

1 ☐ **Real Estate Principles of Georgia**

2 ☐ **Types of Real Estate Contracts**

Five types of real estate contracts:

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

3 ☐ **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.

4 ☐ **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.

5 ☐ **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.

6 ☐ **Ready, Willing, and Able Buyer**

Sale fails to close

Generally, once a ready, willing, and able buyer is found, broker has earned commission even if sale never closes.

- 7 ☐ **Summary**  
Earning a Commission
- ▶ Listing agreement
  - ▶ Commission
  - ▶ Ready, willing, and able buyer

- 8 ☐ **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

- 9 ☐ **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.

- 10 ☐ **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.

- 11 ☐ **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.

12 ☐ **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.**

13 ☐ **Summary**

**Types of Listing Agreements**

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

14 ☐ **Elements of a Listing Agreement**

**Listing agreement should:**

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

15 ☐ **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.**

16 ☐ **Elements of a Listing Agreement**

**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.**

- 17  **Elements of a Listing Agreement**  
Listing agreement generally authorizes only to find a buyer for property.
- Not to accept offers or transfer title.
- 18  **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
- 19  **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.
- 20  **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
- 21  **Commission Provisions**  
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.
- 22  **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.

23 ☐ **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.**

24 ☐ **Summary**

**Elements of a Listing Agreement**

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

25 ☐ **Buyer Agency Agreement**

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

26 ☐ **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.

27 ☐ **Buyer Agency Agreement**

- ▶ ◊ The broker and buyer may enter into:
  - Exclusive buyer agency: buyer's agent is entitled to compensation if buyer buys type of home described in agreement.
  - Nonexclusive (open) buyer agency: buyer's agent is entitled to compensation only if agent locates home that buyer purchases.

28 ☐ **Buyer Agency Agreement**

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

29  **Buyer Agency Agreement**

- ▶ Retainer: a fee paid up front before services are provided, usually nonrefundable.
- ▶ Buyer-paid fee: may be an hourly rate, a percentage of the purchase price, or a flat fee.

30  **Buyer Agency Agreement**

- ▶ Seller-paid fee: usually a commission split.
- ▶ In a commission split, any cooperating broker who procures a buyer is entitled to the selling broker's portion of the commission, regardless of whom the cooperating broker represents.
- ▶
- ▶ Accepting a seller-paid fee does not create agency duties to seller.

31  **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.**

32  **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.

33  **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.

34  **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.**

35  **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**

36  **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.**

37  **Parties and signatures**

**Married parties**

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

38  **Parties and signatures**

**Capacity**

**Contract may be void if:**

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

39 ☐ **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.

40 ☐ **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

41 ☐ **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.

42 ☐ **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.



43 ☐ **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.

44 ☐ **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.

45 ☐ **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.

46 ☐ **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**

47 ☐ **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.

48 ☐ **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**

49 ☐ **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?**

50 ☐ **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.**

51 ☐ **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.**

## 52 ☐ **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.

## 53 ☐ **Summary**

### **Elements of Purchase Agreement**

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

## 54 ☐ **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.

## 55 ☐ **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.

56 ☐ **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

57 ☐ **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.

58 ☐ **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.

59 ☐ **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.

60 ☐ **Summary**

**Land Contracts**

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

61 ☐ **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.

62 ☐ **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.

63 ☐ **Option Agreements**

**Requirements for valid option**

Writing requirement: Option agreement for real property must be in writing and state all terms of sale.

- Oral option agreement is unenforceable.

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

64 ☐ **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.

65 ☐ **Option Agreements**

**Option rights**

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

- Option binding on heirs and assignees of optionor.

66 ☐ **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.

67 ☐ **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.

68 ☐ **Summary**

**Option Agreements**

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

