CHAPTER SUMMARY

1. Generally, most residential real estate contracts are prepared by real estate brokers. Commercial real estate contracts, however, are often prepared and reviewed by attorneys with the help of legal assistants. This chapter contains an itemization of the types of things that you can expect to find in a real estate contract. Most examples are related to commercial contracts. The chapter also contains sample contract language that covers several issues and complete contracts for the sale of a home, retail shopping center and an option.

2. The parties to a real estate contract are generally the purchaser, the seller, and in some cases, the real estate broker.

3. Common methods of payment are (1) cash, (2) seller accepting a note or providing credit, (3) purchaser assuming preexisting encumbrances or debts on the property, and (4) an exchange of property.

4. Marketable title is a title that a prudent purchaser with full knowledge of all the facts would accept. Insurable title is a title that a title insurance company would insure as marketable.

5. Possession of the property is generally given to the purchaser at closing. The closing is the date on which the parties perform all of their obligations under the contract. In some states, the closing is referred to as a settlement.

6. The risk of loss generally shifts from seller to purchaser at the time the real estate contract is entered into. The parties, however, may agree in the contract that risk of loss remains with the seller until closing.

7. Earnest money is money paid by the purchaser at the time the contract is signed. Earnest money generally does not have a legal definition and will be paid or returned to the purchaser as provided for in the contract.

8. Items that are generally prorated between purchaser and seller in a real estate contract are taxes and rents received from the property.

9. Generally real estate contracts are assignable by purchaser or seller; however, the contract may restrict or prohibit such assignments.

10. “Time is of the essence” means the dates for performance are critical dates and are strictly enforced.

11. A condition precedent in a contract is an event that must be resolved in accordance with the terms of the contract before one or both of the parties are required to perform their contractual obligations.

12. The parol evidence rule provides that the written agreement is the best and only evidence of the agreement between the parties and that the parties are not permitted to bring in oral testimony regarding other agreements concerning the contract.

13. The doctrine of caveat emptor requires a purchaser to bear the burden of investigation to find any defects in both the title and the condition of improvements located on the real estate they purchase. A buyer who fails to obtain any express warranties from the seller buys the property “as is” and “at risk.”

14. States have modified the rule of caveat emptor, at least as it applies to residential property, by requiring that a seller of residential real estate complete a disclosure form to inform the purchaser about the condition of the property. The form requires the seller to make a good-faith disclosure of all information available to the seller at the time the disclosure statement is given.

15. An option is a contract by which an owner of property, usually called the optionor, agrees with another person, usually called the optionee, that the optionee shall have the right to buy the owner’s property at a fixed price within a certain time upon agreed terms and conditions.