



## CHAPTER 11

### Real Estate Contracts



# Contracts

## Parties to the Contract

- must have legal authority

## Subject of the Contract

- property must be accurately described  
use legal description

## Form of the Contract

- may be written or verbal
- Statute of Frauds:  
must be written to be enforceable

## Consideration

- anything of value the seller accepts  
earnest money deposit is not consideration  
demonstrates seriousness

## Legal Subject Matter



# Contracts

## Offer and Acceptance

- Must be 100% meeting of the minds becomes a contract upon agreement **and** communicated to all parties

## Contingency

- Example: financing contingency

## Time

- Real estate contracts: time is of the essence

## Performance

- Seller provides marketable title  
buyer pays consideration  
contract is executed



# Contracts

- **Time for Acceptance of Offers**
  - Contract not signed by and delivered to all parties by date specified in contract
    - Offer deemed withdrawn
    - Deposits returned to buyer
- **Special Assessments**
  - Seller pays if certified, confirmed & ratified before closing
  - Seller pays if substantially complete as of effective date whether or not lien is filed
  - Buyer pays all other assessments



# Contracts

## • **Occupancy and Possession**

- Delivered to buyer at closing
- Buyer takes occupancy prior to closing
  - Buyers assumes risks of loss
  - Liable for all maintenance
  - Accepts condition of property at tie of occupancy

