PREFACE

Florida is growing faster than any state in the country, and the real estate industry is a major participant in that growth. A real estate career in Florida can be very rewarding. Whether you are acting as an agent for others or are acting on your own behalf, the more you know about the real estate business, the better your chances are for success.

This book is based on the most current FREC Course I syllabus published by the Florida Real Estate Commission for sales associate's pre-licensing education. In addition, the author of this book practices real estate on a full-time basis and therefore brings a unique insight to understanding the practical application of real estate brokerage.

The author would like to take this opportunity to thank a number of individuals who were instrumental to the success of this book. Many thanks to the late James Mitchell, Esq., former Assistant State Attorney General assigned to counsel the Florida Real Estate Commission and the Foundation Advisory Commission, for providing invaluable insight and understanding to a complicated business.

A Big thanks must also go to Mary Gerlach for her professional review and editing efforts of the text and to Philip Armour for the design of the cover. Additionally, many thanks to the thousands of students who gave their input enabling the author to produce what he believes are an exceptional publication.

Finally, the author wishes to express his sincerest hopes for your success in the real estate business. Congratulations for taking the first step towards your new real estate career!

David Collins
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CHAPTER ONE: INTRODUCTION TO THE REAL ESTATE BUSINESS

TALK THE TALK

Absentee Owner: A property owner who does not reside on the property and who usually relies on a property manager to oversee the investment.

Appraisal: A supported, defended estimate of the value of property rights as of a given date.

Appraiser: Any person who is a trainee, licensed, or certified real estate appraiser.

Business Opportunity Brokerage: The marketing and sale of a going-concern operation. Florida requires that business brokers have a real estate license to market business opportunities.

Comparative Market Analysis: An informal estimate of market value performed by a real estate licensee for the seller to assist in arriving at an appropriate listing price, or, if working with the buyer, an informal estimate of market value to assist the buyer in arriving at an appropriate offering price.

Dedication: A deliberate transfer of land by its owner for public use and accepted for such use by the public.

Farm Area: A selected and limited geographical district to which a sales associate devotes special attention and study.

Follow-Up: A post-closing communication initiated by a licensee to maintain customer contact and goodwill.

Property Management: The process of directing, controlling, operating, and maintaining real estate for a third party.

Real Estate Brokerage: A commercial activity in which the sale, purchase, leasing, rental, exchange or management of real property is conducted by qualified and licensed individuals acting either for themselves or for others for compensation.

Subdivision Plat Map: The layout of a subdivision showing lots, roads, and other structural aspects of importance.

USPAP: Rules and guidelines that must be followed by any professional conducting an appraisal.

AREAS OF CRITICAL CONCERN

- Describe the various activities of real estate brokerage.
- Distinguish among the five major sales specialties.
- Identify reasons why property management has grown in importance.
- Explain the appraisal process and the role of an appraiser.
- Understand the mortgage process and the role of mortgage loan originators.
- Explain the three phases of development and construction.
- Distinguish among the three categories of residential construction.
I. INTRODUCTION

A. Overview: In Florida, the Florida Real Estate Commission (commonly referred to as FREC) oversees and regulates the real estate license law and licensed individuals who participate in the real estate business. FREC defines the term "real estate business" as a vocation in which real property forms the stock in trade that is bought, sold, leased, or rented.

Real estate represents a very large portion of the overall wealth of our country, particularly in the State of Florida. Property values, mortgage markets, and investment opportunities evidence the role of real estate and its impact in the nation's economy. Other types of businesses and industries are also dependent upon real estate activities, such as property management, appraisers, banking industry, development, and construction businesses.

B. Real estate is a business of many specializations: A professional real estate licensee should possess specialized knowledge in the following areas:

1. Property Transfer: A licensee needs to understand the details of transferring legal title from one party to another. An interest in real property can be transferred by deed, will, lease, or other legal methods. Additionally, a licensee needs to understand the entire process from creation of a real estate contract through final closing of title.

2. Market Conditions: A licensee should understand current interest rates and the availability of financing, the relationship between real estate supply and demand in his or her particular market area, and the history of sold properties. The licensee should also have an understanding of future market trends that will be the driving force of tomorrow's sales.

3. Sales and Marketing: Being a professional and effective real estate licensee requires understanding the significance of past sales of similar properties. By understanding past sales, licensees can establish a price range that will ideally result in properties being bought and sold in the shortest amount of time and for the best possible price. Once a licensee has established the proper market value of a home (listing price), the next step is to procure a purchaser through the various marketing techniques available. These techniques include drafting effective advertisements, participating in the Multiple Listing Service (MLS), offering open house presentations, and effective showing of real estate to potential purchasers. There is an old saying in the real estate business: "You have to circulate to percolate."

II. BROKERAGES

A REAL ESTATE BROKERAGE is a business that performs the actual day-to-day operations of assisting the general public in one or more of the various real estate areas and specialties. They include:
A. **Sales and Leasing:** For most Real Estate Brokerages, sales and leasing comprise the bulk of their business activities. All Real Estate Brokerages must have at least one active broker to be responsible for the daily activities of the brokerage. Although many sales associates may work for a brokerage, it is ultimately the broker who actually supervises and is legally responsible for all actions of the sales associates and office employees.

The licensed associate is an agent of the broker and must not be directly employed by members of the public. It is actually the broker who has the necessary contractual relationship between the brokerage and a buyer or seller. It is important to remember that although a sales associate works directly with the public, he or she does this on behalf of the broker. Individuals working in a real estate brokerage should possess expert information about real estate that is not commonly known by the general public, for instance preparing contracts and understanding other complex documents such as closing statements and mortgages.

Generally speaking, it is more efficient for a member of the public to employ a real estate professional because the process of finding the right property to buy or the process of selling and finding a qualified buyer is time consuming. A licensee deals with these complex matters on a daily basis and, therefore, is better prepared to make sales and closings a smoother process.

Many successful real estate licensees have chosen to specialize in a particular area of their community, known as a **FARM AREA**. By utilizing the process known as farming, licensees become familiar with the properties and the property owners. Due to their continuing contact with the Farm Area, licensees are prepared to immediately provide marketing and sales assistance upon request. Being specialists in a particular neighborhood also allows the licensees to market their personal expertise in addition to marketing the subject properties.

It is advisable that real estate licensees contact their clients within a reasonable time after a closing. This type of contact, known as a **FOLLOW-UP**, will promote goodwill between the client and the licensee and help ensure client satisfaction.

There are five major areas of sales that a licensee may specialize in:

1. **Residential:** Defined as facilities where people live and reside. The term "residential property" includes single-family homes, condominiums, duplexes, and apartment complexes. The majority of real estate licensees specialize in the sale and purchase of owner-occupied residential properties.
2. **Commercial**: Practicing in commercial investment real estate usually requires expert knowledge in investment analysis and cash flows. These properties include shopping centers, warehouses, office buildings, and others. Licensees should be cautious about representing themselves as experts in this area unless properly qualified.

3. **Industrial**: Includes properties located in industrial parks or properties otherwise zoned for industrial use, such as manufacturing and distribution.

4. **Agricultural**: Includes farms and other agricultural land such as citrus groves and timberland operations.

5. **Businesses**: Also called business brokerage or **BUSINESS OPPORTUNITY BROKERAGE**, this area specializes in the marketing and sales of up and running businesses (going concern operations). An understanding of both tangible assets (e.g. inventory) and intangible assets (e.g. goodwill or business reputation) is required.

B. **Property Management**: **PROPERTY MANAGEMENT** is defined as the management of properties owned by others for compensation. A property manager’s goal is to generate the greatest amount of net income while at the same time maintaining the property in good condition. Typically, a property manager will be responsible for locating tenants, collecting rent, providing maintenance, and handling landlord/tenant relationships. Property managers are paid a fee for their services, typically a percentage of gross rent.

Recently, property management has become a growing industry in Florida due to the increase of **ABSENTEE OWNERS** (individuals who own the subject property but do not personally manage or reside on the property). Additionally, property management has become popular because of the complex nature of investment real estate.

C. **Property Valuation**: The process of estimating the value of real estate is accomplished through the preparation of an **APPRAISAL**. The majority of appraisals are performed at the request and insistence of mortgage lenders who require an appraisal before they will approve a mortgage loan. Mortgage lenders must have reliable assurances that the value of the property will provide sufficient collateral (security) for the mortgage loan.

Although appraising is still considered to be a service of real estate, only individuals who are state certified or licensed appraiser can perform this service for a fee for banks. It is permissible for real estate licensees to provide valuation services, but they must not misrepresent themselves as being either a state certified or licensed appraiser.

The **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)** is the body of rules and guidelines that must be followed by appraisers. Failure to abide by USPAP regulations when performing an appraisal could subject the appraiser to disciplinary sanctions.
CHAPTER ONE: INTRODUCTION TO THE REAL ESTATE BUSINESS

Real estate licensees cannot perform “appraisals” but rather perform valuation services commonly referred to as a COMPARATIVE MARKET ANALYSIS (CMA) which is an informal method of estimating a subject property's value. Licensees will research the sales data of similar properties (comparable properties known as "comps") and review their past selling prices, current listing prices, and identify "comps" that were previously listed for sale but did not sell. Once all the data has been accumulated and reviewed, the licensee can establish a range of values for the subject property and suggest an initial listing price. Due to the CMA's less complex nature, it is not considered to be an appraisal and will not be relied upon by lending institutions. CMA's are exempt from USPAP regulations. Although it is permissible to charge a fee for performing a CMA, licensees will typically provide the service as a free courtesy. The Broker’s Price Opinion (BPO) is another form of a CMA and used by banks when evaluating short sales.

Appraisers are compensated on a flat-fee basis depending upon the difficulty of their task and the amount of time involved in the appraisal's preparation. Pursuant to USPAP ethics rules, appraisers are not compensated on a percentage of the subject property's value to avoid a conflict of interest situation.

D. Financing: Financing is the business of providing funds for real estate transactions. The majority of real estate transactions require the buyer to obtain financing in order to have the necessary funds to purchase. There are several major sources of lendable funds for real estate financing including commercial banks, savings and loan associations, mortgage bankers, credit unions, and life insurance companies. Licensees should have a general understanding of mortgage lending practices in order to best serve their clients.

The Mortgage Brokerage Business is a separate industry that requires a separate and distinct license. Mortgage brokers and mortgage bankers must be licensed in the state of Florida.

E. Counseling: Real estate counseling has become an important part of the real estate industry due to the complex nature of large scale commercial and investment real estate. A Real Estate Counselor acts as a consultant by performing research on the subject real property and its community location and making recommendations about the subject property's ultimate value. Real Estate Counselors are typically paid either on an hourly basis or a pre-determined fee based upon the nature of the job and the counselor's experience and qualifications. Typically, Real Estate Counselors will have extensive amounts of education, knowledge, and, above all else, an abundance of experience.

III. DEVELOPMENT AND CONSTRUCTION

Real estate development and construction is a fascinating aspect of the real estate business requiring many skills and an understanding of future community growth.

A. Land Acquisition: The first step in the process of development and construction is to locate and acquire suitable land. In order for new development to occur, land must be available at a reasonable price and has the capability of being
developed. Developers should always consider current zoning laws and
governmental planning policies before acquiring land.

B. Subdivision and Development: The next step in development and
construction is the process of preparing the land site by subdividing the parcel into
individual, smaller parcels. The developer will also typically install infrastructure
which is defined as the sewer, water, electrical, streets, and storm drains necessary
for the support of a development.

C. Subdivision Plat Map Recording: Prior to actual development and
construction, developers must submit a SUBDIVISION PLAT MAP of the proposed
project to the applicable local government. This Subdivision Plat Map, which must be
approved by the local government, will identify where streets and lots will be located.
Once approved, the Subdivision Plat Map is recorded in the public records of the
county where the subject property is located.

D. Dedication: Frequently after a development is completed, a
homeowner's association is charged with maintaining streets and other common
facilities. However, in some instances, the developer transfers ownership of the
streets and utilities to the applicable local government through the process of
DEDICATION. Afterwards, the local government is then responsible for maintenance
and upkeep.

