

Chapter 11

Option

Legally enforceable agreement. Seller promises buyer to keep an offer open for acceptance until a specified time. May serve as a substitute for consideration.

Transaction with a subjective subject clause: buyer's representative may better protect the buyer by recording presence of separate consideration for the seller's promise to refrain from cancelling the agreement before the subject removal deadline

True Conditions Precedent

dependent on will/actions of someone who is not a party to the contract. No party may unilaterally waive.

Condition

fundamental term of contract.

Condition Breach

injured party can terminate and/or sue for damages or specific performance

Property Disclosure Statement

completed any time property is listed for sale. DOES NOT form a part of their contract unless agreed to.

Chapter 11: Contract of Purchase and Sale

Contains the obligations of the vendor and purchaser with respect to purchase and sale

Legible, names/occupations, description of property, description of financing/price

Protection of personal information: obtain consent for various use

Terms and Conditions:

warranty: breach allows to sue for damages but not terminate

conditions, deposit, consideration

Chapter 11: Contract of Purchase and Sale (cont)

note: if the parties to the contract do not consent in writing to the release of the deposit, then the brokerage cannot release the deposit from trust.

Deposits protected under contract

Record Keeping: receipt of funds, client info, large cash transaction, suspicious transaction, client identification, unrepresented parties and third party determination, penalties: criminal charges

keep record of steps involved to ascertain the existence of party

Warranties: express or implied (verify implied)

written warranties necessary to preserve a parties right to sue after transaction

Chapter 12

When an agent acting within authority discloses he is acting as an agent enters into a contract with 3rd party, the parties to the contract are: PRINCIPAL + 3RD PARTY

Power of attorney, undersold property: succeed for damages for breach of agency contract (not for warranty of authority)

Ratification: agents authority created retroactively by principal

An agent will be personally liable to third parties: where they fail to disclose that they are an agent

The licensee may advise the buyer that the offer exceeds the stated price in listing contract

Chapter 13

Reasons to borrow funds

Diversify investments and reduce overall risk by using only part of total funds

Invest the borrowed funds at a higher rate of interest than the borrowing rate

Chapter 13 (cont)

Purchase real estate as a hedge against inflation

Save or release equity for activities

Primary objectives of the lender-investor

Regular and predictable return on capital as specified in the loan contract

Return of capital through the scheduled payment

Primary Mortgage Market: sale of interests of land

Secondary Mortgage Market: mortgages bought/sold as investment

Interest Rate Charged on a Mortgage Loan is Comprised of:

Return on the invested capital which is determined by current interest rates in investment markets and by the supply and demand for mortgage funds

Inducement to accept risk on the capital resulting from an uncertain investment; prime investments will generally be granted a lower rate than higher risk

Payment to the lender for part of the costs of managing m. lending activities

Elements Considered in Setting Rate

Credit rating of the borrower, property value

Administrative work

Type of property used

Amount of borrower's equity; rate being lower as the amount of equity increases

Chapter 15

Interest Act: no limit on the rate of interest which can be charged in a mortgage.
Borrower must be individual, rates must be determined

Criminal rate is over 60%

Mortgage Fraud Offences:

person who acts under POA for the mortgage of property to fraudulently use proceeds for an unauthorized purpose

agent of seller to fraudulently conceal title info to induce a sale

person who has knowledge of unregistered mortgage to sell property

Provincial Legislation Over Mortgages: Business Practices and Consumer Protection Act

BC can intervene if loan is excessive, even rewrite entire transaction

Mortgage Brokers Legislation: registrar has power to investigate complaints, freeze funds

Environmental Legislation and Mortgage Loan Application Procedures: creates exemption from remediation liability for lenders who act primarily to protect their security interest. Lenders become liable for remediation when

they make requirements which cause a site to become contaminated

registered owner of a contaminated property

they must get approval from director of waste management within 10 days of purchase

Remediation: cleanup of environmentally contaminated site

Chapter 17

5 c's of credit in notes

Commercial Underwriting Process

Chapter 17 (cont)

Residential property which is not owner occupied (income producing), and all non residential property (predominantly income producing). Focus is on NOI. Application Factors Include:

Applicant's track record

Mortgage and real estate market conditions at time of application

Type, age, condition and location of the property securing the loan

Strength of the covenants of tenants resident in property

Lending Constraints: LVR and income constraint (lower of 2)

