

*Avoid an explosive
situation with
KNOWLEDGE!*

Contracts

**from the
Iowa Association of REALTORS®**

Prepared by
Paul McLaughlin, Legal Counsel

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Program Objectives & Overview

Objective

The objective of this Contracts packet is to educate Iowa REALTORS® regarding contracts.

This program is designed for use at in-house office or sales meetings. The materials provide important, current legal information that will assist IAR members in providing productive, effective service and minimize legal risk.

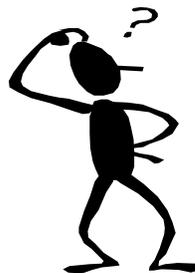
This program is designed to be presented by the Broker and/or Manager while agents participate by taking the quiz and discussing the issues.

Provided in these materials are:

- 1) Objectives & Overview of the Program*
- 2) Suggested Timeframe*
- 3) Quiz to be given to sales agents*
- 4) Answers to Quiz and back-up information*

If you have questions about the **legal aspects** of the program, please contact:

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1. An elderly client who is interested in purchasing a home dictated to his agent to write an offer including the phrase in the “Included Items” portion of the purchase agreement “the icebox stays”. The home included a Kitchen refrigerator, a downstairs “dorm style” refrigerator, a basement refrigerator/freezer with an icemaker, a deep freeze in the garage, and a window air conditioner. The contract is agreed to and upon moving in the client finds all the above gone except for the dorm style refrigerator and sues. What would a court likely do?
 - a. Give the buyer his choice of the above as he knew what he meant when he dictated the contract.
 - b. Give the buyer the refrigerator/freezer w/ icemaker since that most closely resembles the wording of “icebox”.
 - c. Because of the ambiguous language allow the seller’s determination to stand.
 - d. Void the contract.

2. The boilerplate of a purchase agreement the language reads, “the time for inspection of a property by the buyer is 30 days.” Typed at the bottom of the contract immediately above the signature lines is the wording “buyers shall have 15 days for inspection”, and hand written in the margin next to other comments is “the buyer has 20 day to inspect the property.” How long does the buyer have to inspect the property?
 - a. 15 days
 - b. 20 days
 - c. 30 days
 - d. Due to the confusion, whatever is reasonable to the buyer.

3. A buyer from Bosnia makes an offer for the “farm, acreage together with ‘cattle, hogs and other animals’ presently on property.” What all is included in the sale?
 - a. Piglets
 - b. Fish in the stocked ponds
 - c. House cats
 - d. Chickens
 - e. All the above
 - f. None of the above

4. Owners of a property (mother and father) suddenly die in an accident. The 6 children who inherited the property want to sell the property. Only two are able to sign a listing contract. Can the property be marketed by the brokerage?
 - a. No, all listing agreements must be signed by all owners of the property.
 - b. No, the listing must have a majority of owners (who have legal authority) sign a listing contract
 - c. No, the property would not be able to be transferred.
 - d. Yes, a listing agreement only need one person to be marketed
 - e. A, B, and C above.

5. Sole owner of property has signed a contract for the sale of his farm, prior to the closing the owner dies. The contract provides the following language: "this contract is binding on the heirs and assigns". What is the status of the contract?
 - a. The contract continues without interruption
 - b. The heirs MUST follow the intention of the owner and fulfill the contract
 - c. The heirs MAY follow the intention of the owner and fulfill the contract
 - d. The contract dies with the owner.

6. All the following are excuses for performance of a contract EXCEPT:
 - a. Duress
 - b. Mistake
 - c. Fraud
 - d. Undue Influence
 - e. All the above
 - f. None of the above

7. Blowhard Broker Bob claims to be the smartest person in real estate you will ever meet. While looking at a house on the market, Bob tells Buyer Betty "I think this is one of the hardiest houses I have ever marketed" "I believe houses like these only need painting every twenty years" "I feel you cannot make a better buy, dollar for dollar, than this home". After a purchase agreement was agreed to, but prior to the closing which is three (3) months later, due to peeling paint, a wall support collapsed due to water intrusion problems. Will Broker be liable to Buyer?
 - a. Yes, absolutely!
 - b. Yes, but only if the buyer can prove she relied upon the representations, and the representations were important to the decision to purchase.
 - c. No, the representations were clearly opinions and not facts.
 - d. No, the claims were made innocently and it was up to the buyer to independently confirm those items important to her via an inspection.

