer Beware |
| Express Authority | A Precise Instruction |
| Exclusive Buyer Representation Agreement | Sole Right to Locate Suitable Property |

**Chapter 5**

**Mini Review**

1. The issue of competing interests is a major source of conflict for a brokerage when attempting to represent more than one client >> **True**
2. Under multiple representation, as set out in the OREA *Listing Agreement* (OREA Form 200), the listing brokerage can disclose what the seller may or will accept, if written instruction to do so is given by the seller >> **True**
3. A key question should litigation arise over multiple representation is: *Did the salesperson's actual conduct align with the stated procedure as set out in the representation form?* >> **True**
4. According to the Code of Ethics, a brokerage need only disclose to a client the services provided to that client when discussing a representation agreement >> **False** [Section 10 of the Code of Ethics requires that disclosure involve types of service alternatives, including a representation agreement or another type of agreement]
5. *Working with a REALTOR®* (OREA Form 810), published by the Ontario Real Estate Association, provides a description of services potentially provided by a brokerage, but does not include an acknowledgement >> **False**
6. *The Confirmation of Co-operation and Representation* (OREA Form 320) is typically signed at the time that the listing agreement or buyer representation agreement is signed >> **False** [typically signed prior to the presentation of an offer]
7. The *Listing Agreement* (OREA Form 200) contains a provision relating to the seller's consent to obtaining a finder's fee, but such a provision is not included in the *Buyer Representation Agreement* (OREA Form 300) >> **False** [A finder's fee provision involving consent of the client to such a fee is included in both form]
8. A seller customer service agreement does not typically include any reference to the payment of commission to the brokerage >> **False**
9. A customer service agreement with a buyer may require that the brokerage protect and promote the interests of that customer >> **False**
10. Minimum content requirements for agreements apply equally to representation agreements and service agreements >> **False**
11. The *Confirmation of Co-operation and Representation* (OREA Form 320) can be used for situations involving multiple representation or co-operating brokerages, but does not apply to circumstances involving single representation >> **False**
12. The *Buyer Customer Service Agreement* (OREA Form 310) provides that the buyer must pay compensation to the brokerage for services rendered >> **False** [The form wording does not include a requirement for compensation, but does contemplate that such an arrangement could be made if agreed to by the parties]

**Active Learning Exercise:**

**Exercise 1 Fill-in-the-Blanks**

Seller Watson selects Salesperson James of ABC Realty Inc. to represent her in the sale of a property. Salesperson Janson of XYZ Real Estate Ltd. arranges an appointment to show the property to Mrs. Williams, who has signed a buyer representation agreement with Janson.

* 1. Salesperson James provides a Working with a REALTOR® form to the seller client and receives written acknowledgement of **Client** status.
  2. Salesperson James then has Watson sign a (an) **Listing** agreement, which sets out the agreement between them and details such things as representation procedures and commission payment.
  3. Salesperson Janson provides a (an) **Working with a REALTOR® form** to the buyer to comply with the Code of Ethics, Sec 10 regarding the types of service alternatives available to the buyer.
  4. Salesperson Janson, who drafts the agreement of purchase and sale, also completes a (an) **Confirmation of Co-operation and Representation** to confirm the roles of both listing and co-operating brokerages.
  5. The form, prepared under 1.4, is then signed by **Watson, James, Janson and Williams**.
  6. The signing of this form meets requirements as set out in this chapter under **Step 2: Disclosure Before Offer**

