

# Modern Real Estate Practice, Twentieth Edition



## **Unit 1: Introduction to the Real Estate Business**

Real estate transactions are taking place all around us, all the time. The services of many highly trained individuals are required: from attorneys to title insurance company agents, from surveyors to tax experts. All these people, in addition to buyers, sellers, landlords, and tenants, depend on the skills and knowledge of licensed real estate professionals.



# 1 Introduction to the Real Estate Business

## Learning Objectives

- List and describe the various careers available in the real estate industry.
- List the different classifications and characteristics of real property.
- Describe the types of housing available for purchase or rental. (cont.)

# 1 Introduction to the Real Estate Business

## Learning Objectives (cont.)

- Explain the factors of supply and demand in the real estate market and financial considerations for a homebuyer.
- Identify the advantages and disadvantages of investing in real estate.
- Describe the objectives and financial concepts involved in the investment process.

# 1 Introduction to the Real Estate Business

## Real Estate: A Business of Many Specializations

- Brokerage
- Appraisal
- Property Management
- Financing
- Subdivision and Development
- Home Inspection
- Counseling
- Education

# 1 Introduction to the Real Estate Business

## Types of Real Property

- Residential
- Commercial
- Mixed Use
- Industrial
- Agricultural
- Special Purpose

# 1 Introduction to the Real Estate Business

## Residential Property

- Advantages of home ownership
  - Financial stability
  - Long-term appreciation
- Advantages of renting a home
  - Affordability
  - Flexibility
  - Amenities offered by development or area

# 1 Introduction to the Real Estate Business

## Types of Housing

- Single-family detached house
- Apartment building
- Condominium
- Cooperative
- Planned unit development (PUD)
- Mixed-use development (MUD)
- Converted-use property
- Factory-built housing

# 1 Introduction to the Real Estate Business

## Fair Housing

Federal law prohibits discrimination in the provision of housing and housing-related services, such as lending, based on an individual's race, color, national origin, religion, sex, familial status, or disability.

# 1 Introduction to the Real Estate Business

## The Real Estate Market

### Supply and Demand

- When supply and demand are balanced, prices are stable.
- When supply increases, prices go down.
- when demand increases, prices go up.

# 1 Introduction to the Real Estate Business

Characteristics of real estate as a commodity

- Uniqueness
- Immobility

# 1 Introduction to the Real Estate Business

## Factors Affecting Supply

- Labor force, construction, and material costs
- Governmental controls and monetary policy

# 1 Introduction to the Real Estate Business

## Factors Affecting Demand

- Population
- Demographics
- Employment and wage levels

# 1 Introduction to the Real Estate Business

## Financial Considerations for the Homeowner

- Property appreciation
- Buildup of owner's equity as loan payments are made
- Tax deductions for mortgage interest and property tax
- Exclusion from capital gains tax of part or all of profit from a sale

## **Unit 2: Real Property and the Law**

Though real estate can never change its location, it is a product that has a market in which a variety of transactions take place. The real estate professional brings the parties together for a sale, lease, exchange, or other transaction. The real estate professional needs to know enough about the product to be able to educate and guide clients and customers, whether they are buyers, sellers, renters, landlords, or investors.



# 2 Real Property and the Law

## Learning Objectives

- Discuss the concepts of land and ownership rights in real property.
- Distinguish real and personal property.
- Explain the basic economic and physical characteristics of real property.
- Discuss the limitations of the real estate professional under the law.

# 2 Real Property and the Law

## Land, Real Estate, and Real Property

### Land

The earth's surface extending downward to the center of the earth and upward to infinity.

# 2 Real Property and the Law

## Real Estate

- Land plus all human-made improvements to the land that are permanently attached (annexed) to it.
- An improvement to land can be any artificial thing attached on or below ground, such as a building, fence, water line or sewer pipe, as well as growing things that are made part of the landscaping.

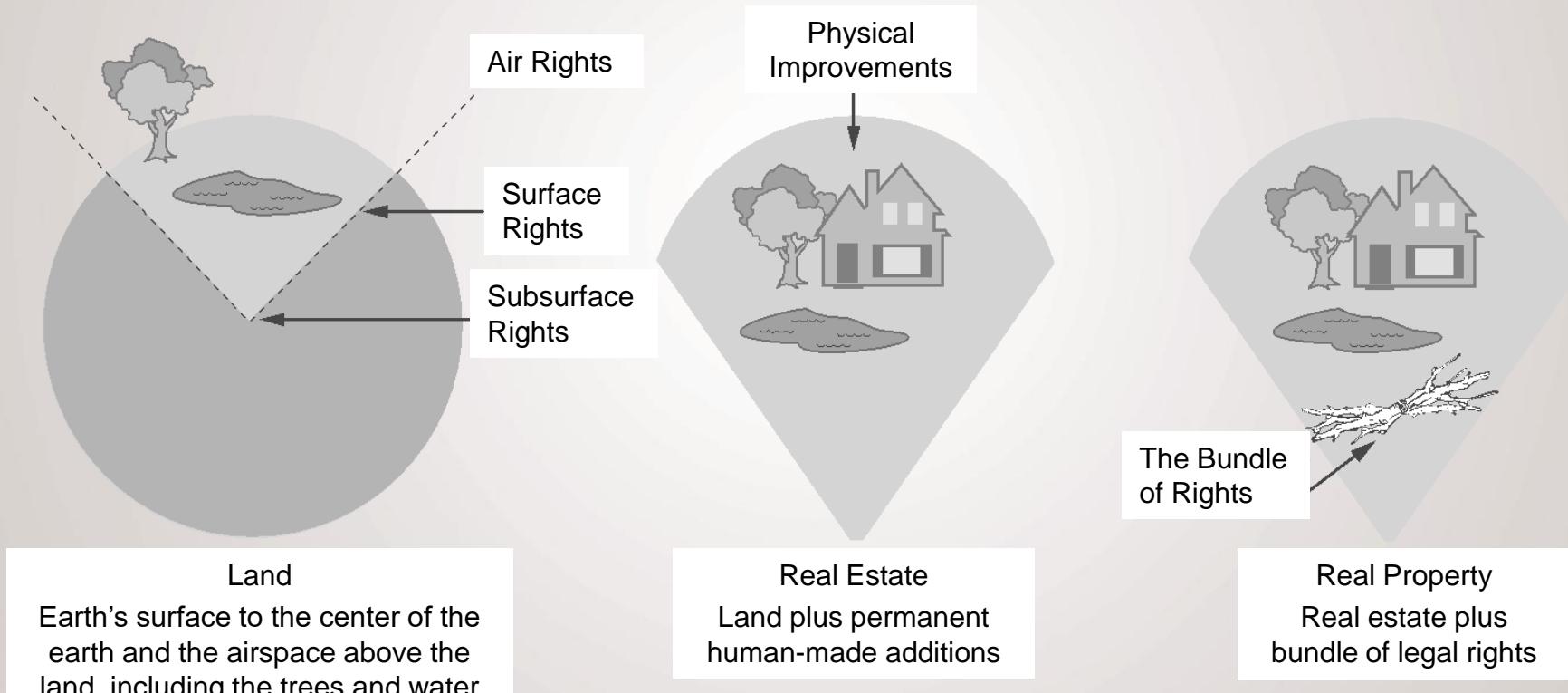
# 2 Real Property and the Law

## Real Property

- The interests, benefits, and rights that are automatically included in the ownership of real estate.

# 2 Real Property and the Law

## Land, Real Estate, and Real Property



# 2 Real Property and the Law

Bundle of legal rights



# 2 Real Property and the Law

## Title to Real Property

- The right to or ownership of the property, including the owner's bundle of legal rights
- Evidence of that ownership by a deed

# 2 Real Property and the Law

## **Surface rights**

Ownership rights in a parcel of real estate that are limited to the surface of the earth

## **Subsurface rights**

The rights to the natural resources below the earth's surface

## **Air rights**

The rights to use the space above the earth; may be sold or leased independently, provided the rights have not been limited by law

# 2 Real Property and the Law

## Water rights

Riparian rights are common law rights of owners of land that borders a flowing body of water

Littoral rights belong to owners of land that borders navigable lake, sea, or ocean

Accretion, erosion, and avulsion—add to or decrease land by natural action of water

Doctrine of prior appropriation—grants state the right to determine ownership and use of water

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# 2 Real Property and the Law

## Real Property Versus Personal Property

- Personal property (chattels)
- Factory-Built Housing
- Plants and growing crops

*Fructus naturales*

Emblements (*fructus industriaes*)

# 2 Real Property and the Law

## Classifications of Fixtures

A fixture is personal property that has been so attached to land or a building that, by law, it becomes part of the real property.

# 2 Real Property and the Law

## Legal Tests of a Fixture

- Method of annexation
- Adaptability of item to land's use
- Relationship of parties
- Intention in placing item on the land
- Agreement of the parties

# 2 Real Property and the Law

## Trade Fixtures

- Usually owned and installed by a tenant for the tenant's use
- May be attached to a building so they appear to be fixtures, but are removable

# 2 Real Property and the Law

## Characteristics of Real Property

### Economic Characteristics

- Scarcity
- Improvements
- Permanence of Investment
- Area Preference (situs)

# 2 Real Property and the Law

## Physical Characteristics

- Immobility
- Indestructability
- Uniqueness

# 2 Real Property and the Law

## Laws Affecting Real Estate

- Contract law
- General property law
- Agency law
- Real estate license law
- Federal, state, and local laws and regulations  
(e.g., consumer protection, environmental, tax, land use, and zoning)

## **Unit 3: Interests in Real Estate**

Ownership of a parcel of real estate includes all or some of the bundle of rights, depending on the type of interest a person holds in the property. Ownership may be limited by public and private restrictions intended to ensure that one owner's use and enjoyment of the property owned does not interfere with others' use and enjoyment of their property or with the welfare of the general public.



