

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.

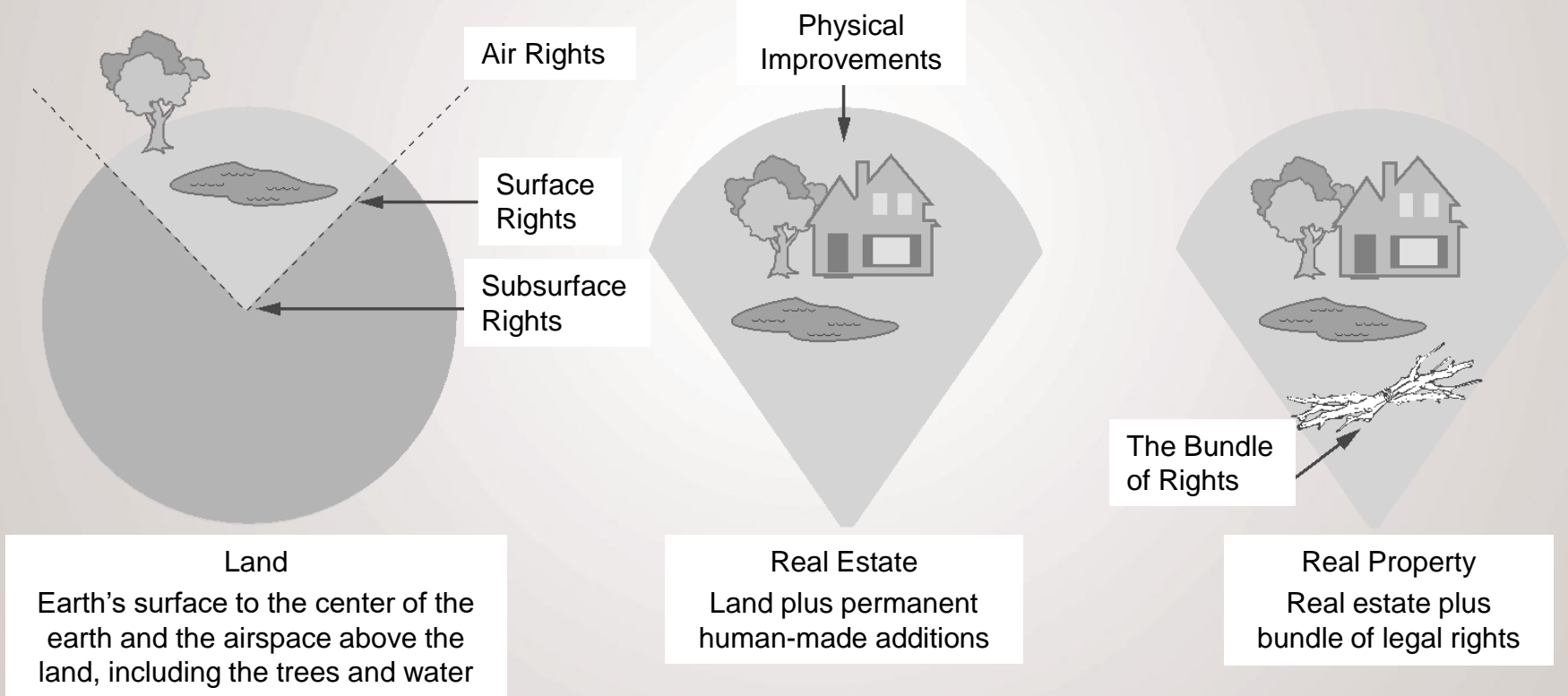
2 Real Property and the Law

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

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 industriales*)

