

TOPIC 3

Contracts



EXAM TOPICS

TOPIC 3 - Contracts (Salesperson 17%; Broker 18%)

- A. General knowledge of contract law**
 - 1. Requirements for validity
 - 2. Factors affecting enforceability of contracts
 - 3. Void, voidable, unenforceable contracts
 - 4. Rights and obligations of parties to a contract
 - 5. Executory and executed contracts
 - 6. Notice, delivery and acceptance of contracts
 - 7. Breach of contract and remedies for breach
 - 8. Termination, rescission and cancellation of contracts
 - 9. Electronic signature and paperless transactions
 - 10. Bilateral vs. unilateral contracts (option agreements)
- B. Contract Clauses, including amendments and addenda**
- C. Offers/purchase agreements**
 - 1. General requirements
 - 2. When offer becomes binding
 - 3. Contingencies
 - 4. Time is of the essence
- D. Counteroffers/multiple offers**
 - 1. Counteroffers
 - 2. Multiple offers

STUDY NOTES:

- I. Voluntary Agreement between Legally Competent Parties to Do or Refrain from Doing Some Legal Act, Supported by Legal Consideration**
- II. Essential Elements of a Valid Contract**
 - 1. **Offer and acceptance** - mutual assent or meeting of the minds
 - a. **Offer** - promise made by one party (offeror) with the request for something in

exchange for that promise may be terminated by the following:

- (1) **Rejection**, including a counteroffer
- (2) **Failure to accept** within prescribed time period
- (3) **Revocation** by the offeror before acceptance
- b. **Acceptance** - promise by the offeree to be bound by the exact terms proposed by the offeror
- c. **Counteroffer** - a new offer which rejects the original offer
2. **Consideration** - something of legal value; that which is "good and valuable" between the parties. Courts do not inquire into the adequacy of consideration.
3. **Consent** - parties must be able to make a prudent and knowledgeable decision without undue influence. May be deprived by the following:
 - a. Mistake
 - b. Misrepresentation
 - c. Fraud
 - d. Undue influence, including chemical substances
 - e. Duress
4. **Legal purpose**: Reason for legal existence
5. **Legally competent parties**
 - a. Of legal age (moral and local viewpoint)
 - b. Sufficient mental capacity to understand the actions or consequences

III. Contract Classifications

Contract—a voluntary agreement or promise between legally competent parties, supported by legal consideration, to perform (or refrain from performing) some legal act

- A. **Express contract** - when the parties state the terms and show their intentions in words
- B. **Implied contract** - the agreement of the parties is demonstrated by their acts and conduct
- C. **In bilateral contracts**, both parties promise to do something for the other; they bind all parties and are enforceable against all parties.
- D. **In unilateral contracts**, one party promises to do something to induce the second party to do something; they are binding on and enforceable against only one party.
- E. **Executed contracts** - are those that have been fully performed.
- F. **Executory contracts** - require some performance by one or more parties before they are completed.

IV. Legal Effect of a Contract

Validity of contracts

- a. **Valid** - complies with the essentials of a valid contract; binding in a court of law
- b. **Void** - has no legal effect (in theory, never was a contract); lacks essential elements of a valid contract
- c. **Voidable** - appears valid but may be disaffirmed or voided by one party based on some legal principle

- d. **Unenforceable** - no party may sue for performance; type of contract being used.

V. Contracts used in Business

A. Sales contracts (refer to the name used in your area) (agreement of sale, offer to purchase, contract of purchase and sale, purchase agreement, earnest money agreement, deposit receipt)

- 1. **The sales contract** is the most important document in a transaction because it establishes the legal rights and obligations of the buyer and seller; it dictates the contents of a deed.

- 3. **Offer**

- a. Original offer is typically the MLS Listing or seller directly (FSBO)

- 4. **Counteroffer**

- a. Original offer ceases to exist
 - b. Buyer may accept or reject counteroffer
 - c. Counteroffer may be withdrawn at any time before it has been accepted.

- 5. **Acceptance** - there must be an acceptance to create a contract

- a. If accepted as written, the contract is created and a signed copy must be given to all parties.
 - b. Notification of acceptance must be given to the party who made the offer before the contract is considered created.

