

## Chapter 1 - CONTRACTS

*Notes:*

Real estate transactions are ruled by specific documents such as leases, listings and offers to purchase. Such documents spell out the contractual rights and obligations agreed to by parties to certain transactions. Therefore, much of this chapter addresses the general area of law known as contract law. An understanding of contracts is essential in dealing with real estate. In simple terms, *a contract is an agreement enforceable by law.*

### Essential Elements for Valid Contracts

Contracts that meet all legal requirements are valid and enforceable, which means that either party can hold the other party responsible for his or her agreement. Three requirements must be met before a contract is valid:

#### 1. Offer and Acceptance

To have a valid contract, there must be a *meeting of the minds* (**mutual assent**), nominally evidenced by an offer and acceptance.

*An offer is made by an offeror* and expresses that person's willingness to enter into a particular agreement. The **offeree** is the *person to whom the offer is made*. When the offer is accepted by the offeree, a contract is formed. Unless the offer specifies a particular period of time for acceptance, it is considered to be held open for acceptance for a reasonable time. A newspaper or online advertisement usually is not regarded as an offer but merely an invitation to negotiate.

If an offer states a time for acceptance but fails to indicate "**time is of the essence**," the courts could allow acceptance after the period for acceptance expires. If "time is of the essence" is stated in the offer, acceptance must generally occur within the period specified or the offer is canceled automatically.

If the offer fails to specify the form for acceptance (letter, telephone call, telegram or even performance), the offer may be accepted in any reasonable manner. Under the Statute of Frauds (below), offers and acceptances for real estate transactions must be in writing. Acceptance does not take place until the offeror is notified, which usually is by delivery of a signed accepted copy of the offer to the offeror.



*offer....acceptance – but not a contract yet!*

## SHORT-ANSWER QUESTIONS

1. The three requirements for a valid contract are:
  - a) \_\_\_\_\_ and \_\_\_\_\_;
  - b) \_\_\_\_\_;
  - c) Absence of \_\_\_\_\_.
2. Offer and Acceptance is also known as the \_\_\_\_\_ of the \_\_\_\_\_, or \_\_\_\_\_.
3. An Offer is made by the \_\_\_\_\_. The \_\_\_\_\_ is the person to whom the offer is made. When the offer is \_\_\_\_\_, a contract is formed. An offer is considered to be held open for a \_\_\_\_\_ time, unless it specifies a particular time.
4. An offer is \_\_\_\_\_ automatically if it states "time is of the \_\_\_\_\_" and the period specified expires.
5. An offer may be \_\_\_\_\_ in any reasonable manner if it fails to specify the form. Acceptance does not take place until the offeror is \_\_\_\_\_.
6. If the offeror did not receive any \_\_\_\_\_ to keep the offer open, the offeror may withdraw, or \_\_\_\_\_ the offer any time prior to acceptance.
7. The act of placing an acceptance in the \_\_\_\_\_ is effective acceptance, even if the offeror tries to revoke after the acceptance is \_\_\_\_\_, but before it is received.
8. The death of the offeror prior to acceptance \_\_\_\_\_ the offer. However, after acceptance, the agreement is still binding on the \_\_\_\_\_ of the deceased party. This may not be true if the contract was for the \_\_\_\_\_ services of one of the parties. The death of a corporate \_\_\_\_\_ does not terminate the offer.
9. An acceptance of the offer which changes one or more terms of the original offer is called a \_\_\_\_\_. Since this now becomes a new offer, the parties switch positions and the original offeror becomes the new \_\_\_\_\_. Once any offer is \_\_\_\_\_, it is considered dead and cannot be accepted.
10. An \_\_\_\_\_ is a right to buy or lease property at a specified price during a certain period of time. The owner who is giving the right is called the \_\_\_\_\_. To create a valid \_\_\_\_\_, something of value must be given to keep it open, and once given it cannot be revoked or withdrawn until it expires.
11. A Right of \_\_\_\_\_ \_\_\_\_\_ gives the right to buy or lease only if the owner decides to sell or lease. The owner is not required to sell or lease the property to this person, however.

## QUESTION ANSWERS

1. a. offer, acceptance  
b. consideration  
c. defenses
2. meeting, minds, mutual assent
3. offeror, offeree, accepted, reasonable
4. canceled, essence
5. accepted, notified
6. consideration, revoke
7. mail, mailed
8. voids, estate, personal, officer
9. counteroffer, offeree, rejected
10. option, optionor, option
11. first refusal

## QUIZ

1. All of the following elements are always necessary to make a contract, except:
  - a. consideration;
  - b. be in writing;
  - c. legal purpose;
  - d. competent party.
2. Mutual assent consists of all of the following, except:
  - a. offer;
  - b. reality of consent;
  - c. competent parties;
  - d. acceptance.
3. Which of the following contracts always falls under the Statute of Frauds?
  - a. Contract made in consideration of marriage;
  - b. Contract for the sale of personal property;
  - c. Contract for a legal purpose;
  - d. Contract for an illegal purpose.
4. The law that requires certain kinds of contracts to be in writing is called:
  - a. Statute of Limitations;
  - b. Parol Evidence rule;
  - c. Statute of Frauds;
  - d. Rule Involving Laches.
5. Which of the following is usually a competent party to enter into a contract?
  - a. Insane person;
  - b. Someone 17 years of age;
  - c. Intoxicated person;
  - d. None of the above.

## QUIZ ANSWERS

1. b
2. c
3. a
4. c
5. c