

SLIDE 1 – Contracts Important to Real Estate (Cover Page)

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Independent Contractor

A sales agent may be an independent contractor (IC) or an employee. In either case, the broker is responsible and liable for the sales agent's actions.

As agent of a broker, a salesperson may offer properties for sale or lease, procure buyers, negotiate transaction terms, and otherwise conduct the business of brokerage. The agent, however, must act entirely on the broker's behalf.

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A licensed real estate broker is duly authorized to represent clients directly in brokering real estate. A sales agent, on the other hand, is only authorized to represent a broker and carry out such duties as the broker may legitimately delegate. In other words, a sales agent does not directly represent the client in a transaction but is rather the agent of the broker and subagent of the client. A sales agent is therefore a fiduciary of the employing broker.

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Review of Legal Foundations

Agency Law

Contract Law

A listing agreement, the document that puts an agent or broker in business, is a legally enforceable real estate agency agreement between a real estate broker and a client, authorizing the broker to perform a stated service for compensation.

A listing agreement is essentially an Employment Contract because it specifies the terms of payment for a provided service.

In Florida, listing agreements:

- May be written or oral
- Written agreements are preferable as oral is difficult to enforce
- Copy must be given to seller within 24 hours of signing

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A listing agreement is a written document signed by all owners of real estate or their authorized attorney in fact authorizing a broker to offer or advertise real estate described in such document for sale or lease on specified terms for a defined period of time and is only valid if signed by all owners or their authorized attorney.

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A valid a listing agreement should include:

1. Start and end date of property listing.
2. The price the home should be listed.
3. How the broker is to be compensated.
4. Terms regarding how the fees are paid.
5. The broker's scope of authority regarding co-agreements with other brokers.

The broker's scope of authority regarding the existence of previous offers.

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Listing Agreement Clauses

A written listing, particularly an exclusive, is a formal contract which contains the entirety of all agreements between the parties. If an agreement is left out, it is assumed not to exist. An agreement that is included is assumed to exist and is generally enforceable.

If a written agreement contains mistakes, it is probably not valid or enforceable. For these reasons, it is extremely important for a listing agreement to be accurate, error-free, and complete.

In Florida, automatic renewal clauses are forbidden in listing agreements.

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Types of Listing Agreement

A broker may represent any principal party of a transaction: seller, landlord, buyer, tenant. An owner listing authorizes a broker to represent an owner or landlord. There are three main types of owner listing agreement:

- Exclusive right-to-sell (or lease)
- Exclusive agency
- Open listing

Another type of listing, rarely used today and illegal in many states, is a net listing.

The first three forms differ in their statement of conditions under which the broker will be paid. The net listing is a variation on how much the broker will be paid.

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Types of Listing Agreement

A buyer agency or tenant representation agreement authorizes a broker to represent a buyer or tenant. The most commonly used form is an *exclusive right-to-represent* agreement, the equivalent of an exclusive right-to-sell. However, exclusive agency and open types of agreement may be also used to secure a relationship on this side of a transaction.

Though not a distinct type of listing agreement, *multiple listing* is a significant feature of brokerage practice. Multiple listing is an authorization to enter a listing in a multiple listing service.

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Open listing

An open listing, or, simply, open, is a *non-exclusive* authorization to sell or lease a property. The owner may offer such agreements to any number of brokers in the marketplace. With an open listing, the broker who is the first to perform under the terms of the listing is the sole party entitled to a commission. Performance usually consists of being the procuring cause in the finding of a ready, willing, and able customer.

If the transaction occurs without a procuring broker, no commissions are payable.

Open listings are rare in residential brokerage. Brokers generally shy away from them because they offer no assurance of compensation for marketing efforts. In addition, open listings cause commission disputes. To avoid such disputes, a broker has to register prospects with the owner to provide evidence of procuring cause in case a transaction results.

An open listing may be oral or written.

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Exclusive agency

An exclusive agency listing authorizes a single broker to sell the property and earn a commission, but *leaves the owner the right to sell the property without the broker's assistance*, in which case no commission is owed. Thus, if any party other than the owner is procuring cause in a completed sale of the property, including another broker, the contracted broker has earned the commission.

