



## Basics Of The Real Estate Contract

The real estate contract is the most often used, yet little understood tool in the real estate business. Whether you are a rank beginner or seasoned expert, there is no excuse for not knowing and understanding the real estate contract.

Real estate contracts are based on common law contract principles, so it is important that you understand the nuts and bolts of contract law.

**Offer, Counteroffer and Acceptance.** In most states there are standardized contracts used by real estate agents and attorneys. The contract is generally drafted in the form of an offer. The offer is usually signed by the buyer (the offeror). The contract is not binding until the seller accepts, creating a "meeting of the minds" (called "mutual assent").

An acceptance is made if the offeree (the seller, in this case) agrees to the exact terms of the offer. If the seller replies, "I'll accept your offer if you agree to close fifteen days sooner," there is no binding contract, but rather a counteroffer. The basic building block of a contract is that there is mutual agreement.

If the offer is not accepted in the time frame and manner set forth by the buyer (offeror), then there is no contract. For example, if the contract specifies that acceptance must be made by facsimile, an acceptance by telephone call or mail will not suffice.

### Unilateral Contract vs. Bilateral Contract.

A real estate sales contract is a "bilateral" (two-way) agreement. The seller agrees to sell, and the buyer agrees to buy. Compare this with an option; an option is a unilateral (one-way) agreement in that the seller is obligated to sell, but the buyer is not obligated to buy - it is his option to do so. A bilateral agreement with a "liquidated damages" provision yields the same result if the buyer fails to close escrow; the seller keeps the buyer's earnest money and the deal is over.

### Basic Legal Requirements of a Real Estate Contract.

There are some basic requirements that must be present to make a real estate contract valid:

**Mutual Assent.** As stated earlier, there must be mutual agreement or "meeting of the minds."

**In Writing.** With few exceptions, a contract for purchase and sale of real estate must be in writing to be enforceable. Thus, if a buyer makes an offer in writing and the seller accepts orally, then backs out, the buyer is out of luck.

**Identify the Parties.** The contract must identify the parties. Although not legally required, a contract commonly sets forth full names and middle initials (it helps the title company in preparation of the title commitment). If one of the parties is a corporation, it should so state (e.g., "North American Land Acquisitions, Inc., a Nevada Corporation").

**Identify the Property.** The contract must identify the property. Although not required, the legal description should be set forth. A vague description such as "my lakefront home" may not be specific enough to create a binding contract.

**Purchase Price.** The contract must state the purchase price of the property or a reasonably ascertainable figure (e.g., "appraised value as determined by ABC Appraisal Group").

**Consideration.** A contract must have consideration to be enforceable. Consideration is the benefit, interest or value that induces a promise; it is the glue that binds a contract. The amount of the consideration is not important, but rather whether there is consideration at all. It is common for a contract to state that "ten dollars and other good and valuable consideration has been paid and received."

**Signatures.** A contract must signed to be enforceable. The party signing must be of legal age and sound mind. A notary's signature or witness is not required. A facsimile signature is usually acceptable, so long as the contract states that facsimile signatures are valid.

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