Chapter 6: Contracts in Real Estate Transactions

Contract – an exchange of promises between parties, conditioned on certain events and enforceable by law.

Necessary Elements of a Contract
- Offer and acceptance
- Consideration
- Capacity of parties
- Lawful purpose
- Writing requirement (Statute of Frauds) – requires that contracts involving real estate must be in writing (some leases for less than one year are an exception in some states).

Partial performance – fulfillment of the terms of an agreement to such an extent that the existence of the agreement may be reasonably inferred, even though no written contract exists.

See the Real Estate Today Feature “Validity of an Oral Contract” on page 115.

Breach of contract – failure to perform as promised in a contract, in whole or part

Specific performance – performing exactly to the terms of the contract as agreed

Contract contingencies – specified conditions in a contract that relieve the parties of their promises to perform
- financing contingency – allows a buyer who is not able to arrange the necessary financing within a certain period of time to cancel a contract
- title contingency – allows the parties to cancel a contract if a search of the properties title reveals a problem with the seller’s legal title that cannot be resolved within a certain time period
- inspection and repair contingency – permits the buyer to have the property inspected for physical defects. If defects are found, the seller is obligated to make repairs up to an agreed-upon amount. If additional repairs are needed and the seller is unwilling to make them, the buyer can elect to cancel the contract.

Real Estate Sales Contract – purpose is to provide the rules governing the parties’ rights and duties during the time between the agreement to transfer title to real property and the actual transfer of title. See Figure 6.1, pages 118-119.

Option-to-Buy Contract – agreement between a property owner and a potential buyer stating that the property owner agrees to keep an offer open for acceptance during a stated period of time. The buyer has the right, but not an obligation, to purchase the property at the specified price within the time period allowed.
Contract for Deed – an installment sale arrangement in which the payments for a property are stretched over time, with the seller holding title to the property until the agreed-upon amount is paid. (a.k.a. land contract or agreement for deed)