This arrangement may also be used in a leasing transaction: if any party other than the owner procures the tenant, the owner must compensate the listing broker.

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Exclusive right to-sell (or lease)

The exclusive right-to-sell, also called exclusive authorization-to-sell and, simply, the exclusive, is the most widely used owner agreement. Under the terms of this listing, a seller contracts exclusively with a single broker to procure a buyer or effect a sale transaction. If a buyer is procured during the listing period, the broker is entitled to a commission, regardless of who is procuring cause. Thus, if anyone--the owner, another broker-- sells the property, the owner must pay the listing broker the contracted commission.

The exclusive right-to-lease is a similar contract for a leasing transaction. Under the terms of this listing, the owner or landlord must pay the listing broker a commission if anyone procures a tenant for the named premises.

The exclusive listing gives the listing broker the greatest assurance of receiving compensation for marketing efforts.

In some states, an exclusive right-to-sell listing is enforceable only if it is in writing and has an expiration date. Some states do not require the agreement to be in writing, but if it is in writing, it must have an expiration date.

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Exclusive Right-to-Sell Clauses

Requirements for exclusive listing agreements vary from state to state. Generally, a written listing agreement requires as a minimum:

- Names of all owners
- Address or legal description of the listed property
- Listing price
- Expiration date
- Commission terms
- Authority granted

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Net listing

A net listing is one in which an owner sets a minimum acceptable amount to be received from the transaction and allows the broker to have any amount received in excess as a commission, assuming the broker has earned a commission according to the other terms of the agreement. The owner's "net" may or may not account for closing costs.

For example, a seller requires \$75,000 for a property. A broker sells the property for \$83,000 and receives the difference, \$8,000, as commission.

Net listings are generally regarded as unprofessional today, and many states have outlawed them. The argument against the net listing is that it creates a conflict of interest for the broker. It is in the broker's interest to encourage the owner to put the lowest possible acceptable price in the listing, regardless of market value. Thus the agent violates fiduciary duty by failing to place the client's interests above those of the agent.

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Types of Listing

Exclusive Right	\$ ⇒ Broker	IF customer is procured
Exclusive Agency	\$ ⇒ Broker	IF customer is procured and client does not procure customer
Open	\$ ⇒ Broker	IF broker procures customer
<hr/>		
Net	\$ ⇒ Broker	IF broker is due commission, receives proceeds over seller's minimum
"Multiple Listing"	⇒ Broker	Authority to enter listing in multiple listing service

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Compensation

The main item of performance for the client is payment of compensation, if the agreement calls for it. A broker's compensation is earned and payable when the broker has performed according to the agreement.

The amount and structure of the compensation, potential disputes over who has earned compensation, and the client's liability for multiple commissions are other matters that a listing agreement should address.

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Causes for termination

A listing may terminate on grounds of:

Performance – all parties perform; the intended outcome

Infeasibility – Impossible to perform under the terms of the agreement

Mutual agreement – both parties mutually agree to cancel the listing

Revocation – either party cancels the listing, with or without the right

Abandonment – the broker does not attempt to perform

Breach – the terms of the listing are violated

Lapse of time – the listing expires

Invalidity of contract – the listing does not meet the criteria for validity

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Causes for termination

Incapacitation – or death of either party

Involuntary title transfer – condemnation, bankruptcy, foreclosure

Property destruction

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An agent hired by a buyer to help find a suitable property for purchase would typically execute a Buyer Broker agreement with that client.

Typically the buyer and the broker will enter into a contract defining their legal relationship. It explicitly covers the duties and responsibilities of both parties and sets out exactly what services the broker will be providing.

The three most common buyer broker contracts are:

- Nonexclusive not-for-compensation
- Nonexclusive right-to-represent
- Exclusive right-to-represent

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Nonexclusive not-for-compensation agreement

In this common buyer-broker agreement the broker is not paid any commission.

Other common contract terms include verbiage that allows the buyer to retain multiple brokers and the contract to be revoked by either party at any time for any reason.

