

31. NRS 111.210.

32. NRS 111.450.

33. Zhang v. Dist. Court, 120 Nev. Adv. Op. 104 (2004).

34. Tomiyasu v. Golden, 81 Nev. 140, 141, 400 P.2d 415 (1965).

Statute of Frauds: Every purchase contract in Nevada must comply with the statute of frauds. It: 1) Must be in writing, 2) State the consideration given by the parties for the contract, and 3) Be signed by the owner (seller) or his or her lawfully authorized agent.<sup>31</sup> Unless the licensee has a separate, notarized and recorded, power-of-attorney from the client,<sup>32</sup> a client is not bound when a licensee signs the purchase agreement.

a. "Writing" Required – The "writing" clause required by Nevada's statute of frauds is intended to prove a contract exists; thereby preventing fraud and perjury. The writing may consist of a standard contract form, letter, or other written document and may consist of one or several related instruments that when read together, contain the legal requirements for a purchase contract. Emails may be sufficient to create a legal purchase agreement.

b. Consideration – All contracts require consideration. Consideration may be either the mutuality of obligation, or the receipt of a thing of value exchanged between the parties - from money to love and affection. If each party has some right (benefit) and responsibility (burden) there is mutuality of obligation and this is sufficient consideration, as is a promise given for a promise received.

Earnest money is not consideration - it is an inducement to negotiate. Earnest money is presented with an offer to indicate the genuineness of the offer. If the offer is accepted, the earnest money is usually incorporated into the purchase agreement as part of the buyer's down payment. If the offer is rejected, the earnest money is returned to the offeror.

Since each contract requires consideration, a contract without consideration is void. In Zhang v. Dist. Court (2004),<sup>33</sup> the seller defaulted on an existing purchase agreement. He then stated he would sell the property to the same buyer but at a higher price. To proceed with the transaction, the buyer agreed and signed the new purchase agreement. The buyer then sued to enforce the original contract. The court found for the buyer stating the seller was already obligated to sell to the buyer under the first contract when he required the buyer to sign the new contract. It found there was no consideration for the second contract. Without consideration, the second contract failed. Therefore, the buyer could enforce the first purchase agreement.

Inadequate consideration will not undo a contract. The Nevada Supreme Court has stated,

"mere inadequacy of price without proof of some element of fraud, unfairness, or oppression that could account for and bring about the inadequacy of price was not sufficient to warrant the setting aside of the [contract]."<sup>34</sup>

It is not up to the licensee to determine if the consideration is sufficient – that is the client's decision.