# 3 Interests in Real Estate

## Learning Objectives

- Identify and describe the various types of estates.
- Explain the difference between liens and other types of encumbrances.
- Explain the limitations on private property rights for the welfare of the public.

# 3 Interests in Real Estate

## Estates in land

### Freehold estates

- Fee simple estate
  - Fee simple absolute
  - Fee simple defeasible
  - Fee simple determinable

# 3 Interests in Real Estate

- Life Estate

- Conventional Life Estate

- Ordinary, with remainder or reversion

- Pur autre vie, with remainder or reversion

- Legal Life Estate

- Dower

- Homestead

- Courtesy

# 3 Interests in Real Estate

## Encumbrances

- Easements
- Private restrictions
- Liens
- Encroachments

# 3 Interests in Real Estate

## Liens

- Real estate taxes
- Mortgages
- Judgments
- Mechanics' liens

# 3 Interests in Real Estate

## Private Restrictions on use of Real Estate

- Deed restrictions
- Covenants, conditions, and restrictions (CC&Rs)

# 3 Interests in Real Estate

## Easements

- Easement appurtenant
- Easement in gross
- Easement by necessity
- Easement by prescription

# 3 Interests in Real Estate

## Terminating an Easement

An easement terminates

- When the need no longer exists
- When the owner of either the dominant or the servient tenement becomes sole owner of both properties
- By the release of the right of easement to the owner of the servient tenement
- By the abandonment of the easement
- By the nonuse of a prescriptive easement

# 3 Interests in Real Estate

## License

- Personal privilege given for a specific purpose

## Encroachment

- Illegal extension beyond boundaries of land

## Lis Pendens

- Pending legal action

# 3 Interests in Real Estate

## Governmental Powers

- Police power
- Eminent Domain
- Taxation
- Escheat

## **Unit 4: Forms of Real Estate Ownership**

Although the forms of ownership available are controlled by state law, real estate may be held in one of three basic ways. They include ownership in severalty (one owner), co-ownership (more than one owner), and ownership by a trust (property held for the benefit of another).



# 4 Forms of Real Estate Ownership

## Learning Objectives

- Define and explain the distinction between ownership in severalty and co-ownership.
- Describe the various forms of co-ownership in real estate.
- Describe the key elements of trusts, partnerships, corporations, and LLCs.
- Identify and describe the types of property ownership for common-interest properties.

# 4 Forms of Real Estate Ownership

## Ownership in Severalty

- Property is owned by one individual, corporation, or other entity

## Co-Ownership

- Property is owned by two or more individuals

# 4 Forms of Real Estate Ownership

## Forms of Co-Ownership

- Tenancy in common (TIC)
- Joint tenancy
- Tenancy by the entirety
- Community property

# 4 Forms of Real Estate Ownership

## Trusts and Business Organizations

- Living and Testamentary Trusts

- Land Trusts

- Business Organizations

- Partnership

- Corporation

- Limited Liability Company

# 4 Forms of Real Estate Ownership

## Condominiums, Cooperatives, and Time-Shares

- Condominium Ownership

- Common elements

- Right of first refusal

- HOA

# 4 Forms of Real Estate Ownership

- Cooperative Ownership

- Corporation holds title

- Corporation bylaws

- Shares of stock

# 4 Forms of Real Estate Ownership

- Time-Share Ownership

Time-share estate

Time-share use

## Unit 5: Land Description

A street address, while helpful for finding the location of a property or building, is not precise enough to define the perimeter of a parcel of land in a way that excludes all other parcels. A property description must be legally sufficient, or described in a way that will enable a sales contract, deed, or mortgage document to be legally enforceable. A legal description is a detailed way of describing a parcel of land for such documents. The description is based on information collected through a survey.



# 5 Land Description

## Learning Objectives

- Identify and explain the methods used for describing real estate.
- Explain the process involved in identifying and measuring property rights including those above and below the surface.

# 5 Land Description

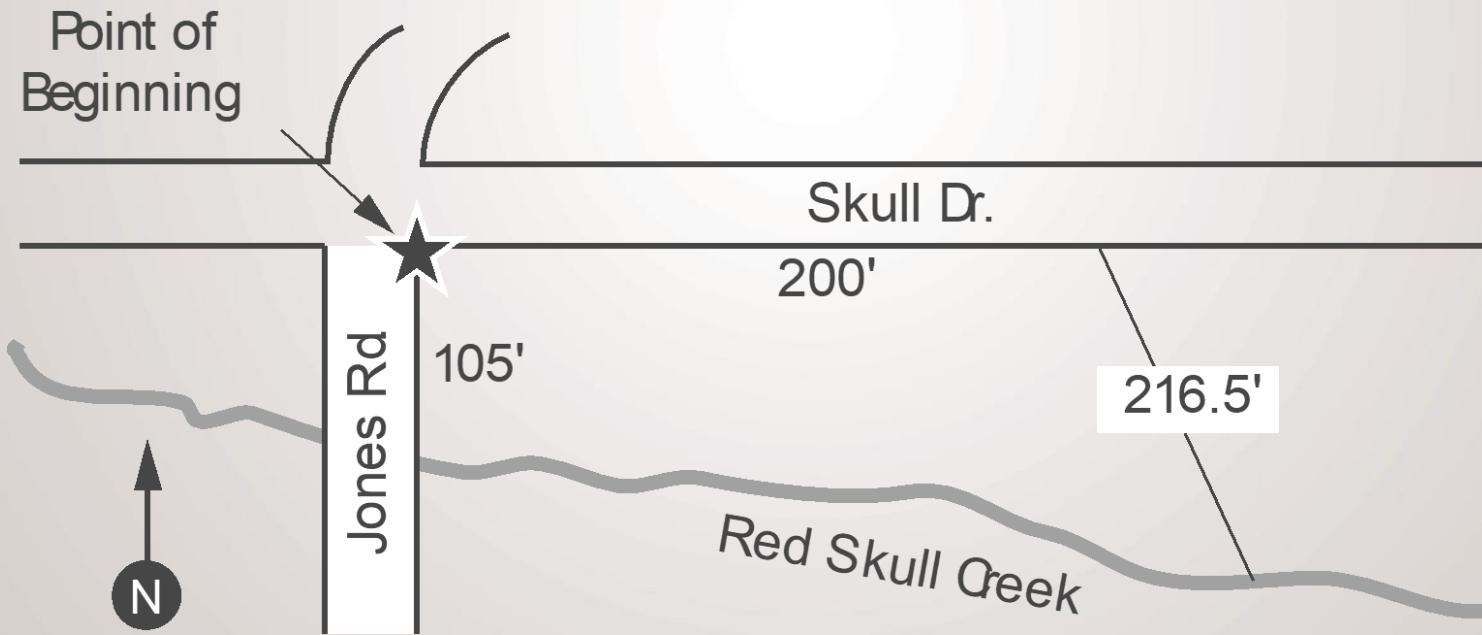
## Methods of Describing Real Estate

- Metes-and-bounds
- Rectangular (government) survey
- Lot-and-block (recorded plat)

# 5 Land Description

## Metes-and-Bounds Method

- Starts at point of beginning (POB)



# 5 Land Description

- Monuments are fixed objects used to identify the POB, all corners of the parcel or ends of boundary segments, and the location of intersecting boundaries.

# 5 Land Description

## Rectangular (Government) Survey System

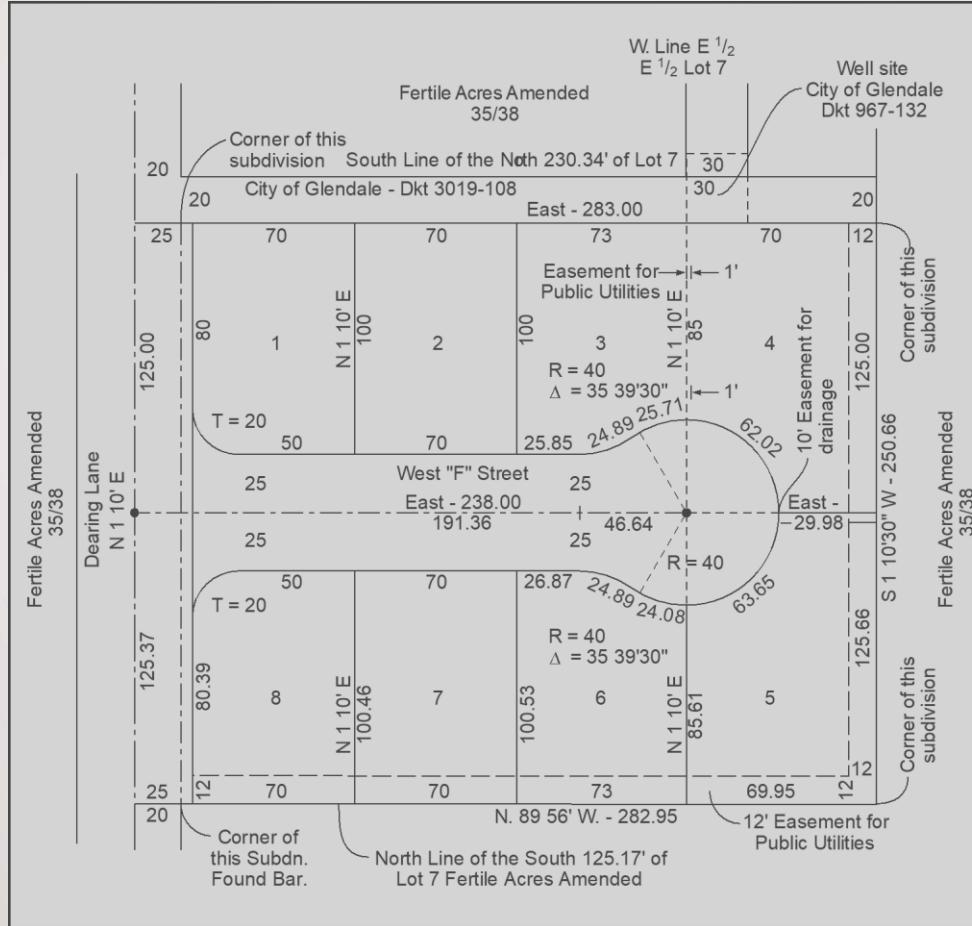
- Principal meridian
- Tiers
- Ranges
- Townships
- Sections

