

Real Estate Principles of Georgia

Lesson 10: Types of Real Estate Contracts

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Types of Real Estate Contracts

Five types of real estate contracts:

- listing agreements
- buyer agency agreements
- purchase agreements
- land contracts
- option agreements



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Listing Agreement

Listing agreement: Written employment contract between seller and broker (not salesperson).

Typically, seller agrees to compensate broker for services by **commission**.

- Commission amount is usually a percentage of property's sale price.

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Earning a Commission

Three requirements

Broker is legally entitled to collect a commission only if:

1. parties had written agreement,
2. broker was licensed at time she performed brokerage services for seller, and
3. broker met employment agreement terms.

Listing Agreement



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Earning a Commission

Ready, willing, and able buyer

Ready, willing, and able buyer: party who offers to buy property at price and on listing agreement's terms, and who is financially able to complete purchase.

If offer meets seller's terms but seller doesn't accept it (or if offer doesn't meet terms but seller accepts it anyway), seller usually liable for commission.



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Summary

Earning a Commission

- ▶ Listing agreement
- ▶ Commission
- ▶ Ready, willing, and able buyer

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Types of Listing Agreements

Payment of broker's commission depends on type of listing agreement used:

1. open listing
2. exclusive agency listing
3. exclusive right to sell listing
4. net listing



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Types of Listing Agreements Open listing

Open listing: Listing given to as many brokers as owner chooses (also called non-exclusive listing).

Broker earns commission only if she is **procuring cause**: primarily responsible for bringing about sale.

Open listings generally used only if seller insists.

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Types of Listing Agreements Exclusive agency listing

Exclusive agency listing: Seller signs listing agreement with only one broker.

- If seller finds buyer, no commission owed.
- If broker—or anyone other than seller—finds buyer, broker is entitled to commission.



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Types of Listing Agreements

Exclusive right to sell listing

Exclusive right to sell listing: Seller lists property with only one broker, who is entitled to commission if property sells during listing period—no matter who finds buyer.

- Even if seller finds buyer without any help, listing broker still gets commission.

Exclusive right to sell listing is the type of listing most frequently used.

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Open vs. Exclusive Listings

Due diligence

Open listing usually **unilateral** contract: seller agrees to pay commission if broker finds buyer, but broker doesn't promise to try to find a buyer.

Exclusive listing usually **bilateral** contract: seller promises to pay a commission, and broker promises due diligence and good faith effort to sell property.

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Summary

Types of Listing Agreements

- ▶ Open listing
- ▶ Exclusive agency listing
- ▶ Exclusive right to sell listing

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Elements of a Listing Agreement

Listing agreement should:

- identify the property
- set terms of sale
- grant broker authority
- determine broker's compensation



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Elements of a Listing Agreement

Property description

Listing agreement must identify property.

Attach legal description of property to listing agreement as exhibit (to avoid typos/errors, photocopy description from seller's deed).

Legal description not essential for valid listing agreement in Georgia; only an adequate description required.

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Elements of a Listing Agreement

Terms of sale

Include terms of sale acceptable to seller (listing price, etc.).

- Seller need not accept offer on these terms, but will likely be liable for commission if seller turns down offer.



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Elements of a Listing Agreement

Broker's authority

Listing agreement generally authorizes only to find a buyer for property.

- Not to accept offers or transfer title.



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Elements of a Listing Agreement

Termination date

Termination date: When broker's authority to act on seller's behalf ends.

- Georgia requires exclusive listing agreements to specify a termination date.



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Elements of a Listing Agreement

Commission provisions

Forms have space to write in broker's commission rate/amount.

- **Commission must be negotiable.**

Pre-printed rate = Violation of antitrust laws



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Elements of a Listing Agreement

Commission provisions

Net listing: Agreement specifying net amount seller will accept from sale. Any excess proceeds—no matter how much—will belong to broker.

- Can be abused by dishonest brokers.
- **Illegal in Georgia.**



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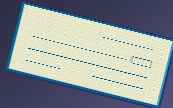
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Commission Provisions

Payment

Usually by check, but sometimes:

- new promissory note,
- assignment of existing note, or
- assignment of funds from buyer to seller.
- other items of value



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Commission Provisions

Safety clause

Safety clause: Entitles broker to commission if seller sells property during “safety period” (such as six months) after listing expires.

- Included in most exclusive listings.
- Also called protection period clause.

Prevents seller from avoiding commission by waiting for listing to expire before accepting offer.

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Commission Provisions

Safety clause

Safety clause may require broker to give seller a list of prospective buyers that broker had contact with during listing period.



