

1 ☐ **Real Estate Principles of Georgia**

2 ☐ **Introduction**

Contract: An agreement between two or more persons to do, or not do, certain things.

3 ☐ **Legal Classification of Contracts**

Every contract is:

- ⊖ express or implied
- ⊖ unilateral or bilateral
- ⊖ executory or executed

4 ☐ **Legal Classification of Contracts**

Express vs. implied

Express contract: One that is put into words, whether oral or written.

Implied contract: One not expressed in words, but implied by the parties' actions.

Most contracts are express, not implied.

5 ☐ **Legal Classification of Contracts**

Unilateral vs. bilateral

Unilateral contract: Only one party promises to do something and is legally obligated to perform as promised.

Bilateral contract: Both parties promise to do something and are legally obligated to perform as promised.

Most contracts are bilateral.

6 ☐ **Legal Classification of Contracts**

Executory vs. executed

Executory: Contract is in the process of being performed.

Executed: Contract has been fully performed; both parties have fulfilled their promises.

7 ☐ **Summary**

Legal Classification of Contracts

- ⊖ Contract
- ⊖ Express or implied
- ⊖ Unilateral or bilateral
- ⊖ Executory or executed

8 ☐ Elements of a Valid Contract

Valid contract: A legally binding contract (will be enforced by court if one party fails to comply).

Valid contract must have:

- ⊖ parties with legal capacity
- ⊖ mutual consent
- ⊖ lawful objective
- ⊖ consideration

9 ☐ Elements of a Valid Contract Contractual capacity

⊖ Contract is not legally binding unless all parties have **legal capacity** to enter into it.

⊖ Two requirements for legal capacity:

- (1) age
- (2) mental competence

10 ☐ Contractual Capacity

Age of majority

⊖ In Georgia, the age of majority is 18:

- ⊖ person under 18 is a minor
- ⊖ parent or legal guardian may enter into a binding contract on minor's behalf

11 ☐ Contractual Capacity

Age of majority

⊖ In Georgia, any contract, including a real estate contract signed by the minor, may be **voidable** by the minor.

12 ☐ Contractual Capacity

Age of Majority

⊖ Exception Emancipated minor may freely enter into any type of contract.

- ▶ Minor may be emancipated by:
 - marriage
 - military service
 - court order

13 Contractual Capacity

Mental competence

⊖ Mentally competent: Of sound mind

⊖ If one party has been declared mentally incompetent, contract is void.

⊖ Legal guardian can enter into contracts on behalf of incompetent person.

⊖ If someone enters into a contract while temporarily incompetent, contract may be voidable.

14 **Contractual Capacity**

Necessities exception

- ▶ ◊ If minor or incompetent person enters into contract to buy necessities (food, medicine, etc.), the contract may be valid.
 - Housing usually not considered a necessity for minor, unless minor is emancipated.

15 ◻ **Contractual Capacity**

Representing another

- ◊ Parents, court-appointed guardians, corporate officers, executors, etc. may represent another person/party in a contract.

16 ◻ **Contractual Capacity**

Corporations and partnerships

- ◊ Corporation may enter into contract through individual authorized by board of directors.
- ◊ Partnership may enter into contract through general partner in his/her name or in name of partnership.

17 ◻ **Contractual Capacity**

Aliens

- ▶ ◊ Aliens may enter into real property contracts, but may be subject to certain property transfer reporting requirements.

18 ◻ **Summary**

Contractual Capacity

- ◊ Capacity
- ◊ Age of majority
- ◊ Mental competence
- ◊ Guardian

19 ◻ **Elements of a Valid Contract**

Mutual assent

- ◊ Contract is legally binding only if both parties have consented to its terms (a meeting of the minds).
- ◊ Mutual assent is arrived at through **offer and acceptance**.

20 ◻ **Negative Forces Affecting Assent**

- Genuine Assent -

- ◊ Acceptance must be freely given.
- ◊ Contract voidable by victimized party if he or she can show consent resulted from:
 - ⦿ fraud
 - ⦿ mistake
 - ⦿ undue influence
 - ⦿ duress

21 **Negative Forces Affecting Assent**
Fraud

- Fraud: Misrepresenting a material fact to someone who relies on the misinformation.
- Fraud is either actual or constructive.

22 **Negative Forces Affecting Assent**
Fraud

- Actual fraud: Person making misrepresentation knows or should know that it's false.
- Intentional deceit.