# 5 Land Description

## Lot-and-Block Method

- Lot and block number
- Subdivision plat

# Subdivision Plat Map of Block A



# 5 Land Description

## The Survey: Measuring Property Rights

- Legal description
- Survey sketch

# 5 Land Description

## Measuring Elevations

- Air lots
- Datum
- Monuments and Benchmarks

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# 5 Land Description

## Units of Land Measurement

- Mile—5,280 feet
- Square mile—640 acres
- Acre—43,560 square feet

## **Unit 6: Transfer of Title**

Transfer of title is an aspect of a real estate sales transaction generally handled by lawyers and title companies. Nonetheless, a real estate professional who is aware of the fundamentals of deeds and title issues will be able to alert consumers to the need for legal advice to avoid potential title problems.



# 6 Transfer of Title

## Learning Objectives

- Describe the fundamental concepts of *title* as it relates to the ownership of land, and the processes and instruments used to apply these concepts.
- Describe the circumstances and conditions which may provide for the involuntary transfer of title.
- Explain testate, intestate, wills, and the probate process.

# 6 Transfer of Title

## Title Concepts

### Voluntary Alienation

- A **grantor** conveys property *to* a **grantee**.
- A **grantee** receives property *from* a **grantor**.
- A **deed** is the instrument that conveys property from grantor to grantee.

# 6 Transfer of Title

## Requirements for a Valid Deed

- Grantor
- Grantee
- Consideration
- Granting clause
- Habendum clause (cont.)

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# 6 Transfer of Title

## Requirements for a Valid Deed (cont.)

- Legal description of real estate
- Exceptions and reservations, if any
- Signature of grantor
- Acknowledgment
- Delivery and acceptance

# 6 Transfer of Title

## Types of Deeds

- General warranty deed—provides greatest protection to buyer
- Special warranty deed—warrants that grantor received title and did not encumber the property
- Bargain and sale deed—no express warranties, but implies that grantor holds title
- Quitclaim deed—conveys only whatever interest grantor may have when deed delivered (cont.)

# 6 Transfer of Title

## Types of Deeds (cont.)

- Deed of trust—*trustor* conveys legal title to a *trustee* for the benefit of a *beneficiary*
- Reconveyance deed—used by trustee to return title to trustor
- Trustee's deed—used by trustee to convey title to anyone other than trustor
- Deed executed pursuant to a court order

# 6 Transfer of Title

## Transfer Tax Stamps

- May require *transfer declaration form*—also called *transfer statement* or *affidavit of real property value*
- Exemptions

Gifts	Deeds not in connection with a sale
Conveyances to, from, or between governments bodies	
Deeds by charitable, religious, or educational institutions	
Deeds securing debts or releasing property as security for debt	
Partitions	Tax deeds
Certain deeds of corporations	

# 6 Transfer of Title

## Involuntary Alienation—Usually by Operation of Law

- Condemnation allowed by state's power of eminent domain
- Foreclosure of a mortgage loan
- Sale to satisfy delinquent tax liens
- Transfer on death of owner by law of intestate succession or, if no heirs found, to state by escheat
- Adverse possession

# 6 Transfer of Title

Adverse possession requires that the use be:

- Open—obvious to anyone
- Notorious—known to others
- Continuous—uninterrupted
- Hostile—without true owner's consent
- Adverse—against the true owner's right of possession

# 6 Transfer of Title

## Conveyance of a Decedent's Property

- By Will, when a person dies *testate*
- According to the state's law of descent and distribution, when a person dies *intestate*
- Probate takes place in the county in which the decedent last resided, and in any other county in which the decedent owned real estate

## **Unit 7: Title Records**

A review of public records will reveal the documents, claims, and other details that affect a property's ownership. If the property is subject to any liens or other encumbrances, a prospective buyer or lender needs to know. A real estate professional should understand what is in the public record and what a search may disclose.



# 7 Title Records

## Learning Objectives

- Explain the public recordation system and its importance to the title insurer.
- Explain the benefits of title insurance and the difference between an owner's policy and a lender's policy.

# 7 Title Records

## Public Records

- Recording
  - Placing document in public record
- Constructive notice
  - Placing document in public record
  - Physical possession
- Actual notice
  - Information is available and someone is actually made aware of it

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# 7 Title Records

- Priority
  - The order in which documents or liens are recorded
- Unrecorded Documents
  - Real estate taxes
  - Special assessments
  - Inheritance taxes
  - Franchise taxes

# 7 Title Records

- Chain of title is record of property's ownership  
*Cloud on the title* is created when there is a gap in the chain of title  
*Action to quiet title* can be brought in court to establish ownership

# 7 Title Records

- Title Search and Abstract of Title

*Title search* is examination of public records

*Abstract of title* is summary report of what is discovered in a title search

# 7 Title Records

- **Marketable Title**

Title is marketable when it is acceptable to a reasonably prudent person

No serious defects; no questions of law or fact

Will not expose purchaser to litigation

Provides ability to sell or mortgage property at later time

# 7 Title Records

## Proof of Ownership

- Certificate of title
- Title insurance

Standard

Extended (ALTA)

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# 7 Title Records

- The Torrens System

Legal registration system to verify ownership of real estate and issue a certificate of title that will allow future title transfer without need for additional search of public records

## **Unit 8: Real Estate Brokerage**

Within a brokerage, no matter how large or small it is, each real estate professional has an individual business. Economics and personnel decisions are part of running a business. A successful real estate professional needs to think like a businessperson.



# 8 Real Estate Brokerage

- Learning Objectives
  - Describe the fundamentals of real estate brokerage and licensing laws.
  - Describe the purpose and basic elements of antitrust laws including price fixing, boycotts, and allocation of markets.
  - Explain how real estate professionals should use technology in real estate practice to comply with laws and ethical standards.

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# 8 Real Estate Brokerage

## Brokerage and Real Estate License Laws

- Purpose of License Laws

- Establish basic requirements for licensees

- Define activities that require licensing

- Describe standards of conduct and practice

- Enforce standards through disciplinary system

# 8 Real Estate Brokerage

Real Estate Brokerage—the business of bringing parties together

A real estate broker is licensed to buy, sell, exchange, or lease real property for others and to charge a fee for those services.

# 8 Real Estate Brokerage

## Relationship of Broker and Sales Associate

- A real estate salesperson is licensed to perform real estate activities on behalf of a licensed real estate broker, but a licensed real estate broker can choose to work for another broker.
- The broker for whom the sales associate (licensed individual) works is called the employing broker, and both are subject to the terms of an employment agreement, even when the sales associate is an independent contractor for tax and other purposes.

# 8 Real Estate Brokerage

## Independent Contractor Versus Employee

### Independent Contractor

No employee benefits

Sets own rules

### Employee

Must follow employer's rules for working hours, office routines, attendance at meetings, sales quotas, dress codes

# 8 Real Estate Brokerage

## Real Estate Assistant

If *licensed*, is employed by broker

If *unlicensed*, can be employed by a sales associate, but cannot perform duties for which a license is required

# 8 Real Estate Brokerage

## Broker's Compensation

Commission or fee, as specified in contract

Broker (or broker's sales associate) must be  
procuring cause of a sale

When seller accepts offer from ready, willing, and  
able buyer, broker has earned compensation

# 8 Real Estate Brokerage

## Sales Associate's Compensation

100% commission plan provides for sales associate to pay a monthly charge to broker, but keep 100% of commissions earned

Commission splits can vary, subject to negotiation

No matter how sales associate's compensation is structured, only employing real estate broker can pay it.