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Nonexclusive right-to-represent agreement

Under this agreement compensation is only paid to the broker if the buyer decides to buy the house the broker proposes.

If a commission is paid to the broker by another party, this obligation is removed.

Usually these agreements may not be revoked except for specified reasons spelled out in the contract.

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Exclusive right-to-represent agreement

Under this contract the buyer agrees to work exclusively with this broker and may not contract another.

It spells out the commission to be paid and is paid whether the broker, the owner or another broker finds the property ultimately purchased.

If the broker commission is paid by another party such as the seller, the buyer is not obligated to pay.

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Sales Contract

The conventional transfer of real estate ownership takes place in three stages.



First, there is the negotiating period where buyers and sellers exchange offers in an effort to agree to all transfer terms that will appear in the sale contract.

Second, when both parties have accepted all terms, the offer becomes a binding sale contract and the transaction enters the pre-closing stage, during which each party makes arrangements to complete the sale according to the sale contract's terms.

Third is the closing of the transaction, when the seller deeds title to the buyer, the buyer pays the purchase price, and all necessary documents are completed. At this stage, the sale contract has served its purpose and terminates.

Other names for the sale contract are *agreement of sale*, *contract for purchase*, *contract of purchase and sale*, and *earnest money contract*.

Section 11 – Part 5

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Contract creation

Offer and acceptance. A contract of sale is created by full and unequivocal acceptance of an offer. Offer and acceptance may come from either buyer or seller. The offeree must accept the offer without making any changes whatsoever. A change terminates the offer and creates a new offer, or counteroffer.

An offeror may revoke an offer for any reason prior to communication of acceptance by the offeree.

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Earnest money escrow

The buyer's earnest money deposit fulfills the consideration requirements for a valid sale contract. In addition, it provides potential compensation for damages to the seller if the buyer fails to perform. The amount of the deposit varies according to local custom.

The sale contract provides the *escrow instructions* for handling and disbursing escrow funds. The earnest money is placed in a third party trust account or escrow. A licensed escrow agent employed by a title company, financial institution, or brokerage company usually manages the escrow. An individual broker may also serve as the escrow agent.

The escrow holder acts as an impartial fiduciary for buyer and seller. If the buyer performs under the sale contract, the deposit is applied to the purchase price.

Strict rules govern the handling of earnest money deposits, particularly if a broker is the escrow agent. For example, state laws direct the broker when to deposit the funds, how to account for them, and how to keep them separate from the broker's own funds.

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Equitable title. A sale contract gives the buyer an interest in the property that is called equitable title, or *ownership in equity*. If the seller defaults and the buyer can show good faith performance, the buyer can sue for specific performance, that is, to compel the seller to transfer legal title upon payment of the contract price.

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Contract for Sale

A real estate sale contract is a binding and enforceable agreement wherein a buyer, the vendee, agrees to buy an identified parcel of real estate, and a seller, the vendor, agrees to sell it under certain terms and conditions. It is the document at the center of the transaction.

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Primary provisions

Parties, consideration, and property – One or more clauses will identify the parties, the property, and the basic consideration, which is the sale of the property in return for a purchase price.

There must be at least two parties to a sale contract: one cannot convey property to oneself. All parties must be identified, be of legal age, and have the capacity to contract.

The property clause also identifies fixtures and personal property included in the sale. Unless expressly excluded, items commonly construed as fixtures are *included* in the sale.

Similarly, items commonly considered personal property are *not included* unless expressly included.

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Primary provisions

Legal description – A legal description must be sufficient for a competent surveyor to identify the property.

Price and terms – A clause states the final price and details how the purchase will occur. Of particular interest to the seller is the buyer's down payment, since the greater the buyer's equity, the more likely the buyer will be able to secure financing. In addition, a large deposit represents a buyer's commitment to complete the sale.

If seller financing is involved, the sale contract sets forth the terms of the arrangement: the amount and type of loan, the rate and term, and how the loan will be paid off.