8. A contract inspection clause reads "buyer may have professional inspection conducted on property within 10 days of acceptance of contract." Buyer waits a couple days to call their preferred inspector when they find out she is on vacation and will not be able to inspect the property until 12 days after acceptance. Can the seller not allow an inspection after the 10 day period has expired?
 - a. No, the seller must be reasonable and allow the inspection.
 - b. No, the buyer has a bona fide excuse for not being able to perform promptly.
 - c. Yes, but the seller has to provide notice to the buyer.
 - d. Yes.

9. A hungry real estate agent who takes advantage of an elderly property owner's ignorance of the value of his own property in order to induce him to sell below market value would likely be guilty of
- undue influence
 - duress
 - menace
 - mistake

If the owner accepts a purchase contract, is he obligated to go thru with the transaction?

10. After several glasses of Champaign, Crazy Pete "the Joker" Broker at a 2004 New Year's Eve party thought he'd be funny and after seeing his nemesis Sue "the Straight Arrow" Salesperson, proclaims and writes down on a streamer "whooh whee Straighty Sue, today I'll sell you my brokerage office at 123 main street, Des Moines for \$5.00 if I get a kiss at midnight" and marks the streamer by putting on lipstick and leaving a kiss mark on the streamer. Sue's sister Prudie Patty kisses Pete at midnight. Does Sue have a binding contract?
- Yes, the minimum requirements of a contract have been met.
 - No, there was no intent by Pete to be bound
 - Yes, as each person has a real estate license, they have actual knowledge of the real estate process therefore a court would enforce under contract law
 - No, in Pete's state, he was not a competent adult
 - All the above
 - None of the above
11. If the objective of a contract becomes legally impossible to accomplish
- the law will consider the contract discharged
 - a lawsuit for specific performance is appropriate
 - a lawsuit for money damages is appropriate
 - liquidated damages would be appropriate

Contract Quiz Review with answers

1. An elderly client who is interested in purchasing a home dictated to his agent to write an offer including the phrase in the “Included Items” portion of the purchase agreement “the icebox stays”. The home included a Kitchen refrigerator, a downstairs “dorm style” refrigerator, a basement refrigerator/freezer with an icemaker, a deep freeze in the garage, and a window air conditioner. The contract is agreed to and upon moving in the client finds all the above gone except for the dorm style refrigerator and sues. What would a court likely do?
 - a. Give the buyer his choice of the above as he knew what he meant when he dictated the contract.
 - b. Give the buyer the refrigerator/freezer w/ icemaker since that most closely resembles the wording of “icebox”.
 - c. Because of the ambiguous language, allow the seller’s determination to stand.
 - d. Void the contract.

Answer = c. A rule of contractual construction when a clause is vague or ambiguous, in choosing among reasonable interpretations, courts will interpret the less favorable language against the person who drafted or supplied the language – so the client buyer is less likely to prevail. Although in Iowa a “reasonable person” (i.e. judge) may choose a differing remedy – such as what may be traditionally kept in a home transaction (i.e. kitchen refrigerator.) A judge tries to find the underlying cause of what the intention of by parties is when they agree to a contract.

2. The boilerplate of a purchase agreement the language reads “the time for inspection of a property by the buyer is 30 days.” Typed at the bottom of the contract immediately above the signature lines is the wording “buyers shall have 15 days for inspection”, and hand written in the margin next to other comments is “the buyer has 20 day to inspect the property.” How long does the buyer have to inspect the property?
 - a. 15 days
 - b. 20 days
 - c. 30 days
 - d. due to the confusion, whatever is reasonable to the buyer.

Answer = b, 20 days. To interpret a contract courts often utilize various principles to ascertain the intent or purpose of the parties. A court is free to look at all or the relevant circumstances (words and conduct) surrounding a transaction to determine a reasonable, lawful and effective meaning to an agreement. One of the principles of interpretation is

handwritten terms control over typewritten or printed terms; typewritten terms control printed ones.