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# 8 Real Estate Brokerage

## Services Offered

Bundle of services

Services for property sellers

Services for property buyers

Limiting services offered

Requirements vary by state, which may require specified *minimum level of services* to be offered

# 8 Real Estate Brokerage

## Antitrust Laws

- Price-fixing
- Group boycott
- Allocation of customers
- Allocation of markets
- Tie-in agreements
- Penalties can be severe

# 8 Real Estate Brokerage

## Technology in Real Estate Practice

- NAR Internet Data Exchange (IDX) policy
- Smartphones
- Email/Texting
- Social Media
- Internet Advertising

# 8 Real Estate Brokerage

- Electronic Contracting

Uniform Electronic Transaction Act (UETA) had been adopted by all states except for Illinois, New York, and Washington

Electronic Signatures in Global and National Commerce Act (E-Sign) is used in states that have not enacted UETA

# 8 Real Estate Brokerage

- Prohibited Communications

- National Do Not Call Registry

- Telephone Consumer Protection Act (TCPA)

- Junk Fax Prevention Act

- Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act)

- Children's Online Privacy Protection Act (COPPA)

# 8 Real Estate Brokerage

## Professional Organizations and Ethics

### NAR Affiliates

- Counselors of Real Estate (CRE) [www.cre.org](http://www.cre.org)
- Commercial Investment Real Estate Institute (CIREI) [www.ccim.com](http://www.ccim.com)
- Institute of Real Estate Management (IREM) [www.irem.org](http://www.irem.org)
- REALTORS® Land Institute (RLI) [www.rliland.com \(cont.\)](http://www.rliland.com)

# 8 Real Estate Brokerage

- Certified Real Estate Brokerage Manager (CRB)  
[www.crb.com](http://www.crb.com)
- Certified Residential Specialist (CRS)  
[www.crs.com](http://www.crs.com)
- Graduate, REALTOR® Institute (GRI)  
[www.realtor.org](http://www.realtor.org)
- Council of Residential Specialists (CRS)  
[www.crs.com \(cont.\)](http://www.crs.com)

# 8 Real Estate Brokerage

- Society of Industrial and Office REALTORS® (SIOR) [www.sior.com](http://www.sior.com)
- Women's Council of REALTORS® (WCR) [www.wcr.org](http://www.wcr.org)

# 8 Real Estate Brokerage

## Professional Ethics

Ethics refers to a system of moral principles, rules, and standards of conduct.

- Establish standards for integrity and competence in dealing with consumers of an industry's services
- Define a code of conduct for relations within the industry among its professionals

# 8 Real Estate Brokerage

## Code of Ethics

- NAR's Code of Ethics
- NAREB Code of Ethics

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## **Unit 9: Real Estate Agency**

The relationship between a real estate professional and the parties involved in a real estate transaction is not a simple one. A real estate professional can represent a client as an agent, but the real estate professional acts as a fiduciary and is subject to a wide range of legal and ethical requirements designed to protect the seller, the buyer, and the transaction itself. There are other agency relationships in the real estate business, including that of sales associate to the employing broker.



# 9 Real Estate Agency

## Learning Objectives

- Explain agency concepts and terminology.
- Explain the difference between express and implied agency.
- Define the types of agency and identify which, if any, are involved in real estate practice.  
(cont.)

# 9 Real Estate Agency

## Learning Objectives (cont.)

- Describe and explain an agent's duties to third-party customers, especially regarding misstatements, misrepresentation, and potential fraud.

# 9 Real Estate Agency

## History of Agency

- Common law
  - Rules established by tradition and court decisions
  - Caveat emptor* (“Let the buyer beware”)
- Statutory Law
  - Laws enacted by the legislature
- Administrative Law
  - Rules and regulations created by real estate commissions, authorized by the legislature

# 9 Real Estate Agency

## Definitions in the Law of Agency

- *Agent* represents the interests of another person in dealings with a third person
- *Principal* hires the agent and delegates responsibilities of representation to the agent
- *Agency* is fiduciary relationship between principal and agent in which agent represents principal in one or more transactions
- *Fiduciary* is relationship in which agent is held in position of special trust and confidence by the principal (cont.)

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# 9 Real Estate Agency

## Definitions in the Law of Agency (cont.)

- *Client* is the principal in a real estate transaction for whom a real estate broker acts as agent
- *Customer* is the third party or nonrepresented consumer for whom some level of service may be provided and who is entitled to fairness and honesty
- *Nonagent (facilitator, intermediary, transactional broker, transaction coordinator, contract broker)* works with a buyer and seller (or landlord and tenant), without representing either party's interests

# 9 Real Estate Agency

## Creation of Agency

- *Express agency* is created by express agreement of the parties, stating the terms and conditions of the agency
- *Implied agency* may be created by implied agreement when the parties act as though they have mutually consented to an agency
- *Compensation* by itself does not determine an agency relationship; agency can exist even if no fee is involved—a *gratuitous agency*

# 9 Real Estate Agency

## Fiduciary Responsibilities

- Care C
- Obedience O
- Loyalty L
- Disclosure D
- Accounting A
- Confidentiality C

# 9 Real Estate Agency

## Types of Agency Relationships

- *General agent* Represents the principal in certain business matters generally
- *Special agent* Represents the principal only for specified transactions, such as the sale of a house

# 9 Real Estate Agency

## Disclosure of Agency

*Real estate professionals are required to disclose the parties they represent.*

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# 9 Real Estate Agency

## Single Agency

The agent represents only one party to a transaction

- Seller representation
- Buyer representation
- Property management

# 9 Real Estate Agency

## Dual Agency

The agent represents two principals in the transaction

- *Disclosed* and with written consent of the principals may be permitted by the state
- *Undisclosed* dual agency violates licensing laws
- *Designated* agency in which two sales associates with the same brokerage each represent a different party to a transaction may be allowed by the state

# 9 Real Estate Agency

## Termination of Agency

- Completion of purpose
- Death/incapacity of either party
- Destruction of property
- Expiration of terms
- Mutual agreement
- Breach by one of the parties
- Operation of law (bankruptcy)

# 9 Real Estate Agency

## Customer-Level Services

- Reasonable care and skill in performance
- Honest and fair dealing
- Disclosure of all facts that materially affect the value or desirability of the property

# 9 Real Estate Agency

## Opinion Versus Fact

- *Puffing* exaggerates a property's benefits
- *Fraud* is an intentional misrepresentation of a material fact to harm or take advantage of another person
- *Negligent misrepresentation* occurs when real estate professional should have known that a statement about a material fact was false

# 9 Real Estate Agency

## Disclosures

- *Environmental hazards* that make a property unusable for its intended purpose
- *Property conditions* that threaten structural soundness or personal safety
- *Stigmatized properties* that are considered undesirable because of events that occurred there or proximity to a known nuisance
- *Megan's Law* requires state registration of those who have committed certain criminal acts

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## **Unit 10: Client Representation Agreements**

The agreements by which a broker can be employed to act for a seller or a buyer in a sales transaction are client representation agreements. The most common are the listing agreement and the buyer representation agreement.



# 10 Client Representation Agreements

## Learning Objectives

- Describe the different types of listing agreements and how they may be terminated
- Describe the listing presentation and the information needed for a listing agreement.
- Identify the listing agreement terms and the responsibilities of both parties.
- Describe the types of buyer representation agreements and how they may be terminated.

# 10 Client Representation Agreements

## Representing the Seller

- Types of Listing Agreements
  - Exclusive Right-to-Sell
  - Exclusive Agency
  - Open
  - Net
- Listings Involving Cooperating Brokers
  - Multiple listing clause in listing agreement allows listing to be shared with other members of the listing broker's multiple listing service (MLS)

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# 10 Client Representation Agreements

## Termination of Seller Representation

- Agreement's purpose fulfilled
- Term expires
- Property is destroyed
- Title transferred by operation of law (bankruptcy, foreclosure)
- Mutual agreement
- Breach
- One party dies or becomes incapacitated

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# 10 Client Representation Agreements

## Expiration of Listing Period

- *Definite termination date* should be specified
- *Automatic extension clause* prohibited or discouraged
- *Broker protection clause* requires payment of commission within stated period after listing terminates, if broker originally introduced a subsequent buyer to the seller

# 10 Client Representation Agreements

## The Listing Presentation

- Comparative Market Analysis (CMA), also called competitive market analysis, shows asking prices of similar properties as well as prices at which similar properties have sold
- Information needed from property owner will include names of owners, description of property, seller's willingness to carry financing
- Disclosures include agency representation and seller's knowledge of property's condition

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# 10 Client Representation Agreements

## Listing Agreement Provisions

- Names of all parties to the contract
- Brokerage firm
- Description of premises
- Listing price
- Broker's authority and responsibilities
- Broker's compensation
- Real property and personal property included in the sale (cont.)

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# 10 Client Representation Agreements

## Listing Agreement Provisions (cont.)

- Leased equipment
- Proposed dates for closing and possession
- Closing attorney, title company, or escrow company
- Evidence of ownership
- Encumbrances
- Home warranty, if included in sale
- Termination (cont.)

# 10 Client Representation Agreements

## Listing Agreement Provisions (cont.)

- Broker protection clause
- Warranties by owner
- Indemnification clause
- Nondiscrimination statement
- Antitrust provision
- Signatures of the parties
- Date the contract is signed

# 10 Client Representation Agreements

## Representing the Buyer

Exclusive buyer representation agreement—  
buyer works with only one broker, but broker is  
free to represent other buyer clients

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# 10 Client Representation Agreements

## Termination of Buyer Representation

- Purpose of agreement fulfilled
- Term expires
- Mutual agreement
- Breach
- Either party dies or is incapacitated

## **Unit 11: Real Estate Contracts**

The real estate market is driven by contracts. A real estate professional must know not only what a contract means but also how one is created, what is required of the parties to the contract, and how the contract is concluded.



# 11 Real Estate Contracts

## Learning Objectives

- Describe the essential elements of a contract.
- Explain the various means by which a contract may be enforced, terminated, assigned, or replaced.
- Describe the primary written agreements and forms used in real estate sales and leasing.