23 **Negative Forces Affecting Assent**
Fraud

- Constructive fraud: Person in a position of trust or with superior knowledge unintentionally misleads other person.
- Also called innocent misrepresentation.

24 **Negative Forces Affecting Assent**
Mistake

- Mistake: When parties are mistaken as to a material fact or the contract terms.
- If parties are mistaken, the contract is void for lack of mutual agreement.

25 **Negative Forces Affecting Assent**
Undue influence

- Undue influence: Using one's influence to pressure a person into making a contract.
- Or: taking advantage of someone's distress or weakness of mind to induce him into entering into a contract.

26 **Negative Forces Affecting Assent**
Duress

- Duress: When one party uses force, constraint, or threat of force or constraint to force other party to enter a contract.

27 **Mutual Assent**
Offer and acceptance

Offer must :

- express intent to enter into a contract
- be definite and certain (must specify basic contract terms)
- Vague offer is **illusory**.

28 **Offer and Acceptance**

Termination of an offer

- ⊖ Offer terminates if before acceptance:
 - ⊕ offeror revokes offer
 - ⊕ too much time passes
 - ⊕ offeror dies or is declared insane
 - ⊕ offeree rejects offer
 - ⊕ offeree makes counteroffer

29 **Termination of an Offer**

Revocation

- ⊖ Offeror can revoke offer any time before acceptance is properly communicated.
 - ⊕ Offeror must notify offeree of revocation before acceptance.

30 **Termination of an Offer**

Lapse of time

- ⊖ Offer that states deadline for acceptance expires automatically at that time.
- ⊖ Offer without deadline expires after a reasonable amount of time has passed.

31 **Termination of an Offer**

Death or insanity

- ⊖ If offeror dies before offer is accepted, offer is terminated and no contract is formed.

- ⊖ If a court determines offeror is mentally incompetent, offer is terminated.

32 **Termination of an Offer**

Rejection by offeree

- ⊖ Rejection terminates offer.
 - ⊕ Once offer is rejected, offeree can't change mind and accept it.

33 **Termination of an Offer**

Counteroffer

- Counteroffer: When offeree agrees to some terms of original offer, but changes one or more other terms.
 - ⊕ Counteroffer terminates original offer and replaces it with new offer.

34 **Offer and Acceptance**

Communication of acceptance

- ⊖ To create binding contract, offeree must communicate acceptance to offeror before offer terminates.
 - ⊕ If no time or manner of acceptance is stated in offer, a reasonable time and manner are implied.

35 **Elements of a Valid Contract**

Lawful objective

- ⊖ Lawful objective: A contract must have a lawful objective to be valid.
 - ⊕ Sometimes unlawful portion of contract can be severed from lawful (enforceable) portion.

36 ☐ **Elements of a Valid Contract**

Consideration

- ⊖ Consideration: Something of value exchanged by contracting parties.
 - ⊖ Money, property, services, or a promise to provide something of value in the future.
 - ⊖ Consideration in typical real estate sale:
 - ③ seller's promise to convey title
 - ③ buyer's promise to pay agreed price

37 ☐ **Elements of a Valid Contract**

Statute of frauds

Statute of frauds: state law requiring some types of contracts to be:

- ⊖ in writing, and
- ⊖ signed.

Contract subject to statute of frauds is unenforceable if it isn't in writing and signed.

38 ☐ **Statute of Frauds**

Which contracts must be in writing

In Georgia, the statute of frauds applies to any agreement:

1. not to be performed within one year
2. for sale of real property
(e.g., purchase and sale agreement)
3. to lend money
4. to assume the debts of another

39 ☐ **Statute of Frauds**

Which contracts must be in writing

5. any agreement made upon consideration of marriage
6. any promise by an executor, administrator, guardian, or trustee to be personally liable for an estate's debts
7. any promise to revive a debt barred by statute of limitations, or
8. any contract for sale of personal property for more than \$500

40 ☐ **Statute of Frauds**

The "writing" requirement

- ⊖ The "writing" does not need to be in a Particular format or entirely in one document.
- ⊖ It simply must:
 - ⊖ identify the contract's subject matter
 - ⊖ indicate agreement and its essential terms
 - ⊖ be signed by the parties

41 ☐ **Statute of Frauds**

The “writing” requirement

- ⊖ May be printed, handwritten, or a combination.
- ⊖ If conflict between printed and handwritten parts, handwritten part takes precedence.