- 6. **Binder** - used in some areas as a "short form" sales contract

- 7. **Earnest money deposits** - evidence of the buyer's intention to carry out the terms of the contract

- a. Should be held by the broker, escrow agent, or attorney in a trust or escrow account
 - b. Amount to be agreed upon by buyer and seller
 - c. Should show how interest earned (if any) will be distributed
 - d. Should be of a sufficient amount to discourage the buyer from defaulting and compensate the seller for taking the property off the market

- 8. **Equitable title** - after the contract is created but before the deed is delivered, the buyer may have an insurable interest in the property being purchased

- 9. **Destruction of premises**—depending on the jurisdiction, either the seller or the buyer can be responsible for the property after the contract is created but before the deed is delivered

- 10. **Liquidated damages** - commonly, the contract specifies that the earnest money will be used as liquidated damages to compensate the seller if the buyer breaches the contract

V. Types of Listing Contracts

A. Listing agreement

1. Listing agreement is an employment contract between a broker & seller.
2. Most states require that they must be in writing to be enforceable in court.

B. Types of listing agreements

1. **Exclusive-right-to-sell listing:** One broker is appointed as the sole agent for the seller and is entitled to a commission regardless of who procures the buyer, including the seller.
2. **Exclusive-agency listing:** One broker is appointed as the sole agent for the seller and is entitled to a commission regardless of who procures the buyer, except the seller.
3. **Open (nonexclusive) listing:** Any number of brokers as well as the seller can procure the buyer, with only the procuring broker, if any, being entitled to a commission.
4. **Net listing:** Broker receives set amount above seller's proceeds—illegal in many states, discouraged in others

VI. Discharge of Contract

Discharge of Contracts - discharged when terminated; completely performed, a party's breach or default

A. Performance of contract

1. **"Time is of the essence"** means the contract must be performed within the stipulated time.
2. If no time is stipulated, it should be performed within a reasonable time.

B. Assignment - the transfer of rights or duties under a contract; generally to a third party (assignee)

C. Novation - the substitution of a new contract for an existing contract

D. Breach of contract - violation of any of the terms or conditions of a contract without legal reason

1. If the seller defaults, the buyer may take one of the following actions:

- a. Sue the seller for specific performance.
- b. Sue the seller for damages.

2. If the buyer defaults, the seller may take one of the following actions:

- a. Sue the buyer for the purchase price; this is the same as a suit for specific performance.
- d. Sue the buyer for damages.

E. Statute of limitations - the time limit in which to enforce rights; time varies for different legal actions, rights not enforced within time period are lost

F. Contracts may be discharged or terminated when any of the following occur:

1. **Partial performance** - with written acceptance
2. **Substantial performance** —may be sufficient to force payment with certain adjustments
3. **Impossibility of performance** - legally impossible to perform the required act
4. **Mutual agreement** - by the parties to cancel the contract
5. **Operation of law** - as in the voiding of a contract by a minor, result of fraud,

- improper alteration of the contract, or expiration of statute of limitations
6. **Rescission** - one party may rescind the contract and return the parties to their original positions; monies that have been exchanged must be returned.

VII. Default/Breach of Contract

A. Buyer recourse if seller defaults:

1. Rescind, or terminate, the contract and recover the earnest money.
2. Sue for specific performance.
3. Sue the seller for damages.

B. Seller recourse if buyer defaults:

1. Declare the contract forfeited.
2. Rescind the contract and keep all or part of the deposit as liquidated damages.
3. Sue for specific performance.
4. Sue for damages.

VIII. Types of Listing/Agency Agreements

A. Listing Agreements

1. Open listing

- a. The seller may employ any number of brokers.
- b. The seller is obligated to pay a commission only to the broker who produces a buyer (procuring cause).
- c. If the seller personally sells the property without the aid of any broker, the seller is not obligated to pay the commission.

2. Exclusive-agency listing

- a. Only one broker is authorized to act as the exclusive agent of the principal.
- b. The seller retains the right to sell the property without obligation to the broker.

3. Exclusive-right-to-sell listing

- a. One broker is given the exclusive right to sell the property.
- b. The seller gives up the right to sell the property without paying the broker's commission.
- c. The broker receives the commission regardless of who sells the property.