# 11 Real Estate Contracts

## Contract Law

Contracts must be

- Voluntary
- Agreement or Promise
- Made by Legally Competent Parties
- Supported by Lawful Consideration
- For a Legal Act

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# 11 Real Estate Contracts

## Types of contract

- Express, if intent of parties shown in words
- Implied by conduct of parties, though statute of frauds requires certain contracts to be in writing
- Bilateral, if both parties promise to do something
- Unilateral, if one party promises to do something and the other party can accept by performance
- Executed, when both parties have performed (also refers to the signing of a contract)
- Executory, when one or both parties still have to perform

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# 11 Real Estate Contracts

## Creation of a Valid Contract

- Offer and acceptance
- Consideration
- Legally competent parties

Contract by minor is voidable by the minor

Contract by someone adjudicated incompetent is void

- Consent of both parties
- Legal purpose

# 11 Real Estate Contracts

## Validity of a Contract

- Valid—has all legal elements
- Void—lacks one or more elements and has no legal force or effect
- Voidable—has all legal elements on its face, but it may be rescinded or disaffirmed
- Unenforceable—appears to have all legal elements but cannot be enforced in court

# 11 Real Estate Contracts

## Discharge of Contracts

- Performance
- Assignment
- Novation
- Breach by one of the parties
  - Variety of remedies available to injured party
  - Statute of limitations requires legal action by deadline
- Other reasons (cont.)

# 11 Real Estate Contracts

## Discharge of Contracts (cont.)

- Other reasons may include

*Partial performance* by one party that is accepted in writing by the other party

*Substantial performance*

*Impossibility of performance* brought about by unforeseen circumstance

*Mutual agreement* of the parties

*Operation of law*

*Rescission* by mutual agreement of the parties

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# 11 Real Estate Contracts

## Contracts Used in the Real Estate Business

- Client representation agreements
- Real estate sales contracts
- Options
- Escrow agreements
- Property management agreements
- Leases
- Owner financing contracts, such as land contracts or contracts for deed

# 11 Real Estate Contracts

## Real Estate Sales Contract

Must include essential elements of a contract, plus:

- Sales price and terms
- Adequate description of the property and improvements
- Statement of kind and condition of title and form of deed to be delivered by seller
- Kind of title evidence required, who will provide it, and what defects in the title will be eliminated
- Statement of the terms of the agreement, including contingencies

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# 11 Real Estate Contracts

## Provisions of a Sales Contract

- Offer
- Counteroffer
- Acceptance
- Binder
- Earnest money deposit
- Equitable title
- Destruction of premises
- Liquidated damages (cont.)

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# 11 Real Estate Contracts

## Provisions of a Sales Contract (cont.)

- Contingencies
  - Mortgage (financing)
  - Inspection
  - Property sale
  - Lienholder approval, in a short sale
- Amendments and addendums
- Disclosures
  - May be required by state law within the contract or in a separate document

# 11 Real Estate Contracts

## Option Contract

- *Optionor* is property owner
- *Optionee* is prospective purchaser or tenant, who pays a fee for the right to exercise the option right

## Owner Financing Contract

Called a *land contract, contract for deed, contract of sale, bond for title, installment contract, land sales contract, or articles of agreement for warranty deed*

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## **Unit 12: Real Estate Financing**

Most homes in the United States are bought with borrowed money, and a huge lending industry has been created to service the financial requirements of homebuyers. It is important for the real estate professional to be knowledgeable about real estate financing programs and products in order to provide quality service, especially when representing a homebuyer.



# 12 Real Estate Financing

## Learning Objectives

- Describe the factors that contribute to housing affordability, including mortgage term and ability to pay.
- Describe the terms, conditions, and use of the promissory note.
- Explain the elements and use of security instruments, and describe the mortgage and deed of trust and the roles, rights, and obligations of the parties involved in each. (cont.)

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# 12 Real Estate Financing

- Describe the various types of real estate financing.
- Explain the distinction between a judicial foreclosure and a non-judicial foreclosure, and the process involved in each.
- Describe the various consumer protections related to homeownership.

# 12 Real Estate Financing

## Housing Affordability

- Mortgage Terms
- Ownership Expenses and Ability to Pay
  - PITI (principal, interest, taxes, and insurance)
  - FICO score
    - Credit score prepared by credit reporting company
  - Debt-to-income ratio (DTI)

# 12 Real Estate Financing

## Promissory Note

- Negotiable instrument
- Interest is charge for the use of money
  - Usury laws are in effect in many states
    - Federal law exempts federally related residential first mortgage loans from state usury laws
- Loan origination fee covers lender's expense in generating the loan
- Discount points increase lender's yield
- Prepayment penalty chargeable only on certain loans

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# 12 Real Estate Financing

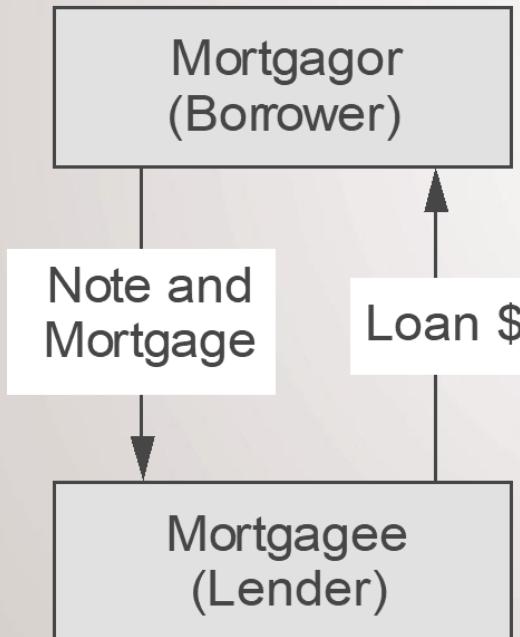
## Security Instrument

- Mortgage loan includes the debt itself and the security for the debt
- Hypothecation allows borrower to retain possession of property used as security for a debt
- Lien theory allows borrower to hold both legal and equitable title to property used as security for debt

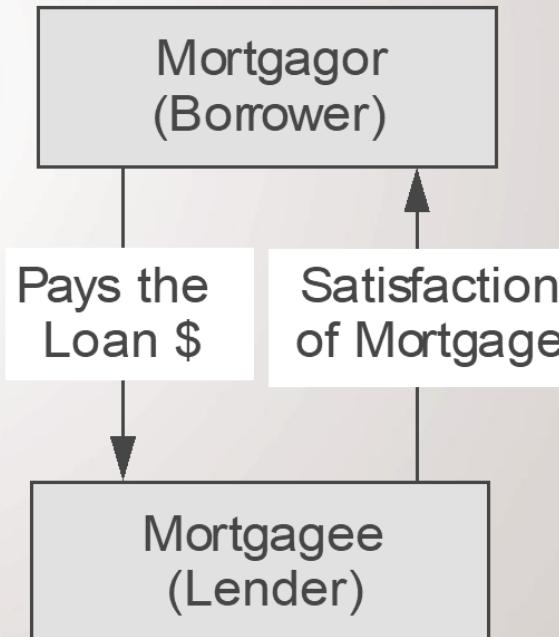
# 12 Real Estate Financing

## Mortgage—Two Parties

### When the Money is Borrowed



### When the Money is Repaid



# 12 Real Estate Financing

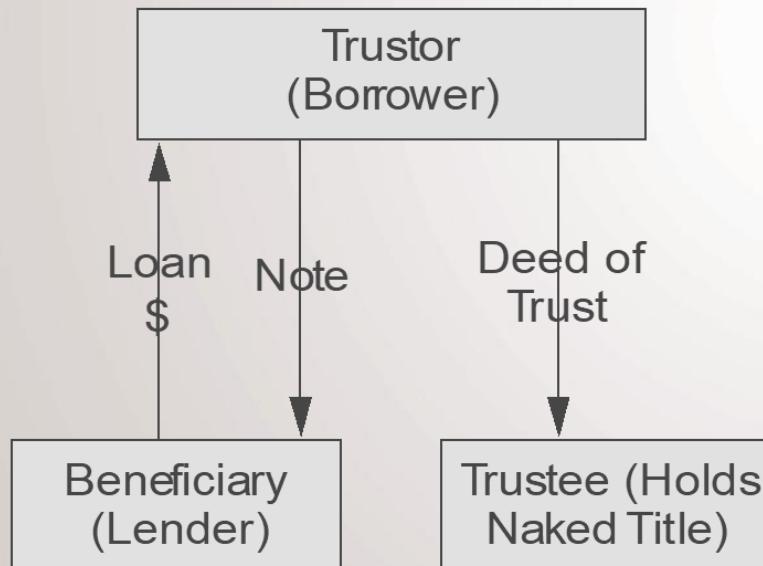
## Deed of trust

- *Trustor* is borrower, who conveys legal title to property to the *trustee*, who holds the title for the benefit of the *beneficiary*, and is authorized to sell the property in the event the debt is not repaid
- *Title theory* means that borrower holds *equitable title* to property while trustee holds *legal title* (called naked title), which is returned to borrower when debt is repaid

