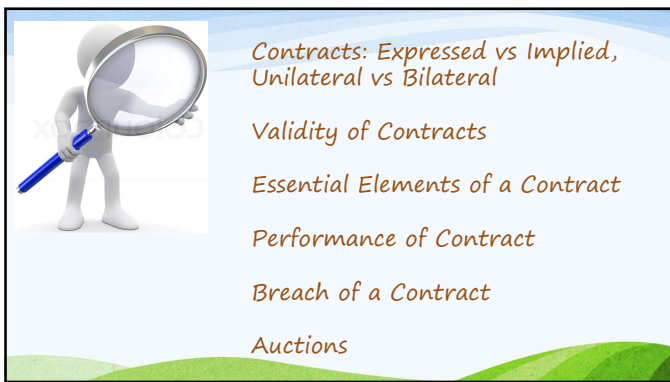
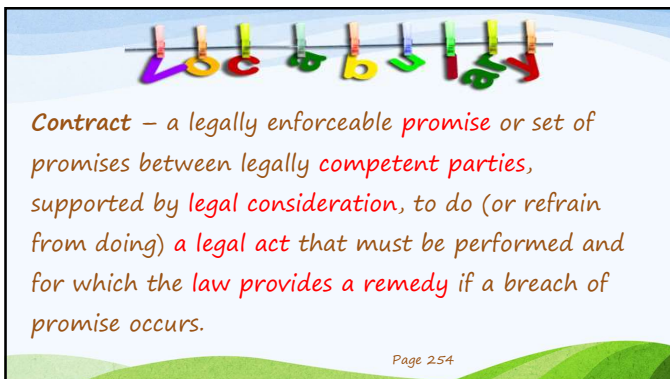




1



2



3

A Contract Must Be the Following:

- Voluntary – no one can be forced into a contract
- Agreement or Promise – contract is basically a legally enforceable promise
- Legally Competent Parties – the law must view both parties as capable of making a legal promise

4

A Contract Must Be the Following:

- Legal Consideration – something of value
- Legal Act – a contract can't force someone to do an illegal act



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Types of Contracts

Express Contracts – oral or written

Implied Contracts – formed as the result of an action or conduct



Statute of Frauds says that any contracts dealing with real estate must be in writing

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Types of Contracts

Bilateral Contracts – both parties must act .. A promise for a promise



Unilateral Contracts – one party persuades a second party to do something



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Types of Contracts

Executory Contract:
something remains to be done by one party or both parties



Executed Contract:
all commitments have been fulfilled and monies are disbursed

8

Validity of Contracts *Figure 9.1, pg 256*



Classification of Contract	Legal effect	Example
Valid	Binding and enforceable on both parties	Agreement complies with essentials of a valid contract
Void	No Legal Effect	Contract for an illegal purpose
Voidable	Valid but may be disaffirmed by one party	Contract with a minor, coercion, mental illness, undisclosed material fact
Unenforceable	Valid between the parties, but neither party may force performance	Certain oral agreements

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Essential Elements of a Valid Contract


1. Legally competent parties

- Mental capacity
- 18 years old

2. Mutual assent or deliberate agreement

- Meeting of the Minds



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Essential Elements of a Valid Contract

3. Legality of object

4. Consideration

- Something of legal value
- Courts won't enforce "free" agreements

**Earnest Money Deposit – Expression of good faith
(not required to create a valid contract)**

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Formation of a Contract

Requirement for Reality of Consent:


1. Contracts signed while a person is under duress or undue influence (drugs/alcohol) may be voidable by that person or by a court
2. Misrepresentation, fraud or mistake of fact could render a contract voidable by the injured party

Reality of Consent reached when the above does NOT exist

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Revocation of an Offer

Counteroffer: a change in any of the terms




The offeror is relieved of the original offer because in effect, the offeree rejected it by making changes

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Revocation of an Offer




1. An offer or a counteroffer may be revoked at any time before it has been accepted (even if the person making the offer or counteroffer agreed to keep the offer open for a set period of time).
2. A real estate broker stands in the shoes of the principal and communication of acceptance or revocation to an agent is the same as communication directly to the principal

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Revocation of an Offer

3. All offers must be delivered immediately, but in North Carolina no case later than 3 days after execution



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On Monday, an offer was written to buy a seller's vacant lot for \$32,000. On Tuesday, the seller counteroffers by raising the purchase price up to \$33,500. The prospective buyer does not reply, so on Friday, the seller changes his mind and accepts the original price of \$32,000. Under these circumstances, there is:

16

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- A. A valid agreement because the seller accepted the original offer exactly as it was made
- B. A valid agreement because the seller accepted before the prospective buyer withdrew his original offer
- C. No valid agreement because the original offer was not accepted within 72 hours of it being made
- D. No valid agreement because the seller's counteroffer was a rejection of the original offer.

