CHAPTER 12 REAL ESTATE CONTRACTS

IMPT: KEY TERMS, OVERVIEW. TEXT, SUMMARY, AND? AT END OF CHAPTER

I. OVERVIEW
   A. GET IT IN WRITING
   B. EXPLAIN CONTENT
   C. VARIOUS RE CONTRACTS
      1. LISTING AGREEMENT
      2. LEASES
      3. SALES CONTRACT
      4. OPTION AGREEMENT
      5. ETC.

II. CONTRACTS

   A. DEFINITION
      1. A VOLUNTARY AGREEMENT BETWEEN LEGALLY COMPETENT PARTIES TO PERFORM OR REFRAIN FROM PERFORMING SOME LEGAL ACT SUPPORTED BY LEGAL CONSIDERATION.

      2. TO FAIL TO KEEP UP YOUR END IS TO BREACH THE CONTRACT.

      3. LEGAL REMEDIES ARE AVAILABLE IF A BREACH OCCURS.

   B. TYPES OF CONDITIONS A CONTRACT MAY BE
      1. EXPRESS CONTRACT or
      2. IMPLIED CONTRACT

      3. BILATERAL or
      4. UNILATERAL
5. EXECUTED or
6. EXECUTORY
7. VALID or VOID or VOIDABLE or UNENFORCEABLE

C. ESSENTIAL ELEMENTS FOR A VALID CONTRACT

1. BETWEEN COMPETENT PARTIES
   a. AGE
      1) 18 OR OLDER
      2) IF MARRIED AND UNDER 18
      3) MINORITY STATUS REMOVED BY COURT
   b. MENTAL CAPACITY
      1) VOID OR VOIDABLE
      2) IF ADJUDICATED INCOMPETENT—VOID
   c. AGENT, CORP. OFFICER, FIDUCIARY
      1) WRITTEN DOCUMENT TO CREATE AUTHORITY TO ACT

2. OFFER AND ACCEPTANCE AND NOTIFICATION OF ACCEPTANCE
   a. MUTUAL ASSENT—MEETING OF THE MINDS
   b. ENTERED INTO FREELY AND VOLUNTARILY

3. CONSIDERATION
   a. CASH OR OTHER

4. LEGAL OBJECTIVE PURPOSE
5. AGREEMENT IN WRITING AND SIGNED

a. TEXAS STATUTE OF FRAUDS SAYS TO BE ENFORCEABLE IN A COURT OF LAW

1) SIGNATURE OF PARTY TO BE CHARGED IS NEEDED

2) SPOUSE SIGNATURE NEEDED TO RELEASE MARITAL RIGHTS

a) COMMUNITY PROPERTY RIGHTS
b) HOMESTEAD RIGHTS

3). UETA

6. ACCURATE LEGAL DESCRIPTION

D. PERFORMANCE-TO FULFILL CONTRACTUAL OBLIGATIONS

1. USE SPECIFIC TIME

2 TIME IS OF THE ESSENCE

a. PARA 23- 20-7 1-4 FAMILY RESALE
b. ADDENDUM FOR SALE OF OTHER PROPERTY BY BUYER
c. ADDENDUM FOR BACK-UP CONTRACT

3. IF NO TIME SPECIFIED
a. REASONABLE TIME IS USED

4. IF LAWSUIT, COURT CONSIDERS
a. 4 CORNERS
b. PAROL EVIDENCE RULE
E. WITHDRAWAL WITHOUT TERMINATING CONTRACT

1. ASSIGNMENT
2. NOVATION

F. DISCHARGE (ENDING) OF CONTRACT

1. COMPLETELY PERFORMED TO
2. BREACHED-ONE PARTY DEFAULTS
3. PARTIAL PERFORMANCE ALONG WITH WRITTEN ACCEPTANCE
4. SUBSTANTIAL PERFORMANCE
5. IMPOSSIBILITY OF PERFORMANCE
6. MUTUAL AGREEMENT
7. OPERATION OF LAW

G. DEFAULT/BREACH

1. IF SELLER DEFAULTS, BUYER CAN

   a. RESCIND/CANCEL THE CONTRACT KEEPING ANY EARNEST $

   OR

   b. FILE COURT SUIT FOR SPECIFIC PERFORMANCE

   OR

   c. SUE SELLER FOR COMPENSATORY DAMAGES

   OR

   d. BOTH b & c
2. IF BUYER DEFAULTS, SELLER CAN
   a. DECLARE CONTRACT FORFEITED, USUALLY KEEPING EARNEST $ AND ALL PAYMENTS MADE, IF ANY

   OR

   b. RESCIND THE CONTRACT RETURNING ALL $

   OR

   c. SUE FOR SPECIFIC PERFORMANCE

   OR

   d. SUE FOR COMPENSATORY DAMAGES

   OR

   e. BOTH c & d

3. READ “IN PRACTICE” PAGE 234

4. STATUTE OF FRAUDS-ENFORCEMENT TIME LIMITS TO BRING SUIT

   a. WRITTEN—4 YEARS FROM DATE OF BREACH
   b. ORAL—2 YEARS FROM DATE OF BREACH
II. CONTRACTS USED IN RE

A. SALES CONTRACTS

1. IS THE ROAD MAP CONTAINING DETAILS
   DICTATES DEED
   NO EXTRA STUFF

2. RESULT OF : OFFER
   COUNTEROFFER
   ACCEPTANCE
   NOTIFICATION OF ACCEPTANCE

3. WHO ARE THE PARTIES TO THE CONTRACT?
   BUYER-----YES
   SELLER----YES
   RE BROKER-----NO
   ESCROW AGENT---NO

4. EQUITABLE TITLE
   WHAT IS IT?
   IF DEAL FALLS THROUGH BUT THE
   CONTRACT WAS RECORDED, BUYER IS TO
   GIVE SELLER A QUITCLAIM DEED

5. DESTRUCTION OF THE PREMISES
   RISK IS TO SELLER TO INSURE/FIX
   IF SELLER FAILS TO FIX, BUYER CAN
   TERMINATE OR CLOSE WITH INSURANCE
   PROCEEDS BEING ASSIGNED TO BUYER
6. EARNEST MONEY DEPOSIT

EVIDENCE OF BUYER’S GOOD FAITH

NOT REQUIRED

IF PRESENT, AMOUNT IS NEGOTIATED

WHEN OFFERED//WHEN PAID

WHEN DEPOSITED---CLOSE OF 2\textsuperscript{nd} BUSINESS DAY AFTER EXECUTION

WHO HANDLES $-BROKER

COMINGLING/CONVERSION—
bad<bad<bad!!!

COMPUTING TIME --AFTER LAST DAY IN THE PERIOD

7. PROMULGATED FORMS

a. TRELA/TREC/BROKER-LAWYER COMMITTEE

b. LICENSEE MUST USE TREC PROMULGATED FORMS UNLESS

1) LICENSEE IS PRINCIPAL, NOT AGENT
2) AGENCY OF US GOVT REQUIRES THE USE OF ANOTHER FORM
3) PROPERTY OWNER HAS HIS OWN FORM AND REQUIRES THAT IT BE USED---PREPARED BY ATTY
4) NO TREC PROMULGATED FORM EXISTS
c. BROKER HAS NO AUTHORITY TO PRACTICE LAW-TREC CAN REVOKE LICENSE

B. OPTIONS

C. CONTRACTS FOR DEED
   ALSO KNOWN AS INSTALLMENT CONTRACT OR LAND CONTRACT

D. LEASES

E. ESCROW AGREEMENT
   CLOSING AGENT
   DOCUMENT PREPARATION
   TITLE INSURANCE