It is important for all parties to verify that the buyer's earnest money deposit, down payment, loan proceeds, and other promised funds together equal the purchase price stated in the contract.

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Primary provisions

Loan approval – A financing contingency clause states under what conditions the buyer can cancel the contract without default and receive a refund of the earnest money. If the buyer cannot secure the stated financing by the deadline, the parties may agree to extend the contingency by signing next to the changed dates.

Earnest money deposit – A clause specifies how the buyer will pay the earnest money. It may allow the buyer to pay it in installments. Such an option enables a buyer to hold on to the property briefly while obtaining the additional deposit funds.

For example, a buyer who wants to buy a house makes an initial deposit of \$200, to be followed in twenty-four hours with an additional \$2,000. The sale contract includes the seller's acknowledgment of receipt of the deposit.

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Primary provisions

Escrow – An escrow clause provides for the custody and disbursement of the earnest money deposit, and releases the escrow agent from certain liabilities in the performance of escrow duties.

Closing and possession dates – The contract states when title will transfer, as well as when the buyer will take physical possession. Customarily, possession occurs on the date when the deed is recorded, unless the buyer has agreed to other arrangements.

The closing clause generally describes what must take place at closing to avoid default. A seller must provide clear and marketable title. A buyer must produce purchase funds. Failure to complete any pre-closing requirements stated in the sale contract is default and grounds for the aggrieved party to seek recourse.

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Primary provisions

Conveyed interest; type of deed – One or more provisions will state what type of deed the seller will use to convey the property, and what conditions the deed will be subject to. Among common "subject to" conditions are easements, association memberships, encumbrances, mortgages, liens, and special assessments. Typically, the seller conveys a fee simple interest by means of a general warranty deed.

Title evidence – The seller covenants to produce the best possible evidence of property ownership. This is commonly in the form of title insurance.

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Primary provisions

Closing costs – The contract identifies which closing costs each party will pay. Customarily, the seller pays title and property-related costs, and the buyer pays financing-related costs. Annual costs such as taxes and insurance are prorated between the parties. Note that who pays any particular closing cost is an item for negotiation.

Damage and destruction – A clause stipulates the obligations of the parties in case the property is damaged or destroyed. The parties may negotiate alternatives, including seller's obligation to repair, buyer's obligation to buy if repairs are made, and the option for either party to cancel.

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Primary provisions

Default – A default clause identifies remedies for default. Generally, a buyer may sue for damages, specific performance, or cancellation. A seller may do likewise or claim the earnest money as liquidated damages.

Broker's representation and commission – The broker discloses the applicable agency relationships in the transaction and names the party who must pay the brokerage commission.

Seller's representations – The seller warrants that there will be no liens on the property that cannot be settled and extinguished at closing.

Additionally, the seller warrants that all representations are true, and if found otherwise, the buyer may cancel the contract and reclaim the deposit.

Section 11 – Part 6

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Secondary provisions

A sale contract may contain numerous additional clauses, depending on the complexity of the transaction.

The following are some of the common provisions.

Inspections. The parties agree to inspections and remedial action based on findings.

Owner's association disclosure. The seller discloses existence of an association and the obligations it imposes.

Survey. The parties agree to a survey to satisfy financing requirements.

Environmental hazards. The seller notifies the buyer that there may be hazards that could affect the use and value of the property.

Compliance with laws. The seller warrants that there are no undisclosed building code or zoning violations.

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Secondary provisions

Due-on-sale clause – The parties state their understanding that loans that survive the closing may be called due by the lender. Both parties agree to hold the other party harmless for the consequences of an acceleration.

Seller financing disclosure – The parties agree to comply with applicable state and local disclosure laws concerning seller financing.

Rental property; tenant's rights – The buyer acknowledges the rights of tenants following closing.