17

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- D. No valid agreement because the seller's counteroffer was a rejection of the original offer.

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NC Agreement in Writing and Signed

- In NC, Statute of Frauds for transferring real estate - signed by the party to be bound by the agreement
- Based on common-law doctrine
- Certain types of contract must be in writing to be enforceable in court


• Deeds	Contracts for Sale
• Mortgages	Options (unit 10)
• Easements	Leases longer than 3 years

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NCREC Rule A.0104

Listing Agreements and Buyer Representation Agreements are not mandated by Statute of Frauds.

However, as they are both employment contracts and NCREC says they must be in writing



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Formation of a Contract

Parol Evidence Rule from Common Law

No oral agreements that contradict the terms of a written contract may be considered in a lawsuit based on the written agreement



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Performance of a Contract

a. Time is of the essence: The contract must be performed within the stipulated time or the party that did not perform within the timeframe is liable for breach of the contract. *Usually by 5 pm*

b. If a date is not followed by "time is of the essence" it is a "general" target date that all parties should attempt to meet.

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Performance of a Contract

c. Not complying with the date is **NOT** an automatic termination of the contract; contract becomes voidable by the non-breaching party if not finished in a "reasonable amount of time"

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Performance of a Contract

- Assignment:** Substitution of Parties

 In North Carolina Offer to Purchase is not assignable without mutual written consent

- Novation:** the substitution of a new contract for an existing contract

Nova = New

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Discharge of a Contract

Breach contract if one party defaults; cancelled by:

- *Partial performance (accord and satisfaction)*
- *Substantial performance*
- *Impossibility of performance*
- *Mutual agreement of the parties to cancel*
- *Operation of law*

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General Rules for Interpretation of Contracts:

- *Inconsistent preliminary negotiations irrelevant*
- *Contract interpreted as a whole*
- *Contract judged as reasonable vs. unreasonable*
- *Popular interpretation of ordinary words*
- *Written provisions considered over pre-printed language*
- *Party that created ambiguity will not be favored*

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Default - Breach of Contract

Breach = violation (no legal excuse) of any terms or conditions of a contract;

Injured party may:

1. *Sue the breaching party for compensatory damages (not the buyer in NC)*
2. *Be entitled to collect liquidated damages (EMD)*



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Default - Breach of Contract, Cont'd




3. Sue for consequential damages for loss of profits (REASONABLY FORESEEN)
4. File a court action for specific performance
5. Rescission (not getting disclosures in a timely manner)

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Default - Breach of Contract




Statute of Limitations - North Carolina law allows a specific time limit during which parties to a contract can bring legal suit to enforce their rights



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Broker's Authority to Prepare Documents

- Cannot draft legal documents for others (unlawful practice of law)
- But allowed to fill in the blanks on approved preprinted forms NC G.S. 93A-6(a)(11)
Licensees will be disciplined
- Broker can't advise how to take title to property



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Addenda - (aka Rider) additional terms or conditions to a contract

Examples of Addendums:

FHA/VA	New Construction
Back-Up Contract	Additional Provisions
Additional Signatures	LBP Paint Disclosure

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Addendum - means including an additional document in the already existing one; becomes a part of the legal and binding contract

Vs


Amendment - means changes made in an already existing agreement; are only part of a contract until negotiations.

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AUCTION SALES

Real estate auctioneer needs:

- a real estate license and
- an auctioneer license



Not the same as a mere crier of sales who is exempt from a real estate license

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33

AUCTION SALES

Two types:

1. **Auctions with reserve**—the seller reserves the right to stop the bidding if the high bid does not reach the minimally acceptable bid for the seller



2. **Auctions without reserve**—the seller agrees to accept the high bid, no matter what the terms of that bid; aka an “**absolute auction**” in North Carolina

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A listing broker schedules an appointment to present a purchase offer to the seller. The seller has serious health problems and her son is attending to her healthcare. When the broker arrives, he finds the seller’s son and daughter-in-law present. In the broker’s presence, both persistently urge the seller to accept the offer. The seller is reluctant to accept, since the offer is substantially less than the list price. If the seller accepts the offer under these circumstances, she may later claim that

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a. The broker should not have brought such a low offer for her property

b. She was under undue influence from her son and daughter-in-law, and therefore, the contract is voidable

c. The broker defrauded her by allowing her son and his wife to see the offer he brought to her

d. Her consumer protection rights under anti-trust laws were violated by her son and his wife

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b. She was under undue influence from her son and daughter-in-law, and therefore, the contract is voidable

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