42 ☐ **Statute of Frauds**

Parol evidence rule

- ⊖ If written agreement is considered complete and unambiguous, the parties can't introduce parol evidence to prove contract's contents.
- ⊖ **Parol evidence**: oral statements or other extraneous evidence.

43 ☐ **Summary**

**Mutual Assent and
Other Required Elements**

- ⊖ Mutual consent
- ⊖ Termination of offer
- ⊖ Counteroffer
- ⊖ Fraud, mistake, undue influence, duress
- ⊖ Lawful objective
- ⊖ Consideration
- ⊖ Statute of frauds

44 ☐ **Legal Status of Contracts**

Terms indicating to what extent a contract is legally binding:

- ⊖ void
- ⊖ voidable
- ⊖ unenforceable
- ⊖ valid

45 ☐ **Legal Status of Contracts**

Void

A **void** contract has no legal effect whatsoever.

- ⊖ Contract can be disregarded.
- ⊖ Neither party needs to withdraw, because there's nothing to withdraw from.

46 ☐ **Legal Status of Contracts**

Void

Examples:

- ⊖ no consideration exchanged
- ⊖ party is mentally incompetent
- ⊖ objective is unlawful
- ⊖ party's signature is forged
- ⊖ Lack of mutual assent

47 ☐ **Legal Status of Contracts**

Voidable

A **voidable** contract has some defect allowing one or both parties to withdraw from agreement.

- ⦿ Example: contract entered into as a result of fraud is voidable by defrauded party.

48 ☐ **Legal Status of Contracts**

Voidable

- ⦿ Voidable contract is binding unless party asks court to rescind contract.
 - ⦿ Withdrawing party must take legal action within reasonable time; otherwise, court may rule that contract has been ratified.

49 ☐ **Legal Status of Contracts**

Unenforceable

An **unenforceable** contract is one whose contents can't be proved in court.

- ⦿ Often a problem with unwritten contracts.
- ⦿ Or if written contract is too vaguely worded and parties can't prove what they intended, court will refuse to enforce it.

50 ☐ **Legal Status of Contracts**

Unenforceable

- ⦿ A contract is unenforceable if beyond limitations period.
 - ⦿ **Statute of limitations** sets time limit for filing a lawsuit.
 - ⦿ In Georgia, the statute of limitations for oral contracts is 4 years and the statute of limitations for written contracts is 6 years.
 - ⦿ A party who misses the applicable deadline loses the right to sue.

51 ☐ **Legal Status of Contracts**

Unenforceable

- ⦿ **Doctrine of laches:** If court finds there's been undue delay in asserting the claim, it may bar claim altogether.
 - ⦿ Different from statute of limitations, which sets specific deadline for filing claim.

52 ☐ **Legal Status of Contracts**

Valid

- ⦿ Contract is valid if:
 - ⦿ it has all the essential elements,
 - ⦿ its contents can be proved in court, and
 - ⦿ statute of limitations hasn't run.
- ⦿ If one party fails to perform as promised, other can sue to have contract enforced.

53 **Summary**

Legal Status of Contracts

- Ⓐ Void
- Ⓐ Voidable
- Ⓐ Unenforceable
- Ⓐ Valid

54 **Discharging a Contract**

A contract may be discharged by:

- Ⓐ full performance,
- Ⓐ agreement between parties, or
- Ⓐ termination of contract.

55 **Discharging a Contract**

Full performance

Most contracts are discharged by full performance:

- Ⓐ Each party performs as promised.
- Ⓐ Contractual relationship ends.

56 **Discharging a Contract**

Agreement between parties

Parties can agree to discharge contract through:

- Ⓐ rescission,
- Ⓐ cancellation,
- Ⓐ assignment,
- Ⓐ novation, or
- Ⓐ partial performance.

57 **Discharging a Contract**

Rescission

Rescission: Parties agree to terminate contract and undo any steps already taken to perform.

- Ⓐ Any payment or property is returned.
- Ⓐ Parties put themselves back in positions they were in before contract was formed.

58 **Discharging a Contract**

Cancellation

Cancellation: Parties agree to terminate contract without undoing whatever steps they've already taken.

- Ⓐ If money has changed hands, party who received it is allowed to keep it.

59 ☐ **Discharging a Contract**

Assignment

Assignment: Original party (assignor) assigns his interest in contract to new party (assignee).

- ⦿ Assignor remains secondarily liable.
- ⦿ Generally, one party can assign interest without other party's permission unless contract expressly forbids assignment.

