Consideration

Something of value given to make the promises in a contract enforceable
Lawful Purpose

In order to be enforceable, the purpose of a contract cannot be illegal or violate public policy.
Statute of Frauds

- State statutes that require certain contracts to be in writing to be enforced
- Every state’s Statute of Frauds includes all contracts for sale or transfer of land or any interest in land

Example: Md. Code, Real Prop. §§ 5-101 to -104
Remedies for Breach of Contract

- **Specific Performance**: Order to perform promises in contract
- **Monetary Damages**: Compensate victim for harm done – place victim in same financial condition as if contract performed
- **Rescission**: Terminates the contract - may compensate victim’s expenses
Liquidated Damages

Amount of money agreed to by parties to a contract to be the damages in event of default
FIDUCIARY

Person who holds a special relationship of confidence and trust and owes to a principal a duty to exercise all of the affairs of the principal in good faith and with loyalty.
Broker vs. Agent

In a real estate firm...

- **Broker**: One or more persons in a realty company that have an ownership interest and management duties
- **Agent**: Salespeople that work for the company
- **Realtor**: Both brokers and agents
Agency Relationships

- Seller’s Agent (traditional role)
- Buyer’s Agent
- Dual Agent - Most states permit; must disclose dual role to all parties and both parties must execute a written contract
Capital Gains Tax

- A type of income tax
- Federal tax exemption for sale of principal residence
- Calculated by subtracting selling expenses and adjusted basis from sales price times capital gains tax rate
Client funds must be kept separate from the attorney’s personal funds or law firm funds.
Parties to a Real Estate Contract

Buyer and Seller are essential

Sellers name *should be* exactly as it appears on his/her deed

Buyers name *should be* exactly how he/she wants to take title
Description of Property

- The land *should be* described with the formality of a legal description.
- Where it is not clear whether personalty is a fixture, contract *should* specify whether it conveys or not.
“Cash” at Closing

- Certified Check: Personal check on which the drawer bank has certified the funds are available
- Cashier’s Check: Check drawn on a bank (or financial institution) the payment of which is guaranteed
- Wire Transfer: Electronic transfer of funds to closing attorney’s client fund
Marketable vs. Insurable Title

- Marketable: Title that a prudent purchaser with all knowledge of the facts would accept
- Insurable: Title that is good enough to be underwritten by a title insurance company
General Warranty Deed vs. Special Warranty Deed

- **General Warranty**: Full warranty of title. Property is free of liens and claims by anyone and seller will defend title against any claim.

- **Special Warranty**: Warranty against claims made by or through seller. Claims made due to actions before seller owned are not covered.
CLOSING

Sometimes called “settlement”

- Date set forth in real estate contract on which parties agree to perform all promises of the contract
- Date on which ownership of real property is transferred
Prorating Taxes, Utility Bills, etc.

- Contract should specify costs to be prorated or apportioned at closing
- Typical considerations: Taxes, utility costs, homeowners association dues, assessments, fuels left on premises
Closing Costs

- State statutes specify which party pays various closing costs
- Example Costs: title examination, transfer tax, recording fees
- Parties may negotiate different responsibilities for payment of costs
Condition of Property; Risk of Loss

- Contract *should* address the condition of property at time of closing.
- Contract *should* address risk of loss during the period between contract execution and closing.
- Common law of many states place risk of loss on *buyer*.
Earnest Money

- Money paid by buyer at time contract is executed
- May be used as part or all of down payment
- Sometimes contract states earnest money is liquidated damages for buyer’s default
Assignment of Contract

Generally, contracts are freely assignable unless assignment is prohibited or restricted by contract.
“Time is of the essence”

...means the contract requires strict performance by the date or dates provided in the contract
Contingency (Condition Precedent)

- Condition precedent = Contingency
- Condition in a contract that must be satisfied in accord with terms of the contract before one or both parties are required to perform
Parol Evidence Rule

- A written contract cannot be contradicted by testimony about an oral agreement unless fraud or mistake can be proven.
- Parol Evidence Rule is a contract law principle in every state.
- “Entire Agreement” clause means parol evidence rule applies to contract.
Modification of *Caveat Emptor*

Who bears risk for defects in property?

- **Old Law:** *Caveat Emptor* – Seller not liable for defects in improvements to land existing at time of transfer
- **New Law:** Most states have modified *caveat emptor* for residential property – seller must reveal defects
Sale “As Is”

When contract specifies the sale is “as is” or “as is, where is,” *caveat emptor* applies and buyer is responsible for repair of defects.
Electronic Signatures

Most states have passed laws recognizing the validity of electronic signatures for a variety of legal documents.
DEED

Written document that transfers ownership of real property from one person to another
“The Players”

- **Grantor**: Transferor of real property by deed – person giving up title

- **Grantee**: Person to whom title is being transferred by a deed
Covenant or Warranty

In the context of deeds...

Covenant or warranty is a promise that a fact is true or that an event will take place.
General Warranty Deed

Grantor promises:

- Has right to convey title & possession
- Title is free from encumbrances not listed
- Will assure grantee gets full title
- Grantee will have “quiet enjoyment” – grantor will defend against all claims
Grantor promises:

- Only against claims of people claiming by or through grantor
- No agreement to defend claims arising from acts or events occurring prior to grantor’s period of ownership
Quitclaim Deed

Grantor promises:

- Only the interest in the land that the grantor has
- No covenants or warranties of title
- Basically: “I quit any claim I have to the property and transfer all my claim to grantee”
Requirements for Valid Deed

- Written Instrument
- Competent grantor; Identity of Grantee
- Words of conveyance
- Property description
- Statement of consideration
- Grantor’s signature
- Witnesses or notary acknowledgement
- Delivery to grantee
Sufficient Deed in Maryland

- Identify grantor and grantee
- Description of property
- Description of interest or estate granted
- Execution by grantor acknowledged before notary
- Recorded

Md. Code Ann., Real Property § 4-101
Consideration

Some states, including West Virginia, require that the exact consideration for the conveyance be declared in or on the deed.

W.Va. Code § 11-22-6
Witnessing/Acknowledgement

- **Witnessing** = Attestation – Witnessing a grantor’s signature and signing the document as a witness

- **Acknowledgement** – Notary public identifies grantor, watches grantor sign or has grantor state it is his/her signature and notary signs and seals the document
Weird Words for Deeds

- Habendum Clause: Clause in deed that indicates what estate is being transferred
- Testimonium Section: Portion of deed where grantor signs and the signature is witnessed or notarized
Preliminary Sections of a Deed

- **Caption:** Shows place deed is executed. May or may not be used.
- **Preamble:** Sets forth the parties, and, if 2 or more grantees, the form of title (joint tenancy, etc.).
- **Granting Clause:** Language indicating that land is being conveyed – may include a declaration or recital of consideration.
“Being Clause”

- Recites how grantor received title
- “Being the same property conveyed to the grantor from Maybeline Smith and Harley Smith, husband and wife, by deed dated August 2, 1995, and recorded in Deed Book 32, Page 78....”