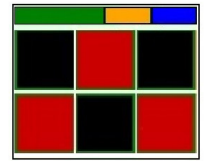


SALE OF REAL ESTATE



CONTROLLING DOCUMENTS

Sale of Real Estate - Controlling Documents

Broker-Seller (K) 1) open, non-exclusive
(Not covered by SoF) 2) exclusive

Majority View : Broker earns commission on production of qualified buyer for purchase on terms agreeable to seller

Purchase Agreement -
(Covered by SoF) (K) to purchase property

Mortgage - funding for sale

Deed - at closing, fm Grantor - Grantee
Remedies for Breach:

- 1) sue for breach & damages (*actual, interest & expenses*)
- 2) Negotiate lower purchase price
- 3) Sue for specific performance & price abatement

SoF = Statute of Frauds

Purchase Agreement

Once purchase agreement is signed, rights of the parties have transferred and land is sold

Seller's promise to deliver marketable title is implied; failure to produce entitles buyer to rescission, damages, or specific performance

If buyer closes anyway, *merger* occurs and marketable title is **not** warranted (*exc. fraud*)

Key Issues:

- Identify the land
- Purchase price
- Transfers seller's interest of record
- Evidence of Title
- Conditions and Contingencies
 - - buyer finance
 - - discovery of defect
- Broker's Commission
- Form of the Deed
- Warranties of Title
- Integration Clause
- Environmental Survey
- Risk of Loss Clause
- Condition of Premises
- Specific Time for Closing
- Possession Passes at Closing
- Fixtures & Improvements
- Existing Land Use is Legal
- All Improvements are Lawful

Earnest Money

Many states view earnest money as provision for liquidated damages in event of breach

If Buyer breaches, no damages –
- no refund (*majority view*)

Enforceability will hinge on reasonableness

- 1) were parties justified in believing damages might be difficult to calculate
- 2) was the calculation of damages reasonable – from the perspective of two parties aware of the circumstances and knowledgeable about risk

If Buyer breaches, yes, damages –
Liquidated damages available

Foresight View – (*California*)
- judged from time of K

Hindsight View – (*Utah*)
Judged from time of closing
- flies in the face of the purpose of liquidated damages

Notice

Notice:

Actual- buyer actually knew of prior interest

Constructive Record - interest is adequately recorded and findable by reas. record search

Inquiry - buyer in possession of facts which would lead a reas. person to investigate.

Notice of Covenants:

Constructive record notice

Inquiry notice by inspection