Chapter 6  Contracts in Real Estate Transactions

How a contract is created
- Expressed or Implied
- Bilateral Contracts (Promise-Promise)
- Unilateral Contract (Promise-Performance)
- Forbearance
- Valid, Voidable, and Void

Essentials of a Valid Contract
- Four ‘C’s and an ‘O’
  - Capacity
  - Consent
  - Lawful Objective
  - Consideration
  - Contract in Writing
Essentials of a Valid Contract

- Competent Parties (capacity)
  - Four l's
    - Insane
    - Infant (minor)
    - Incarcerated
    - Intoxicated

- Mutual Agreement (Consent)
  - Offer and Acceptance
  - Counteroffers
  - Fraud
  - Innocent Misrepresentation
  - Mistake
  - Contractual Intent
  - No duress, menace, or undue influence

- Lawful Objective
  - Consideration
    - Exchange of promises
    - Valuable consideration
    - Good consideration
    - Multiple meanings
Essentials of a Valid Contract
- Contract in Writing
  - Statute of Frauds
  - Parol Evidence Rule

Performance and Discharge of Contracts
- Full performance
- Partial performance
- Substantial performance
- Impossibility of performance
- Mutual rescission
- Operation of law

Breach of Contract
- Unilateral rescission
- Lawsuit for money damages
- Lawsuit for specific performance
- Liquidation damages
Contracts - other issues
- Novation
- Deceased parties - effect on contract
- Effect of property damage during contract period
- Statute of limitations
- Caveat emptor

Contracts Used in Real Estate
- Real Estate Sales Agreements*
- Option Agreements*
- Escrow Agreements*
- Installment Contracts*
- Leases
- Listing Agreements

Real Estate Sales Agreements
- Broker's Authority to Prepare Legal Documents
- Binder -> Agreement of sale -> Closing
- Equitable title Vs Legal title
- Earnest money deposit
  - escrow account
  - commingling of funds
Parts of a Sales Agreement

- Identification of the buyer and seller
- Legal description of the real estate
- How the seller will deliver title (type of deed)
- Consideration, price and terms, earnest money
- Provisions for closing the sale/buyer’s occupancy

Parts of a Sales Agreement

- Provisions for title evidence/title insurance
- Prorations of taxes and insurances
- Provisions for damages/destruction
- Provisions for default
- Provisions for contingencies
  - mortgage contingency clause, other
- Broker’s commission
- Date and signatures

Escrow Arrangements

- Means by which the parties to a contract carry out the terms of their agreement
- Delivery and acceptance
- Escrow agent
- Protection of the buyer
Option-to-Buy Contracts
- Gives one party the right to buy for a specified price within a specified time
- Optionor, optionee
- Option
  - exercise the option
  - allow option to expire

Installment Contracts (Contracts for Deeds)
- Financing technique
- Seller receives a down payment and periodic payments
- Buyer receives possession and equitable title
- Deed (legal title) does not transfer until the terms of contract have been satisfied
- Default
- Vendor, vendee

Problems
- Mark offered to buy Charlie's four-acre tract for $20,000, and they shook hands on the deal. Both men went to an attorney to draft the formal contract. The next day, Mark signed the written contract, but Charlie refused to do so because he had received a higher offer. What recourse, if any, does Mark have against Charlie for failing to abide by their oral agreement?
Problems

- Suppose instead that Mark and Charlie (see prior question) had agreed on the deal and Mark wrote the terms of the sale on the back of an envelope, which both signed. They knew they needed an attorney to flesh out the agreement and draft a formal contract. Charlie refused to sign the formal contract, having received a higher offer. Could Mark force Charlie to carry out the contract?

Problems

- Nell and Edward agreed that Nell would purchase Edward's house and lot. Because both parties wanted to avoid the expense of having a formal contract drafted, they signed their names below the following handwritten statement: "Nell hereby agrees to buy from Edward the house at 1023 Washington Avenue for $65,000. Closing to be within 60 days. September 12, 1992." Nell had planned to borrow 90% of the purchase price, but failed to qualify for this loan. Does Nell's inability to obtain a loan excuse her from

Problems

- After Kristy finished college and started working, she found a small house that she wanted to buy, but could not afford. As an alternative, she agreed to lease the house with an option to buy it. To be valid, what must the option agreement include?