

**Real Estate Principles of Georgia**

**Lesson 9:  
Contract Law**

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**Introduction**

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



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**Legal Classification of Contracts**

Every contract is:

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



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## 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.

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## 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.

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## 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.

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## Summary

### Legal Classification of Contracts

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

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## 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



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## 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



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## 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



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## Contractual Capacity

### Age of majority

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



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## 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.

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## Contractual Capacity

### Representing another

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



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## 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.



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## Summary

### Contractual Capacity

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

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## 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.**



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## 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



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## Negative Forces Affecting Assent

### Fraud

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



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## Negative Forces Affecting Assent Fraud

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



- Intentional deceit.

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## 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.



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## 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.



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## 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.

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## 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.



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## 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**.



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## 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



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## Termination of an Offer

### Revocation

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



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## 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.



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## 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.



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## Termination of an Offer

### Rejection by offeree

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



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## 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.



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## 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.

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## 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.



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## 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:
    - seller's promise to convey title
    - buyer's promise to pay agreed price

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## 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.

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## 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

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## Statute of Frauds

### The "writing" requirement

- ▶ May be printed, handwritten, or a combination.
  - If conflict between printed and handwritten parts, handwritten part takes precedence.
- ▶ It simply must:
  - identify the contract's subject matter
  - indicate agreement and its essential terms
  - be signed by the parties

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## 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.



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## Summary Mutual Assent and Other Required Elements

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

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## Legal Status of Contracts

Terms indicating to what extent a contract is legally binding:

- void
- voidable
- unenforceable
- valid



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## 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.



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## 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



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## 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.



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## 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.



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## 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.



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## 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.

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## 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.



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## 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.



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## Summary Legal Status of Contracts

- ▶ Void
- ▶ Voidable
- ▶ Unenforceable
- ▶ Valid

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## Discharging a Contract

A contract may be discharged by:

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



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## Discharging a Contract

### Full performance

Most contracts are discharged by full performance:

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



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## Discharging a Contract

### Agreement between parties

Parties can agree to discharge contract through:

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



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## 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.



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## 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.



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## 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.



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## 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.

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## Discharging a Contract Partial performance

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

- Requires a written agreement.



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## Discharging a Contract Termination

Court may terminate a contract on basis of:

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



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## 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.



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## 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.

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## 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.



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## Summary Discharging a Contract

- ▶ Discharge
- ▶ Full performance
- ▶ Rescission
- ▶ Cancellation
- ▶ Assignment
- ▶ Novation
- ▶ Partial performance
- ▶ Substantial performance
- ▶ Impossibility
- ▶ Operation of law

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## 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.



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## 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.



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## Remedies for Breach of Contract

Four legal remedies for breach of contract:

- rescission
- damages
- liquidated damages
- specific performance



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## 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.



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## 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.



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## Remedies for Breach of Contract

### Liquidated damages

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



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## 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.



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## 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.



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## Remedies for Breach of Contract

### Specific performance

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



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## 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.

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## Summary

### Remedies for Breach of Contract

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

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