4. Net listing

- a. The list price is based on the amount of money the seller will receive if the property is sold, plus the commission.
 - b. If the property is sold, the seller receives only the net amount for which the property was listed, and the broker retains the remainder.
 - c. Because of the uncertainty of the selling price, sellers could sacrifice thousands of dollars to dishonest real estate agents; therefore, net listings are prohibited in many states.
5. All listings are agreements between the broker and the seller, not the salesperson. Accordingly, if a salesperson leaves his or her broker, all of the listings taken by the salesperson remain the property of the listing broker.

B. Buyer Agency Agreements

1. **Exclusive Right to Sell**—unless agreed that the seller pays the commission, the buyer must compensate his or her agent whenever purchasing a property of the type described within the period described.
2. **Exclusive Agency**—the buyer's agent is assured of buyer loyalty relative to any other agents. The buyer may, however, purchase property on his or her own without the assistance of an agent and thus without any compensation being due to the buyer's agent.
3. **Open Agency**—the buyer can work with more than one buyer's agent at the same time but owes compensation only if the buyer uses the services of a buyer's broker.

4. Situations where it is appropriate for a buyer to enter into a relationship with buyer broker
 - a. A family business relationship or friendship exists, which makes it difficult for broker to be completely loyal to the seller.
 - b. Working with former seller clients as buyer customers.
 - c. A buyer prefers to have the agent as her advocate.
 - d. A broker is buying for himself; he must disclose that he is a licensed agent and representing himself and not a seller.

C. Ways in which buyer's broker can be compensated

1. Retainer fee.
2. Gives buyer incentive to perform contract.
3. Fee may be refundable or nonrefundable.

D. Flat/Fixed Fee, Percentage or Rate (daily/hourly)

1. **Can calculate a straight fixed/flat fee.**
2. **The flat fee** can be paid by the buyer or as a co-op fee by the seller.
3. **The hourly fee** should reflect the market as well as what other professionals are receiving.
4. **Percentage fee**
 - a. Can be a percentage of the sales price or MLS (multiple-listing service) co-op fee.
 - b. Creates a disincentive for buyer's broker to get a lower price for buyer.

IX. Termination of Listings or Buyer Agency Agreements

A. Operation of law

1. Contracting with an individual while she or he is in a state of diminished capacity.
2. Death or incapacity of either party.
3. Destruction of the property or change in the property use because of an outside force.
4. Bankruptcy of either party, at option of trustee.

B. Acts of the parties

1. Mutual consent
2. Completion of the objective
3. Expiration
4. Revocation termination by the principal
5. Renunciation rejection by the agent
 - a. Subject to liability for damages caused by revoking or renouncing the agreement

X. Lease Agreement | Contracts

A. Requirements of a valid lease

1. **Capacity to contract** - all parties must be legally competent
2. **Legal objective** - intent of the contract must be legal
3. **Offer and acceptance** - meeting of the minds of the parties
4. **Consideration** - usually rent but can be labor or other services

- B.** A complete description of the premises should be clearly stated; preprinted lease agreements better suited for residential property; commercial lease more complex, legal counsel should be consulted

C. Possession of premises

1. The covenant of quiet enjoyment for the tenant is implied by law regardless of whether addressed in the lease.
2. Conditions under which the landlord is allowed to enter property without tenant's permission.

- D. **Use of premise** - if the use is to be limited in any manner, that use must be specifically stated in the lease
- E. **Term of lease** - dates should be stated precisely
- F. **Security deposit (CT: 2 months' max, 1 month for 65-year-old tenants)**
 - 1. Held by the landlord during the lease
 - 2. Applied to unpaid rent or repairs
 - 3. State or local law may set maximums
 - 4. In Practice: The lease should specify whether such funds are security deposits or advance payments of rent.
- G. **Improvements**
 - 1. Generally, neither party is required to make improvements.
 - 2. The tenant may make improvements with permission.
 - 3. Any trade fixtures should be identified in the lease.
- H. **Accessibility** - Federal Fair Housing Act makes it illegal to discriminate on basis of physical disabilities. Tenants may make reasonable modifications to property but must restore at end of lease term.
- I. **Maintenance of premises**
 - 1. Historically, the landlord is not obligated to make repairs.
 - 2. Under current landlord-tenant laws, some jurisdictions require landlords to make repairs on residential units to keep them in habitable condition and maintain the common areas.
 - 3. The tenant must return the premises in the same condition as received, except for ordinary wear and tear.
- J. **Destruction of premises**
 - 1. The tenant is obligated to pay rent if the improvements are damaged or destroyed when the tenant has constructed buildings on leased land, often agricultural or industrial land.
 - 2. If part of a building is destroyed, the tenant is usually not required to continue to pay rent for that part.
- K. **Assignment and subleasing**
 - 1. Can be prohibited by the terms of the lease
 - 2. Assignment is the transfer of all of the tenant's interest.
 - 3. Subleasing is the transfer of part of the tenant's interest.
 - 4. Either may require the lessor's consent.
 - 5. The original tenant/sublessor's interest in a sublease is known as a sandwich lease.
- L. **Recording a lease** - varies according to state laws and the length of the lease; leases of three years or longer generally are recorded
- M. **Non-disturbance clause** - mortgage clause that states the mortgagee who forecloses agrees not to terminate the tenancies of lessees who pay their rent
- N. **Options**