3. A buyer from Bosnia makes an offer for the “farm, acreage together with ‘cattle, hogs and other animals’ presently on property.” What all is included in the sale?
 - a. Piglets
 - b. Fish in the stocked ponds
 - c. House cats
 - d. Chickens
 - e. All the above
 - f. None of the above

Answer = D and maybe B. Another principle or contract interpretation is parties who list specific items, followed by a more general or inclusive term, are assumed to include only things that are like the specific ones. Because of this principle, courts will generally exclude the seller’s house pets, and piglets are not technically “hogs” unless they are raised for market and weigh more than 120 pounds however, they may be considered livestock. Fish, depending on their purpose, may be considered “livestock (i.e. catfish farms). Chickens generally would be the best answer since they would be similar to cattle and hogs.

4. Owners of a property (mother and father) suddenly die in an accident. The 6 children who inherited the property want to sell the property. Only two are able to sign a listing contract. Can the property be marketed by the brokerage?
 - a. No, all listing agreements must be signed by all owners of the property.
 - b. No, the listing must have a majority of owners (who have legal authority) sign a listing contract
 - c. No, the property would not be able to be transferred.
 - d. Yes, a listing agreement only need one person to be marketed
 - e. A, B, and C above.

Answer = d. A listing agreement need only have one person sign the contract. The only signature necessary is that of the person the broker seeks to hold responsible for the commission (Rodger v. Baughman, 342 N.W.2nd 801 (Iowa 1983)). A purchase agreement should have all signatures, and the deed must have all signatures of owners and their spouses.

5. Sole owner of property has signed a contract for the sale of his farm, prior to the closing the owner dies. The contract provides the following language: “this contract is binding on the heirs and assigns”. What is the status of the contract?
- The contract continues without interruption
 - The heirs **MUST** follow the intention of the owner and fulfill the contract
 - The heirs **MAY** follow the intention of the owner and fulfill the contract
 - The contract dies with the owner.

Answer = b and c are the best answers. The heirs may try to keep a contract viable, but generally will need a third party (executor or court) to approve the sale. If seller heirs do not want to continue with the sale, and if the buyer(s) wishes to proceed, the buyer(s) would need to petition the court to open an “adverse estate” to continue the sale forward. (I.e. the buyer(s) is demanding specific performance from the seller’s estate). ***If*** consideration is paid for the right to keep an offer open for possible acceptance (an option contract), the death or incompetency of the offer will not terminate the offer.

6. All the following are excuses for performance of a contract EXCEPT:
- Duress
 - Mistake
 - Fraud
 - Undue Influence
 - All the above
 - None of the above

Answer = f. All the above are potential excuses a person may claim to attempt to get out of a contract. Duress is the use or threat of force to complete the signing of a contract against one’s will. Mistake must be mutual, and the issue must be a material factor in the parties decision to enter the contract. Fraud is the intentional misrepresentation of an issue. Undue influence is the taking of an unfair advantage.

7. Blowhard Broker Bob claims to be the smartest person in real estate you will ever meet. While looking at a house on the market, Bob tells Buyer Betty “I think this is one of the hardiest houses I have ever marketed” “I believe houses like these only need painting every twenty years” “I feel you cannot make a better buy, dollar for dollar, than this home”. After a purchase agreement was agreed to, but prior to the closing which is three (3) months later, due to peeling paint, a wall support collapsed due to water intrusion problems. Will Broker be liable to Buyer?
- Yes, absolutely!

- b. Yes, but only if the buyer can prove she relied upon the representations, and the representations were important to the decision to purchase.
- c. No, the representations were clearly opinions and not facts.
- d. No, the claims were made innocently and it was up to the buyer to independently confirm those items important to her via an inspection.

Answer = depends. A misrepresentation is a false assertion of a material fact. Unlike fraud, a party claiming misrepresentation need not show intent to deceive to avoid performance due under a contract. The false statement can be made innocently or negligently, through concealment or, in some cases, by non-disclosure. The effect of misrepresentation may be to prevent the formation of a contract, make a contract voidable, or present grounds for the reformation of a contract. A person may sue in court for damages due to misrepresentation. A person must be careful to distinguish mere statements of opinion (“puffing”) from false assertions of fact (misrepresentation). Also, to avoid a contract, the victim of either fraud or misrepresentation must return consideration received.