E. Construction: There are three types of residential construction with
which licensees should be familiar:

1. Speculative: Constructing a speculative (spec) house in a
type of development wherein the builder actually owns the land, constructs a
house to the builder's tastes and satisfaction, and then offers the completed
construction for sale to the general public.

2. Tract: Tract house construction is a type of spec construction
which involves some input from the Buyer for design and layout of a particular
floor plan or model previously chosen by the developer. Typically, a buyer
will select his or her lot, and then choose from a number of floor plans that
have been approved for the particular subdivision.

3. Custom: Custom home construction is a type of development
which provides for the builder to consult with a landowner and construct a
home in accordance with the landowner's wishes and designs.

IV. THE ROLE OF GOVERNMENT
The role of government always impacts the way we do business, and real
estate is no exception. There are three entities of government which influence real
estate decisions:

A. Local Government: Without question, local government is the most
prominent form of governmental regulation concerning real estate. Local
governments implement zoning laws, building codes, and establish property taxes
through authority known as Police Powers. The local government is authorized to enact laws to protect the health, safety, and welfare through its use of Police Powers.

B. State Government: The State of Florida has implemented many laws protecting our environment and waterfront properties. The Department of Environmental Protection (DEP) is the leading governmental agency in this area.

C. Federal Government: There are various federal agencies and regulations that influence real estate ownership. They include the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), the Federal Housing Administration (FHA), and Federal Reserve System (the "Fed").

V. PROFESSIONAL ORGANIZATIONS

Real estate licensees have the opportunity to join various real estate trade organizations such as the National Association of REALTORS® (NAR), the Florida Association of REALTORS® (FAR), and their local board association. Licensees are prohibited from using the term REALTOR® unless they are current members in good standing with local, state, and national associations of REALTORS®.

The National Association of REALTORS® (NAR) has established and published a code of ethics which sets forth high standards of conduct that should be followed by all of its members.

SUMMARY

- The various activities of a real estate brokerage include sales and leasing, property management, property valuation, financing, and counseling.
- The five major areas of sales specialty include residential, commercial, industrial, agricultural, and businesses.
- Property management has become important in Florida due to an increase in absentee ownership.
- Comparative Market Analysis, although an estimate of a property's value, differs from a true appraisal in its complexity and depth. Real estate licensees perform CMA's rather than appraisals.
- In speculative building, the builder builds a home on his own land in hopes of selling it. In custom building, on the other hand, the builder builds a pre-arranged home on an owner's property.
CHAPTER ONE Quiz

1. Builder Kate buys a lot in Blue Bayou Plantation subdivision and builds a single-family house according to plans and specifications she selects. After the house is completed, she sells it to someone who saw the "For Sale" sign posted in the front yard. This type of development/construction is known as:

   A. Custom  
   B. Tract  
   C. Speculative  
   D. Co-op

2. A local government acquires ownership of streets and other infrastructure (e.g. storm sewers) and thereafter becomes responsible for maintenance of those acquired items through the process of:

   A. Dedication  
   B. Police Power  
   C. Eminent Domain  
   D. Condemnation

3. Sales associate Tom decides to focus primarily on selling properties located in his own residential neighborhood. He constantly reviews current information about past sales and present homes for sale. He tries to get new clients by sending them direct mail information about the availability of his services. Tom is developing sales and marketing skills through which type of procedure?

   A. Farming  
   B. Exclusive right to sell  
   C. Mass media  
   D. Multiple Listing Service

4. Prior to constructing a subdivision, a developer must submit which of the following for approval to the local government:

   A. Subdivision Plat Map  
   B. Restrictive covenants  
   C. Topographical survey  
   D. Phase I soil test
5. All of the following are sources of funds available for mortgage lending except:
   A. Life insurance companies
   B. Commercial banks
   C. Credit unions
   D. Federal Reserve System

6. Is it permissible for a licensed sales associate to perform a CMA for a fee?
   A. Yes, provided the sales associate calls it an "appraisal"
   B. Yes, although it is usually performed as a marketing courtesy
   C. No, the service must be done for free
   D. No, only licensed appraisers can perform an appraisal for a fee

7. An individual who owns rental real estate in a location other than where they reside is known as
   A. prospect
   B. absentee owner
   C. property manager
   D. investor

8. If an appraiser was paid on a percentage basis (for example, 1% of the appraised value), how could this result in a conflict of interest?
   A. The appraiser would only appraise properties that were very expensive.
   B. Payment on a percentage basis could lead to price fixing.
   C. The appraiser might be more inclined to inflate the value of the property to increase the appraisal fee.
   D. Paying an appraiser on a percentage basis is not a conflict of interest.

9. The Florida state agency that is primarily involved with issues of real estate development on coastal lands is:
   A. Department of Business and Professional Regulation
   B. Florida Real Estate Commission
   C. Secretary of State
   D. Department of Environmental Protection
10. Uniform Standards of Professional Appraisal Practice (USPAP) must be adhered to when the appraiser prepares which of the following:

A. Appraisal  
B. Comparative Market Analysis  
C. Survey  
D. Investment Analysis

11. Which type of government is responsible for enacting zoning laws?

A. Local  
B. State  
C. Federal  
D. The United Nations

12. All of the following are major areas of sales specialization except:

A. Industrial  
B. Agricultural  
C. Condominium  
D. Residential

13. A supported, defended estimate of the value of property is known as:

A. Comparative Market Analysis  
B. Dedication  
C. Appraisal  
D. Mortgage

14. A real estate counselor:

A. Is typically paid on a commission basis  
B. Must have a college degree to be qualified  
C. Acts as a consultant by performing research on the subject real property  
D. Usually holds a broker's license

15. Laws enacted to protect the public health, safety, or welfare are established through authority known as:

A. Caveat Emptor  
B. Police Powers  
C. Res Judicata  
D. Eminent Domain
CHAPTER TWO:
REAL ESTATE LICENSE LAW AND QUALIFICATIONS

TALK THE TALK

Adjudication Withheld: When a criminal final judgment is withheld or not recorded in public record
Broker: One who is licensed by the State of Florida to carry on the business of dealing in real estate; a broker may receive a commission for his or her part in bringing together parties in a real estate transaction
Broker Associate: An individual qualified to be issued a broker's license but who operates as a sales associate in the employ of another
Caveat Emptor: "Let the buyer beware"
Compensation: Any form of remuneration, payment, or value
Florida Resident: A person who has resided in Florida for at least four months, or a person who is residing in Florida with an intent to remain for at least four months
License: A document issued by the Department of Business and Professional Regulation which certifies that the licensee is or was duly licensed on the effective date shown
Nolo Contendre: A plea of no contest entered in a criminal court of law
Prima Facie Evidence: Evidence that is valid and admissible on its face requiring no further proof of authenticity
Real Estate Services: Buy, advertise, rent, sell, auction, lease, and exchange (BAR SALE)
Registration: Authorization by the state to place an applicant on the register (record) of officially recognized individuals and businesses
Sales Associate: A licensed individual who, for compensation, is employed by a broker or owner/developer

AREAS OF CRITICAL CONCERN

• Identify the qualifications for a sales associate's license
• Describe the application requirements for licensure including nonresident application requirements
• Understand the importance of responding accurately to questions on the license application and understand the DBPR background check procedure
• Describe the education requirement for pre- and post-license education and continuing education
• Distinguish among the various license categories
• Identify services of real estate
• Recognize exemptions from real estate licensure
• Distinguish between registration and licensure
• Understand mutual recognition agreements
I. HISTORY AND OBJECTIVES OF REAL ESTATE LICENSE LAWS

In 1923, Florida enacted real estate license laws that were under the jurisdiction of the courts. Two years later, the Florida Real Estate Commission was created to give substance and direction to those laws. In 1941, Florida Statute, Chapter 475, entitled the "Real Estate License Law", was created as a consumer protection legislation. Under Chapter 475, the Florida Real Estate Commission (FREC) was empowered to "protect the public and ensure minimal competence of real estate practitioners."

Initially, Florida law adopted the philosophy of CAVEAT EMPTOR ("let the buyer beware"), meaning that every buyer and seller was responsible for their own wisdom and knowledge in real estate transactions. That policy later evolved into a consumer protection attitude with the advent of requiring sellers (and their agents) to disclose all known property defects in a residential transaction. The Florida Supreme Court ruled in Johnson v. Davis that if a seller knows of a hidden material defect in a residential transaction they must disclose this to a potential buyer prior to entering into a contract to purchase.

Also involved in the governmental regulation of real estate practitioners is the Florida Department of Business and Professional Regulation, Division of Real Estate. Actually, the DBPR regulates all licensed professions throughout the state. The Division of Real Estate (DRE) is part of the DBPR and works in conjunction with FREC. Additionally, the DRE acts as a support system to the members of FREC.

II. LICENSE CATEGORIES

There are two types of real estate LICENSE issued in Florida. One type is the BROKER license which entitles an individual to perform real estate services, for compensation, for the public. The other type of real estate license is the SALES ASSOCIATE license which entitles the licensee to perform real estate services, for compensation, for the public, but does so under the direct supervision and control of an active broker or owner/employer (developer). A sales associate can only place his or her license with one employer at a time.

The sales associate license and the broker license are the only types of licenses that are available. A real estate license, registered with the Division of Real Estate, affords the privilege to practice real estate in Florida.

A BROKER ASSOCIATE is an individual who has a broker's license but has chosen to work in real estate under the direct supervision and control of a broker or owner/employer. Broker Associate is not a license rather a registration status.
III. GENERAL LICENSURE PROVISIONS

There are certain minimal requirements that must be met by all applicants for real estate licensure. The applicant must:

- Be eighteen years of age or older
- Possess a high school diploma or equivalent (G.E.D.)
- Be honest, trustworthy, truthful, of good character, and have a reputation of dealing fairly with others
- Disclose if under investigation for a crime, convicted of a crime or ever entered a plea of nolo contendere (no contest)
- Disclose if ever declared mentally incompetent
- Disclose if he/she has ever had an alias or been known by any other name
- Disclose if another state has either denied a real estate license application or if such a license has ever been suspended or revoked
- Disclose if a license or registration to practice any regulated profession has ever been denied
- Disclose if the applicant has been found guilty of any practice or conduct that would have been grounds for suspension or revocation under Florida Real Estate License Law (F.S. 475)

Failure to disclose information regarding an applicant’s criminal background may have serious consequences. A person that has pled NOLO CONTENDRE or been found guilty, but ADJUDICATION WITHHELD, should disclose this as well. If discovered during the application process, the application may be denied. If discovered after a person has become licensed, the license may be revoked. In either case, applicant or licensee has the right to a hearing before any sanction can be imposed.

IV. APPLICATION REQUIREMENTS

Each prospective licensee must submit to the Department of Business and Professional Regulation, Division of Real Estate, a completed application or electronic application and appropriate application fee. The application must be fully completed with all questions answered. Take special care to answer questions accurately and honestly, especially questions about your personal history, background, and possible criminal activities. Electronic fingerprinting must be provided as part of the application through the testing company prior to testing.

The DRE has thirty days to review your application and check for errors and omissions. The DRE has a maximum of ninety days to inform the applicant if the application has been approved or denied. If the application is denied, the applicant has the right to an administrative hearing under Florida Statute Chapter 120. If the DRE fails to notify an applicant within ninety days of receiving a fully completed application, the application is deemed approved. The application is valid for two years.

Please note that there is no FLORIDA RESIDENCY or U.S. citizenship requirement for an applicant. A non-resident applicant is required to be
knowledgeable in Florida real estate law, statutes, and administrative rules. They
must meet all educational and testing requirements as prescribed by Florida Statute.

Certain individuals are exempt from the requirement to attend a pre-license class. Those types of individuals include:

1. College graduates in real estate (4 year degree or more)
2. Out-of-state licensees applying for a Florida real estate license under mutual recognition procedures.

V. SALES ASSOCIATE EDUCATION AND LICENSE REQUIREMENTS

A. Pre-License Requirements: Sales associate applicants must satisfactorily complete a FREC Course I which is a 63-hour sales associate pre-license course. The pre-license course includes, but is not limited to, real estate law, Florida real estate license law, principles and practices of real estate, and real estate math. The pre-license course can be taken either through the internet (distant learning) or in class. Students may not miss more than eight classroom hours in the classroom presentation.