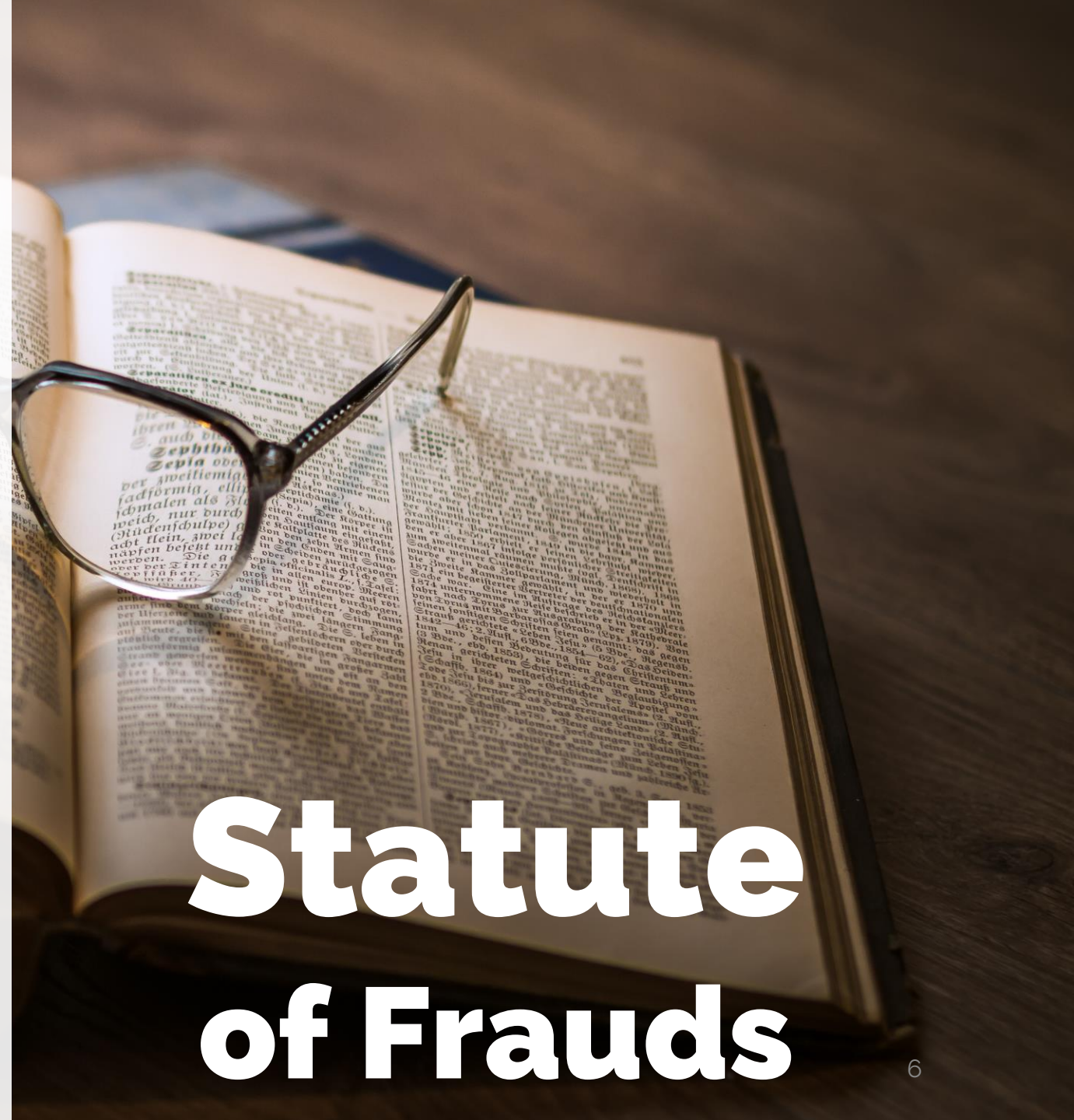
## • **Closing Date**

- May be extended if funds are not available to lender due to Truth In Lending Act (TILA) requirements
- May be extended if utility service is disrupted due to severe weather

Transfer of a right or interest in land  
Must be in writing to be enforceable  
Purchase and sale contract  
Lease over a year  
Option contract  
Failure to comply: not illegal,  
contract may be unenforceable

## 2 Exceptions

1. Title has transferred to Buyer
2. Buyer has paid part of the purchase price,  
**and**
  - a. Taken possession
  - or**
  - b. Made improvements



# Statute of Frauds

# Fee Simple Property Interests

Type of Property Interest	Definition of Interest
Estate in Severalty	Single Owner
Estate by the Entireties	Co-ownership between spouses
Joint Tenancy	Co-ownership with equal rights
Tenancy in Common	Co-ownership with equal or unequal rights

## **Buyer brokerage agreement**

- Agreement between broker and buyer
- Compensation and representation

## **Option contract**

- Right to purchase real estate in the future
- Terms must be 100% stated

## **Listing Agreement**

- Employment contract between seller and broker

## **Contract for Sale and Purchase**

- Agreement between seller and buyer



**Four Contracts  
Licensees May Prepare**



## Specific Performance

- One party defaults & the other party asks the courts to require specific performance
- Usually a buyer remedy

# Default and Dispute Resolution



# Default and Dispute Resolution

## Damages

- **Liquidated damages**
  - Specified in the contract
  - Usually the deposit, retained by the seller when buyer defaults
- **Compensatory damages**
  - Not specified in contract
  - Usually a remedy decided by the courts