Here a court would have to investigate the representations of broker and could a reasonable person be justified in relying upon them. Were the statements material to the entire transaction? In addition, the court will have to distinguish if these statements were provided as opinions, or as fact. Bottom line for licensees is to only state the truth of what you know, don’t speculate, clearly state your opinion is only an opinion and could be in error, and direct the buyer to contact the appropriate professional

- 8. A contract inspection clause reads “buyer may have professional inspection conducted on property within 10 days of acceptance of contract.” Buyer waits a couple days to call their preferred inspector when they find out she is on vacation and will not be able to inspect the property until 12 days after acceptance. Can the seller not allow an inspection after the 10-day period has expired?
 - a. No, the seller must be reasonable and allow the inspection.
 - b. No, the buyer has a bona fide excuse for not being able to perform promptly.
 - c. Yes, but the seller has to provide notice to the buyer.
 - d. Yes.

Answer = d. Under the “plain meaning doctrine” of contractual interpretation, where the contract language is clear, there is no need to interpret.

9. A hungry real estate agent who takes advantage of an elderly property owner's ignorance of the value of his own property in order to induce him to sell below market value would likely be guilty of
- undue influence
 - duress
 - menace
 - mistake

If the owner accepts a purchase contract, is he obligated to go thru with the transaction?

Answer = a - Undue Influence. The client/consumer has an expectation to rely upon the advice and counsel of a real estate agent for real estate matters. An agent owes loyalty, reasonable skill, and honesty to as part of the fiduciary duties owed to a client. Intentionally inducing the client to list the property for a value less than market (without informed consent) may be seen as using the position of authority (by virtue of a license) over a client, here, damaging the client.

10. After several glasses of Champaign, Crazy Pete "the Joker" Broker at a 2004 New Year's Eve party thought he'd be funny and after seeing his nemesis Sue "the Straight Arrow" Salesperson, proclaims and writes down on a streamer "whoo whee Straighty Sue, today I'll sell you my brokerage office at 123 main street, Des Moines for \$5.00 if I get a kiss at midnight" and marks the streamer by putting on lipstick and leaving a kiss mark on the streamer. Sue's sister Prudie Patty kisses Pete at midnight. Does Sue have a binding contract?
- Yes, the minimum requirements of a contract have been met.
 - No, there was no intent by Pete to be bound
 - Yes, as each person has a real estate license, they have actual knowledge of the real estate process therefore a court would enforce under contract law
 - No, in Pete's state, he was not a competent adult
 - All the above
 - None of the above

Answer = a, b, c and d!. A case like this will come down to the individualized facts of the case. The best answer may be b – with the facts presented it would appear a court would conclude (if Pete can meet the burden of proof) that there was no intention by Pete to enter a contract. A contract made in jest is not based on mutual agreement and does not reflect contractual intent. He may also be able to prove he was not a competent adult at the time he wrote things down. An individual must be competent which is the ability to understand and control their actions. Intoxication, as a defense to a contract, must establish that the person is unable to understand, in a reasonable manner, the nature and consequences of the transaction, or to act in a reasonable manner in relation to the transaction. The minimum "four squares" of a contract have been met (date, price,

reasonable legal description, signature) and the conditional term (the kiss) has been met, therefore a binding contract may possibly be found.

Does Sue have to kiss him? What if the kiss was by Sue's brother Gleeful Glenn? Doesn't midnight technically start tomorrow? Is a kiss mark really a signature? Can a streamer be considered a legal document

11. If the objective of a contract becomes legally impossible to accomplish
 - a. the law will consider the contract discharged
 - b. a lawsuit for specific performance is appropriate
 - c. a lawsuit for money damages is appropriate
 - d. liquated damages would be appropriate

Answer = a. If a contractual objective should become legally impossible to accomplish, the law will consider the contract to be discharged. Lawsuits for specific performance, monetary damages, and liquated damages would be inappropriate because a court would not enforce.