

NAVIGATING COMMERCIAL PURCHASE AND SALE AGREEMENTS



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What is a Contract?

- An Agreement between two or more persons to do, or not do, certain things
- Express vs Implied
- Unilateral vs Bilateral
- Executory vs Executed
- Valid vs Void

Essential Elements of a Contract

- Competent Parties
- Mutual Assent
(Offer & Acceptance)
- Lawful Objective
- Valuable Consideration



Validity & Enforceability

Valid Contract

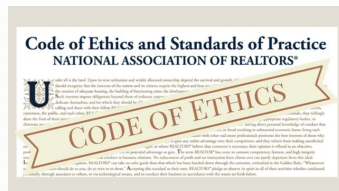
- Includes Essential Elements
- Satisfy Statute of Frauds (in writing)
 - **Contracts for sale of real property**
 - Agreements that can't be performed within 1 year
 - Promises to lend money
 - Promises to pay another's debts

Void or Unenforceable Contract

- No consideration
- Party incompetent
- Objective unlawful
- Forged signature
- No mutual consent

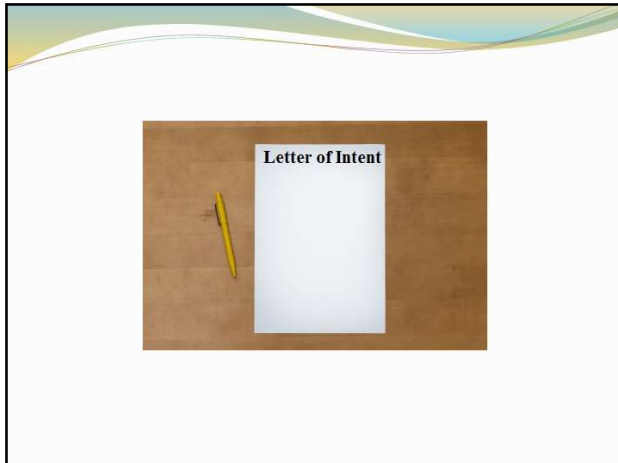
Are You Practicing Law Without a License?

- Article 13 NAR Code of Ethics and Standards of Practice
- DO NOT:
 - Write Contracts
 - Modify Contracts
 - Interpret Contracts



Confidentiality/Non-Disclosure Agreement







Commercial Agreement Clauses

- Purchase and Sale (A.1. and B.1.)
 - Property Identification
 - Legal Description
 - Warranty
 - Examination
 - Seller's Obligations at Closing
 - Conditions to Closing

Commercial Agreement Clauses

- Purchase Price (A.2. and B.2.)
- Closing Costs (A.3. and B.3.)
 - Seller
 - Buyer
 - Taxes & Prorations



Commercial Agreement Clauses

- Closing and Possession Date (A.4. and B.4.)



Commercial Agreement Clauses

- Closing Law Firm (A.5. and B.5.)
- Holder of Earnest Money (A.6. and B.6.)
- Earnest Money (A.7 and B.7.)

Commercial Agreement Clauses

- Due Diligence Period (A.8. and B.8.)



Commercial Agreement Clauses

Issues

- Documents
- Commencement
- Rights
- Termination
- Costs

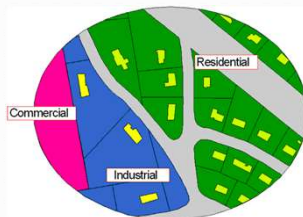
Categories

- Land Use
- Site
- Building Code & Development
- Transactional/Business/Financing
- Market

Commercial Purchase and Sale Agreement Clauses

• Land Use Issues

- Zoning/Planning
- Buffers
- Signage



- Local Ordinances/Policies

Commercial Purchase and Sale Agreement Clauses

• Site Issues

- Size and Shape
- Surveys
- Easements/Rights of Ways
- Traffic/Roads/Access/Ingress/Egress
- Environmental Issues
- Soil characteristics & Topography
- Other