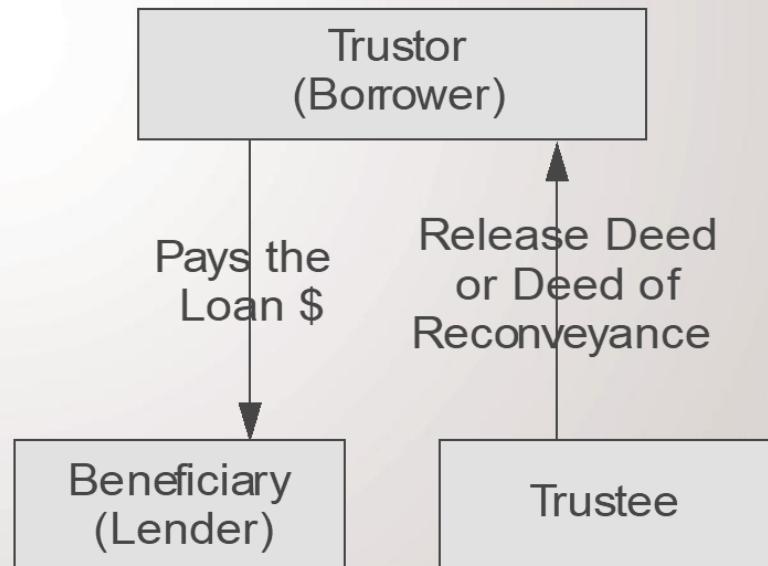
# 12 Real Estate Financing

## Deed of Trust—Three Parties

### When the Money is Borrowed



### When the Money is Repaid



# 12 Real Estate Financing

## Duties of the Borrower

- Payment of the debt in accordance with the terms of the promissory note
- Payment of all real estate taxes on the property
- Maintenance of adequate insurance on the property
- Maintenance of the property in good repair
- Receipt of lender authorization before making any major alterations to the property

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# 12 Real Estate Financing

## Provisions for Default

- *Acceleration clause*

## Assignment of the Mortgage

## Release of the Mortgage Lien or Deed of Trust

- *Defeasance clause*
- *Satisfaction of mortgage* (also called *release* or *discharge*)

# 12 Real Estate Financing

## Tax and Insurance Reserves

- Flood insurance reserves

## Buying “Subject to” or Assuming a Seller’s Mortgage or Deed of Trust

- Alienation clause

## Recording a Mortgage or Deed of Trust

## Priority of Mortgage or Deed of Trust

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# 12 Real Estate Financing

## Types of Loans

- Straight (interest-only)
- Amortized
- Adjustable-Rate Mortgage (ARM)

*Index* is economic indicator that determines rate adjustment

*Payment cap* limits amount interest rate may change

*Negative amortization* can occur when payment amount is capped and balance of loan is increased

- Growing-Equity Mortgage (GEM)
- Balloon Payment Loan
- Reverse Mortgage

# 12 Real Estate Financing

## Foreclosure

- *Judicial foreclosure* requires court order
- *Nonjudicial foreclosure*, when security instrument contains a power-of-sale clause
- *Strict foreclosure*, when court awards full legal title to lender following notice to delinquent borrower

## Deed in Lieu of Foreclosure

- Requires mutual agreement; called a friendly foreclosure

# 12 Real Estate Financing

## Redemption

*Equitable right of redemption* by defaulting borrower  
allowed by some states

## Deed to Purchaser at Sale

## Deficiency Judgment

Prohibited in some states on a purchase money loan for  
the borrower's principal residence

## Short Sale

Sale for less than remaining loan balance; requires  
lender's consent

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# 12 Real Estate Financing

## Consumer Protections

Dodd-Frank Act created Consumer Financial Protection Bureau

## Homeowners Insurance

Coverage and claims

Comprehensive loss underwriting exchange (CLUE)

## Federal Flood Insurance Program

Policy can cover replacement cost value (RCV) or  
actual cost value (ACV)

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## **Unit 13: Government Involvement in Real Estate Financing**

A mortgage that has no direct federal involvement (even though it may be made by a federally chartered lender) is called a *conventional loan*. Loans that have direct federal involvement include those insured by the Federal Housing Administration (FHA) or guaranteed by the U.S. Department of Veterans Affairs (VA).



# 13 Government Involvement in Real Estate Financing

## Learning Objectives

- Explain the primary and secondary mortgage marketplaces, the roles of the parties in each, and the impact on the parties of government influence.
- Describe the difference between conventional, government, and private loan programs available for real estate financing. (cont.)

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# 13 Government Involvement in Real Estate Financing

- Describe the various alternative and special purpose loan programs which can meet a borrower's special needs.
- Explain the primary government regulations which govern real estate lending and provide consumer protection against unfair lending practices.

# 13 Government Involvement in Real Estate Financing

## Introduction to the Real Estate Financing Market

- Government influences
  - Primarily, the Federal Reserve System
- Primary mortgage market
- Secondary mortgage market

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# 13 Government Involvement in Real Estate Financing

## Federal Reserve System (The Fed)

The Fed regulates the flow of money and interest rates in the marketplace through its member banks by controlling

- the rate charged for loans the Fed makes to member banks, called the *discount rate*
- reserve requirements—the minimum level of funds that a bank must maintain

# 13 Government Involvement in Real Estate Financing

## Primary Mortgage Market

Lenders who make money available directly to borrowers

- Savings associations
- Commercial banks
- Insurance companies
- Credit unions
- Pension funds (cont.)

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# 13 Government Involvement in Real Estate Financing

## Primary Mortgage Market (cont.)

- Endowment funds
- Investment groups
- Mortgage banking companies originate mortgage loans with their own funds and those of others
- Mortgage brokers are intermediaries who bring borrowers and lenders together

# 13 Government Involvement in Real Estate Financing

## Secondary Mortgage Market

Loans are bought and sold only after they have been funded

## Government-Sponsored Enterprises (GSEs)

- Fannie Mae
- Freddie Mac
- Farmer Mac
- Ginnie Mae

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# 13 Government Involvement in Real Estate Financing

## Loan Programs

- Conventional loans (80% LTV)

*Private mortgage insurance (PMI)* enables lenders to make loans greater than 80% LTV

- FHA-insured loans

Discount points

Assumption rules

HUD home sales

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# 13 Government Involvement in Real Estate Financing

- VA-Guaranteed Loans
  - Certificate of reasonable value (CRV)
  - Costs
  - Prepayment privileges
  - Assumption rules
- Agricultural Loan Programs
  - Farm Service Agency (FSA)
  - Farm Credit System

# 13 Government Involvement in Real Estate Financing

## Other Financing Techniques

- Package loan
- Blanket loan
- Open-end loan
- Construction loan
- Sale-and-leaseback
- Buydown
- Home equity loan

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# 13 Government Involvement in Real Estate Financing

## Financing Legislation

- Truth in Lending Act (TILA) and Regulation Z
  - Three-business-day right of rescission
  - Advertising must comply with strict rules
  - Penalties include actual damages, costs, legal fees, fines
- Equal Credit Opportunity Act (ECOA)
  - Prohibits discrimination in the lending process based on credit applicant's race, color, religion, national origin, sex, marital status, age, or receipt of public assistance
- Community Reinvestment Act of 1977 (CRA)
- Real Estate Settlement Procedures Act (RESPA)

## **Unit 14: Closing the Real Estate Transaction**

The conclusion of the real estate sales transaction is the closing, when title to the real estate is transferred in exchange for payment of the purchase price. Until closing preparations begin, a real estate professional's relationship is primarily with the buyer or the seller. During the closing period, new players come on the scene. A thorough knowledge of the closing process is the best defense against the risk of a transaction failing.



# 14 Closing the Real Estate Transaction

## Learning Objectives

- Describe the steps and involved to achieve conveyance of clear and marketable title, including compliance with all applicable laws.
- Describe closing procedures and the respective roles of all parties.
- Explain the Real Estate Settlement Procedures Act (RESPA) and the Mortgage Disclosure Improvement Act (MDIA). (cont.)

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# 14 Closing the Real Estate Transaction

## Learning Objectives (cont.)

- Describe and explain all buyer and seller charges and credits contained in the closing statement.
- Explain the financial entries and mathematical calculations contained in the closing statement.
- Review and confirm the accuracy of a closing statement.

# 14 Closing the Real Estate Transaction

## Preclosing Procedures

- Buyer's Concerns

- Inspections, including final property inspection

- Survey

- Title evidence

- Seller's Concerns

- Receiving payment

- Payoff statement from lender

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# 14 Closing the Real Estate Transaction

## Real Estate Professional's Role at Closing

- Varies by state
- Involved on behalf of client

## Lender's Interest in Closing

- Protect its security interest
- Mortgage lien priority

## IRS Reporting Requirements

Form 1099-S

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# 14 Closing the Real Estate Transaction

## Conducting the Closing

- Face-to-face

May include buyer, seller, real estate professionals, seller's and buyer's attorneys, lender's representative, title insurance company representative

- In escrow

# 14 Closing the Real Estate Transaction

## Legislation Related to Closing

- Real Estate Settlement Procedures Act (RESPA)
- Mortgage Disclosure Improvement Act (MDIA)

## TILA-RESPA Integrated Disclosure Rule

- Loan Estimate
- Closing Disclosure
- *Your Home Loan Toolkit* must be provided by creditor to mortgage applicant as part of loan application process

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# 14 Closing the Real Estate Transaction

## Kickbacks and Unearned Referral Fees

Prohibited by RESPA

## Mortgage Disclosure Improvement Act (MDIA)

Regulates change of interest rates before closing; APR increase of more than 0.125% after Closing Disclosure is delivered to borrower requires new disclosure with revised APR and additional three-day waiting period before closing can occur.

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# 14 Closing the Real Estate Transaction

## Preparation of Closing Statements

- A *debit* is an amount to be paid by the buyer or the seller.
- A *credit* is an amount payable to the buyer or the seller.

# 14 Closing the Real Estate Transaction

## Prorations

- In most states, seller owns the property on the day of closing
- Prorations may be computed by using 360 days in a year and 30 days in a month, or by using the actual number of days in the calendar month of closing
- Accrued items = Buyer credits
- Prepaid items = Seller credits

## **Unit 15: Real Estate Taxes and Other Liens**

The ownership of real estate is subject to certain obligations imposed by state and local governments, usually in the form of taxes that become a *lien against the property*. A creditor or a court can also place a claim against property to secure payment for a debt or other obligation.