A student/applicant must pass a 100-question final examination consisting of 45 questions on principles and practices, forty-five questions on real estate law, and 10 math questions. A grade of 70% or higher is necessary to satisfactorily pass the examination. If the applicant does not attain a grade of 70% or higher, the student/applicant must wait at least thirty days before taking a different final examination. If the student/applicant does not attain a grade of 70% or higher on the second exam, the entire FREC Course I must be repeated.

Once the FREC Course I examination is passed, the student/applicant will receive an end of course report which is valid for two years from the successful completion date. If the student/applicant does not successfully complete the state exam within that two-year period, the student/applicant must repeat the entire FREC Course I. This report must be presented to the testing center at the time of examination.

After receiving the end of course report (and notice of an approved application), the student/applicant is qualified to take the state examination administered by a private testing company. The student/applicant must arrange for an appointment with a private testing company for a testing date. The state exam contains 100 questions consisting of forty-five questions on principles and practices, forty-five questions on real estate law, and ten math questions. The student/applicant must receive a grade of 75% or higher to pass.

At the private testing center, the student/applicant will be directed to a user-friendly computer based terminal. After a brief orientation, the student/applicant should be quite comfortable with the testing equipment. The student will be given a total of 3.5 hours to complete the examination.
CHAPTER TWO: REAL ESTATE LICENSE LAW AND QUALIFICATIONS

The test is graded immediately upon completion and the student is notified of the results. If the applicant does not pass the examination, arrangements must be made to retake the test at the applicant’s convenience. The applicant has the right to review only the incorrect questions and answers on the examination.

B. Sales Associate Post-License Education Requirement: After obtaining the initial sales associate license, the licensee must complete a 45-hour post-license education course before the initial license expires. Failure to timely complete and pass the post-license education course could result in the sales associate's license being declared null and void when discovered by the Division. The 14-hour Continuing Education is not required during the initial issue.

Every sales associate's license expires on either March 31st or September 30th, depending on when the state examination is passed. The initial license is valid for a period of time greater than 18 months, but less than 24 months. For example, if an applicant passed his or her state examination on July 1, 2015, the license would expire on March 31, 2017 (22 months). Thereafter, each additional license period is valid for a full two years (next expiration: March 31, 2019).

Once the applicant has passed the state examination, the DRE will issue the initial license that contains an effective date (start date). The initial license will also contain an expiration date (either March 31st or September 30th). The licensee must successfully complete a 45-hour post license course before the initial license expires. Post license courses can be taken through the internet or may also be attended in a classroom setting and the student is allowed to miss up to 10% of the total classroom hours. The student must pass an end-of-course final exam with a score of 75% or better. If the student does not pass that exam, a period of thirty days must pass before re-examination.

VI. BROKER LICENSE REQUIREMENTS

A. Overview: In order to become a broker, the applicant must first complete the Florida sales associate post-license course (45-hour course). In addition, the applicant must have worked for an active real estate broker or brokers for 24 months of the preceding 5 years. Out-of-state experience under an active broker qualifies for the 24-month requirement. Time spent working for an owner-employer (not active broker) does not qualify towards the experience requirement of broker applicants.

Broker applicants must complete the FREC Course II Broker Pre-License 72-hour course. The FREC Course II may be started after 6 months of being an active sales associate under the supervision of a broker. However, the state examination can only be taken after complying with the 24-month experience requirement.

The end-of-course examination consists of 100 questions will be administered and the student must score 70% or better to pass. A private computer-based testing company administers the state exam that will consist of 100 questions. Students must pass the state examination with a grade of 75%.
The state broker examination is graded immediately upon completion and the applicant is notified of the results. If the applicant does not pass the examination, arrangements must be made to retake the test at the applicant's convenience. The applicant has the right to review only the incorrect questions and answers on the examination.

When the broker license is issued, if that person is currently an active sales associate, he or she can continue working under his or her current employer as a broker associate without registering with the DBPR. Otherwise, any change of license status will require the proper registration.

B. Broker Post-License Education Requirement: After obtaining the initial broker's license, the licensee must complete sixty hours of post-license education before the initial broker license expires. Failure to timely complete and pass the post-license education course could result in the broker's license being declared null and void when discovered by the Division.

Every broker's license expires on either March 31st or September 30th, depending on when the state broker examination is passed. The initial license is valid for a period of time greater than 18 month, but less than twenty-four months. For example, if an applicant passed his or her state examination on July 1, 2016, the license would expire on March 31, 2018 (21 months). Thereafter, each additional license period is valid for a full two years (March 31, 2020).

Once the applicant has passed the state examination, the DBPR will issue the initial license that contains an effective date (start date). The initial license will also contain an expiration date (either March 31st or September 30th). The licensee must successfully complete 60 hours of post-license education. The course work can be done either through the internet or in class where the student is allowed to miss up to 10% of the total classroom hours. The student must pass an end-of-course final exam with a score of 75% or better. If the student does not pass that exam, a period of thirty days must pass before re-examination. The 14-hour Continuing Education is not required during the initial issue of the new broker license.

VII. MUTUAL RECOGNITION

A person who resides in any state that Florida has a mutual recognition agreement with may obtain the same type of license in Florida by submitting an approved application and passing a 40-question examination on Florida real estate law with a passing score of 75% or higher.

If the applicant moves to Florida before applying for a mutual recognition status license, then the mutual recognition applicant no longer qualifies. However, the applicant may obtain a Florida license under normal application and requirement guidelines.

Florida has entered into mutual recognition with nine states: Alabama, Georgia, Indiana, Mississippi, Nebraska, Tennessee, Arkansas, Oklahoma, and Connecticut.
VIII. THE LICENSE

A real estate license is considered PRIMA FACIE EVIDENCE that the holder of the license possesses a current and valid licensure (rebuttable presumption). The license contains an effective date, expiration date, the name of the governor, and the secretary of the DBPR. It also contains the licensee's full name and his or her license status.

IX. REGISTRATION

Real estate sales associates and brokers are licensed and are afforded the privilege to practice real estate in Florida. To be valid and current, those licenses are registered with the DRE. REGISTRATION simply means placing on record the name and address of each licensed broker and sales associate, the name of the business and the business address, and the name and address of each officer, director, partner, or general partner. If an officer, director, partner, or general partner is unlicensed, his or her name is simply registered with the DRE with the understanding that no services of real estate can be offered or performed.

X. CONTINUING EDUCATION REQUIREMENT

During the first renewal period after initial license issue, and all renewals thereafter, the licensee is required to complete 14 hours of continuing education for each 2-year license period thereafter.

XI. SERVICES REQUIRING REAL ESTATE LICENSURE

REAL ESTATE SERVICES include the following (A BAR SALE):

1. Appraising
2. Buying
3. Advertising
4. Renting (or rental information list)
5. Selling
6. Auctioning
7. Leasing
8. Exchanging

Who must have a real estate license?

Answer: Anyone who performs

1. any service of real estate,
2. in the state of Florida,
3. for someone else, and
4. for compensation or the mere expectation of compensation

must possess a valid and current real estate license unless they are exempt by law. Compensation can mean anything of value such as money, reimbursement of
expenses, or other consideration of value. If any of these four requirements are not fulfilled then no real estate license is required. In addition, the unlicensed practice of real estate is a 3rd degree felony.

XII. EXEMPTION FROM LICENSURE

Certain types of individuals are exempt from licensure although technically it could be argued that they are performing real estate services for another, in the state of Florida, for someone else, and for compensation. Those types of exempt individuals include the following:

1. Any salaried employee of the owner of an apartment building or complex when renting units from an on-site rental office and he or she is not being paid a commission

2. A salaried manager of a condominium or co-operative when leases do not exceed one year and he or she is not being paid a commission

3. Employees of the state of Florida when performing real estate services for the state

4. Attorneys when performing duties within the scope of their attorney-client relationship

5. Persons who have been given a power of attorney (attorney in fact) are exempt for signing documents only

6. CPAs when performing duties that fall within the scope of their respective profession.

7. Anyone who is court appointed

8. Persons who rent mobile home lots or recreational vehicle lots in mobile home or travel trailer parks

9. An employee of a real estate developer when paid a salary only and no commission

10. An employee of a corporation involved in buying or selling company owned property as long as it is incidental to his or her employment

11. A partner in a real estate partnership who receives no more than his or her normal pro-rata share of profits

12. Persons selling cemetery lots

13. Television and radio announcers and persons in public relations and advertising media provided the service performed is incidental to their employment in advertising
14. Hotel and motel clerks for short-term rentals

15. Property managers may pay up to $50.00 to unlicensed individuals for rental referrals

16. Out of state brokers, provided they have an active broker’s license and do not come to Florida and participate in the transaction

SUMMARY

- In order to be qualified as a sales associate, the applicant must meet certain qualifications which include being eighteen years of age or older, high school diploma or equivalent, and having good character.

- An application must be filled out in proper form with proper fee. It is important that an applicant respond accurately to questions about past criminal activities.

- Sales associates are required to complete a 63-hour pre-license course and a 45-hour post-license course within the initial license period. Brokers are required to complete a 72-hour pre-license course and 60 hours of post-license education within the initial license period.

- There are two types of licenses issued by the DBPR. They include a sales associate license and a broker license. A person who is registered as a broker associate possesses a broker’s license but chooses to work under a licensed broker in a sales associate’s capacity.

- Licensure is a privilege. Registration is the process of placing information on record with the DRE. Individuals are licensed; entities and their representatives are registered.

- Florida has entered into a mutual recognition agreement with a number of states that allow licensees of those states (who reside in those states) to obtain a Florida license of equal status by taking and passing a 40-question law exam.
CHAPTER TWO QUIZ

1. An applicant must possess all of the following except:
   A. Be eighteen years of age or older
   B. Be a Florida resident
   C. Have a high school diploma or equivalent
   D. Possess good character

2. A fully completed application for a Florida real estate license is submitted to:
   A. Florida Real Estate Commission
   B. Department of Business and Professional Regulation
   C. Florida Department of Law Enforcement
   D. Florida Association of Realtors

3. All of the following are services of real estate except:
   A. Mortgaging
   B. Buying
   C. Renting
   D. Exchanging

4. What is the passing score for the final exam given for the FREC Course I?
   A. 60%
   B. 65%
   C. 70%
   D. 75%

5. What is the minimum age for the issuance of a Florida real estate license?
   A. 18
   B. 20
   C. 21
   D. 22
6. If Carla is issued a Florida real estate license on July 22, 2012, when will her initial license expire?
   A. March 31, 2014
   B. July 22, 2014
   C. September 30, 2014
   D. March 31, 2015

7. How long is the license period for each license issued after the initial renewal period?
   A. six months
   B. one year
   C. two years
   D. four years

8. Which of the following must be submitted with the Department of Business and Professional Regulation application?
   A. Testing fee
   B. Passport style photographs
   C. Application fee
   D. Copy of driver’s license

9. Shirley has failed the end-of-course exam for the FREC Course I. Which of the following apply to Shirley’s situation?
   A. She must repeat the entire course.
   B. She must retake the test within thirty days.
   C. She must wait at least thirty days before retaking the test.
   D. She is not qualified to receive a sales associate’s license.

10. Which of the following is required before an applicant can be issued a Florida real estate sales associate license?
    I. Florida resident
    II. U.S. citizen
    A. I only
    B. II only
    C. I and II
    D. Neither I nor II
11. Once a student pass the FREC Course I, how long is that certificate good for?
   A. one
   B. two
   C. three
   D. four

12. What will happen if a Florida real estate licensee fails to timely complete the post-license education requirement?
   A. Automatic suspension
   B. Cancellation
   C. Null and void
   D. Involuntary inactive

13. How long does a person have to obtain their license before an approved application expires?
   A. Two
   B. Three
   C. Four
   D. Five

14. What is the experience requirement for a sales associate applying for a Florida broker license?
   A. Must have worked as a licensed sales associate for an active real estate broker(s) for twenty-four months of the preceding five years
   B. Must have worked for an active real estate broker for two years
   C. Must have worked for either a broker or owner/developer for twenty-four months of the preceding five years
   D. Must have held an active sales associate's license for two years

15. Which of the following statements best describes who must hold a Florida real estate license?
   A. Anyone that wants to work for a broker
   B. Anyone who performs any service of real estate, in the state of Florida, for someone else, and for compensation, unless they are exempt by law
   C. Anyone who wants to sell real estate
   D. None of the above
CHAPTER THREE:
REAL ESTATE LICENSE LAW AND FREC RULES

TALK THE TALK

Cease to be in force: If a broker or real estate school changes its business address or if a real estate licensee or real estate instructor changes his or her employer without notifying the DRE within ten days.