# Finding a Buyer or Effecting a Sale

## **Effect a sale**

Transaction must close for broker to be paid

## **Find a purchaser (Florida)**

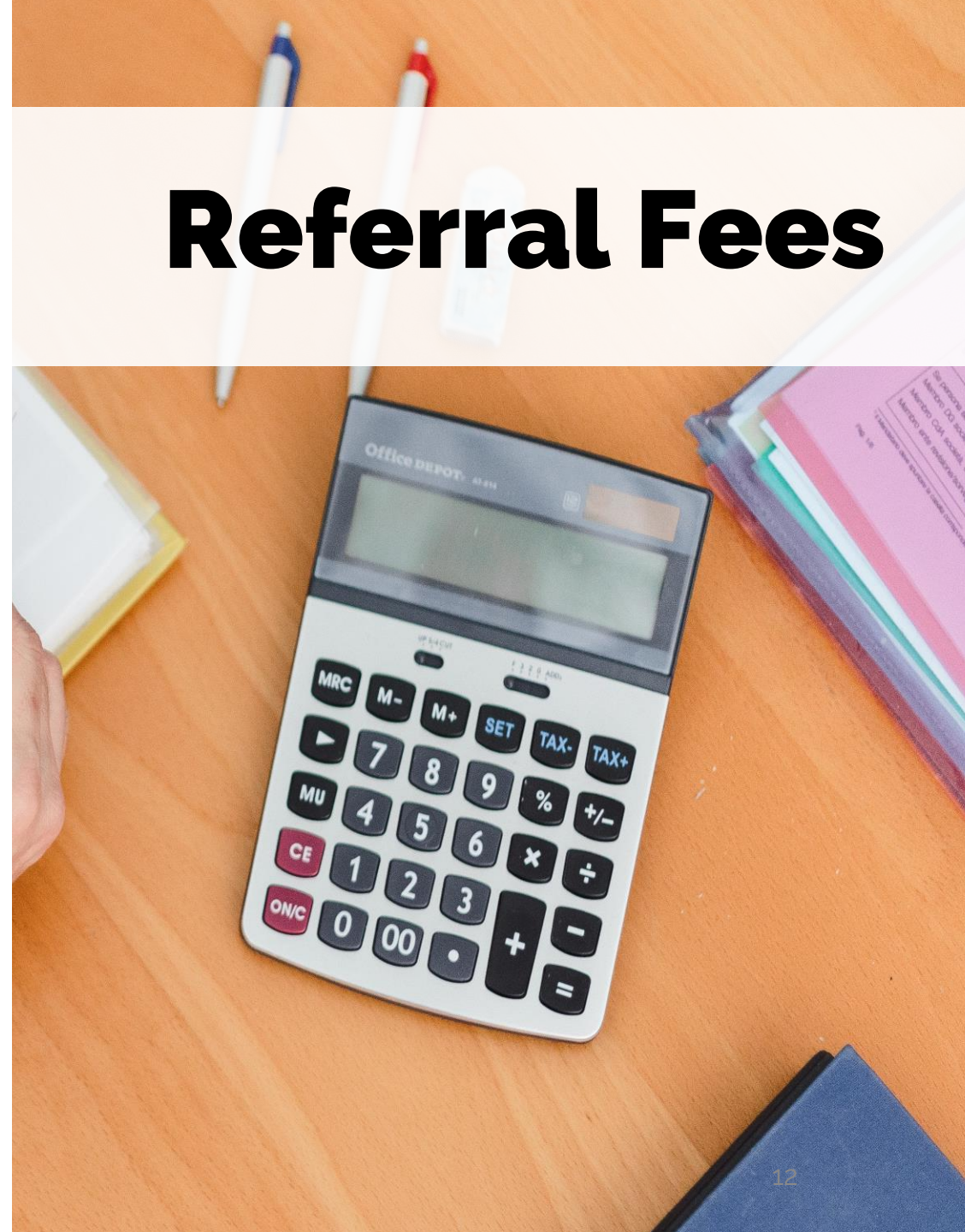
Commission is earned when:

- Ready, willing and able buyer is presented to seller
  - Must be same terms as offered in listing contract
  - Seller does not accept offer
    - Commission is due

## Real Estate Settlement Procedures Act (RESPA)

- **Broker may pay referral fees**
  - To licensees without disclosure to buyers or sellers
  - Broker licensed by another state or country
  - Broker not licensed in Florida may not participate in the transaction
  - If outside broker participates in transaction, a referral fee/commission **cannot** be paid

## Referral Fees



# Liens on Commission

## Commercial Real Estate Sales Commission Lien Act

F.S. 475 – PART III Commercial Real Estate

- Broker must disclose lien rights
  - At or before the brokerage agreement is executed
  - Lien rights are not waivable before commission is earned
  - Within 30 days of earning commission & 1 day before closing
  - Deliver commission notice to:
    - Owner of the commercial real estate
    - Closing agent
    - Lien notice may be recorded in public records
    - Lien attaches to the net sales proceeds (not real estate)
- F.S. 475.703 - .705

# Liens on Commission

## Commercial Real Estate Leasing Commission Lien Act

F.S. 475 – PART IV Commercial Real Estate

- Broker must disclose lien rights
  - At or before the brokerage agreement is executed
  - Lien rights are not waivable before commission is earned
  - Commission earned – broker may file lien notice
  - Copy must be delivered to owner within 7 days after filing lien notice
  - Lien may be recorded in public records
    - Lien attaches to the owner's interest in the real property
- F.S. 475.803 - .807



## Right of First Refusal

- Contractual right granted by owner
- 3 parties to right of first refusal
  - 1) property owner
  - 2) holder of right of first refusal
  - 3) third party

Example – condo association has right to purchase resale units before property is placed on market



