



In business, be it in Tanzania or elsewhere, a contractual agreement is the most essential part of any real estate-related exchange. Its aim is to bring both parties to a comfortable settlement that will achieve a fair and reasonable objective for those involved in the agreement. For many of us, a contract is nothing foreign. We have had many instances where we were asked to endorse a document that acknowledged a specific performance that we were legally obligated to exercise in exchange for goods or services. While we may have understood the conditions and expectations of our written agreements, it's very likely that a large number of us were unaware of the major components that must be present in order for a contract to be both valid and enforceable in a court of law. A basic contract contains some basic and essential elements, which will be examined in this expose.

Essential elements of a real estate Contract

- **It must be In Writing** - To be enforceable, a real estate contracts must be in writing and contain all the essential elements. However, short-term leases are often exceptions to this requirement. In most cases, contracts must be written in plain English/Swahili, and must be understood by both parties named in the agreement. Section 78 of the Law of Contracts Act requires all contracts to either be oral or written. Contracts which are concerned with land must be in writing as stipulated under Section 64(1) of the Land Act 1999 [R.E 2002].
- **Competent Parties** - As per Section 12(1) of the Law of Contract Act [CAP 345 R.E 2002] a party to a contract should be of the age of majority and of sound mind when entering into the contract. Legal competency also involves one's mental capacity. Both parties must assure that they are psychologically and intellectually fit to meet the conditions and terms stated in the agreement.
- **Mutual Agreement** - Mutual agreement is also referred to by the terms *mutual consent*, *mutual assent*, or *meeting of the minds*. This means that the parties involved must fully agree to meet the provisions stated in the agreement as so provided under Section 13 the Law of Contract Act [CAP 345 R.E 2002] . They must be willing to enter into the agreement, and must not be forced in any way.
- **Legal Consideration** - All parties to a contract must offer consideration. Consideration is anything of value that is given in exchange for goods or services, and is used to induce the other party to enter into a contractual agreement.
- **Lawful Object** - A contract must have a legal purpose to be enforceable.
- **Property Description** - A contract must identify the property being sold. While a street address is sufficient, the legal description should be used to clearly identify the



property.

- **Price** - The purchase/sales price must be stated. The parties may also use some reasonably ascertainable figure such as the appraised value as of a specified date.
- **Signatures** - The contract must be signed by all parties. In the case of corporations or partnerships, an authorized person may sign on behalf of the entity.

Essential Steps in Contract Formation

The contract formation process is made up of several steps. Before a contract can be drafted, your lawyer will gather essential information about the property and all buyers and sellers. The information gathered will include:

- The names of the involved parties.
- A description of the real estate in question.
- Photos of the parties.
- The purchase price.
- Special mention of any contingencies.
- Any other relevant information.

A real estate contract is a legally enforceable document. It is absolutely essential to have an attorney complete contract formation to ensure that the contract protects the rights of all parties involved.

Real Estate Contract Disputes

Real estate contract disputes can result in lengthy court battles if they are not handled properly. In some cases, it is best to use arbitration to settle real estate contract disputes. The arbitration process will allow you to avoid going to court. Instead, you'll work with a qualified mediator to reach an agreement with the other parties involved in the contract dispute. In other cases, it may be necessary to pursue litigation in order to handle real estate contract disputes. This is often an effective method of dealing with contract disputes that result from a significant defect in the property or gross dishonesty on the part of another party.

Be Protected



Most buyers and sellers or tenants and landlord are excited about moving into a new house or selling the house and earn money but tend to not look at most essential matters. Without a solid contract, you leave yourself open to lawsuits. If you are buying property, then having a solid contract ensures that you are protected throughout the purchasing process and that you have legal recourse in case the property you purchase has a serious defect that the seller did not disclose. Buyers, sellers and their representatives should also avoid using a “one-size-fits-all” approach to contracts and set out to create agreements that reflect the risk they’re willing to assume in each transaction since every contract is different. You should make sure you review the entire document carefully and if there are any areas you are unsure of, you should obtain legal advice before signing.

Mr. Sunday Godfrey Ndamugoba is an Associate at ABC
ATTORNEYS of
Dar es Salaam, Tanzania and an Arbitrator with the Tanzania Institute