# 15 Real Estate Taxes and Other Liens

## Learning Objectives

- Describe the characteristics of statutory and equitable liens
- Describe general taxes and special assessment taxes
- Explain real property liens, including judgments and taxes, and the protection and limitations they offer the respective parties

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# 15 Real Estate Taxes and Other Liens

## Liens

- A *lien* is a charge or claim against property to enforce payment of money
- All liens are *encumbrances*, because they attach to real property and lessen its value or impair its use, but not all encumbrances are liens

# 15 Real Estate Taxes and Other Liens

## Types of Liens

- Voluntary (created intentionally) or involuntary (created by law)
- Statutory (created by statute) or equitable (arising out of common law)
- General (affecting all real and personal property of a debtor) or specific (affecting only a particular property)

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# 15 Real Estate Taxes and Other Liens

## Effect of lien on title

- Might reduce the value of the property or serve as an impediment to a transfer of the property
- Release of lien by lienholder required to clear the title to the property
- Priority of liens is the order in which claims against a property will be satisfied
- Subordination agreement between lienholders will change the order in which the liens will be satisfied

# 15 Real Estate Taxes and Other Liens

## Real Estate Tax Liens

- General real estate tax is an *ad valorem* tax, which means it is based on the value of the property taxed
- Most states exempt from real estate taxation properties owned by

Cities

Various municipal organizations (schools, parks)

State and federal governments

Religious and charitable organizations

Hospitals

Educational institutions

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# 15 Real Estate Taxes and Other Liens

## Taxation Process

- *Assessment* is the valuation of real estate by county or township assessor or appraiser
- *Equalization factor* is applied to assessed property value to achieve uniformity
- *Tax rate* determined after budget adopted by taxing district
- *Tax bills* are sent out with deadlines for payment
- *Tax sale* is held if a court renders a judgment for overdue taxes, penalties, and administrative costs
- *Equitable right of redemption* in some states allows taxpayer to redeem the property before a tax sale
- *Statutory right of redemption* in some states allows taxpayer to redeem the property within statutory period after a tax sale

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# 15 Real Estate Taxes and Other Liens

## Special Assessment

Tax charged on real estate to fund public improvements

## Other Liens on Real Property

- Mortgage lien
- Mechanic's lien
- Judgment

*Lis pendens* provides notice of a possible future lien

*Writ of attachment* gives the court custody of the property

- Estate and inheritance tax liens (cont.)

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# 15 Real Estate Taxes and Other Liens

## Other Liens on Real Property (cont.)

- Liens for municipal utilities
- Bail bond lien
- Corporation franchise tax lien

General, statutory, involuntary lien on all real and personal property owned by the corporation

- IRS tax lien

General, statutory, involuntary lien on all real and personal property held by the delinquent taxpayer

## **Unit 16: Real Estate Appraisal**

Most real estate transactions require an appraisal by a licensed or certified real estate appraiser. Real estate professionals must be aware of the fundamental principles of valuation and have knowledge of the appraisal process to recognize a questionable appraisal. A broker's price opinion might be requested by a lender when property is refinanced.



# 16 Real Estate Appraisal

## Learning Objectives

- Explain appraisal concepts and the process employed by the appraiser.
- Differentiate between value and price.
- Describe the three approaches to value.

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# 16 Real Estate Appraisal

## Appraising

- Appraisal: An opinion of value based on supportable evidence and approved methods.
- Appraisal report: An opinion of market value on a property given to a lender or client with detailed market information.
- Appraiser: An independent professional trained to provide an unbiased opinion of value in an impartial and objective manner, following an identified appraisal process.

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# 16 Real Estate Appraisal

## Regulation of Appraisal Activities

- Appraiser Independence Requirements (AIR)
  - Took effect October 15, 2010
- Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)
  - Requires that appraisal in federally related transaction be performed by state licensed or certified appraiser
- *Uniform Standards of Professional Appraisal Practice (USPAP)*

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# 16 Real Estate Appraisal

## Organizations for Appraisers

- American Society of Appraisers, [www.appraisers.org](http://www.appraisers.org)
- American Society of Farm Managers and Rural Appraisers, Inc., [www.asfmra.org](http://www.asfmra.org)
- Appraisal Institute, [www.appraisalinstitute.org](http://www.appraisalinstitute.org)
- International Association of Assessing Officers, [www.iaao.org](http://www.iaao.org)
- International Right of Way Association, [www.irwaonline.org](http://www.irwaonline.org)
- National Association of Independent Fee Appraisers, [www.naifa.com](http://www.naifa.com)
-

# 16 Real Estate Appraisal

## Comparative Market Analysis (CMA)

Based on:

- Recently sold properties
- Properties currently on the market
- Expired listings
- NOT an appraisal

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# 16 Real Estate Appraisal

## Broker's Price Opinion (BPO)

- Usually less extensive than a CMA
- NOT an appraisal
- Fannie Mae allows for certain transactions, including a short sale or deed-in-lieu of foreclosure
- Cannot be used if the matter involves a federally related transaction that requires an appraisal and/or the transaction occurs in a state that requires one

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# 16 Real Estate Appraisal

## The Appraisal Process

- Define the problem
- Determine scope of work
- Gather, record, verify, and analyze the necessary data
- Form opinion of value by each of the three approaches
- Reconcile values for final opinion of value
- Report final opinion of value

# 16 Real Estate Appraisal

## Uniform Residential Appraisal Report (URAR)

- Fannie Mae Form 1004/Freddie Mac Form 70
- Last revised March, 2005
- Specifies detailed information required
- Highlights certifications required of the appraiser
- Accompanied by a page of instructions
- Available online at [www.fanniemae.com](http://www.fanniemae.com)

# 16 Real Estate Appraisal

## Value

Before a product can have value there must be

- Demand
- Utility
- Scarcity
- Transferability

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# 16 Real Estate Appraisal

## Market Value

Most probable price a property will bring in a competitive market

## Market Price

Property's asking, offer, or sales price

## Cost

More likely to equal market value when improvements are new

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# 16 Real Estate Appraisal

## Basic Principles of Value

- Anticipation
- Change
- Competition
- Conformity
- Contribution
- Highest and Best Use
- Increasing and Diminishing Returns
- Plottage
- Regression and Progression
- Substitution
- Supply and Demand

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# 16 Real Estate Appraisal

## Three Approaches to Value

- Sales Comparison Approach (Market Data Approach)

- Cost Approach

Land Value + Current Cost of Improvements – Depreciation = Value

- Income Approach

Potential Gross Income – Vacancy and Rent Loss = Effective Gross Income

Effective Gross Income – Operating Expenses = Net Operating Income

Net Operating Income x Capitalization Rate = Value

*Gross rent multiplier* for one to four-unit resid. property

*Gross income multiplier* for resid. property of five or more units

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# 16 Real Estate Appraisal

## Reconciliation

- Analyzing and effectively weighing the findings from the three approaches.
- Appraiser explains not only the appropriateness of each approach but also the relative reliability of the data within each approach in line with the type of value sought
- Appraiser explains how the data reflect the current market

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## **Unit 17: Leases**

Anyone with an interest in rental property should be aware of the basic provisions of leases and other landlord-tenant issues. Real estate professionals should be knowledgeable about the local rental market to better assist prospective buyers or investor-buyers, or to manage their own portfolios.



# 17 Leases

## Learning Objectives

- Explain the essential elements of leasehold interests.
- Describe the essential terms of a lease agreement.
- Distinguish the various types of leases.
- Explain the means by which the lease may be terminated and discharged and the remedies available to the parties for its breach.

203

# 17 Leases

## Leasing Real Estate

Leasehold (less-than-freehold) estate is a tenant's right to possess real estate for the term of the lease

- *Estate for years* continues for definite period
- *Estate from period to period* is indefinite
- *Estate at will* gives tenant the right to possess the property with the landlord's consent for an unspecified or uncertain term
- *Estate at sufferance* occurs when tenant continues in possession of property without landlord's permission after lawful lease terminates

204

# 17 Leases

## Lease Agreements

- Capacity to contract
- Legal objective
- Offer and acceptance
- Consideration

205

# 17 Leases

## Lease Provisions

- Possession of premises
- Use of premises
- Term of lease
- Security deposit
- Improvements
- Accessibility
- Maintenance of premises
- Destruction of premises
- Assignment and subleasing

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# 17 Leases

## Types of Leases

- Gross lease
- Net lease
- Percentage lease
- Variable lease
- Ground lease
- Oil and gas lease
- Lease purchase
- Sale-and-leaseback

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# 17 Leases

## Discharge of a Lease

- Breach
  - Actual Eviction
  - Constructive Eviction
- Tenant Legislation
- Fair Housing and Civil Rights Laws

208

## **Unit 18: Fair Housing**

Understanding and working within the context of fair housing laws is critical to creating and maintaining a vibrant and ultimately profitable real estate market for everyone.



# 18 Fair Housing

## Learning Objectives

- Explain the significance of the Civil Rights Act of 1866 to equal opportunity in housing.
- Describe and explain the various federal laws which protect Americans from unfair housing practices.
- Describe blockbusting, steering, redlining, and other abusive housing practices. (cont.)

210

# 18 Fair Housing

## Learning Objectives (cont.)

- List the various recourses available to the aggrieved person who believes illegal discrimination has occurred, including acts of real estate professionals.
- Describe the importance to real estate professionals and the public of understanding and complying with fair housing laws.