## Other Contracts





# Four Contracts Licensees May Prepare

## Buyer Brokerage Agreement Commercial

- Broker hired to find a property
- Addresses broker representation

## Residential

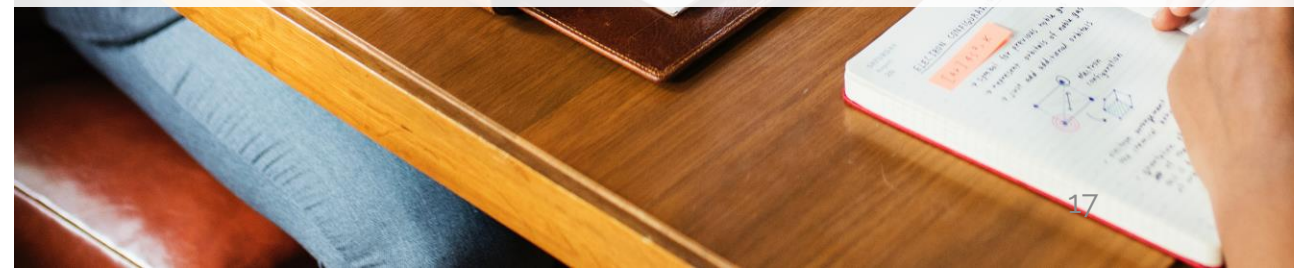
- Commission buyer agrees to pay broker
- Commission is reduced by amount paid by listing brokerage

## Lease-Option Agreement

- Between landlord & tenant
- Optionor – landlord
- Optionee – tenant
- Optionee has right but not obligation to purchase
- Must state specific time frame
- Optionee may let option expire without recourse
- Option exercised, becomes a purchase and sales contract
- Once option is exercised, becomes effective date of the sales contract



**Four Contracts  
Licensees May Prepare**



# Four Contracts Licensees May Prepare

## Option agreement

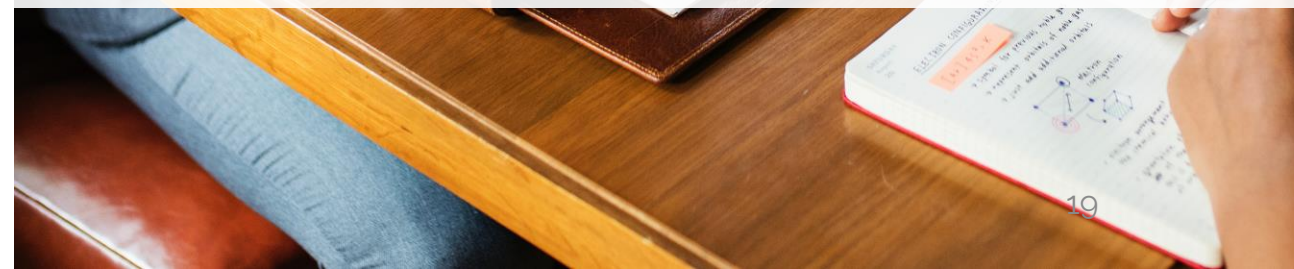
- Optionor – property owner
- Optionee – potential buyer
- Specified price
- Definite time period
- Must be in writing to be enforceable (Statute of Frauds)
- Unilateral contract
  - Only seller has to perform if buyer exercises the option
- Buyer must pay a non-refundable fee
  - Fee must be definite valuable consideration
  - Seller may retain fee if option not exercised

## Lease-purchase agreement

- Tenant enters into a lease
- Agreement becomes effective at end of lease term
- Tenant responsible for repairs during lease



**Four Contracts  
Licensees May Prepare**





## Four Contracts Licensees May Prepare

### Listing Agreement

- Agreement between broker and seller
- Broker must have power of attorney
  - To accept or reject offers on sellers behalf
- Listing agreement may be verbal
  - Must prove seller approved of brokers efforts to sell
- Listing agreement for more than one year must be in writing
- Signed listing agreement must be given to seller within 24 hours
- Cannot contain an automatic renewal

## Open listing Agreement

- **Given to multiple brokers**
  - Usually a for-sale-by-owner (FSBO)
- **Procuring cause**
  - Who introduced the property to the buyer
- **Unilateral contract**
  - Only seller has to perform
  - Can be terminated at will
- May not be entered in MLS

## Four Contracts Licensees May Prepare

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30	31					

A close-up photograph of a person's hand holding a pen and signing a document. The hand is positioned over a white sheet of paper, and the pen is in the process of writing. The background is blurred, showing a person in a blue shirt.