Group License: License issued to sales associates and broker associates when there is proof that ownership or control of various properties is substantially held by the same individual(s), although the properties are owned in the name of different interlocking or affiliated entities.

Ineffective: When a license is cancelled, suspended, involuntary inactive (because a broker of record has been suspended or revoked), or ceases to be in force.

Involuntary Inactive: A licensee fails to renew his or her license in a timely manner, or when a sales associate or broker associate is registered with a broker whose license has been suspended or revoked.

Multiple Licenses: Additional license(s) issued to a broker when necessary for the conduct of brokerage business.

Void: When a license is either revoked or expired.

Voluntary Inactive: When a licensee chooses not to have an active license or files the proper form with the DRE requesting inactive status.

AREAS OF CRITICAL CONCERN

- Describe the composition, appointment, and member qualifications of the Florida Real Estate Commission.
- Understand the powers and duties of the Florida Real Estate Commission.
- Distinguish between active and inactive license status.
- Understand the regulations regarding involuntarily inactive status.
- Explain the purpose of multiple and group licenses.
- Distinguish between void and ineffective licenses.
- Identify situations that cause a license to cease to be in force.
I. REGULATION BY THE DBPR

The Department of Business and Professional Regulation (DBPR), under Florida Statute Chapter 455 (F.S. 455), regulates most licensed professions throughout the state of Florida. The chief administrator of the DBPR is the Secretary of the DBPR who is appointed by the Governor. Contained within the DBPR are the following divisions:

- Division of Technology, Licensure, and Testing
- Division of Regulation (legal and investigative authority)
- Division of Professions (regulates state boards and commissions)
- Division of Real Estate (provides support to FREC)

The Director of the Division of Real Estate is appointed by the DBPR Secretary and is responsible directly to the Secretary. The main DBPR office is located in Tallahassee, Florida, and the Florida Real Estate Commission is located in Orlando, Florida.

Because real estate licensees are classified as a professional, they are regulated by 455 F.S. (Professions) and 475 F.S. (Real Estate License Law).

II. FLORIDA REAL ESTATE COMMISSION

The Florida Real Estate Commission was created as a consumer protection agency to ensure the minimal competence of real estate practitioners.

A. Composition: FREC is composed of seven members. By law, five members of FREC must be real estate licensees and two members must be unlicensed. Of the five licensed members, four (4) members must be licensed brokers with at least five (5) years experience as a broker. The other licensed member must be a broker, broker associate, or sales associate with at least two (2) years of licensed experience. At least one member of FREC must be at least 60 years of age.

FREC members are appointed to four-year terms but may not serve more than two consecutive terms. Members are appointed by the Governor and confirmed by the Florida State Senate. If the Senate rejects the Governor’s appointment, the Governor should make another selection. Each year, the members of FREC appoint a chairperson and vice chairperson to oversee the activities of the Commission while in session.

FREC members are not paid a salary, but they do receive $50.00 per day while conducting FREC business. In addition, FREC members are paid for their per diem (per day) expenses. FREC meetings are held in Orlando once a month. Minutes of all meetings are taken and kept by the DRE. All FREC meetings and minutes of meetings are open to the public in accordance with Florida Sunshine laws.
CHAPTER THREE: REAL ESTATE LICENSE LAW AND FREC RULES

B. Powers and Duties: In general, FREC has three basic types of powers and duties to implement and administer the real estate license law:

1. Executive Powers (to regulate and enforce)
2. Quasi-Legislative (to enact rules and regulations)
3. Quasi-Judicial (to determine violations and administer penalties)

More specifically, the FREC is empowered to do the following:

1. Adopt a Seal to authenticate official documents
2. Educate members of the profession
3. Enact rules and regulations, and decide questions of practice
4. Inspect and audit licensees and their records
5. Discipline licensees for violations

Therefore, any complaint with probable cause (alleging a criminal violation) submitted to the Division of Real Estate must be promptly reported to the State Attorney’s Office for consideration of criminal prosecution. Additionally, FREC must inform the Division of Florida Land Sales, Condominiums, and Mobile Homes when disciplinary action is taken by FREC against any real estate licensee.

III. DIVISION OF REAL ESTATE

The Division of Real Estate (DRE) is a division of the Florida Department of Business and Professional Regulation (DBPR) that is chiefly empowered to provide administrative assistance and support to FREC. For example, DRE is empowered to administer the license application and testing process. Additionally, the DRE is responsible for maintaining records on all licensees and applicants.

Funding for the DRE is provided by funds generated from real estate license applications, fees, fines, and publication sales. The DRE is staffed by employees of the DBPR and are not appointees. The DRE works in conjunction with the Division of Technology, Licensure, and Testing to supervise testing for all applicants and licensees.

There is an application fee for sales associates and brokers that is paid directly to the DRE. In addition, there is a testing fee paid to the company which actually administers the test at various locations throughout the state of Florida.

The DRE has a very strict policy concerning any license obtained by fraud, misrepresentation, or concealment. Any person obtaining a license in this manner will most likely result in the license being revoked.
IV. LICENSE ISSUES

Every real estate license (and registration) expires on either March 31st or September 30th, depending on the license's effective date. Prior to expiration, each licensee is expected to complete a renewal application and confirm that all educational requirements have been met.

A. Active vs. Inactive: When an applicant passes the state examination, the initial license status is voluntary inactive. In order to activate this new license, the licensee must submit the proper form either at the time of testing at the testing site, or his or her broker submits the proper form to the DRE. For a broker to become active, he or she can either continue to practice under his or her current employer as a broker/sales associate without submitting the proper form or if they choose to change status to an active broker, by submitting a completed form with appropriate information and signatures.

A license becomes active when all the necessary information and forms are received by the DRE.

If a person's license is inactive, he or she is prohibited from performing real estate services for a fee. A sales associate's active license becomes inactive if either:

1. His or her license expires prior to proper renewal, or
2. Licensee requests inactive status by filing with the DRE

B. Voluntary vs. Involuntary: A sales associate may choose to have his or her license converted to inactive status. To do so, the sales associate’s broker of record files the proper form, but the sales associate should continue to comply with all education requirements, and pay the appropriate renewal fee. A licensee can remain voluntary inactive indefinitely. Such a person is said to have his or her license on VOLUNTARY INACTIVE status.

However, if a sales associate:

1. fails to submit a renewal application, or
2. fails to pay the appropriate renewal fee, or
3. does not complete 14 hours of continuing education, or
4. is registered with a broker whose license is suspended or revoked

his or her license automatically becomes Involuntary Inactive. An involuntary inactive license under conditions 1, 2 or 3 can remain in effect for 2 years, after which time the license becomes null and void.
If a license is involuntary inactive under conditions 1, 2 or 3 the licensee may elect to convert his or her license to active status as follows:

1. If the license has been Involuntary Inactive for 12 months or less, then the licensee must submit the proper renewal form, pay the appropriate fees (including late fee), and confirm that the continuing education requirements have been fulfilled.

2. If the license has been Involuntary Inactive for more than twelve months but less than twenty-four months, then the licensee must submit the proper renewal form, pay the appropriate fees (including late fee), and show completion of a 28-hour, in-class education (reactivation credit).

C. License Renewal Exception of Armed Forces Members: When a licensee is in good standing with the DRE and is inducted into active military duty, all renewals or license requirements are excused for the period of active duty and up to an additional six months after active duty terminates.

In order for this exception to apply, the licensee must not actively participate in real estate during the exemption period. Otherwise, all renewal requirements must be fulfilled.

A licensee who is a spouse of a member of the Armed Forces of the U.S. is exempt from all renewal requirements (provided the spouse is on active duty) and remains exempt for an additional period of six months after the spouse's military discharge. To be eligible for the exemption, the licensee must not engage in the practice of real estate activities for profit and does not reside in Florida.

D. Types of License Status: Real estate licensees can have the following types of status:

1. Effective: When the proper form has been submitted and received by the DRE, the licensee has a current and valid (active or voluntary inactive) license.

2. Ineffective: A person with an INEFFECTIVE license means he or she holds a license but is prohibited from using it.

   a. Cancelled: Anytime that a broker resigns, dies, or fails to renew his or her license, the registration of all licensees under that broker are cancelled if a replacement broker is not appointed within fourteen days.

   b. Suspended: A temporary penalty issued against a licensee, not to exceed ten years. During the time of suspension, the licensee may not practice real estate.
CHAPTER THREE: REAL ESTATE LICENSE LAW AND FREC RULES

c. Involuntary Inactive: When a broker has his or her license either suspended or revoked, licensees registered with that broker are **IN Voluntary Inactive**. Also, when a licensee fails to properly renew his or her license, the license will be involuntary inactive. A license can remain involuntary inactive for up to two years, at which point it will become null and void.

d. Cease to be in force: If a broker changes her or his business address, or if a real estate school changes its business address, or if a sales associate, broker associate, or real estate instructor changes employer, the DRE must be notified within ten days. If the DRE is not notified within ten days, then the appropriate license shall **CEASE TO BE IN FORCE**.

3. Void: When a license has either been revoked or has expired it becomes **VOID**.

   a. Revoked: A permanent loss of the license ordered by FREC

   b. Expired: Fail to properly renew license (also defined as involuntary inactive). License becomes null and void two years after original expiration date.

E. Reporting Requirements: A licensee must notify the DBPR/Division of Real Estate within 30 days of being convicted of any crime. Failure to do so could lead to revocation of the license.

F. Multiple Licenses: An active broker may be issued a **MULTIPLE LICENSES** that allows a broker to be the broker of record for more than one brokerage entity, provided the broker can demonstrate a genuine business need and demonstrate that no conflict of interest exists among the brokerage entities.

G. Group License: Sales associates and broker associates who are employed by an unlicensed owner of real estate (such as a developer) may be issued a **GROUP LICENSE** which will entitle the licensee to work for separate sales projects provided the licensee can demonstrate that the same person(s) is the driving force behind both projects. A licensee possessing a group license is still considered to have only one employer. Additionally, a person holding a group license can only market the product owned by that unlicensed owner-employer.

H. Real Estate Schools: Real Estate Schools, and their instructors, must be licensed. Recruiting activities by prospective employers during classroom hours are prohibited. Real Estate Schools may not offer a refund to any student who does not pass an examination.
SUMMARY

- The FREC is comprised of 7 members (2 laypersons and 5 licensees). The Governor appoints FREC members with confirmation by the state Senate for a 4-year term, not to exceed 2 consecutive terms.

- The powers and duties of FREC are administrative and include executive (to regulate), quasi-legislative (to make rules), and quasi-judicial (disciplinary).

- In order to perform any service of real estate in the state of Florida, for someone else, and for compensation, a person must have an active real estate license, unless they are otherwise exempt. If a person has an inactive license, whether voluntary or involuntary, he or she is prohibited from practicing real estate. Failure to timely renew a license can cause a person to become involuntary inactive for a period not to exceed two years.

- Active brokers can be issued a multiple license that, in effect, allows them to be the broker of record for more than one brokerage. Sales associates and broker associates working for an owner-employer can be issued a group license.

- A void license is a license that has been either revoked or has expired. An ineffective license is a license that is either cancelled, suspended, involuntary inactive (expired), or ceases to be in force.

- A license "ceases to be in force" when a broker or real estate school changes its business address, or if a real estate licensee or real estate instructor changes employer without notifying the DRE within ten days.