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

Curtesy

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

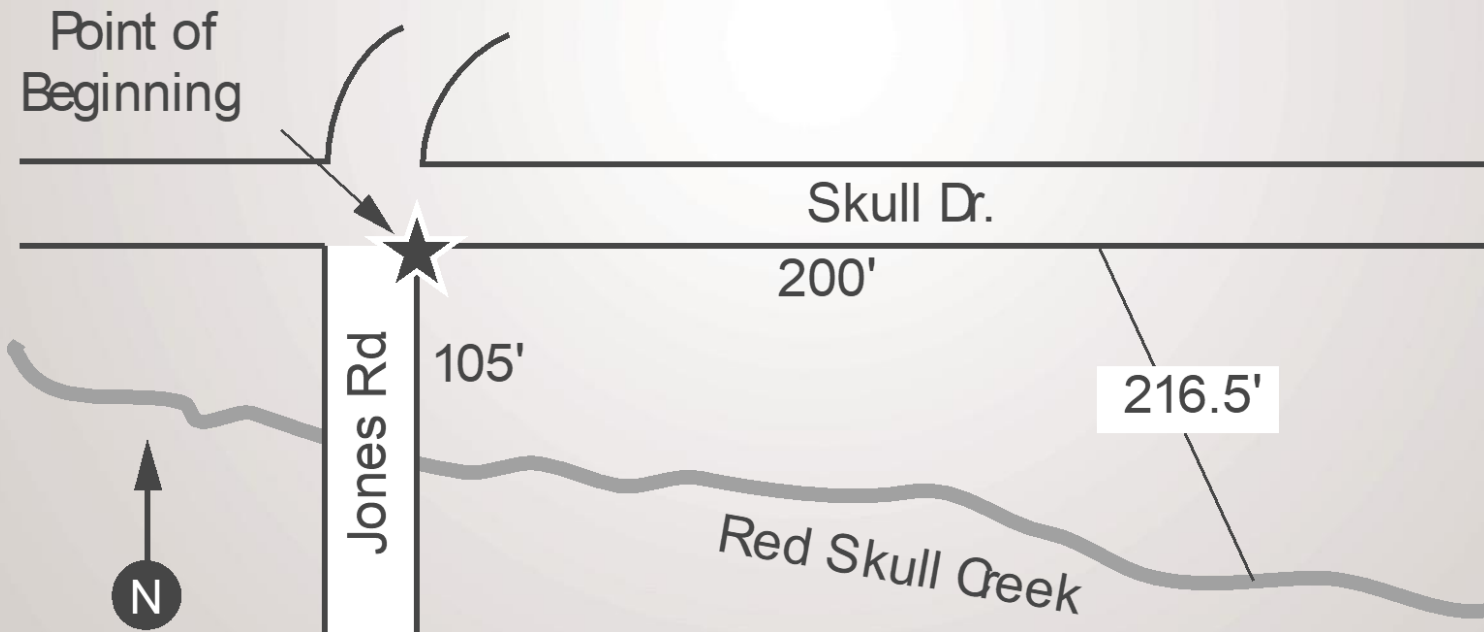
Methods of Describing Real Estate

- 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

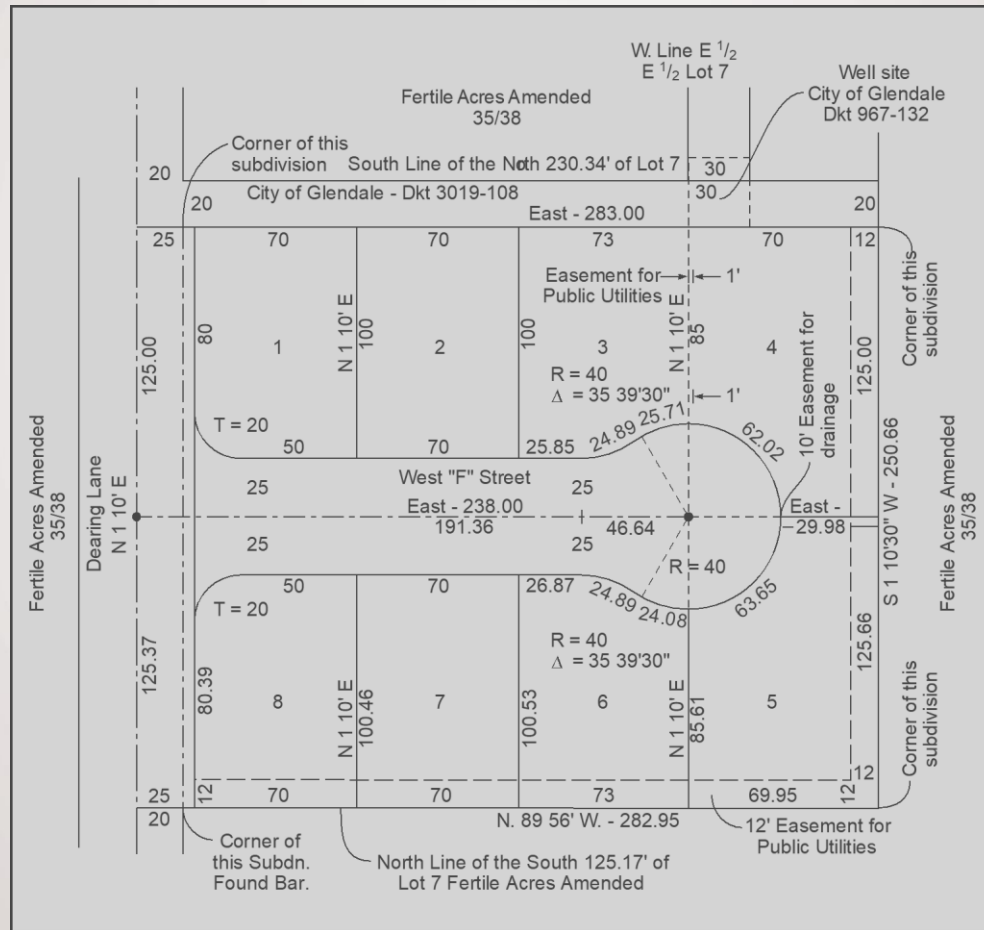
- Principal meridian
- Tiers
- Ranges
- Townships
- Sections

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

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.)