# **Four Contracts Licensees May Prepare**

## **Exclusive agency listing**

- Property is listed with one broker
- If owner is procuring cause – no commission due
- Listing brokerage participates with cooperating brokers
- May be entered in the MLS



## **Four Contracts Licensees May Prepare**

### **Exclusive right-of-sale listing**

- Most common in residential real estate
- Broker is paid no matter who is procuring cause, including owner
- Best protection for Broker
- May be entered in MLS

## Net listing

- Minimum amount owner wants to receive
- Broker keeps amount over sellers net amount, only customary commission allowed
- Excessive broker profit – considered unjust enrichment
- Legal in Florida



# Four Contracts Licensees May Prepare



# **Four Contracts Licensees May Prepare**

## **Contract for sale and purchase**

- Standard contracts provided by Florida Association of Realtors (FAR)
- FAR contracts not required by law
- Federal E-Sign Act allows electronic signatures



# **Four Contracts Licensees May Prepare**

## **Contract for sale and purchase**

- **Requirements needed to prepare sales contract**
  - Deed
  - All legal owners must sign listing and sales contract
  - Must know legal interest held by sellers
  - Provide accurate legal description
  - Not accurate – buyer may void contract
  - Survey – not required by law (lender)
    - encroachments

A close-up photograph of a person's hand holding a blue pen, poised to write on a white document. The hand is wearing a grey, textured sweater. In the background, a white coffee cup is visible on a wooden surface. The overall scene suggests a professional or legal setting.

# Occupancy and Possession

## **Immediate Possession**

- Buyer takes possession immediately after closing

## **Delayed Possession**

- Seller remains after closing
- Lease is prepared
- Seller – tenant
- Buyer – landlord

## **Possession while tenant occupied**

- Property sold while tenant is in possession
- Buyer must be made aware
- Written lease – tenant can continue to occupy the proper after closing



# **Four Contracts Licensees May Prepare**

## **Contract for sale and purchase**

- **Requirements needed to prepare sales contract**
  - Effective date
    - Date last party signed
    - Date used to calculate all time frames
    - Either party is in default if not in compliance with time frames
    - “time is of the essence”
- **Mortgage**
  - Existing loans satisfied

A close-up photograph of a person's hand holding a blue pen, poised to write on a document. The hand is wearing a grey, textured sweater. In the background, a white coffee cup sits on a wooden surface. The scene is softly lit, creating a professional and focused atmosphere.

# **Earnest Money Deposits**

- Also called: Good Faith Deposit
- Anything of value that can be turned into cash
  - Postdated checks with sellers approval
  - Promissory notes with sellers approval
- Broker not responsible for bounced checks
  - Deposited immediately



# Earnest Money Deposits

- Escrow held in trust by an attorney or title company
- **Verification of Deposits - 3 requirements:**
  - 1) Name, address & phone number of title co./attorney on sales contract
  - 2) Request written verification of deposit with 10 business days
  - 3) Provide seller's broker or seller with copy of verification within 10 business days
    - FREC Rule 61J2-14.008(2)(b)

- Personal property listed in contract:
- Separate value listed for each item
- Seller must pay sales tax

# Chattel and Fixture Inclusions

## **Rayner vs. Wise Realty**

- Sellers must disclose material defects
- Licensees must disclose material defects if known

## **Johnson vs. Davis**

- Sellers have a duty to disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer.
- “As-is” contract does not relieve sellers from duty to disclose



# Disclosures

## Stigmatized Properties

- Owners, landlords and real estate licensees
- Do not have to disclose if a homicide suicide or death occurred on the property

## HIV/AIDS

- Licensees must not disclose
- Do not have to disclose murder, death or suicide



# Disclosures

## **Restrictive Covenants**

- Seller must provide HOA documents to Buyer
- Buyer has 3 days to review

## **Community Development District (CDD)**

- Infrastructure financing by municipalities
- Seller must disclose
- In addition to property taxes

## **Lead-Based Paint**

- Pre- 1978 properties
- Sellers & landlords must provide disclosure



# **Disclosures**

## Brokerage Relationship

- Single Agency – written
- Transaction broker – presumed
- No brokerage – written
- Radon Gas
- Ad Valorem Tax Disclosure Summary
- Energy Efficiency Disclosure Brochure



# Disclosures



# Coffee Break

15 Minutes