- A sales associate or broker associate's license becomes involuntarily inactive when the licensee fails to timely renew or an employing broker's license is suspended or revoked.
CHAPTER THREE QUIZ

1. How does a person become a member of the Florida Real Estate Commission?
   A. Appointed by the Florida Legislature
   B. Elected by popular vote
   C. Appointed by the Governor and confirmed by the Florida Legislature
   D. Appointed by the Governor and confirmed by the Florida Senate

2. Criminal prosecution for any violation of Chapter 475 is handled by:
   A. Florida Real Estate Commission
   B. Division of Real Estate
   C. State Attorney's office
   D. Local Sheriff

3. Sales associate Donna has moved from Port St. Lucie, Florida, to Destin, Florida and started working with a new broker. Which of the following statements is correct?
   A. Donna must inform the Division of Real Estate of her change of address within ten days.
   B. Donna must inform the Division of Real Estate of her change of address within sixty days.
   C. It is the responsibility of Donna's new broker to inform the Division of Real Estate of Donna's new address.
   D. Donna does not have to inform the Division of Real Estate if she files for a new homestead.

4. Randy has just passed his state real estate exam. His initial license status will be:
   A. Active
   B. Voluntary inactive
   C. Involuntary inactive
   D. Current
5. If a license has been involuntary inactive for 15 months, what must the licensee do in order to reactivate his or her license?

A. Submit the proper renewal form, pay the appropriate fees (including late fee), and confirm that the continuing education requirements have been fulfilled
B. Submit the proper renewal form and pay the appropriate fees
C. Submit the proper renewal form, pay the appropriate fees (including late fee), and show completion of 28 hours, in-class education reactivation credit
D. A license cannot be reactivated after 15 months

6. How many Florida Real Estate Commission members hold a real estate license?

A. eight
B. seven
C. six
D. five

7. A license is ineffective when it is:

I. Null and Void
II. Suspended
III. Cease to be in force
IV. Revoked

A. I and II
B. I and III
C. II and III
D. I, II, III and IV

8. A license is void when it is:

I. Revoked
II. Suspended
III. Expired
IV. Cancelled

A. I and III
B. I, III, and IV
C. II and IV
D. III and IV
9. Which of the following will allow a broker to be the broker of record for more than one brokerage entity?

A. Group license
B. Multiple licenses
C. Complex license
D. Developer license

10. Which of the following is an example of the Florida Real Estate Commission's quasi-legislative powers?

A. Make rules
B. Enforce rules
C. Discipline licensees
D. Regulate licensees

11. A group license

A. is used for large real estate brokerages
B. allows licensees to work for various properties owned and developed by the same unlicensed individual(s), although the properties are owned in the name of different interlocking or affiliated entities
C. allows brokers to be the broker of record for more than one real estate brokerage
D. is available when a licensee chooses not to have an active license and files a 400.5 form requesting a group license

12. Bill works for Broker Jeff, but Broker Jeff's license has just been suspended for a year. Bill's license status will now be considered:

A. Cease to be in force
B. Void
C. Cancelled
D. Involuntary inactive

13. The Florida Real Estate Commission is located in:

A. Orlando
B. Miami
C. Tallahassee
D. Gulf Breeze
14. If a brokerage has its only broker of record resign, how many days does the brokerage have to appoint a replacement and avoid cancellation?

A. Fourteen days  
B. Fourteen business days  
C. Fifteen days  
D. Fifteen business days

15. Tommy holds a voluntary inactive license while he is on active duty in the U.S. Air Force and stationed in Guam. If Tommy wishes to practice real estate after his discharge from the Air Force, he will be required to renew his license:

A. Every two years  
B. Every four years  
C. Within six months after discharge from active duty  
D. Tommy is not required to renew his license
CHAPTER FOUR: PROPERTY RIGHTS

TALK THE TALK

Condominium: Single unit ownership in a multiple unit dwelling

Cooperative: Form of real property ownership where a corporation or association divides a single property into portions with each user owning stock in the corporation

Declaration: The recorded document that creates a condominium

Estate for Years: A lease that has a beginning date, has an ending date, and is in writing

Fee Simple Estate: The most popular type of estate with the greatest "bundle of rights" available

Fixture: Personal property that is permanently attached to real property

Freehold Estate: An estate that consists of ownership rights of an unknown duration

Homestead: The dwelling of the head of household that is afforded certain privileges such as protection from judgment liens and a special real estate tax exemption

Joint Tenancy: Ownership by two or more persons with the "unities" of time, title, interest, and possession present plus the right of survivorship

Land: Actual surface of the subject property

Leasehold Estate: An interest in real property where ownership or possession is measured in calendar time (non-freehold estate)

Life Estate: An ownership in real property that is tied to the death of a pre-determined party

Personal Property: All property that is not real property such as a car, a boat, stocks, or a mortgage

Proprietary Lease: A lease that is created for individual use within a cooperative

Real Estate: The land and all improvements permanently attached to the land (tangible)

Real Property: Real estate plus the legal "bundle of rights" that a person acquires by having an interest in real estate

Remainderman: When a life estate terminates, the property reverts to a pre-determined third party, not the original grantor

Right of Survivorship: Surviving owners in a Joint Tenancy or Tenancy by the Entireties absorb all interest and rights in a property

Tenancy at Sufferance: When a lease expires and no agreement has been made as to future occupancy (the tenant is a holdover)

Tenancy at Will: A lease agreement that is not in writing or does not have a beginning date and an ending date or both (a month-to-month tenant)

Tenancy by the Entitiees: Ownership of real property by husband and wife only

Tenancy in Common: Ownership of real property whereby the co-owners may or may not have acquired title at the same time, may or may not have the same interest and right of use, and do not have the right of survivorship
AREAS OF CRITICAL CONCERN

1. Define real property based on the definition in Chapter 475, F.S.
2. List and explain the physical components of real property
3. Explain the four tests courts use to determine if an item is a fixture
4. Distinguish between real and personal property
5. Describe the bundle of rights associated with real property ownership
6. List the principal types of estates (tenancies) and describe their characteristics
7. Describe the features associated with the Florida homestead law
8. Distinguish between cooperatives, condominiums, and time-shares and describe
   the four main documents associated with condominiums

I. LAND, REAL ESTATE, AND REAL PROPERTY
   A. Overview: LAND is regarded as the actual surface of the subject
      property. Land can be either vacant or developed. REAL ESTATE is defined as the
      land plus all permanent improvements, such as buildings or trees.

      REAL PROPERTY, however, includes the physical components of real estate
      plus the intangible assets ("bundle of rights") inherent with ownership.

      Under Florida Law, real property is technically defined as any interest or
      estate in land and any interest in business enterprise or business opportunities,
      including any assignment, leasehold, sub-leasehold, or mineral right. However, the
      term does not include any cemetery lot or right of burial in any cemetery nor does the
      term include the renting of a mobile home lot or recreational vehicle lot in a mobile
      home park or travel park.

   B. Physical Components: There are three physical components
      that describe real property:

      Air Rights
      Surface Rights
      Subsurface Rights
1. **Surface rights**: Includes the land and everything that is permanently attached thereon. For example: trees, buildings, fences and waterways.

2. **Subsurface rights**: Includes items that are located below the immediate surface. For example: oil, gas, and minerals.

3. **Air rights**: Includes the rights that an owner has over the area directly above the property. For example, if a tree limb overhangs across another person's property, this is considered an encroachment.

C. **Water Rights and Restrictions**: Florida is located on thousands of miles of waterways and shorelines, and anytime a person owns real property that borders on water, there are two categories of legal rights that may apply:

1. Riparian rights are those rights that affect land that abuts more rapid flowing bodies of water such as rivers and streams.

2. Littoral rights are those rights that affect land that abut tidal bodies of water such as lakes, bays, oceans and guls.

Over the course of time, the land that abuts a body of water changes its shape. Sometimes land is washed away through the process of erosion. Sometimes, the land can gradually increase in size due to a build up of displaced land from another location. This process is known as accretion. The wash or flow of water against the shore is known as alluvion. The gradual change of the water line that gives the owner more dry land is known as reliction.

II. **REAL PROPERTY VS. PERSONAL PROPERTY**

A. **Overview**: Real property is considered to be land, any improvements attached to the land (including anything growing on the land), plus the bundle of rights associated with use or ownership. **PERSONAL PROPERTY** is all other types of tangible items that typically have a limited lifetime and are movable from one place to another. For example, an automobile is classified as personal property. An item of personal property is also known as a chattel.

A **FIXTURE** is an item that was once personal property but is legally considered to be real property after attachment. For example, a ceiling fan that is still in a box is considered to be personal property. Once installed, it then becomes part of the real property and is considered to be a fixture.

Under the law, any item that is a fixture is included as part of the real property that is being transferred or sold. If a fixture is not specifically excluded in a real estate sales contract, all fixtures are considered part of the real estate and included in the sale. Severance occurs when real property is converted to personal property.
B. Legal Determination: It is sometimes difficult, however, to decide if an item is personal property or a fixture. The law provides for certain tests to determine the item's status:

1. Intent of the parties: The law seeks evidence of the parties' intent on whether an item is classified as a fixture. Examples of such evidence include the contract terms, oral discussions, or other reasonable inferences and assumptions made between the parties. When the parties have a contract that specifies whether an item is a fixture or not, the language in the contract will control. Also, when the parties discussed whether an item is a fixture or not, that discussion could be evidence of their intent.

2. Method of Attachment: The more permanent and substantial the attachment to the real estate, the more likely the item will be classified as a fixture. For example, an item that is bolted to a wall will more likely be considered a fixture than an item that is taped.

3. Agreement of the Parties: If the parties have specifically defined in their contract that certain items are fixtures, the terms of the contract will control. For example, a chandelier that is attached to the ceiling would ordinarily be classified as a fixture and would be included with the sale of the property. By specifying in their contract that the chandelier is not a fixture, it is not included or expected to be part of the sale.

4. Adaptation of the Item: If an article is custom made for a particular use (such as custom drapes) or built and installed to particular specifications and dimensions (built-in wine rack), the article will likely be considered a fixture.

Disputes and misunderstandings about the status of possible fixtures can be avoided with a well-written contract. Licensees should take great care to explicitly include all items that could possibly be subject to interpretation. A contract's "inclusion clause" will specify items that are included in the purchase and an "exclusion clause" will specify items that are not included.

A trade fixture is an item that has been installed at a business location for business use, such as shelving, display cases, or appliances necessary for a business operation. The law provides that a commercial tenant may remove these trade fixtures at the termination of the lease even though the trade fixtures were permanently attached. However, the tenant is responsible for restoring the premises to its original condition.

III. BASIC PROPERTY RIGHTS

The allodial system of property rights provides for individual ownership of real property. Individual ownership of real property is based on the theory that not only do you own the land and the building, but you have certain rights that are inherent with that ownership.
We often refer to the rights inherent with the allodial system as a "bundle of rights" that include the following characteristics:

<table>
<thead>
<tr>
<th>Disposition</th>
<th>The right to sell, give, or transfer after death</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enjoyment</td>
<td>The right to &quot;quiet enjoyment&quot; without interruption or disturbance by others</td>
</tr>
<tr>
<td>Exclusion</td>
<td>The right to restrict access to others (e.g. &quot;No Trespassing&quot;)</td>
</tr>
<tr>
<td>Possession</td>
<td>The right to occupy the premises within the limits of the law</td>
</tr>
<tr>
<td>Control</td>
<td>The right to use and/or improve the property, subject to private and governmental restrictions.</td>
</tr>
</tbody>
</table>

THINK "D.E.E.P.C."

IV. FREEHOLD ESTATES

A. Overview: An estate is an interest in real property. A FREEHOLD ESTATE is an ownership interest for an indefinite period of time. The ownership interest duration may terminate voluntarily (through a sale or transfer according to a person's will), or terminate involuntarily (foreclosure or dying without a will). In either instance, the owner cannot accurately predict the exact moment when the ownership interest will end.

B. Types of Ownership: There are two types of Freehold Estates:

1. Fee Simple Estate: The FEE SIMPLE ESTATE is the most common type of ownership. It contains the entire “bundle of rights” that is available for private ownership under the allodial system. It would almost be more appropriate to describe it as "Fee Complex" because the owner gets the most comprehensive amount of legal rights. The overwhelming majority of estates in Florida are fee simple.