**Chapter 6**

**Mini Review**

1. Two characteristics of a saleable listing are exclusivity and a reasonable listing time period >> **True**
2. A comparative market analysis is used to establish market value when listing a property for sale >> **False** [A comparative market analysis is used to establish a listing price, not a market value]
3. The seller's motivation for selling is not highly relevant when preparing for a listing presentation >> **False**
4. A property that is frequently shown to prospective buyers is the most likely property to sell in a short period of time >> **False**
5. A brokerage is always responsible for deceitful statements made by a seller client regarding his or her property that result in litigation >> **False**
6. If a seller states that he has installed new shingles on a residential structure within the last six months, the salesperson listing the property should investigate further to substantiate this statement >> **True**
7. Rail access, cranes and sprinkler systems are three of many factors that should be taken into consideration when listing property used for industrial purposes >> **True**
8. The Competition Act sets out various guidelines concerning advertising, one of which relates to the use of abbreviations when promoting property through print and electronic media >> **True**
9. Based on the requirements of the Competition Act, a disclaimer cannot be included in the fine print for an advertisement, but must be prominently displayed within the ad instead >> **False**
10. The Registrar cannot only order the cessation of false advertising, but can also require the registrant to retract statements or publish corrections >> **True**
11. Advertising, for purposes of guidelines published by the Registrar, can include print as well as electronic media >> **True**
12. A registrant cannot make an advertising claim regarding volume of business conducted, as such is not in keeping with the Code of Ethics >> **False**

**Active Learning Exercise:**

1. A brokerage advertises that the organization is ‘Number One’. This is acceptable to the Registrar provided that >> **The brokerage discloses the basis upon which the comparison or claim is made.**
2. A brokerage, when advertising a commission rate: **Must include a description of any situation in which the commission rate advertised is not in fact charged.**
3. A registrant receives an award for outstanding sales performance by her employing brokerage. The registrant: **Must include the source and date of that award in any advertising.**
4. A registrant may use property ‘sold’ cards to advertise a seller client’s property that has just sold, provided that: **The seller gives his or her written consent and is the owner of the property at the time of the consent**
5. Which of the following statements is correct regarding guidelines set out under the Competition Act? >> **Disclaimers and limiting conditions must be consistent with the overall impression given in advertising**
6. Which of the following is a correct statement? >> **All MLS® listings are viewed as advertisements for purposes of the Competition Act.**
7. According to guidelines provided under the *Competition Act* >> **Abbreviations found in the local trading place are generally acceptable provided that they do not confuse or mislead.**

**Chapter 7**

**Mini Review**

1. An agreement for sale provides that title is retained by the seller until some future stipulated date or until some future event occurs >> **True** [An agreement for sale typically requires sequential payments over a period of time before title is transferred]