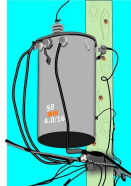
Commercial Purchase and Sale Agreement Clauses

• Building Code/Development Issues

- Engineering and Building Plans



- Utilities



Commercial Purchase and Sale Agreement Clauses

• Transactional/Business & Financing /Costs of Development

- Transactional
- Financing
- Costs of Development

• Market Issues

Commercial Agreement Clauses

- Title Examinations (A.9. and B.9.)
- Existing Brokerage Commissions (A.10. and B.10.)
- Assignment (A.11. and B. 11.)
- Brokerage Relationships (A.12. and B.12.)

Broker Relationships

Write the letter of the correct match next to each problem.

Created on TheTeacherCorner.net Match-up Maker

- | | |
|--------------------------------|---|
| 1. _____ No Agency | a. Chosen by Broker to represent party as an exclusive agent |
| 2. _____ Client | b. No formal agency relationship/no fiduciary |
| 3. _____ Customer | c. Seller pays commission only if Broker sells property |
| 4. _____ Dual Agency | d. Used if Buyer & Seller not represented by Broker |
| 5. _____ Designated Agent | e. Does not represent either party |
| 6. _____ Transaction Broker | f. Exclusive relationship including fiduciary |
| 7. _____ Exclusive Agency | g. Broker represents Buyer & Seller whose interests may not align |
| 8. _____ Exclous Right to Sell | h. Relationship between Broker and owner or property |
| 9. _____ Material Relationship | i. Seller pays commission no matter who sells property |

Commercial Agreement Clauses

- Title Examinations (A.9. and B.9.)
- Existing Brokerage Commissions (A.10. and B.10.)
- Assignment (A.11. and B. 11.)
- Brokerage Relationships (A.12. and B.12.)
- Time Limit of Offer (A.13. and B.13.)

Commercial Agreement Clauses

C. Other Terms and Conditions

- C.1.



- C.2. Destruction of Property Prior to Closing



Commercial Agreement Clauses

(C. Other Terms and Conditions)

- C.3. Representations and Warranties

- C.4. Default

Commercial Agreement Clauses

- Other Provisions (C.5.)

- Condemnation
- Duty to Cooperate
- Electronic Signature
- Entire Agreement, Modification & Assignment
- Extension of Deadline

Commercial Agreement Clauses

- Other (C.5. cont'd)
 - GAR Forms
 - Governing Law & Interpretation
 - No Authority to Bind
 - Notice of Binding Agreement Date
 - Objection to Binding Agreement Date

Commercial Agreement Clauses

- Other (C.5. cont'd)
 - Repairs
 - Rules for Interpreting this Agreement
 - Statue of Limitations
 - Survival of Agreement
 - Warranties Transfer

Commercial Agreement Clauses

- Other cont'd (C.5.)
 - Terminology
 - Time of Essence

Commercial Agreement Clauses

- Definitions (C.6.)
 - Banking Day
 - Binding Agreement Date
 - Broker
 - Business Day
 - Day
 - Material Relationship

Commercial Agreement Clauses

- Warning to Buyers and Sellers:
Beware of Cyber Fraud(C.7.)
- Limit on Broker Liability (C.8.)
- Exhibits & Addenda (C.9.)
- Special Stipulations



Commercial Agreement Clauses (C)

- Signature Block

Commercial Agreement Exhibits

- Exhibit A (CF07) – Legal Description
- Exhibit B1 (CF10)– Due Diligence Documents for Conveyance of Business
- Exhibit B2 (CF11)– Due Diligence Documents of Conveyance of Residential, Office, Retail, or Industrial Building
- Exhibit B3 (CF13) – Due Diligence Documents for Conveyance of Equipment and/or other Personal Property
- Exhibit C (CF19) – Additions to Seller's Closing Documents
- Exhibit D (CF22) - Seller's Warranties and Representations
- Form 246 Special Stipulations

Thank you and Go Close Those Deals!!!

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