2. Life Estate: The LIFE ESTATE is similar to the fee simple estate except the duration of the estate ends when a named person dies. A person who owns a life estate has the entire “bundle of rights” (DEEPC), except there is no right to transfer that estate after death. That means that a person with a life estate can sell it, lease it, or mortgage it subject to the terms and conditions of the life estate.

The life estate terminates when someone dies. The life estate names a person whose lifetime will control, and that person can be anyone, not just the person who owns the life estate.

When the designated person dies, the life estate is immediately terminated, and ownership is transferred to a person named in the life estate. If title reverts back to the original grantor, the original grantor has a reversionary estate. If title is transferred to a designated third party, that third party is known as a REMAINDERMAN.
V. NON-FREEHOLD ESTATES

A. Overview: A Non-Freehold Estate is considered to be an interest in real property that is less than ownership, such as a lease or a rental. A LEASEHOLD ESTATE is an interest in real property for a period of time.

B. Types of Non-ownership Rights: There are three types of leasehold estates:

1. **ESTATE FOR YEARS**: A lease that has a definite beginning date, has a termination date, and is in writing. There are no duration requirements, so technically a written lease for six months is still considered to be an estate for years.

2. **TENANCY AT WILL**: A lease that has a beginning date but no fixed termination date, such as a month-to-month rental agreement. A tenancy at will can be oral or in writing. As long as the tenant pays the rent and the landlord accepts the rent, the relationship continues.

   A tenancy at will is terminated by death of either party, sale of the property, or by giving proper notice prior to the end of the rental term, as defined by Florida law: Residential tenants on a week-to-week require a 7-day notice while residential tenants on a month-to-month require a 15-day notice.

3. **TENANCY AT SUFFERANCE**: This type of non-freehold estate exists when a tenant's rental agreement has expired but the tenant remains in possession without an agreement. Tenants at sufferance are also referred to as "holdover" tenants and their occupancy can be terminated without notice.

VI. HOMESTEAD

Under the Florida Constitution, every head of a household (including single persons) owning a primary residence is entitled to declare that property as a HOMESTEAD. Declaring a property as a homestead entitles that property to certain legal protections and benefits, such as preventing a forced sale of the homestead by most judgment creditors. It should always be remembered that homestead properties are not protected from forced sale as result of unpaid real estate property taxes, mortgages, or mechanic's liens. Signatures of both spouses are required on all contracts, mortgages, and deeds that have the effect of releasing any homestead right, even if the homestead is titled in one spouse's name only. It should be noted that this rule applies to any primary residence in Florida whether homesteaded or not.

Under homestead laws, if a married person dies and the family homestead was titled in that deceased person's name only, then by operation of law (which will supersede a provision in a will), the surviving spouse receives a life estate and the children receive a remainder estate. If there are no children, the surviving spouse receives title to the homestead in fee simple.
Homestead protections are limited to 160 acres if a property is located outside a city or up to 1/2 acre if the property is located within a city. Additionally, homestead properties are provided with a tax exemption that allows $25,000 of assessed value to be exempt from real property taxation plus an additional $25,000 exemption if the homestead is assessed from $50,000 to $75,000 but only on non-school taxes.

VII. SPECIFIC TYPES OF REAL PROPERTY OWNERSHIP

There are four ways to own an interest in real property:

A. Estate in Severalty: When property is titled in one person's name.

B. Tenancy by the Entireties: The TENANCY BY THE ENTIRETIES interest is available only to husbands and wives who own property together. Florida law considers property titled in this manner actually owned by the marriage rather than the individuals. In the event one spouse dies, the surviving spouse automatically receives sole ownership of the property regardless of any "last will and testament" provisions. Neither spouse can legally sell or mortgage the property separately. Any property owned prior to the marriage, however, is considered separate property.

C. JOINT TENANCY: This type of ownership interest between two or more parties with the RIGHT OF SURVIVORSHIP (when one joint tenant dies, the other joint tenants absorb the decedent's interest). The right to survivorship must be stated specifically in the deed by expressly using the words "Joint Tenants with Right of Survivorship." If the survivorship provision is not expressly stated, a tenancy in common will result. Additionally, the joint tenancy with right of survivorship interest requires that the property be acquired under the four unities of possession, interest, time, and title (PITT). The interests must be obtained simultaneously from the same source and in the same conveyance instrument (deed).

The ownership interest between the joint tenants ("co-owners") must be equal (e.g. 50-50 or 1/4 each). All joint tenants have equal rights to possession and use of the subject property. Upon the death of a joint tenant, the decedent's interest in the subject property does not pass according to the joint tenant's will or estate, but rather the surviving joint tenants will equally absorb the decedent's ownership interest. If a joint tenant sells his or her interest, the new co-owner will not be considered a joint tenant with the other co-owners, but rather will be deemed a tenant in common. However, the original joint tenants shall remain as joint tenants with right of survivorship amongst themselves.

D. Tenants in Common: TENANTS IN COMMON is an interest in real property owned by two or more persons that may or may not have equal interests or may or may not have taken title at the same time. Their ownership interest may be equal (e.g. 50/50) or unequal (e.g. 80/20). Tenants in common have equal rights to possession and use of the property, regardless of the ownership share. A co-tenant may sell or transfer his or her interest.
VIII. COOPERATIVES, CONDOMINIUMS AND TIME SHARES

A. Cooperatives: A COOPERATIVE is a multi-unit dwelling that is owned by a corporation comprised of residents/stockholders. When a person owns shares of stock in a cooperative, he or she obtains a PROPRIETARY LEASE entitling the shareholder to possession and quiet enjoyment of his or her particular unit. The proprietary lease payment is typically based upon the pro-rata share of all expenses including taxes and maintenance. When a person wishes to sell his or her interest in a cooperative, he or she actually sells their shares of stock to a purchaser who is then entitled to the proprietary lease.

Florida Statute Chapter 719 specifies that prior to the sale of a cooperative, a prospective purchaser must be provided with copies of the articles of incorporation, by-laws, and rules and be informed of a 15-day contractual right of rescission from the date of contract (or receipt of the required documents, whichever happens last) if purchasing from a developer, or a 3-business-day right of rescission if purchasing from a private individual.

B. Condominium: A CONDOMINIUM is individual ownership within a multiple unit dwelling. Unlike cooperatives, condominiums are typically owned in fee simple. In addition to unit ownership, condominium owners also own an undivided fractional share of the common elements which include all portions of the condominium property other than the individual units. Property taxes are levied upon each individual unit rather than the entire condominium. Transferring ownership of a condominium is generally achieved through the use of a deed.

Condominiums are created by recording a state approved "Declaration of Condominium" (DECLARATION) in the county public records. In addition, a developer will also establish a homeowners' association that will abide by rules and By-Laws that are also recorded in the county public records. The condominium map locates and describes each condominium unit. The condominium conveyance transfers title to individual units as well as an undivided interest in the shared common elements.

Together, these documents comprise the "Condo Docs" which outline and describe the rights and obligations of condominium owners. F.S. 718 requires that all prospective purchasers be given copies of the condominium documents, a copy of the homeowner association budget, and any rules pertaining to the unit's resale.

There are certain disclosure requirements which must be fulfilled prior to the purchase of a condominium. Anyone purchasing a condominium must be provided a set of the condominium documents. Anytime a new condominium is being sold by the developer, the purchaser must be provided with a disclosure stating that the purchaser has a 15-day right of rescission after the receipt of the condominium documents (or the signing of the sales contract, whichever happens last). When a private owner resells a condominium, the purchaser must be provided with a disclosure giving a 3-business-day rescission period.

C. Time Share: Time Share units have taken the concept of condominiums one step further by selling condo units to multiple owners. The basic principle behind time share is to sell a condominium to different owners with an agreement for use. Owning a time share entitles the owner to a right of occupancy.
for a specified interval of time, typically a specific week of each year (e.g. 28th week of each year).

There are two types of legal formats for time share projects to follow:

1. Interval ownership: Actually taking legal title to the property (fee simple) as a tenant in common with other interval owners.

2. Right to use (Vacation Lease): A person leases the time share unit for a prescribed period of time after which sole right of possession is then transferred back to the developer.

The Florida Real Estate Time Share Act (F.S. 721) applies to time share plans consisting of more than seven time share periods over a span of no less than 3 years and in which the time share facilities or accommodations are physically located in Florida.

A prospective time share purchaser must be provided with a public offering statement (prospectus) and a disclosure statement notifying the prospect that a time share sales contract may be cancelled within 10 days of signing the sales contract or receipt of the public offering statement, whichever happens last.

### SUMMARY

- Real property includes both the physical components of real estate (land and improvements) plus the intangible assets known as the "bundle of rights."

- The physical components of real property include surface rights, subsurface rights, and air rights.

- The law will utilize four separate tests to determine if an item is a fixture. They are 1) Intent of the parties, 2) Method of Attachment, 3) Agreement of the parties, and 4) Adaptation of the article.

- Personal property is considered to be all properties other than real property.

- The basic property rights ("bundle of rights") can be remembered as "DEEPC" (Disposition, Enjoyment, Exclusion, Possession, Control)
The principle types of estates include 1) Estate in Severalty (individual), 2) Tenancy by the Entireties (husband and wife), 3) Joint Tenancy (Right of Survivorship/ "PITT"), 4) Tenants in Common.

Florida homestead laws provide certain types of protection and benefits. Homestead property is exempt from judgment foreclosure, is limited in size depending on geographical location, and provides a $25,000 tax exemption from the assessed value of the property plus an additional $25,000 if the property is assessed from $50,000 to $75,000 and on non-school taxes.

Properties that were owned prior to a marriage are considered separate from properties acquired during the marriage.

Cooperatives are corporations owned by stockholder/residents with a proprietary lease for occupancy and use.

Condominiums are individual ownership within a multiple unit dwelling.

Time shares are considered interval ownership with multiple owners of a single property unit with an agreement to the right of use.

CHAPTER FOUR QUIZ

1. An item that was once personal property but is now considered to be part of the real property is called a
   A. chattel
   B. fixture
   C. intangible asset
   D. appurtenance

2. Land, together with all the permanent improvements thereon, is technically called:
   A. Land
   B. Real estate
   C. Real property
   D. Tenancy in common
3. The physical components of real property include:
   A. Subsurface rights
   B. Surface rights
   C. Air rights
   D. All of the above

4. Legal rights that affect land that abuts rapid flowing bodies of water such as rivers and streams are called:
   A. Littoral rights
   B. Aquarian rights
   C. Riparian rights
   D. Irrigation rights

5. The following are examples of an interest in real property for an indefinite time period except:
   A. Joint estate
   B. Estate for years
   C. Estate in severalty
   D. Tenancy by the entireties

6. Which type of ownership interest includes the right of survivorship?
   I. Estate in severalty
   II. Tenancy in common
   III. Joint tenancy
   IV. Tenancy by the entireties
   A. I only
   B. II and III
   C. II and IV
   D. III and IV

7. Which type of multiple-unit dwelling provides for right of possession through rights granted under a proprietary lease?
   A. Time share
   B. Cooperative
   C. Condominium
   D. Apartment
8. A purchaser of a new developer condominium has how many days to rescind the sale and purchase contract after receipt of the condominium documents:

A. 3
B. 7
C. 10
D. 15

9. Rules and regulations for a condominium can be found in the:

A. Bylaws
B. Condo docs
C. Declaration
D. Question and answer sheet

10. All of the following are components of the “bundle of rights” granted under the allodial system, except:

A. Disposition
B. Enjoyment
C. Possession
D. Construction

11. Which of the following statements about Florida Homestead laws is incorrect?

A. A minimum of $25,000 may be deducted from the assessed value of a homestead property for tax purposes.
B. Homestead laws will prevent foreclosure by most judgment liens.
C. An owner may protect up to 160 acres if the homestead is within a city.
D. Homestead laws and protections are provided by the Florida Constitution.

12. Which type of ownership requires that the property be acquired under the four unities of possession, interest, time, and title (PITT)?