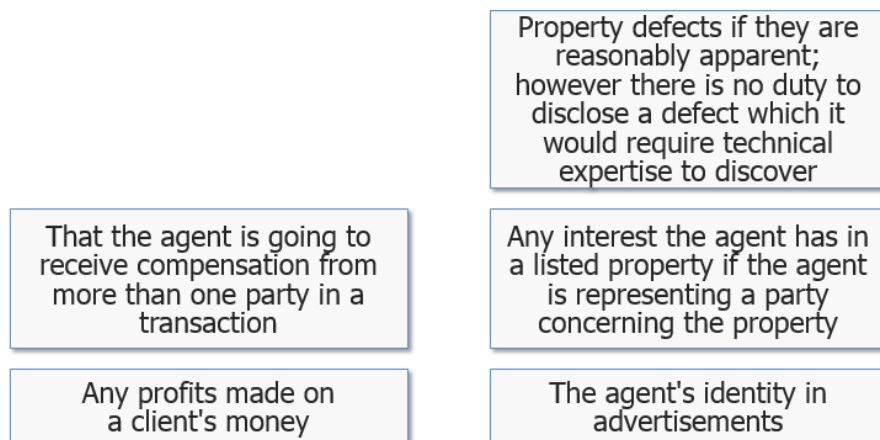
FHA or VA financing condition – A contingency allows the buyer to cancel the contract if the price exceeds FHA or VA estimates of the property's value.

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Professional Practices

Disclosure –

In compliance with applicable laws and to promote respect for the real estate profession, licensees should be careful to disclose:



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Risk Management Procedures

Disclosure

By ensuring that all parties have the information they are entitled to, proper disclosure reduces the risk that clients and customers will accuse a licensee of misleading or inducing them to make a decision with incomplete information.

Laws in every state require disclosures of one kind or another.

Disclosure may be made in writing or verbally and may or may not require written acknowledgment from the receiving party

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Property Disclosures

Property condition

Most states require the seller of a residential property to deliver to the buyer a written disclosure or disclaimer about the property's condition, including any material defects the owner knows about.

The disclosure is usually required before any purchase contract is accepted. A second disclosure may be required at closing. The licensee should always obtain the parties' signatures acknowledging receipt of these disclosures.

The licensee should always obtain the parties' signatures acknowledging receipt of these disclosures.

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Property Disclosures

Lead-based paint and other disclosures

Federal law requires sellers of houses built before 1978 to make a lead-based paint disclosure before accepting an offer to purchase.

The licensee must tell the seller about this requirement, give the seller the proper disclosure form, and make sure that the buyer receives it.

Lead-based paint

- Presence must be disclosed by sellers and landlords
- Disclosure on sale contracts
- EPA pamphlet given to buyers or tenants prior to signing lease or sale contract
- Buyers allowed 10 days to test for lead-based paint
- Licensee to make seller comply

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Radon gas

- Radioactive gas
- Lease or sale agreement must contain explanation/disclosure of what radon gas is
- No testing required

Energy Efficiency Brochure

- Must be given to buyer prior to sale contract
- Gives buyer option to receive rating on building

Homeowners association

- Sellers to disclose mandatory homeowners association
- Provide buyer with
 - disclosure summary of association
 - existence of restrictive covenants
 - imposed assessments

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Flood plain; flood insurance

- Seller discloses that the property is in a flood plain and that it must carry flood insurance if the buyer uses certain lenders for financing.

Condominium assessments

- Seller discloses assessments the owner must pay.

Property tax

- Ad valorem tax disclosure summary prior to or at sale contract signing
- Disclosure attached to sale contract or as wording within the contract
- Discloses future tax may be different than current tax

Building code

- Disclose previous, unresolved building code violations
- Include nature of violation, proceedings, copy of pleadings, documents received by seller
- Disclose buyer's responsibility for compliance with code and court orders

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FAR/BAR Contract Forms

Two commonly used sales contract forms in Florida:

- The FAR/BAR (Contract agreed upon between the Florida State Board of Realtors® and the Florida State Bar Association)
- The Contract for Residential Sale and Purchase (CRSP-12) (Florida Realtors® specific contract)

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Disclose, Disclose, Disclose

Johnson vs. Davis (1985)

The Davises (buyers) entered into a contract to buy The Johnsons (sellers) home. The contract provided for two deposits, \$ 5,000 and a subsequent \$ 26,000. Before the second deposit was paid, the buyers noticed peeling plaster and ceiling stains. The sellers stated minor problems in the past had been corrected. The buyers paid the second deposit. Days later, rain was found gushing through the ceiling.