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# 18 Fair Housing

## Equal Opportunity in Housing

### The Civil Rights Act of 1866

- Prohibits discrimination based on race

### Title VII of the Civil Rights Act of 1866:

### Fair Housing Act

- Prohibits discrimination based on race, color, national origin, religion, sex, familial status, or disability.

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# 18 Fair Housing

Housing for Older Persons Act (HOPA)

Housing intended for those age 55 or older

- At least 80% of occupied units have one person age 55 or older living in them.

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# 18 Fair Housing

## Definitions

- Dwelling
- Family/Familial Status
- Disability

214

# 18 Fair Housing

## Exemptions to the Fair Housing Act

- Owner-occupied buildings with no more than four units
- Single-family housing sold or rented without the use of a real estate professional
- Housing operated by organizations and private clubs that limit occupancy to members
- The rental of rooms or units in an owner-occupied building of no more than four units

215

# 18 Fair Housing

- The sale or rental of a single-family home when

The home is owned by an individual who does not own more than three such homes at one time (and who does not sell more than one every two years).

A real estate professional is not involved in the transaction

Discriminatory advertising is not used

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# 18 Fair Housing

Americans with Disabilities Act (ADA)

Requires reasonable accommodations in employment and access to goods, services, and public buildings for persons with a disability

- Title I: Employers of 15 or more employees must make reasonable accommodations
- Title III: Full accessibility to businesses, goods, and public services

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# 18 Fair Housing

## ADA and the Fair Housing Act

### ADA exempts

- Property that is covered by the Fair Housing Act, which already prohibits discrimination on the basis of disability
- Property that is exempt from coverage by the Fair Housing Act, such as housing for those age 55 or older

# 18 Fair Housing

## Fair Housing Issues

- Blockbusting
- Steering
- Advertising
- Appraising
- Redlining
- Intent and Effect
- Response to Concerns of Terrorism

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# 18 Fair Housing

## Enforcement of the Fair Housing Act

- Complaints investigated by HUD
- Penalty for violations

\$19,987 for first offense

\$49,467 for a second violation within five years

\$98,935 for a further violation within seven years

220

# 18 Fair Housing

## State and Local Enforcement Agencies

All real estate professionals should be aware of their states' fair housing laws, as well as applicable local ordinances.

## Threats or Acts of Violence

The Fair Housing Act protects the rights of those who seek the benefits of the fair housing laws.

Threats, coercion, and intimidation are punishable by criminal action.

221

# 18 Fair Housing

## Implications for Real Estate Professionals Consequences

- Monetary penalties
- Threat to livelihood if real estate license is suspended or revoked

***That the offense was unintentional  
is no defense.***

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## **Unit 19: Property Management**

Property management involves the leasing, managing, marketing, and overall maintenance of real estate owned by others, usually rental property. Although some owners of rental units manage their own properties most rental properties are professionally managed.



# 19 Property Management

## Learning Objectives

- Describe the various assignments available in the property management field and the role of the property manager in each.
- Explain the essential elements of the property agreement.
- List and the primary responsibilities of the property manager. (cont.)

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# 19 Property Management

## Learning Objectives (cont.)

- Describe the various federal laws which the property manager must know and comply with in the performance of management duties.
- Describe the implementation of risk management procedures to insure the safety and security of a managed property's tenants as well as to protect the landlord from liability and loss.

# 19 Property Management

## The Property Manager Responsibilities

- Achieve the objectives of the property owner
- Generate income for the owner
- Preserve and/or increase the value of the investment property

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# 19 Property Management

## Property Management Clients

- Corporate owners
- Owners of apartment buildings
- Owners of small residential rental properties
- Homeowners associations
- Investment syndicates
- Trusts
- Owners of office buildings

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# 19 Property Management

## Newest Property Management Specializations

- Community association management
- Housing for seniors
- Manufactured home parks
- Resort housing
- Concierge services
- Asset management
- Corporate property management
- Leasing agent

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# 19 Property Management

## The Management Agreement

- Property description
- Time period
- Manager's responsibilities
- Owner's purpose and responsibilities
- Extent of manager's authority
- Reporting requirements
- Compensation (cont.)

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# 19 Property Management

## The Management Agreement (cont.)

- Allocation of costs
- Liability
- Antitrust provisions
- Equal opportunity statement

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# 19 Property Management

## The Property Manager's Responsibilities

- Management plan
- Financial reports
- Setting rental rates
- Marketing
- Advertising
- Management activities
- Marketing and advertising costs (cont.)

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# 19 Property Management

## The Property Manager's Responsibilities (cont.)

- Selecting tenants
- Collecting rents
- Maintaining good relations with tenants
- Maintaining the property
- Environmental concerns

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# 19 Property Management

## Federal Laws Prohibiting Discrimination

- Americans with Disabilities Act (ADA)

Reasonable modifications

- Equal Credit Opportunity Act (ECOA)

- Fair Housing Act

Prohibits discrimination based on race, color, religion, national origin, sex, familial status, or disability

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# 19 Property Management

## Risk Management

- Avoid
- Control
- Transfer

**Or**

- Retain

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# 19 Property Management

## Security of Tenants

## Insurance

- Tenant's insurance
  - HO-4 policy
- Commercial insurance
  - Fire and hazard; flood; consequential loss, use, and occupancy; contents and personal property; liability; casualty; surety bonds
- Insurance claims

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## **Unit 20: Land-Use Controls and Property Development**

Real estate professionals must be knowledgeable about local land-use restrictions in order to avoid showing a buyer a property that is not suitable for the buyer's intended use. While no one expects real estate professionals to become experts in land use, they should be aware of these issues and be able to direct their clients to appropriate sources of additional information.



# 20 Land-Use Controls and Property Development

## Learning Objectives

- Explain the concept of police power and the provisions under which it protects the public health, safety, and welfare.
- Explain zoning ordinances, permits, and property use.
- Define building codes as they relate to the requirements and restrictions placed on construction standards. (cont.)

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# 20 Land-Use Controls and Property Development

## Learning Objectives (cont.)

- Explain the issues and regulations involved in creating subdivisions.
- Explain non-governmental (private) land use restrictions: covenants, conditions, and restrictions (CC&Rs).
- Describe the various laws and agencies which regulate land sales.

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# 20 Land-Use Controls and Property Development

## Land-Use Controls

- Police Power of Government
- The Comprehensive Plan

## Zoning

- Zoning ordinances implement comprehensive plan
- Zoning affects permitted uses of each parcel of land, including building setbacks and types of structures

# 20 Land-Use Controls and Property Development

## Exceptions from Zoning Ordinance

Zoning hearing board conducts hearing

- Non-conforming use
- Variance
- Conditional-use permit

## Building Codes and Certificates of Occupancy

- Permit required before building
- Certificate of occupancy issued on satisfactory completion
- ADA architectural standards may be applicable

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# 20 Land-Use Controls and Property Development

## Subdivision

A *subdivider* segments land into parcels.

A *developer* constructs improvements on subdivided parcels.

# 20 Land-Use Controls and Property Development

Land Development Plan

Subdivision Plan

- Plat map
- Density

Private Land-Use Controls

- Deed Restrictions
- Restrictive Covenants

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# 20 Land-Use Controls and Property Development

## Regulation of Land Sales

- Interstate Land Sales Full Disclosure Act (ILSA)
  - ILSA has exemptions for
    - Subdivisions of fewer than 25 lots
    - Subdivisions in which each lot is 20 acres or more
    - Lots offered for sale solely to developers
    - Lots on which buildings exist or where a seller is obligated to construct a building within two years
- State Subdivided Land Sales Laws

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## **Unit 21: Environmental Issues and the Real Estate Transaction**

Environmental issues and health issues based on environmental hazards have become real estate issues. Although real estate professionals are not expected to have the technical expertise necessary to determine whether a hazardous substance is present, they should be familiar with state and federal environmental laws and the regulatory agencies that enforce them.



# 21 Environmental Issues in the Real Estate Transaction

## Learning Objectives

- Identify the basic environmental hazards the real estate professional should be aware of for the protection of client interests as well as the personal risk of liability for nondisclosure.
- Describe *groundwater*, *water table* and the provisions of the Safe Drinking Water Act. (cont.)

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# 21 Environmental Issues in the Real Estate Transaction

## Learning Objectives (cont.)

- Describe the issues involved with underground storage tanks, and the associated legal requirements facing the property owner.
- Explain the regulation involved in the creation and operation of waste disposal sites and in the control of brownfields. (cont.)

# 21 Environmental Issues in the Real Estate Transaction

## Learning Objectives (cont.)

- List the various federal laws which protect the public from uncontrolled hazardous waste, and the liability issues facing those who violate any of these laws.
- Explain the responsibilities and duties of real estate professionals regarding environmental issues.

# 21 Environmental Issues in the Real Estate Transaction

## Hazardous Substances

- Asbestos
- Lead-Based Paint
- Radon
- Formaldehyde
- Carbon Monoxide
- Polychlorinated Biphenyls (PCBs)
- Chlorofluorocarbons (CFCs)
- Mold

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# 21 Environmental Issues in the Real Estate Transaction

Groundwater Protection

The Safe Drinking Water Act

Underground Storage Tanks (USTs)

Waste Disposal Sites and Brownfields

The Brownfields Law

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# 21 Environmental Issues in the Real Estate Transaction

## Environmental Legislation

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
  - Superfund
  - Potentially responsible parties (PRPs)
- Superfund Amendments and Reauthorization Act (SARA)

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# 21 Environmental Issues in the Real Estate Transaction

## Dealing with Environmental Issues

- Discovery of Environmental Hazards
- Environmental Site Assessments
- Environmental Impact Statements
- Disclosure of Environmental Hazards