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

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)

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.

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.

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
- Commercial Investment Real Estate Institute (CIREI) www.ccim.com
- Institute of Real Estate Management (IREM) www.irem.org
- REALTORS® Land Institute (RLI) www.rliland.com (cont.)

8 Real Estate Brokerage

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

8 Real Estate Brokerage

- Society of Industrial and Office REALTORS® (SIOR) www.sior.com
- Women's Council of REALTORS® (WCR) 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

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.)

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.

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

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)

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

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.)

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

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

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

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

11 Real Estate Contracts

Provisions of a Sales Contract

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

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

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.)

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

12 Real Estate Financing

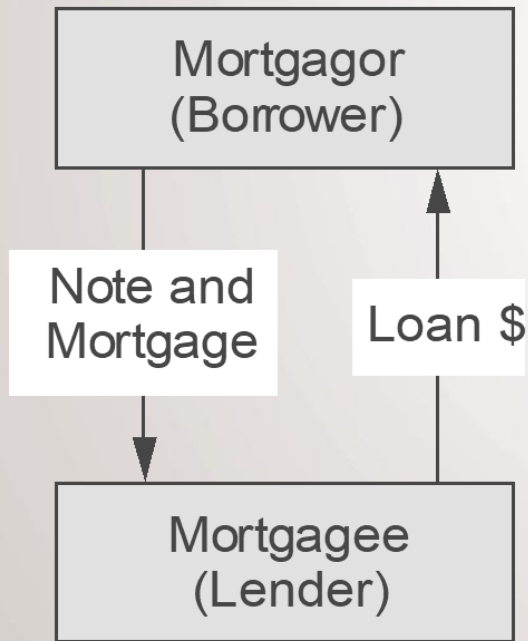
Security Instrument

- 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

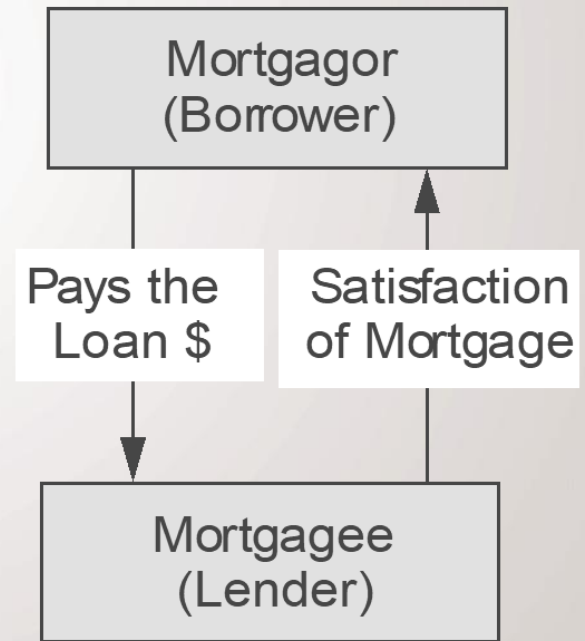
12 Real Estate Financing

Mortgage—Two Parties

When the Money is Borrowed



When the Money is Repaid



12 Real Estate Financing

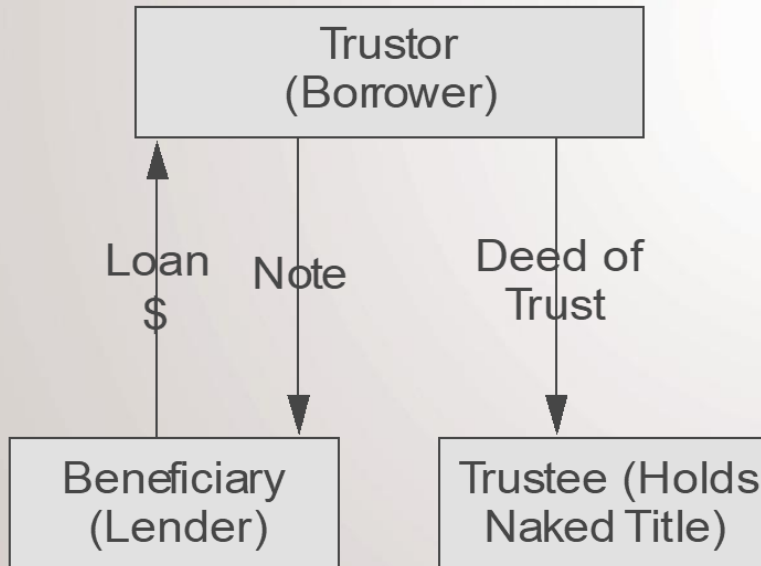
Deed of trust

- *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

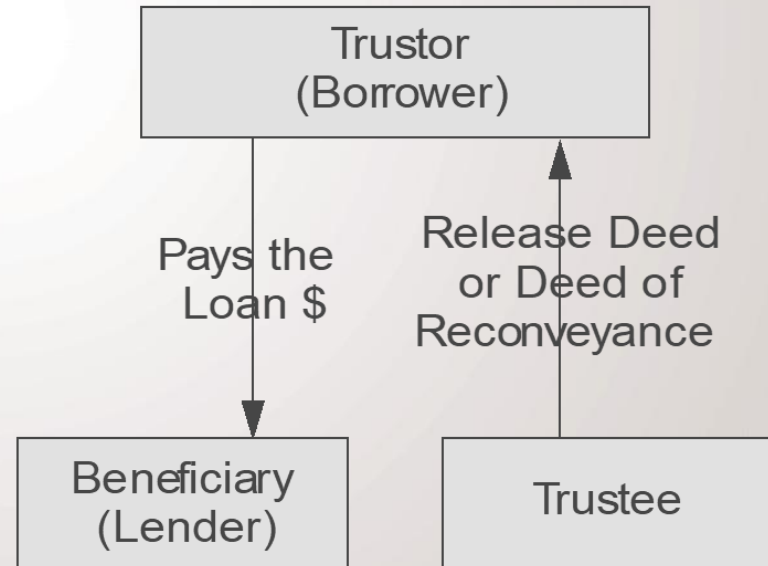
12 Real Estate Financing

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

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

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

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)

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.)

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

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.)

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

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

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

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.)

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

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

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

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.

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

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)

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

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

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.)

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.

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.

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)*

16 Real Estate Appraisal

Organizations for Appraisers

- American Society of Appraisers, www.appraisers.org