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Summary

Elements of a Listing Agreement

- ▶ Property description
- ▶ Broker's authority
- ▶ Commission rate
- ▶ Net listing
- ▶ Safety clause
- ▶ Termination date

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Buyer Agency Agreement

- ▶ Contract between broker and prospective buyer.
- ▶ Analogous to listing agreement, although it doesn't relate to a particular property.



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Buyer Agency Agreement

- ▶ Typical provisions include:
 - duration of agency,
 - characteristics of desired property,
 - price range,
 - conditions under which a fee will be earned,
 - who will pay the fee, and
 - description of broker's duties.



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Buyer Agency Agreement

- ▶ A buyer's agent may be compensated through:
 - a retainer,
 - a seller-paid fee, and/or
 - a buyer-paid fee.



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Purchase Agreement

Sales contract between buyer and seller:

- also called deposit receipt, earnest money agreement, or contract of purchase.



Buyer (offeror) makes offer to purchase.

Seller (offeree) has power to accept and form a legally binding contract.

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Forming the Contract

Written offer

Writing requirement: Buyer must present written, signed offer to seller.

- Statute of frauds requires agreement to buy and sell real property to be in writing.



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Forming the Contract

Earnest money deposit

The earnest money deposit (or good faith deposit) is submitted with written offer to show intent to complete purchase.

- Form buyer used to make offer serves as buyer's receipt.

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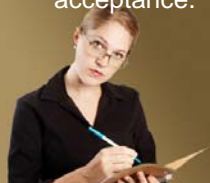
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Forming the Contract

Seller's acceptance

Seller accepts offer by signing it.

Binding agreement has been created when buyer/offeror receives notification of seller's acceptance.



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Forming the Contract

Functions of form

Contract form serves three functions:

1. buyer's offer to seller
2. buyer's receipt for deposit
3. when signed by seller and returned to buyer it becomes binding contract

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Elements of Purchase Agreement

Parties and signatures



Under statute of frauds, agreement unenforceable unless signed by all parties.



If transaction involves more than one buyer and one seller, real estate agent is responsible for having all parties sign.

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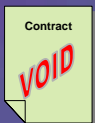
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Parties and signatures

Capacity

Contract may be void if:

- either party is a minor (under 18)
- either party is mentally incompetent



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Parties and signatures

Married parties

If party is married, spouse may need to sign purchase agreement for it to be enforceable.



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Elements of Purchase Agreement

Property description

If property description is ambiguous, contract may not be enforceable.

- Complete legal description is always recommended.

If description won't fit in space provided, use attachment and write "See attached legal description" on form.

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Elements of Purchase Agreement

Terms of sale

- Total purchase price
- Downpayment
- Buyer's financing arrangements:
 - loan amount and type
 - interest rate
 - discount points
 - loan term
 - amortization
 - monthly payment

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Elements of Purchase Agreement

Earnest money deposit

Buyer will normally make an earnest money deposit (or good faith deposit) to show that he is serious about completing the transaction.

Amount of deposit varies according to local custom, but deposit is not required for valid contract.



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Earnest Money Deposit

Form of deposit

Should state deposit's form—cash, check, or promissory note.

Agreement should state when/how deposit will be refunded to buyer or forfeited to seller.



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Earnest Money Deposit

Liquidated damages

The agreement will typically treat the deposit as liquidated damages.

Agreement should specify how deposit is split between seller and broker if buyer defaults.



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Elements of Purchase Agreement

Transfer of possession

Typically occurs on closing date.

- If transfer takes place before or after closing, arrangements should be included in agreement.
 - Parties should also execute separate rental agreement.



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Elements of Purchase Agreement

Closing provisions

Parties should appoint a closing attorney or other closing agent in the agreement.

The agreement should also state how parties will divide closing costs, including closing attorney's fees.



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Elements of Purchase Agreement

Conveyance and title

Agreement should specify type of deed seller will use to convey title.

Contract also typically states:

- there are no liens or other undisclosed encumbrances against the property
- buyer may withdraw without penalty if new survey differs from survey attached to deed



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Elements of Purchase Agreement

Conditions of sale

Purchase agreement usually includes one or more **contingency clauses**: provisions making sale depend on fulfillment of specified conditions.

- If conditions are not fulfilled, agreement will terminate without liability.



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Elements of Purchase Agreement

Conditions of sale

Most residential contracts contain **financing contingency**—contract contingent on buyer's ability to obtain financing.