A. Tenancy in common
B. Joint tenancy
C. Tenancy by the entireties
D. All of the above
13. An ownership interest in real property that will terminate upon the death of an individual is called a:

A. Estate for years  
B. Fee simple estate  
C. Life estate  
D. Remainder

14. Which of the following is an example of tenancy at sufferance?

A. Holdover tenant  
B. Life estate  
C. Time share  
D. Homestead
CHAPTER FIVE: REAL PROPERTY OWNERSHIP

TALK THE TALK

Abstract of Title: A compilation of the recorded documents relating to a parcel of land from which an attorney may give an opinion as to the condition of title (a history of title)

Acknowledged: A written declaration by a person signing a document, given before an officer authorized to give an oath (notary public), stating that the signing is the person's voluntary act

Actual Notice: Giving oral or written notice, presenting a deed, giving verbal notice, or physically moving into a property

Adverse Possession: A method of acquiring title by possession under open, notorious, exclusive, and hostile conditions for seven or more years

Assignment: A transfer to another of any property, real or personal, or of any rights or estates in said property

Chain of title: The chronological order of conveyances of a parcel of land from the original owner to the present owner

Committee's Deed: Utilized when the grantor is mentally incompetent

Constructive Notice: Notice given by publishing in a newspaper, public records, or other method

Deed: Any one of many conveyance or financing instruments, but generally a conveyance instrument given to pass title to property upon sale

Deed Restriction: Limitations on the use of property placed in a deed by the grantor which binds all future owners

Easement: The legal right that a party has to use another's property

Eminent Domain: The legal right that government and quasi-government agencies have to take property from individuals for public use

Escheat: When a person dies intestate (without a will) and with no heirs, all real and personal property transfers to the state of Florida

General Warranty Deed: The most common type of conveyance instrument with full covenant and warranty

Grantee: The person or party receiving the deed

Granting Clause: Words of conveyance found in the premises clause

Grantor: The person or party giving the deed

Gross Lease: A lease in which a tenant pays a specified rent payment and the landlord pays any operating expenses required for maintenance

Ground Lease: A lease on the land only

Guardian’s Deed: Utilized when the grantor is under 18 years of age

Habendum: The clause in which the type of estate is declared (i.e.: fee simple)

Intestate: When a person dies without a will

Lien: An encumbrance against a property for money, either voluntary or involuntary
CHAPTER FIVE: REAL PROPERTY OWNERSHIP

MORE TALK THE TALK

1. Marketable Record Title Act: If a continuous chain of title has existed for at least 30 years, any potential title defect more than thirty years old is considered cured.

2. Net Lease: A lease in which the tenant pays a specified rent plus a portion of typical landlord costs.

3. Percentage Lease: A lease in which a tenant pays a specified rent to the landlord plus a percentage of the income the property generates.

4. Police Power:Legislated power given to governments to protect the public's health, safety, or welfare (zoning ordinances and building codes).

5. Quitclaim Deed: The grantor deeds property to the grantee, but provides no warranty of title or promise of ownership; often used to cure defects in title.

6. Seisen: A statement of ownership or title to real property.

7. Sublease: A tenant who transfers less than the entire leasehold estate.

8. Testate: A person that dies with a will.

9. Title: The evidence one has of ownership to real property.

10. Variable Lease: The tenant pays rent based on a pre-determined index.

AREAS OF CRITICAL CONCERN

- Differentiate between voluntary and involuntary alienation.
- Explain the various methods of acquiring title to real property and describe the conditions necessary to acquire real property by adverse possession.
- Distinguish between actual notice and constructive notice.
- Distinguish between an abstract of title and a chain of title.
- Explain the different types of title insurance.
- Describe the parts of a deed and the requirements of a valid deed.
- List and describe the four types of statutory deeds and the legal requirements for deeds.
- List and describe the various types of governmental and private restrictions on ownership of real property.
- Distinguish among the various types of leases.

I. CONCEPT OF TITLE

A. Overview: TITLE refers to the concept of real property ownership. When a party's name appears on a deed, that person has "title" to the property. Having title to real property includes ownership of a certain "bundle of rights" associated with the type of ownership estate (i.e.: whether title is in fee simple or a life estate). Title to real property is transferred (conveyed) from one owner to another on a voluntary or an involuntary basis.

B. Voluntary Alienation: When real property is transferred according to the actual desires and intent of the owner, the title is being transferred through voluntary alienation. There are two voluntary alienation methods:
CHAPTER FIVE: REAL PROPERTY OWNERSHIP

1. **Deed:** The **DEED** is a written document evidencing transfer of ownership by either sale or gift. Conveying property by deed is the most common method of transferring title from one individual or group to another.

2. **Will:** A valid last will and testament that specifies a real property transfer through the decedent's estate is considered to be a voluntary alienation. When a person dies with a will (**TESTATE**), the real property is transferred according to terms stated in the will.

The person who dies (decedent) leaving a will is called either a testator (male) or testatrix (female). A party named in a will to receive real property is called a devisee and is entitled to inherit a devise. A party named in a will to receive personal property is called a beneficiary and is entitled to inherit a bequest.

A person who leaves a will must be of legal age (eighteen years of age or older) and must be mentally competent.

C. **Involuntary Alienation:** When property is transferred without the specific intent of the owner, we refer to the conveyance as involuntary alienation. There are four methods of involuntary alienation:

1. **Descent and distribution:** Whenever a person dies without a valid will, they have died **INTESTATE**. All real and personal property will transfer to the decedent's heirs or closest known relatives, if any.

2. **Escheat:** Whenever a person dies without a will (intestate) and has no heirs, all real and personal property will transfer to the state of Florida through the process of **ESCHEAT**.

3. **Eminent Domain:** **EMINENT DOMAIN** is the right of government (or a quasi-government agency) to take property from individuals anytime that government feels it is necessary. Examples of quasi-government agencies include railroads and utility companies. This is sometimes referred to as "government land snatching" and is accomplished through the process of condemnation.

4. **Adverse possession:** When a property owner allows another to take possession of his or her property and fails to take legal action to have that person (**ADVERSE POSSESSION**) removed, the true owner may lose his or her rights or interests to the adverse possessor. There are several requirements necessary to acquire property through adverse possession. There are two important conditions:

   a. Adverse possession must continue for seven or more consecutive years without the true owner's consent.

   b. Real estate taxes must be paid by the adverse possessor during the entire time of adverse possession. If the true owner continues to pay taxes, there can be no adverse possession.
CHAPTER FIVE: REAL PROPERTY OWNERSHIP

II. NOTICE OF TITLE

There are two methods to give notice that ownership or some other interest in real property has been acquired.

A. Actual Notice: If a person actually observes a deed, ACTUAL NOTICE has taken place. In some cases, verbal communication of ownership or physical possession of a property might be considered actual notice.

B. Constructive Notice: Recording a document in the county public records establishes legal notice known as CONSTRUCTIVE NOTICE. Anytime conveyances or other documents are made part of public record they must first be acknowledged (notarized). A good example of constructive notice is the filing of a Lis Pendens which is public notice of a pending legal action.

III. PROTECTING TITLE

When a person buys real estate in Florida, the condition of its title should be of the utmost importance. The title needs to be examined by an expert to make sure negative information or claims have not attached that will then become the responsibility and problem of the new owner. For example, if a debt is owed, a lien in the amount of the debt could be attached to the property causing a new owner to lose title in a foreclosure proceeding.

An ABSTRACT OF TITLE is a complete history of a property that could date back to its origin (patent deed). The abstract contains every legal event that has ever happened to that property including deeds or other conveyances, mortgage liens, satisfactions of mortgage, divorces, and foreclosures. A CHAIN OF TITLE, on the other hand, is simply a history of ownership. The chain of title is part of the abstract.

Once a person has had the title examined (title search), an expert (real estate attorney) can give a written opinion of the title’s condition. If the title examination demonstrates that title is marketable, title insurance can be purchased to protect against future claims which might be made against the property or new property owner. The MARKETABLE RECORD TITLE ACT provides that if continuous chain of title has existed for at least thirty years, any potential title defects more than thirty years old is considered cured.

There are two types of title insurance:

1. Owner’s Policy: The owner’s title insurance policy, also referred to as the mortgagor’s policy, is usually based on the purchase price and will pay for all claims made against the property up to the face amount of the policy. An owner’s policy is non-transferable.

2. Lender’s Policy: The lender’s title insurance policy, also referred to as the mortgagee’s policy, is required by the lender if a property is mortgaged. This policy will cover the lender’s investment. A lender’s policy is transferable.
In practice, the mortgagee's policy covers the bank's investment while the owner's policy covers the owner's equity up to the original purchase price. A property owner may subsequently increase the face amount of his or her title insurance by paying an additional premium.

IV. DEEDS

A. Parties: A deed conveys title from one party to another. There are two parties to a deed:

1. Grantor: The GRANTOR is the person or group who is giving title to another. In most cases, the owner is the grantor.

2. Grantee: The GRANTEE is the person or group who is receiving title from another.

B. Deed Elements: There are various elements that make up a deed. Some elements are required while others are simply needed for clarity. There are nine important elements to a deed:

1. The deed must contain the names of the grantor and grantee. The grantor must be of legal age and mentally competent.

2. There must be a recited consideration. Although no specific dollar amount needs to be stated, the recited consideration can be the actual purchase price or might be stated as "$10.00 and other good and valuable consideration".

3. There must be words of conveyance found in the GRANTING CLAUSE. Typically a deed will recite that the grantor hereby "conveys, transfers, remises" or other words of conveyance.

4. The HABENDUM CLAUSE describes the type of estate that is being conveyed (either fee simple or life estate). For example, a deed may state that the grantee is to "have and to hold in fee simple forever."

5. The Reddendum clause describes any reservations or restrictions that run with the land, such as a deed restriction.

6. When stated in a deed, an appurtenance refers to other physical improvements on the property besides the main purpose of the sale

7. The complete legal description. The physical address is not important or required.

8. For title to legally transfer, the deed must be delivered to and voluntarily accepted by the grantee.
9. A valid deed must be signed by a competent grantor with two witnesses. A deed does not have to be ACKNOWLEDGED (notarized) or recorded to be valid. However, a deed must be acknowledged to be recorded. If a person fails to record his or her deed he or she may be estopped from ownership under certain conditions.

C. Deed Requirements: In order for a deed to be legally valid, it must adhere to the following requirements:

1. Must be in writing
2. Must contain the names of the grantor and grantee
3. Must recite the consideration
4. Must contain a granting clause (words of conveyance)
5. A habendum clause define the type of estate
6. There must be a complete legal description
7. The competent grantor must sign the deed with two subscribing witnesses
8. In order to accomplish the conveyance, the deed must be delivered to and accepted by the grantee

D. Statutory Deeds: There are four types of statutory deeds. Each of these deeds transfers title. The difference, however, depends on how much the grantor is willing to defend the quantity and quality of title being conveyed.

1. Quit Claim Deed: The QUIT CLAIM DEED is utilized to cure title defects or lawsuits to quiet title. The grantor makes no warranties, guarantees, or promises of actual ownership of title.

2. Bargain and Sale Deed: This type of deed contains no warrants or covenants other than the warrant of SEISEN (a statement of ownership).

3. Special Warranty Deed: With this type of deed, the grantor provides a warrant of seisen and a warranty of title against any acts that were performed by the grantor or the grantor's agents. The grantor promises to defend any title defects that allegedly arose during the period of time that the property was owned by the grantor. The Special Warranty Deed is often used by banks for properties that have been taken back through foreclosure. Typically, banks do not want to warrant good title for the time period before the foreclosure.
4. **General Warranty Deed:** The **GENERAL WARRANTY DEED** is the most common type of deed used in real estate conveyances and it contains the following warrants and covenants:

   a. **Covenant of Seisen** is a statement of ownership. The grantor warrants that it has the quantity and quality of title being conveyed ("I promise I own it and I promise I have the right to sell it").

   b. **Covenant against encumbrances** guarantees that there are no other claims or liens against the property being conveyed other than those already known by the grantee. The grantor takes full responsibility for any and all claims, regardless of when the claim occurred up to the day the grantee accepted title.

   c. **Covenant of quiet enjoyment** assures the grantee that there will be no other claims of ownership or any other interest claim on the property being conveyed.

   d. **Covenant of Further Assurance** provides that the grantor will produce or sign any legal documents necessary after closing to perfect good title.

   e. **Covenant of warranty forever** insures that the grantor will do whatever is necessary to protect and defend good title forever.