1. The privilege of renewing or extending the lease or purchasing the property at a predetermined price and time
2. The tenant must give notice of intention to exercise the option.
3. The lease is the primary consideration, the option is secondary.

XI. Types of Leases (Contracts)

A. Gross lease

1. The tenant pays a fixed rental amount.
2. The landlord pays all of the property charges, such as taxes and utilities.
3. Most often used for residential and commercial office space rentals (may differ by local custom)

B. Net lease

1. The tenant pays a fixed rental amount.
2. The tenant also pays some or all of the property charges.
3. Generally used for large commercial or industrial leases

C. Percentage lease

1. The tenant pays a fixed amount of rent plus a percentage of the gross income of the business. A gross lease or net lease may also be a percentage lease.
2. The percentage and basis agreed to between the parties
3. Most commonly used in retail businesses
4. Specifics vary with the type of business and its location

D. Variable lease - provides for increases in rent during the lease period

1. **Graduated lease** - provides for increases in rent at set future dates in specified amounts
2. **Index lease** - periodic increase or decrease in rent based on changes in some economic index

E. Other lease types

1. Ground lease

- a. Usually involves separate ownership of land and buildings
- b. Allows the tenant to construct a building on land that the tenant does not own and use thereafter
- c. Generally set up as a net lease
- d. **Typically for terms of 50 up to 99 years**

2. Oil and gas lease

- a. The owner receives cash for giving exploration rights.
- b. If oil or gas is found, the owner usually receives a percentage of its value as a royalty.

3. Lease purchase

- a. The tenant leases the property in advance of its purchase usually for tax or financing reasons. Part of the rent is applied toward the purchase price.
- b. The purchase is the primary consideration, the lease is secondary.

4. Sale-and-leaseback

- a. Owner sells the property and then leases it back for an agreed period and rental.
- b. Often used when extra capital is needed on a construction project

XII. Discharge of a Lease

A. Termination

1. No notice is required to terminate a tenancy for years.
2. The parties can mutually agree to cancel the lease.
3. The tenant may surrender the leasehold interest if the landlord is willing to accept it.
4. A tenant who abandons the property is still liable for the terms of the lease, including rent payments.
5. When the owner of leased property dies or the property is sold, the lease does not terminate except for the following:
 - a. A lease from the owner of a life estate when the measuring life ends
 - b. The death of either party to a tenancy at will
 - c. A sale clause in the lease
6. Oral and written leases without specific expiration dates require proper notice to terminate as required by law.
7. A lease may be terminated by operation of law, as in a bankruptcy.

B. Breach of lease

1. If the tenant breaches the lease, the landlord may sue for overdue rent, damages to the premises, or other defaults. If landlord breaches any lease provision, the tenant is entitled to certain remedies.

2. Suit for possession—actual eviction

- a. The landlord must serve notice to the tenant; the number of days varies according to law.
- b. If the tenant does not leave peacefully, the court may have the tenant and the tenant's possessions forcibly removed.

3. Tenants' remedies - constructive eviction

- a. If the landlord breaches the lease, the tenant has the right to sue for damages.
- b. The tenant may abandon the premises if the following:
 - (1) The landlord's conscious neglect has rendered the premises uninhabitable
 - (2) It is the responsibility of the tenant to leave because of the premises not being usable.