Also common:

1. agreement contingent upon receiving satisfactory inspection results
2. agreement contingent upon sale of the buyer's current home



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Elements of Purchase Agreement

Conditions of sale

Contingency clause must cover:

- What must occur to fulfill condition?
- What is time limit for fulfillment of condition?
- How should one party notify other when condition is fulfilled?
- Can either party waive condition?
- What are parties' rights if condition isn't fulfilled or waived?

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Elements of Purchase Agreement Agency Disclosures

- ▶ Each licensee must disclose:
 - Which party each is representing
 - If Dual agency or Designated agency applies
 - The source of agent's compensation
 - Whether any material relationships exist

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Elements of Purchase Agreement

- ▶ Broker Compensation – If purchase agreement contains no provision for broker compensation, a separate broker confirmation agreement may be used.
- ▶ Property Disclosures – Typically included in purchase agreement but not a requirement in Georgia.

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Conditions of Sale Good faith effort

Parties must make good faith effort to fulfill contingencies.

- Can't get out of contract by failing to take steps to ensure contingencies are met on time.

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Elements of Purchase Agreement

Time is of the essence clause

The time is of the essence clause states that deadlines are important part of contract and will be strictly enforced.

- Failure to perform by agreed date is material breach of contract.



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Purchase Agreement

Amendment of agreement

Once agreement is signed, contract can be modified only by written amendment (also called a **rider**).

- Amendment must be signed by all parties who signed original agreement.



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Summary

Elements of Purchase Agreement

- ▶ Property description
- ▶ Contingency clauses
- ▶ Time is of the essence
- ▶ Receipt for deposit
- ▶ Liquidated damages

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Types of Real Estate Contracts

Land Contract

Land contract: Financing agreement in which buyer agrees to pay seller purchase price in installments over time.

- Installment sales contract, or contract for deed.



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Types of Real Estate Contracts

Land Contract

Seller = Vendor

Buyer = Vendee

Vendee agrees to make regular payments of principal and interest to vendor over a set period.

Vendee takes immediate possession of property.



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Land Contracts

Equitable title and legal title

Vendee takes possession immediately but holds only **equitable title** to property.

- Vendor keeps **legal title** until contract price is fully paid.

Vendor  Legal Title

Vendee  Equitable Title

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Land Contracts
Vendee's rights and duties

Recording: Vendee generally has right to record contract.

Taxes and insurance: Vendee responsible for keeping property insured and paying taxes.

Encumbrances: Vendee may encumber property.

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Land Contracts
Vendee's rights and duties

Sale of property: Vendee may sell interest by assigning right to receive deed when contract price paid off.

Receipt of payments: Vendor has right to receive payments. If vendee defaults, vendor can terminate contract.

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Land Contracts
Termination on default

If vendee defaults, vendor can terminate land contract by giving notice of termination.

- Depending on state law, vendor may or may not need to initiate foreclosure action.

Vendor may be required to reimburse vendee the amount paid so far.

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Summary Land Contracts

- ▶ Land contract
- ▶ Legal and equitable title
- ▶ Termination of land contract

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Option Agreement

An option is a unilateral contract giving one party the right to do something, without obligating him to do it: a contract to keep contract offer open.



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Option Agreements Option to purchase

Gives **optionee** right to buy property belonging to **optionor** at certain price during specified period.

If optionee decides to buy property, she must give written notice of acceptance.

- Option expires automatically at end of period.

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Option Agreements

Requirements for valid option

Written requirement: Option agreement for real property must be in writing and state all of the terms of the sale including:

- Sales Price
- Expiration date for the option right
- Consideration paid for the option right

Consideration: May be nominal amount such as \$1, sometimes referred to as option money. Essential element to create contract.

Oral option agreement is unenforceable 

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Option Agreements

Option rights

Option gives optionee a contract right.

- Does NOT create interest in real property.
- Is not a lien.
- Can't be used as security for mortgage or deed of trust.

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Option Agreements

Option rights

Optionee can assign rights in option (absent provision to contrary).

- Option binding on heirs and assignees of optionor.



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Option Agreements

Recording

If option is recorded and then exercised, optionee's interest in property will relate back to recording date.

- Until option is exercised, it is only contract right and not an interest in property.

If option not exercised, it will remain on record as cloud on optionor's title.

Recording Date



January						
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

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Option Agreements

Right of first refusal



Don't confuse right of first refusal with option.

- **Right of first refusal** gives someone first opportunity to purchase property if it becomes available.

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Summary

Option Agreements

- ▶ Option
- ▶ Option rights
- ▶ Right of first refusal

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