The buyers filed a complaint alleging fraud and misrepresentation and sought rescission of the contract and return of the entire deposit. The sellers counterclaimed seeking the deposit as liquidated damages.

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The trial court held that the representation that the roof was fine was a false representation entitling the buyers to rescission. The sellers appealed this decision.

The Florida State Supreme Court ruled that a seller of a home has a duty to disclose latent material defects to the buyer. In other words, when a seller of a home knows of facts materially affecting the value of the property, which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them.

“As Is” clauses do not relieve the seller from giving material evidence to the buyer

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Option-to-buy contract

An option-to-buy is an enforceable contract in which a potential seller, the optionor, grants a potential buyer, the optionee, the right to purchase a property before a stated time for a stated price and terms. In exchange for the right of option, the optionee pays the optionor valuable consideration.

For example, a buyer wants to purchase a property for \$150,000, but needs to sell a boat to raise the down payment. The boat will take two or three months to sell. To accommodate the buyer, the seller offers the buyer an option to purchase the property at any time before midnight on the day that is ninety days from the date of signing the option. The buyer pays the seller \$1,000 for the option. If buyer exercises the option, the seller will apply the \$1,000 toward the earnest money deposit and subsequent down payment. If the optionee lets the option expire, the seller keeps the \$1,000. Both parties agree to the arrangement by completing a sale contract as an addendum to the option, then executing the option agreement itself.

An option-to-buy places the optionee *under no obligation* to purchase the property. However, the seller must perform under the terms of the contract if the buyer exercises the option. An option is thus a *unilateral* agreement. Exercise of the option creates a bilateral sale contract where both parties are bound to perform. An unused option terminates at the expiration date.

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Option-to-buy contract

An optionee can use an option to prevent the sale of a property to another party while seeking to raise funds for the purchase. A renter with a lease option-to-buy can accumulate down payment funds while paying rent to the landlord.

For example, an owner may lease a condominium to a tenant with an option to buy. If the tenant takes the option, the landlord agrees to apply \$100 of the monthly rent paid prior to the option date toward the purchase price. The tenant pays the landlord the nominal sum of \$200 for the option.

Options can also facilitate commercial property acquisition. The option period gives a buyer time to investigate zoning, space planning, building permits, environmental impacts, and other feasibility issues prior to the purchase without losing the property to another party in the meantime.

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Contract requirements

To be valid and enforceable, an option-to-buy must:

Include actual, non-refundable consideration –

The option must require the optionee to pay a specific consideration that is separate from the purchase price. The consideration cannot be refunded if the option is not exercised. If the option is exercised, the consideration may be applied to the purchase price.

If the option is a lease option, portions of the rent may qualify as separate consideration.

Include price and terms of the sale –

The price and terms of the potential transaction must be clearly expressed and cannot change over the option period. It is customary practice for the parties to complete and attach a sale contract to the option as satisfaction of this requirement.

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Contract requirements

To be valid and enforceable, an option-to-buy must:

- **Have an expiration date –** The option must automatically expire at the end of a specific period.
- **Be in writing –** Since a potential transfer of real estate is involved, most state statutes of fraud require an option to be in writing.
- **Include a legal description –**
- **Meet general contract validity requirements –**

The basics include competent parties, the optionor's promise to perform, and the optionor's signature. Note that it is not necessary for the optionee to sign the option.

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Common provisions

How to deliver notice of election - A clause clarifies how to make the option election, exactly when the election must be completed, and any additional terms required such as an earnest money deposit.

Forfeiture terms - A clause provides that the optionor is entitled to the consideration if the option term expires.

Property and title condition warranties - The optionor warrants that the property will be maintained in a certain condition, and that title will be marketable and insurable.

How option consideration will be credited - A clause states how the optionor will apply the option consideration toward the purchase price.

