# Chapter 11 Summary

Real Estate Contracts

**A contract** is an agreement between the parties to do or not to do something. If it is in writing, contains all the valid essentials, and is signed by all parties, it is also enforceable.

**The Statute of Frauds** says that all contracts must be in writing to be enforceable and that all leases for more than one year must be in writing to be enforceable.

**The Statute of Limitations** provides a time frame which court cases must be filed on certain offenses. If the Statute of Limitations runs out, the case cannot be heard.

**Essentials of a Valid Contract:**

- Legally Competent parties
- Offer and Acceptance
- Consideration**-** something legally sufficient for that which is being exchanged (money/love).
- Legality of Object

The interest a buyer has in a property between the time of acceptance of the contract and the actual closing (Actual Title) is called **Equitable Title**.

Contracts can be **terminated** due to performance, mutual rescission, impossibility of performance, operation of law, or breach (failure to perform provisions of a contract).

**Types of contracts include:**

- **Bilateral:** A "two-way" contract where each party promises to do something. (ex: sales contract)
- **Unilateral:** A "one way" contract in which as in the case of an option, the seller promises to sell **if** the buyer wants to buy the property at a later date. The buyer does not promise to buy.
- **Expressed:** A contract, either oral or written, which contains specific terms and conditions for compliance (ex: purchase price or the date of loan approval).
- **Implied:** A contract which occurs by the actions of the parties (ex: entering a taxi assumes you will pay).
- **Executory:** A contract in process. Something remains to be completed such as the issuing of the deed, or a contingency has not been met.
- **Executed:** A contract completed. It is finished and all terms have been met and satisfied.
- **Formal Contract:** The written, signed contract by the parties, valid and enforceable.
- **Informal Contract:** An oral contract, usually not enforceable.

A **listing contract** is the employment contract between the broker and the seller. The listing agreement sets forth the terms under which a broker is employed to find a buyer for the owner's real property. It outlines the terms under which the seller will owe the broker a commission for his services. There are many types.

In an **Open Listing**, the seller retains the right to hire any number of brokers to sell his property. Whoever provides the seller with a ready, willing and able purchaser is entitled to a commission.

In an **Exclusive or Exclusive Agency Listing:** Only one broker is allowed to act on behalf of the seller but if the owner sells the property himself, no commission is paid to the broker.

In an **Exclusive Right to Sell Contract:** In this type of listing, the listing broker is always entitled to a commission regardless of who procures the buyer. It provides the most protection to the broker.

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In a **Net Listing**, the listing states that the seller will receive a certain amount of money from the sale. Strongly discouraged in Florida as it can lead to inaccurate pricing by brokers.

A **sales contract** is always a bilateral contract because it contains promises from both the seller and buyer. The Vendee makes the offer, Vendor Accepts the offer and the sales contract is in effect once the contract is signed and delivered to all parties.

Some **disclosures** are required in a sales contract:

- *Radon gas* (The law behind the Radon Program has six guidelines/roles for disclosure).
- *Energy Efficiency brochure* (1993 Florida Building Energy-Efficiency Ratings Act).
- *Lead-based paint disclosure* (Lead Hazard Control Grant Program was designed by HUD to address this issue in thousands of low-income privately owned housing units).
- *Homeowner Association disclosure*
- *Flood insurance disclosure* (Homeowner's Insurance policies often do not cover this issue)
- *Condominium and cooperative disclosures*, documents and FAQ's
- *Building Code Violation disclosure*

**Culpable Negligence** is when a sales associate either knew or should have been aware of a defect yet did not disclose that information.

An **option** is a contract that gives the optionee the right to purchase or lease real estate in the future. Many large discount chains buy the right to purchase a property in the future (for example on a busy corner) but want time to do research to see if the property meets the needs of that type of business.

The **Procuring Cause** refers to the party responsible for the sale/the party who should be paid. In most cases, the procuring cause would be the one who put the sale into effect by writing and negotiating the contract.

Most brokers belong to a **Multiple Listing Service**, MLS of some type. The MLS is a database of all the listings of brokers who belong to the service. The brokers have agreed to share the commission with a Cooperating broker.

In **Installment Land Contracts**, the purchaser buys the property but does not receive complete title until the end of a time period. The purchaser pays a certain amount of money each year and the seller retains the title until the final payment is made.