2. A nonowner, for purposes of an agreement of purchase and sale, could be an individual having power of attorney or a person being an estate trustee (executor) to an estate >> **True**
3. A Certificate of Appointment is required by a corporation in order to sign an agreement of purchase and sale when acquiring or disposing of real property >> **False** [A Certificate of Appointment relates to an estate sale, not to the signing of documents by a corporation]
4. A survey can be attached as a schedule to an agreement of purchase and sale only if a proper legal description is not available >> **False** [A survey can be attached as a schedule to any agreement of purchase and sale depending on the circumstances]
5. Minor variations in lot dimensions might be tolerated by the courts if such were slight and unimportant >> **True**
6. All deposits relating to the *Agreement of Purchase and Sale* (OREA Form 100) must be deposited within two banking days of receipt >> **False** [within five business days of receipt]
7. A seller has the right to remove all chattels, while all fixtures remain with the land (unless otherwise specified in the agreement) >> **True**
8. Rental equipment located on the property must be assumed by the buyer according to the *Agreement of Purchase and Sale* (OREA Form 100) >> **False** [The wording in the offer regarding rental equipment only applies to such items that can be assumed, not *all* rental items located on the property would be included]
9. The term *irrevocable* broadly refers to any instruction that is incapable of being recalled or revoked >> **True**
10. The fax number and/or email address of the co-operating brokerage should be inserted in the appropriate space under *Notices* when that co-operating broker is not representing the buyer >> **False** [The fax number and/or email address of the co-operating brokerage is inserted when that co-operating brokerage is representing the buyer]
11. Most residential resale transactions do not attract harmonized sales tax >> **True**
12. The requisition period in the *Agreement of Purchase and Sale* (OREA Form 100) provides the opportunity to examine title, including matters that go to the root of that title >> **True**
13. A lawyer's personal undertaking may be required to delay discharging a mortgage until after the completion date >> **True** [In some instances, mortgages may not be discharged for several days following closing]
14. No right of reinspection is included in the *Agreement of Purchase and Sale* (OREA Form 100), but a buyer may negotiate such a right with the seller >> **True**
15. If substantial damage occurs to a house prior to the completion date, the agreement will be automatically terminated >> **False** [The buyer may elect to take any insurance proceeds and complete the transaction]
16. The deed in a real estate transaction is typically prepared at the buyer's cost >> **False** [The deed is typically prepared at the seller's cost]
17. Section 116 of the *Income Tax Act* imposes a tax liability on the buyer >> **True**
18. If a property is a matrimonial home, the non-owner spouse must sign both the spousal consent and also sign as one of the sellers >> **False** [The non-owner spouse only signs the spousal consent]
19. Contracts are generally assignable at common law >> **True**
20. The salesperson who drafts the agreement of purchase and sale must witness all signatures affixed to that agreement >> **False**
21. Commission to a co-operating brokerage is the first disbursement made from the commission trust account when a listing brokerage processes commission funds received relating to a closed transaction >> **True** [The co-operating brokerage is paid first, followed by salespersons within the brokerage and, lastly, to the brokerage general account]