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Legal aspects

Equitable interest – The optionee enjoys an equitable interest in the property because the option creates the right to obtain legal title. However, the option does not in itself convey an interest in real property, only a right to do something governed by contract law.

Recording – An option should be recorded, because the equitable interest it creates can affect the marketability of title.

Assignment – An option-to-buy is assignable unless the contract expressly prohibits assignment.

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Contract for Deed

A contract for deed is also called a *land contract*, an *installment sale*, a *conditional sales contract*, and an *agreement for deed*. It is a bilateral agreement between a seller, the vendor, and a buyer, the vendee, in which the vendor defers receipt of some or all of the purchase price of a property over a specified period of time. During the period, the *vendor retains legal title* and the vendee acquires equitable title.

The vendee takes possession of the property, makes stipulated payments of principal and interest to the vendor, and otherwise fulfills obligations as the contract requires. At the end of the period, the buyer pays the vendor the full purchase price and the vendor deeds legal title to the vendee.

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Contract for Deed

Like an option, a contract for deed offers a means for a marginally qualified buyer to acquire property. In essence, the seller acts as lender, allowing the buyer to take possession and pay off the purchase price over time. A buyer may thus avoid conventional down payment and income requirements imposed by institutional lenders. During the contract period, the buyer can work to raise the necessary cash to complete the purchase or to qualify for a conventional mortgage.

A contract for deed serves two primary purposes for a seller. First, it facilitates a sale that might otherwise be impossible. Second, it may give the seller certain tax benefits. Since the seller is not liable for capital gains tax until the purchase price is received, the installment sale lowers the seller's tax liability in the year of the sale.

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Interests and rights

Vendor's rights and obligations. During the contract period, the seller may:

- Mortgage the property
- Sell or assign whatever interests he or she owns in the property to another party
- Incur judgment liens against the property

The vendor, however, is bound to the obligations imposed by the contract for deed. In particular, the vendor may not breach the obligation to convey legal title to the vendee upon receipt of the total purchase price. In addition, the vendor remains liable for underlying mortgage loans.

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Vendee's rights and obligations

During the contract period, the buyer may occupy, use, enjoy, and profit from the property, subject to the provisions of the written agreement. The vendee must make periodic payments of principal and interest and maintain the property. In addition, a vendee may have to pay property taxes and hazard insurance.

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Legal Form

Like other conveyance contracts, a contract for deed instrument identifies:

Signatures and acknowledgment	The property's legal description
Consideration: specifically what the parties promise to do	The terms of the sale
Obligations for property maintenance	Default and remedies
Signatures and acknowledgment	

The contract specifies the vendee's payments, payment deadlines, when the balance of the purchase price is due, and how the property may be used.

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Default and recourse

Seller default – If the seller defaults, such as by failing to deliver the deed, the buyer may sue for specific performance, or for cancellation of the agreement and damages.

Buyer default – States differ in the remedies they prescribe for the seller in case of buyer default. Some states consider the default a breach of contract that may be remedied by cancellation, retention of monies received, and eviction. Others provide foreclosure proceedings as a remedy.

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Usage guidelines

Many areas have no standardized contract for deed or any form sanctioned by associations and agencies. Therefore, this kind of conveyance presents certain pitfalls for buyer and seller.

In some states, a breach of the contract for deed is remedied under *local contract law* rather than foreclosure law. The buyer may not have the protections of a redemption period or other buyer-protection laws which accompany formal foreclosure proceedings. The vendor might sue the vendee for breach of contract for the slightest infraction of the contract terms.

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Usage guidelines

A second danger for the vendee is that the vendor has the power and the right to encumber the property in ways that may not be desirable for the buyer. For example, the seller could place a home equity loan on the property, then fail to make periodic payments. The bank could then foreclose on the vendor, thus jeopardizing the vendee's eventual purchase.

Usage guidelines

To minimize risk, principal parties in a contract for deed should observe the following guidelines:

Use an attorney to draft the agreement

Adopt the standard forms, if available

Become familiar with how the contract will be enforced

Utilize professional escrow and title services

Record the transaction properly

Be prepared for the possible effect on existing financing