

## Contracts

**What does it take to form a legally binding contract?** Capacity, consent, lawful object, and consideration.

- **Capacity** means the person is legally competent, i.e., of sound mind and of legal age (18). Mere old age or extreme illness does not mean a person is incapacitated. If a person has sufficient clarity of mind to understand the nature of their act, they will generally be deemed as legally competent. If a REALTOR® has doubts about a client's competence, it is advisable to have others observe the client and witness their transactions.
- **Consent** means all parties to the contract voluntarily agree. If a person is under legal duress, a contract may be rescinded. Duress may be physical, (e.g., threat of violence) or even financial; however, being in a weak bargaining position is not necessarily legal duress. Remember, legal duress is not the same as stress or uneven bargaining power.
- **Lawful Object** means the purpose of the contract is not illegal. Sale of heroin is not a lawful object. Sale of corn is generally lawful. Sale of ivory from an elephant's tusk is not lawful. Sale of a marble miniature elephant paper weight is generally lawful.
- **Consideration** has nothing to do with being considerate, or nice. Consideration generally means giving up something to which you have a legal right. When a seller offers to transfer title, that is consideration. When a buyer offers to pay money for property, that is also consideration. Whether monetary consideration is \$1 or \$1,000,000 dollars does not affect its adequacy as consideration. However, the fair value may impact whether the person contracting had capacity or entered into the contract because of fraud or undue influence.

NOTE: A buyer's earnest money deposit is usually not consideration for a contract. Rather, the deposit provides some assurance to the seller that the buyer intends to buy.

While contracts may generally be expressed (written or verbal) or implied (determined by conduct), California law requires that **certain contracts must be in writing** and signed by the party to be bound to be enforceable. These include:

- Real estate sales contracts,
- Contracts to hire a real estate agent such as a listing agreement or buyer representation agreement (for recovery of a commission), and
- Leases for more than one year for real property