**Active Learning Exercise:**

**Exercise 1 Scenarios**

Various scenarios are provided with salespersons taking certain actions. For each of the following, identify which is acceptable or not acceptable and think about why.

1. The Jones’ are signing an offer concerning their home in Westville. Jim is the owner and Ruth, his spouse, is not on title but paid for half of the home when they were married. James R. Jones and Ruth B. Jones has been inserted on the line for Seller >> **Not Acceptable**
2. Mary Sanchez intends to act as a trustee for her sister’s estate. The salesperson inserts the following on the Seller line: *Mary Sanchez—Estate Trustee Status Pending* >> **Not Acceptable**
3. Salesperson Sanjay attaches a schedule to the offer dated October 3, 20xx between Seller Wellington and Buyer Chin. He writes the following at the top of the schedule: Schedule B Attached and Forming Part of an Agreement of Purchase and Sale dated October 3, 20xx; Seller: Wellington; Buyer: Chin. He has both parties affix their initials >> **Acceptable**
4. Salesperson Smith describes chattels included with the sale as follows: Fridge, stove and dishwasher >> **Not Acceptable**
5. Salesperson Lee prepares an offer with a condition expiring on March 15th and a requisition date of March 12th. >> **Not Acceptable**
6. Neither the buyer nor the seller are certain whether HST applies. The salesperson in a multiple representation inserts the following in Clause 7: Included In. >> **Not Acceptable**
7. The salesperson insists that the buyers and sellers initial at the bottom of page 1 of the Agreement of Purchase and Sale (OREA Form 100). >> **Acceptable**
8. The buyer signs an agreement on April 23, 200x with an irrevocable date of April 25th. The agreement is subsequently accepted verbally by Mr. Chung, the seller, on April 23rd at 2 p.m. However, his spouse (also an owner) cannot be reached until the following day. At 3 p.m. on April 24th, she signs acceptance and Mr. Chung is reached at his office where he signs an hour later confirming his verbal acceptance of April 23rd. The Confirmation of Acceptance reads as follows: …was finally accepted by all parties at 3 p.m. on this 24th day of April, 200x. >> **Not Acceptable**
9. The buyer hears from a friend that the seller has no intention of moving out of the home, despite the fact that only three days remain until completion date. Firmly believing that the property will not close, the buyer drops by the seller’s house and demands access to see if the rumours are true. If so, he will instruct the lawyer to tender documents the next morning. >> **Not Acceptable**
10. The salesperson drafts an agreement including a seller take back mortgage. He advises the seller that the buyer must provide evidence of adequate insurance relating to the mortgagee’s (seller’s) interest on completion. >> **Acceptable**
11. The seller is married but her spouse does not have joint ownership in the matrimonial home, which is now being sold. When presenting an offer on OREA Form 100, the buyer representative insists that a clause be inserted in the agreement. The clause would provide a warranty by the seller to the buyer that the consent of the seller’s spouse is not required. >> **Not Acceptable**
12. The sellers insist that the OREA Agreement of Purchase and Sale is technically wrong and wants the salesperson to stroke out all references to ‘I ’ and insert ‘We’. The salesperson agrees. >> **Not Acceptable**
13. The buyer has not yet selected a lawyer and the salesperson inserts the words ‘To be Advised’ in the acknowledgement space, but emphasizes that the buyer make the selection as soon as possible. >> **Acceptable**
14. Which one of the following statements is correct with respect to the Notices clause in OREA’s Agreement of Purchase and Sale? >> A Listing Brokerage’s fax number must not be entered into the Notices clause if the brokerage also represents the buyer.
15. An irrevocable instruction regarding how long an offer remains open for acceptance is: Generally binding if signed under seal
16. According to the *Agreement of Purchase and Sale* (OREA Form 100) the buyer accepts title subject to certain exceptions. Which is NOT one of them? Ownership issues that go to the root of title
17. Which of the following statements is correct? Inserting the word included in Clause 7 (HST) places the risk on the seller should the property be subject to HST.
18. In setting out details concerning buyers and sellers in an agreement of purchase and sale, which of the following is NOT correct? Always include both spouses as sellers when dealing with a married couple
19. Clause 3–Notices generally provides: Authority for the listing brokerage and co-operating brokerage to give and receive notices on behalf of their respective clients
20. Which of the following statements is NOT correct? >> The title search clause in the Agreement of Purchase and Sale (OREA Form 100) provides only one time period for title and related searches