C. Pro-tenant legislation—Uniform Residential Landlord and Tenant Act

1. The result of consumer awareness

2. Adopted by some states
3. Provides that both parties have certain obligations
4. **Provides state-specific remedies for both parties**

XIII. Earnest Money Deposits—Not Required for a Legal Contract

- A. Generally give evidence of intention to carry out the terms of contract.
 1. Usually must be held by the broker in a special trust, or escrow, account.
 2. Cannot be commingled, mixed with a broker's operating funds, or converted to a broker's own use.
 3. The amount is generally determined by negotiation between the buyer and seller.
 4. A deposit is not legally required to create a valid contract.

IXV. Options

- A. Contract by which the optionor (owner) gives the optionee (prospective buyer) the right to buy at a fixed price within a stated period of time.
- B. The optionee pays the fee for the option right and assumes no obligation to make any other payment until the optionee decides, within a specified time, to either exercise the option right or allow the option to expire.
- C. **Key Points for Options**
 - A. Grant the right to buy or lease property at a fixed price within a stated period of time
 - B. **The optionee** gives valuable consideration and has the right to the following:
 - a. Buy or lease the property
 - b. Let the option expire
 - C. **The optionor** must
 - a. Reserve the property for only the optionee
 - b. Sell or lease the property if the optionee exercises the option

XV. Installment Contract/Contract for Deed/Land Contract

- A. Means of financing a purchase: the buyer gives the seller a nominal down payment and regular periodic payments over a number of years, including interest.
- B. **Legal title to real estate** remains in the vendor's (seller's) name during the term of contract.
- C. **The vendee** (purchaser) takes possession when the contract is executed.
- D. **The vendee** will not receive the deed to the property until the entire purchase price has been paid.
- D. **The vendee** has the equitable title during the life of the contract.

XVI. Other Real Estate Contractual Concepts

- A. **Counteroffer**—new offer made in response to an offer received; the original offer is, in effect, rejected and cannot be accepted thereafter unless it is revived by the offeror.
- B. **Amendments**—licensees in many states are required to fill out amendment forms to change the language in either the listing contract or the offer to purchase.
- C. **Cancellation agreements**—forms used to terminate a transaction; used in some states by a broker to get a written release from both the buyer and the seller to authorize the refund of earnest money.
- D. **Leasing agreements**—written or oral contracts between the tenant (lessee) and the landlord (lessor); transfers the right to exclusive possession and the use of the landlord's real property to the lessee for a stated consideration (rent) and for a specified period of time; the statute of frauds requires that a lease for more than one year be in writing to be enforceable.
- E. **Addendum**—adds further terms and conditions to the approved forms, thus incorporating them into the legal document; may or may not require preparation by an attorney.

Examples include: disclosure of controlled business arrangements and lead-based paint disclosures required to be signed by the seller if the house was built prior to 1978.

- F. **Contingency**—a condition in a contract that requires a certain event or events to happen before the contract is complete. Sometimes referred to as “subject to” clauses.

Contingency clauses have three distinguishing features:

1. Actions needed to satisfy the contingency.
2. Time frame within which actions must be performed.
3. Statement identifying (if necessary) who will be responsible for paying any related costs.

- F. **Broker's protection clause**—states that the property owner will pay the listing broker a commission if, within a specified number of days after the listing expires, the owner transfers the property to someone the broker originally introduced to the owner.

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NATIONAL TEST TOPIC #3
REAL ESTATE CONTRACTS #3 NEW
2020 Practice Classroom Quiz



- 1. Consideration is**
 - A. a promise of quiet enjoyment
 - B. the giving of something, which need not be monetary value, as an inducement to contract
 - C. always expressed as a dollar value
 - D. a power of attorney

- 2. What is the main benefit of the mortgage contingency clause? If the**
 - A. buyer does not like the mortgage rate, the contract may be canceled
 - B. buyer does not receive a mortgage commitment, the contract may be canceled
 - C. seller does not receive a mortgage for his or her next house before the closing, the contract may be canceled
 - D. buyer does not receive a mortgage commitment, the contract is not canceled but his or her deposit is refunded to the seller

- 3. Which of the following is NOT a contract?**
 - A. deed
 - B. lease
 - C. mortgage
 - D. option

- 4. When two parties have made sincere promises to each other, the contract that exists is known as a(n)**
 - A. unilateral contract
 - B. void contract
 - C. bilateral contract
 - D. option contract