Income Constraint: safety margin ensures that the NOI can cover the mortgage payments by expressing the margin between the net operating income and mortgage payment as a percentage of NOI

DCR = NOI/Annual Mortgage Payments

Chapter 11

s59 of the Law and Equity Act (prevention of fraud)

Should be in writing, otherwise it is NOT void, hard to enforce

EXCEPTIONS

contract for less than 3 years

indication of subject matter, money has been spent, reasonable reliance, deposit/p-repayment given,

court may order deposit returned

writing can be sufficient even though a term is left out or improperly stated

Chapter 11

Doctrine of Merger

limits remedies available to the parties after real estate conveyance

doesn't apply to: fraud, mutual mistake, condition, warranty,

Chapter 11 (cont)

caveat emptor applies: buyer must be responsible for checking accuracy before purchase is made

if deficiencies are discovered, they must be acted upon before contract closing.

Remedy: recession

Statutory Land Title System: transfers of freehold estate must be in a transfer form instead of a deed

seller executes a prescribed transfer form: seller has the right to convey title, buyer has quiet possession, title is free from encumbrance

seller will sign further docs, produce docs that support title and release claim to land

Encumbrance: judgement, mortgage, lien or any other claim which is registered against land

Fiduciary: person who holds a position of trust with respect to someone and is obliged, to act solely on the person's benefit

Builders Liens: claim registered against the title to land by a contractor/supplier of material

Refusal to Perform Remedies: court will order

restitution (return deposit)

Incomplete contracts can still be enforced

you cannot enforce contract against person who did not sign

Chapter 12: Types of Agency Contracts

Exclusive Listing

Exclusive right to sell for a specific period of time

If the owner sells himself, he must still pay commission

If the owner uses 2nd agent to sell his property - two commissions could be payable

Multiple Listing

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Chapter 12: Types of Agency Contracts (cont)

Exclusive right to sell

Listing must be distributed to all members of the real estate board and placed on MLS

Listing is not valid unless: its signed, in writing and true copy to owners, provision that it will expire on date

Open Listing

The owner may employ a number of agents to find the purchaser

A commission is paid to the agent who is the effective cause of the sale

Owner can also sell himself and no commission is payable (mostly commercial listings)

Brokerage promises to use best efforts to locate a ready, willing purchaser

Chapter 13

Supply of Mortgage Funds: linked with capital market: competes for share

When demand increases, interest rates increase, investment funds attracted to m. market

Demand of Mortgage Funds: activity of RE market and terms/price of loan. UP when expanding economy

stickiness: slow response

Characteristics of Mortgage Loans

unique investment, hard to trade, long repayment terms, admin work, large capital outlay

CMHC: the only government mortgage insurance in canada

Source of Mortgage Funds:

Institutional Lenders: banks, credit unions, trust and loan companies, life insurance companies

Chapter 13 (cont)

Private Lenders: individuals, vendors of property, investment groups, trust companies, pension funds, might charge higher rates

Government: insured by govt agencies, source of mortgage funds

Mortgage Investment Corporations: if borrowers cant qualify, their own lending policies

note: by creating a m.loan, the borrower (MORTGAGOR) pledges their property rights as collateral for the loan.

Possession and right to redeem the clear title to the property remain with the mortgagor, they are able to build up a series of claims against remaining collateral (get more mortgages)

Chapter 15

Assignment of Mortgage (transfer to another). Risks: payments

Property Law Act Protection For: acquiring residence, making improvements, making expenditures for household, refinancing

Property Law Act limits continuing liability of a vendor under a mortgage or agreement for sale under these circumstances:

Term has expired and lender does not make a demand for payments within 3 months of the expiry

Mortgage assumed or agreement for sale transferred is payable upon demand, no demand within 3 months: liability extinguished

Chapter 15 (cont)

Lender expressly approves purchasers assumption of mortgage or agreement for sale then vendor's liability will cease, subject to requirements (approval made within 3 months, lender is entitled to reasonable financial info about purchaser)

Novation and Impairment of Security

With novation: borrower will be released from further liability. Substitution of one contract for another

Impairing the Security: lender does something which prevents lender from being able to restore the property to original state to the borrower upon the borrower repaying mortgage debt.