- American Society of Farm Managers and Rural Appraisers, Inc., www.asfmra.org
- Appraisal Institute, www.appraisalinstitute.org
- International Association of Assessing Officers, www.iaao.org
- International Right of Way Association, www.irwaonline.org
- National Association of Independent Fee Appraisers, 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

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

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

16 Real Estate Appraisal

Value

Before a product can have value here must be

- **Demand**
- **Utility**
- **Scarcity**
- **Transferability**

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

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

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

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

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.

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

17 Leases

Lease Agreements

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

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

17 Leases

Discharge of a Lease

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

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.)

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.

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 1868:

Fair Housing Act

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

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.

18 Fair Housing

Definitions

- Dwelling
- Family/Familial Status
- Disability

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

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

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

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

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

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.

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18 Fair Housing

Implications for Real Estate Professionals

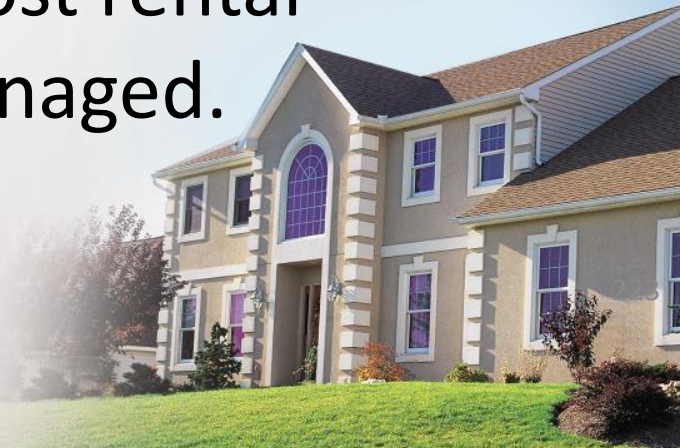
Consequences

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

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

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.)

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

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

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.)

19 Property Management

The Management Agreement (cont.)

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

19 Property Management

The Property Manager's Responsibilities

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

19 Property Management

The Property Manager's Responsibilities (cont.)

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

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

19 Property Management

Risk Management

- **Avoid**
- **Control**
- **Transfer**

Or

- **Retain**

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

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.)

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.

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

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

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

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.)

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

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

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)

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