- 5. Vince, a salesperson, wants to avoid the unlawful practice of law in filling out a contract of sale. What should he include in his contract?**
 - A. A rider
 - B. A copy of his salesperson's license
 - C. An attorney review clause
 - D. The right of first refusal

- 6. An example of liquidated damages is**
 - A. a penalty for extremely bad behavior by a party
 - B. forfeiture of earnest money
 - C. money actually lost
 - D. a penalty for a party taking fraudulent advantage over another party

7. **A contract that is always binding and enforceable on all parties to it is known as**
- A. valid
 - B. void
 - C. voidable
 - D. executed
8. **Carolanne is 15 years old and has entered into a written real estate contract with a person who is 25. From the point of view of Carolanne, this contract is**
- A. void
 - B. voidable
 - C. unilateral
 - D. implied
9. **Why is it important that an earnest money deposit accompany an offer to purchase? It**
- A. shows the sincerity of buyer
 - B. demonstrates financial capability to raise the money called for in the purchase offer
 - C. may serve as possible liquidated damages to the seller if the buyer defaults
 - D. includes all of the answers shown
10. **A contract is drawn to convey Lot #3 from Green Hill Developers, Inc. to Matthew Morton. Upon further investigation, it is discovered that the lot selected by Matthew was Lot #4. Both parties recognize an error was made and agree to correct the contract. The error is an example of**
- A. fraud
 - B. mutual mistake
 - C. misrepresentation
 - D. legality of object
11. **Which of the following is NOT a purpose of the earnest money deposit?**
- A. Shows the sincerity of the buyer
 - B. Helps demonstrate the buyer's capability to raise sufficient funds to purchase the property
 - C. To buy down the interest rate of the mortgage loan
 - D. Serves as liquidated damages to the seller should the buyer default
12. **An executed contract means that**
- A. only one party to the contract has made a promise
 - B. at least one party to the contract may still sue for specific performance
 - C. all of the parties have fully performed their duties
 - D. one of the conditions of the contract has been completed
13. **B entered into a contract to buy land from C. It was soon discovered that C was not the owner of the land. The contract between the two of them is**
- A. valid
 - B. void
 - C. enforceable
 - D. executed

- 14. Which of the following is NOT an essential element of a contract?**
- A. Capacity of the parties
 - B. Legality of object
 - C. Consideration
 - D. Value of comparable sales
- 15. Which of the following is NOT a form of real estate contract?**
- A. Condominium contract of sale
 - B. Option to buy
 - C. Installment sales contract
 - D. Mortgage contingency
- 16. If a contract is signed and pending and another contract comes in, this is known as a(n)**
- A. assignment
 - B. novation
 - C. counteroffer
 - D. back-up offer
- 17. A valid contract**
- A. is always bilateral
 - B. must be filed with the county clerk
 - C. is never broken
 - D. is binding and enforceable on all parties
- 18. When the parties to a contract have definitely agreed to all terms and conditions in the contract, the type of contract that exists is known as**
- A. promissory
 - B. executed
 - C. express
 - D. implied
- 19. Seller R received an order from the court stating that he must pay the commission to the broker exactly as stated in the agreement. The court has ordered**
- A. specific performance
 - B. rescission
 - C. compensatory damages
 - D. liquidated damages
- 20. The portion of the money paid to purchase a property that is paid in cash and is not part of the mortgage loan is called the**
- A. upfront deposit
 - B. boot
 - C. down payment
 - D. contingency