Acceleration

maturity date of loan is pushed forward and lender demands to be paid out in full

Omnibus

in default of payment the lender will do payment and it will be added to the loan

Lender's Remedies

gives lender complete discretion to use most suitable remedy

Mortgage in Possession

foreclosure

Competition Act (chapter 11)

Federal statute designed to hold businesses accountable for misleading advertising, enforced by Competition Bureau

Criminal Provisions: agreements in restraint of trade

Competition Act (chapter 11) (cont)

conspires to fix, maintain, increase, or control prices for product supply or sales, allocate territories, eliminate supply of product

Civil Provisions: agreements between competitors requiring/prohibiting any person to take any action

misleading advertising, price maintenance, sale above advertised price

Chapter 12

Express Contract

Written or Oral, Mutual agreement of both parties

Most common relationship

Implied Agency

can be implied by conduct, not too common, "bring me the buyer", agreeing to do something

past consideration is no consideration!

Ratification

An agent's authority can be granted retroactively

When the agent informs the principal of his actions and the principal accepts, the principal will be bound by the contract

Gives sellers word before seller agrees, seller accepts past actions, if the seller says no - the agent will be responsible

Agency by Estoppel

(not too common) Where the principal acts in such way as to lead a 3rd party to believe that the agent has authority to act on behalf on the principal.

Limited right. Agent CANNOT sign for anyone, seller gives [similar to] power of attorney

Chapter 12

Actual Authority

Express Authority

How long/much/commission

Is created and limited by the terms of the contract

Promise to pay commission must be supported by consideration (listing agreement)

(implied + express) Painting/Rolls Royce question: The agent has express authority to not come back without the original

Implied Authority

Every agent has implied authority to do anything necessary for carrying out the express authority granted (ie. enter property with buyer)

Goal: to sell

Usual or Customary Authority

(most common) The agent is governed what is usual in the trade (to collect deposit)

Apparent Authority

Chapter 12 (cont)

Where the 3rd party would reasonably consider, from the conduct of the principal and agent, that the agent did in fact possess authority

Not common. ie. the seller lets the agent act on behalf of them "sell my house for any price, i trust you"

THE AGENT CANNOT SIGN!

Termination of Authority

The relationship is based on mutual consent, either party can terminate at will

Can be revoked orally or by conduct

Principal that is inconsistent with the communication of authority (ie. one doesn't listen to the other)

Frustration: something happens after the contract is signed (house burns down)

Death, Insanity, Bankruptcy



Chapter 15

Lender: mortgagee

Borrower: mortgagor

Implied Terms of A Mortgage

Prohibition Against Clogging: borrower has right to have the title conveyed in the same state free of any encumbrances.

Option to Purchase the Property when Negotiated: clog on the equity of redemption and makes the contract void.

Option which makes the redemption date distant is void - a term which restricts prepayments or prevents assumption does not constitute a clog.

Stipulations for Collateral Advantage: mortgagee can give the borrower terms which benefit itself, but it has to extend outside of the mortgage (ie. buying their products)

Express Terms of A Mortgage

Land Title Act: delivered and signed to both parties

Land Transfer Form Act: interpretation of terms

Vendor "take back" Mortgage

taken back to facilitate a sale, vendor becomes mortgagee, purchaser becomes mortgagor

Reverse Annuity Mortgage

lender makes periodic payments to borrower. At the end of term, borrower will have to repay balance by owing or refinancing the property

Wrap Around Mortgage

2nd m. registered, includes prior m. Writing for equal or greater amount. Payments include all sums, responsibilities same as original

Chapter 15

Interest Act: if the document does not mention interest, no interest can be charged.

If document requires interest to be paid with no set amount - rate allowed by law is 5% (does not apply to companies)

Foreclosure: Process

Demand Letter: short time to pay

Petition: BC Supreme court registry

1st Court Order: Order NISI (redemption period)

Petitioner May Apply For:

Judicial Sale: Not enough equity, owner can still be liable, most common in BC (ie someone bought it for too much and cant sell)

Order of ABSOLUTE foreclosure: enough equity in property, owner no longer liable, lender becomes registered owner, no further action can be taken against owner

1st Mortgage: Legal Mortgage

2nd Mortgage: equitable mortgage