**Chapter 8**

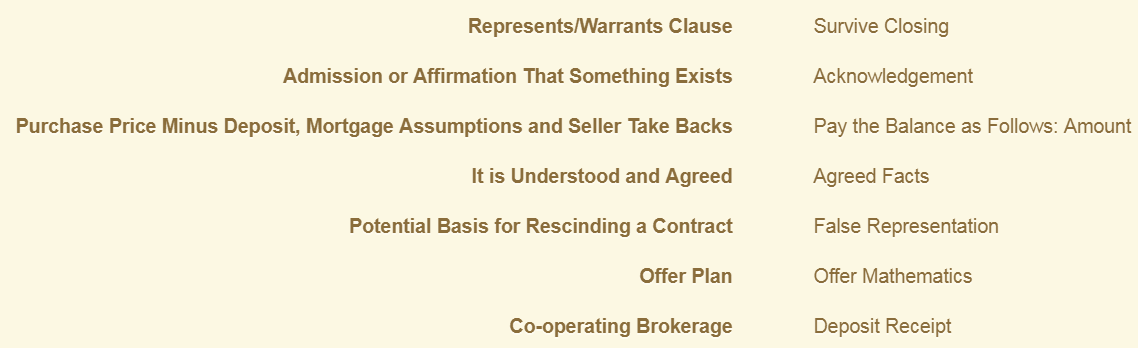
**Mini Review**

1. All brokerages in Ontario must use the *Agreement of Purchase and Sale* (OREA Form 100) >> **False**
2. Cheat sheets are seldom used and have been discouraged by the Real Estate Council of Ontario and real estate boards >> **False**
3. When two brokerages are involved with respective clients in a real estate transaction, the *Individual Identification Information Form* must be completed by the co-operating brokerage, but not by the listing brokerage >> **False**
4. The Receipt of Funds Record must be prepared for every amount of funds received by a real estate brokerage >> **False** [While this record is required in most instances, there are exceptions including funds received from a government agency]s
5. A mandatary is required for identification verification of a buyer client from another country, when a face-to-face meeting is not possible >> **True**
6. The deposit is always the difference between the agreed price and the amount inserted in the *pay the balance as follows* line >> **False** [This formula is correct for an all cash offer, but does not apply in other circumstances such as when the buyer is assuming an existing mortgage]
7. The completion date normally follows the title search date by two or three days >> **False**
8. Deposit increases can be accomplished through multiple payments provided that times, dates and amounts are stated in the agreement >> **True**
9. A buyer who deliberately withholds a deposit may be in breach of the contract >> **True**
10. The decision to use a representation/warranty or other clause; e.g., acknowledgement or statement of agreed facts, is typically dictated by circumstances >> **True**
11. A delay in the delivery of a deposit by a co-operating brokerage can jeopardize the listing brokerage's ability to satisfy depositing requirements set out in the *Real Estate and Business Brokers Act, 2002* >> **True** [The maximum permissible time is five business days following receipt, regardless of delays between the cooperating brokerage and listing brokerage]
12. A right to access clause must always include a provision that such access by the buyer shall be at reasonable times and only upon sufficient notice to the seller >> **False**
13. An acknowledgement clause cannot be inserted that overrides the preprinted portion of an agreement of purchase and sale >> **False**
14. In drafting any action to be taken, the words *authorizes* and *directs* must always be inserted >> **False** [As with most clauses, wordings can be adjusted to suit circumstances]
15. The order of acknowledgements, representations and agreed facts clauses within an agreement of purchase and sale is normally at the option of the person drafting the offer >> **True**
16. FINTRAC deems that a business relationship is effectively established whenever a brokerage conducts three or more transactions with a client within a two-year period >> **False** [A business relationship is effectively established whenever a brokerage conducts two or more transactions with a client within a five-year period. The business relationship expires if there are less than two transactions within a five year period. Transactions relate to a purchase and/or sale]
17. Real estate brokerages have an obligation to conduct a risk assessment of all corporate clients with respect to the possibility of money laundering or terrorist financing. The obligation to conduct a risk assessment does not extend to clients who are private individuals >> **False**

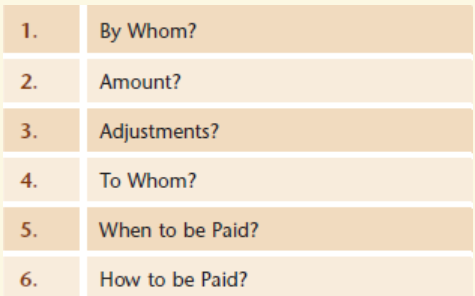
**Exercise 3 Clause Analysis**

Identify whether the following clauses are acceptable or not acceptable based on recommended OREA wordings and, if not acceptable, think about the reason(s) for your decision.

1. Matches



1. Matches



1. The buyer agrees to pay a further sum of Ten Thousand Dollars to ABC Realty Inc., by cheque, at the time of notification or fulfillment or removal of the condition pertaining to arranging a new first mortgage, as an additional deposit to be held in trust pending completion of this agreement. This amount is to be credited toward the deposit on completion of this transaction >> **Not Acceptable**
2. The buyer represents and warrants that on completion, the satellite receiver and associated equipment, as further detailed under Chattels in this agreement, shall be in good working order. The parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction >> **Not Acceptable**
3. The buyer and seller agree that the representations and warranties stated herein shall survive and merge on completion of this transaction >> **Not Acceptable**
4. The buyer shall have the right to inspect the property one further time at completion, provided that notice is given to the seller. The seller agrees to provide access to the property for the purpose of this inspection >> **Not Acceptable**

**Chapter 9**

**Mini Review**