60 ☐ **Discharging a Contract**

Novation

Novation: Original party withdraws and is replaced by new party, and is released from further liability.

- ⦿ Always requires consent of the other original party.

Novation can also refer to substitution of new agreement for old agreement, between same parties.

61 ☐ **Discharging a Contract**

Partial performance

Partial performance: Parties may agree to discharge contract after one party has performed partially.

- ⦿ Requires a written agreement.

62 ☐ **Discharging a Contract**

Termination

Court may terminate a contract on basis of:

- ⦿ substantial performance,
- ⦿ impossibility of performance, or
- ⦿ operation of law.

63 ☐ **Discharging a Contract**

Substantial performance

⦿ **Doctrine of substantial performance:** If one party performs without precisely following contract's terms, performance may still be sufficient to discharge contract.

- ⦿ Example: Contractor builds home as planned, but installs kitchen cabinets that are a shade darker than owner wanted.

64 ☐ **Discharging a Contract**

Impossibility

⦿ **Impossibility:** Contract may be terminated when unforeseen event makes performance legally impossible.

- ⦿ Example: When house burns down, the contract to paint the house is terminated due to impossibility of performance.

65 ☐ **Discharging a Contract**

Operation of law

- ⊖ Operation of law: A court may terminate a contract for legal reasons, such as fraud, duress, mistake, incompetent party, etc.

66 ☐ **Summary**

Discharging a Contract

- ⊖ Discharge
- ⊖ Full performance
- ⊖ Rescission
- ⊖ Cancellation
- ⊖ Assignment
- ⊖ Novation

67 ☐ **Remedies for Breach of Contract**

- ⊖ Breach of contract: When one party doesn't perform as agreed, without discharging contract and without legal excuse.

- ⊖ If breach is **material** (unfulfilled promise is important part of contract), other party may sue.

68 ☐ **Remedies for Breach of Contract**

- ⊖ If contract contains "time is of the essence" clause, timely performance is crucial—failure to meet a contract deadline is material breach.

69 ☐ **Remedies for Breach of Contract**

Four legal remedies for breach of contract:

- ⊖ rescission
- ⊖ damages
- ⊖ liquidated damages
- ⊖ specific performance

70 ☐ **Remedies for Breach of Contract**

Rescission

- ⊖ In rescission, any steps taken to carry it out are undone and parties are put back in their pre-contract positions.
- ⊖ Rescission may be:
 - ⊖ result of agreement between parties, or
 - ⊖ court-ordered remedy for breach of contract.

71 ☐ **Remedies for Breach of Contract**

Liquidated damages

- ⊖ **Liquidated damages:** Remedy that parties may agree to in advance, by including provision in contract.
 - ⊖ If one party breaches, other party is entitled to specified sum of money (liquidated damages).
 - ⊖ Liquidated damages are the other party's only remedy; can't sue for more.

72 ☐ **Remedies for Breach of Contract**

Liquidated damages

- ⊖ In real estate transaction, the buyer's earnest money is often treated as liquidated damages.

73 ☐ **Remedies for Breach of Contract**

Damages

- ⊖ Damages: Amount of money a court orders breaching party to pay other party.
 - ⊕ Compensates non-breaching party for losses resulting from breach.
 - ⊕ Most common remedy for breach of contract.

74 ☐ **Remedies for Breach of Contract**

Specific performance

- ⊖ Specific performance: Court orders breaching party to carry out contract.
 - ⊕ Sometimes damages aren't enough to compensate for breach of contract.

75 ☐ **Remedies for Breach of Contract**

Specific performance

- ⊖ Specific performance is not always granted.
 - ⊕ Court may decide damages award is adequate compensation.

76 ☐ **Breach of Contract**

Tender

- ⊖ To be entitled to sue for breach of contract, non-breaching party must be ready to carry out his side of the bargain.
- ⊖ Before filing lawsuit, non-breaching party is usually required to make a **tender**: unconditional offer to perform as agreed.

77 **Tender Offer**
Anticipatory repudiation

- ▶ ⊖ Anticipatory repudiation: One party repudiates contract by making definite statement that she isn't going to perform as agreed.
If anticipatory repudiation occurs, other party can sue without making a tender.

78 ☐ **Summary**

Remedies for Breach of Contract

- ⊖ Material breach
- ⊖ Rescission
- ⊖ Damages
 - ⊖ Liquidated damages
 - ⊖ Specific performance
- ⊖ Tender offer