Answer Key – REAL ESTATE CONTRACTS 2020

1. B
Consideration is the giving of something of value as an inducement to contract. Quiet enjoyment has to do with uninterrupted possession of one's property. A power of attorney gives a person authority to act for another in legal matters.
2. B
The mortgage contingency clause states that the contract is contingent, or dependent upon, the purchaser's receipt of a mortgage commitment. If the purchaser does not obtain a commitment by a certain date, the contract may be canceled and the deposit returned to the seller.
3. A
A deed is a legal document that conveys real property from one party to another and is not a contract. A lease and mortgage are both bilateral contracts where parties make promises to each other. An option is a unilateral contract where one party makes a promise to another.
4. C
A bilateral contract, in which two parties make promises or perform acts, is the correct answer. In a unilateral contract, only one party makes a promise or acts. A void contract has no legal effect. An option contract is a type of unilateral contract because a promise is made by one party.
5. C
An attorney review clause is a condition that makes the contract subject to approval by each party's attorney, and can help avoid the unlawful practice of law. In many states, a broker can fill in a contract but cannot make any changes to the actual form. If it is reviewed by an attorney, the practice of filling in the blanks is acceptable. A rider covers supplemental issues of the agreement, and can actually be unlawful if prepared from scratch by the agent. The right of first refusal allows the holder a right to purchase a property if the seller decides to sell or another purchaser comes along.
6. B
In real estate, the most typical example of liquidated damages is forfeiture of earnest money should the buyer be unwilling or unable to execute the sales contract. Penalties for extremely bad behavior by a party and for fraudulent advantage taken by one party over another are punitive damages. Compensation for money actually lost is compensatory damages.
7. A
A valid contract is a contract that legally obligates all parties to abide by its terms and conditions. A void contract has no legal effect because it is impossible to be completed or its purpose is illegal. A voidable contract may or may not be enforceable because one of the parties cannot/will not perform as agreed. An executed contract is one that has been completed.

8. B

At 15, Carol-Anne is considered a minor. Minors do not have the legal capacity to contract. Therefore, with minors such as Carol-Anne, the contract is voidable at her option. A void contract has no legal effect because it is impossible to be completed or its purpose is illegal. With a unilateral contract, there is a promise made by one party to perform a specific action. An implied contract is one created by the conduct of, rather than from the direct words of, the parties.

9. D

An earnest money deposit should accompany a contract because it shows the sincerity of buyer, demonstrates financial capability to raise the money called for in the purchase offer, and may serve as possible liquidated damages to the seller if the buyer defaults.

10. B

Mutual mistake of a material fact by both parties causes the contract to be voidable but not void. Fraud is intentional deceit. Misrepresentation is the unintentional misstatement of facts. Legality of object requires the contract to be for legal purpose.

11. C

An earnest money deposit is *not* used to buy down the interest rate of the mortgage loan. "Points" are paid for this purpose. Although earnest money is not required by law, it is offered as evidence of the buyer's sincere offer to purchase and demonstrates the buyer's ability to raise the agreed-upon funds. Earnest money may be used as liquidated damages should the buyer willingly default on the contract terms.

12. C

An executed contract is one that has been fully performed meaning that all of the parties to the contract have performed their duties.

13. B

Because C does not have any land to sell, the contract has no legal force or effect and is void. It cannot be enforced. An executed contract is one that has been fully performed, which is not the case in this example.

14. D

Value of comparable sales, a method appropriate for estimating the value for marketing purposes, is not an essential element of a contract. Capacity of the parties means that those involved have the right to convey and accept the terms of the contract. Legality of object means that the purpose for which the contract exists is legal. Consideration is the giving of value for the property for which the contract is created. All of the foregoing are essentials of a valid contract.

15. D

The mortgage contingency clause is generally part of a clause in a contract of sale, but it is not an actual form of contract. The condominium contract of sale, option to buy, and installment sales contract are all forms of real estate contracts.

16. D

A back-up offer occurs when a contract is signed and is pending and another contract comes in. An assignment is the giving over of a contract and its obligations to another. Novation is the substitution of a new contract for an older contract. A counteroffer is a new offer made by an offeror rejecting an offer.

17. D

A valid contract is binding and enforceable on all parties. A contract may be bilateral with both parties making a promise, or unilateral; with one party making a promise to induce a second party to do something. It need not be filed with the county clerk, and is sometimes breached by one or both parties.

18. C

Under an express contract, the parties to the contract have definitely agreed on all of the contract terms. A promissory (note) is the written promise of one person to pay a certain sum of money to another at a specific time in the future. An executed contract is one that is fully performed. An implied contract exists when the parties signify through conduct or actions, but without express agreement, that a contract exists.

19. A

An order from the court requiring specific performance means that the contract is to be completed as originally agreed. Rescission means to take back, remove, or annul, and may occur when a contract is not performed by either party or when a party breaches it. When a party breaches a contract, one or more other parties usually suffer monetary damages. The amount of money actually lost is the amount of compensatory damages that the court awards. Instead of compensatory damages, the parties to the contract can stipulate an amount of money to be paid upon certain breaches of the contract and are called liquidated damages.

20. C

The portion of the money paid to purchase a property that is paid in cash and is not part of the mortgage loan is called the down payment. The down payment is determined by the lender.

END