5. **Guardians Deed:** A **GUARDIANS DEED** is used to convey title of a minor.

6. **Committees Deed:** A **COMMITTEES DEED** is used to convey title of someone mentally incompetent.

V. **OWNERSHIP LIMITATIONS AND RESTRICTIONS**

From the very beginning of the allodial system of property ownership, a person was said to own a "bundle of rights." Since that time, the "bundle of rights" has undergone a great deal of restricted change. Originally, the right of the individual property owner was paramount. Today, individual property rights are not absolute. There are two distinct areas of property ownership limitations and restrictions:

A. **Governmental Restrictions:** The federal, state, and local governments restrict and limit what we can do, or not do, with our property. There are three categories of governmental limitations:

   1. The government has the right to enact laws and regulations to protect the health, safety, and welfare of the public through the exercise of its **POLICE POWERS**. Examples of Police Power include zoning laws that divide
areas of a community into various uses (residential, commercial, industrial, etc.) and building codes that set guidelines for construction specifications and quality.

2. Eminent Domain is the right of government to take real property owned by individuals and convert it to whatever use or non-use has been chosen. If the property owner disputes the amount of financial compensation being offered, the owner is entitled to a legal determination of value through the court system.

3. Taxation is a governmental restriction because owners must pay property taxes to continue their property ownership. The non-payment of real estate taxes can cause liens or even a forced public sale of the property.

B. Private Restrictions: Restrictions on the use of real property can be imposed by the private sector. Unlike governmental restrictions, private limitations are often negotiated between parties involved with the restrictions. There are two categories of private restrictions that are used:

1. **DEED RESTRICTIONS** allow the seller of real estate to place limitations on the property's future use. Prior to zoning, the only way property values could be protected was through restricting property use by new owners. Many developers still use restrictive covenants which are a form of deed restriction.

2. An **EASEMENT** is a form of conveyance that gives a party the right to enter or use another's property. Most easements are given through negotiations between the parties involved. Easement examples include utility easements and ingress/egress easements given for the purpose of gaining access. There are, however, some easements that are granted through the courts, such as an Easement by Necessity or Easement by Prescription. An Easement by Necessity is given when a property is landlocked with no means of ingress/egress. Easement by Prescription is granted if the easement has been in uninterrupted use for twenty or more years. Some easements can be terminated through agreement or may exist in perpetuity and only the party owning the easement may terminate its use.

3. A lease is the right that a person or group has to occupy and use a property even though they do not hold title. The property owner that gives the lease is known as the lessor while the tenant receiving the lease is known as the lessee. There are five primary types of leases:

   a. **GROSS LEASE**: The tenant pays a fixed rent and the landlord pays all property costs, such as taxes and insurance

   b. **NET LEASE**: The tenant pays a fixed rent, plus the property costs
c. **PERCENTAGE LEASE:** The tenant pays a rent based on its gross sales.

d. **VARIABLE LEASE:** The tenant pays a rent that is related to an index, such as the consumer price index. If the index increases, the rent increases also.

e. **GROUND LEASE:** The tenant pays rent for the ground only and builds upon the leased property.

Anytime a party has a lease and desires to let another party take over the entire lease in full prior to its expiration, the parties will execute a lease **ASSIGNMENT.** If a party wishes to give up only a portion of his or her existing lease, he or she will execute a **SUBLEASE.** For example, if a tenant would like to rent out one of several bedrooms to another.

4. **Liens:** A **LIEN** is a document stating that a party is owed money, and ultimately that party may seek a forced judicial sale of the property if the debt is not satisfied. The creditor is the lienor while the debtor is known as the lienee. A general lien, such as a recorded judgment, attaches to all the lienee's real property located in the county where the lien is recorded. A specific lien, such as a mechanic's lien, attaches to only one particular property.

Liens are created either voluntarily or involuntarily. Different types of liens include the following:

a. **Mortgage liens** are created when a person borrows money from a bank and pledges real estate as collateral for the loan. The collateral instrument is known as a mortgage. When the lender records the mortgage, giving public notice of the debt, it becomes a mortgage lien. Once the debt is repaid, a satisfaction of mortgage is recorded releasing the property as collateral. Mortgage liens are voluntary liens.

b. **Judgment liens** are court judgments recorded in the public records. Once recorded, these judgment liens become a lien on all of the debtor's real property located in the county where the judgment is recorded. Judgment liens are involuntary.

c. **Mechanic's liens** are utilized whenever a party has work performed on a property and does not pay for that work or the materials used. The party performing the work (or the party supplying materials) can file a mechanics lien. The lien can only attach to the property where the work was performed, must be recorded within 90 days of the completion of the work, and is valid for one year. A mechanics lien is involuntary and
its priority in a foreclosure sale is retroactive to the date the work was first performed or materials were first delivered.

d. Real estate tax liens become effective January 1st of each year, even though the tax bill does not become due until November of the same year. Real estate tax liens are involuntary.

e. Federal Income Tax liens (IRS) are general tax liens and are levied on anything and everything that a person owns for the non-payment of income taxes. IRS liens are involuntary.

f. Special Assessment liens occur as a result of the property owner's failure to pay a special assessment. A special assessment is a one-time tax levied to pay the cost of a public improvement that directly benefits the assessed property. Special assessment liens are involuntary.

Most liens establish priority based on the date they were recorded although mechanic's liens date back to the date materials were first delivered or the date work was first performed. Real estate tax liens, special assessment liens, and federal estate tax liens are considered to be superior liens. That means they will take a higher priority than any other lien regardless of the recording date. Although Federal Income Tax liens are not defined as “Superior”, they must be dealt with when title transfers and cannot be foreclose or eliminated through bankruptcy.

### SUMMARY

- A voluntary lien is given out of choice. An involuntary lien is recorded for the non-payment of a debt.

- There are six methods of acquiring title to real property:

1. **Deed**: The most common means of conveying title
2. **Will**: A person leaves his or her estate to others upon his or her death
3. **Descent and distribution**: Transfers a person's estate when there is no will
4. **Escrow**: Title reverts to the state of Florida when a person dies without a will and with no heirs
5. **Eminent domain**: Government land taking with or without the owner’s permission
6. **Adverse possession**: Open and hostile possession doing the normal things a true property owner would do for seven or more years

- Actual notice is physically reading a person's deed, being told by the owner that they have acquired title, or by observing a person's actual possession and control of a property and inferring some interest in the property. Constructive notice, also known as legal notice, is created by recording in the public records any interest in real estate that might be owned.

- A chain of title is a history of ownership. An abstract is a complete history of a property, which includes title, liens, and any other document recorded.

- There are two types of title insurance. The owner's policy covers the owner's equity in a property while the lender's policy (mortgagee's policy) covers the bank's investment in a property.

- The important parts of a deed are the names of the grantor and grantee, consideration, words of conveyance, estate being conveyed, restrictions and reservations, appurtenances, legal description, signature of the grantor with two witnesses, and the deed delivered and accepted.

- The four types of statutory deeds are quitclaim, bargain and sale, special warranty, and general warranty deeds. In order for title to transfer, the grantor must deliver the deed, and the grantee must accept the deed.

- There are two methods of restrictions on property:
  1. Governmental restrictions include police powers, eminent domain, and taxes.
  2. Private limitations include deed restrictions, easements, leases, and liens.

- There are five types of leases:
  1. Gross Lease
  2. Net Lease
  3. Percentage Lease
  4. Variable Lease
  5. Ground Lease

- There are two ways that a lessee can transfer its rights to a lease:
  1. An assignment of lease gives up everything owned remaining in a lease.
  2. A sublease gives up less than everything owned in a lease.
CHAPTER FIVE QUIZ

1. Rights to real property can be voluntarily conveyed through the use of
   A. deed
   B. will
   C. eminent domain
   D. both A and B

2. If a person dies with a valid will in effect, that person has died:
   A. Testate
   B. Intestate
   C. In trust
   D. In probate

3. If a person dies with no heirs or beneficiaries, his or her estate will pass to the
   state of Florida through the process of:
   A. Inheritance
   B. Escheat
   C. Taxation
   D. Probate

4. If the government wishes to seize private land for the purpose of widening an
   existing road, it can acquire the land through
   A. taxation
   B. escheat
   C. police power
   D. eminent domain

5. Recording a deed in the public records achieves:
   A. Constructive notice
   B. Actual notice
   C. Probate notice
   D. Judicial notice
6. The type of title insurance that is non-transferable and typically has a face amount equal to the purchase price is the:
   A. Owner’s policy
   B. Lender’s policy
   C. Mortgagee’s policy
   D. None of the above

7. The words of conveyance in a deed are contained in the:
   A. Habendum clause
   B. Granting clause
   C. Reddendum clause
   D. Premises clause

8. Which type of statutory deed is used primarily to clear defects to title?
   A. Quitclaim deed
   B. Bargain and sale deed
   C. Special warranty deed
   D. General warranty deed

9. Which type of deed offers the greatest protection for a buyer?
   A. Quitclaim deed
   B. Bargain and sale deed
   C. Special warranty deed
   D. General warranty deed

10. The government has the right to enact laws and regulations to protect the health, safety, and welfare of the public through the exercise of its:
    A. Sovereign immunity
    B. Police powers
    C. Executive privilege
    D. Eminent domain
11. Which of the following is a non-governmental limitation on title?
   A. Zoning
   B. Planning
   C. Condemnation
   D. Deed restriction

12. Which type of lease provides that the tenant will pay a fixed rent plus the property's operating expenses?
   A. Net lease
   B. Gross lease
   C. Variable lease
   D. Percentage lease

13. Which of the following is an example of a voluntary lien?
   A. Construction lien
   B. Mortgage lien
   C. Special Assessment lien
   D. Judgment lien

14. Real estate tax liens become effective on:
   A. December 31st of the tax year
   B. January 1st of the tax year
   C. January 1st of the proceeding tax year
   D. April 1st of the proceeding tax year

15. Which provides clear title to property after 30 years of continuous ownership?
   A. Marketable Records Title Act
   B. Title Theory
   C. Lien Theory
   D. General Warranty Deed
CHAPTER SIX: LEGAL DESCRIPTION

TALK THE TALK

Base Line: The horizontal line that runs east and west through Tallahassee that is the starting point for all other horizontal lines north and south of Tallahassee.

Government Survey System: A method of describing land developed by the U.S. government using surveying lines; the entire state of Florida is mapped out in a large checkerboard.

Legal Description: A method of geographically identifying a parcel of land which is acceptable in a court of law.

Lot and Block: A common type of legal description used for single-family properties located in subdivisions (recorded plat maps).

Meters and Bounds: The most accurate method to legally describe both regular and irregular shaped parcels of real estate and is based on distances (meters) and directions (bounds); also known as the "surveyor's system".

Monument: An object used to establish boundaries (both natural and man-made).

Point of Beginning: The reference point that is the starting place for all meters and bounds legal descriptions.

Principal Meridian: The north and south line that runs through Tallahassee and is the starting place for all other meridian lines that help measure distances east and west throughout Florida.

Section: A one-mile square found within a township.

Township: A six-mile square area that is created when two six-mile wide bands called townships (tiers) and ranges intersect.

Range: A vertical strip of land six miles wide that runs north and south, and help determine distances east and west across Florida.

Range Line: The vertical lines six miles apart that border a range.

Township or Tier: The horizontal strip of land six miles wide that runs east and west and helps determine distances north and south across Florida.

Township Line: The horizontal lines six miles apart that border a township (tier).
AREAS OF CRITICAL CONCERN

• Describe the purpose of legal descriptions
• Distinguish among the three types of legal descriptions
• Locate a township by township line and range
• Locate a particular section within a township
• Understand how to subdivide a section
• Calculate the number of acres in a parcel based on the legal description and convert to square feet
• Explain the use of assessor’s parcel numbers
• Apply the measurements associated with checks, townships, and sections
• Describe the process of creating a legal description using the metes-and-bounds method

I. PURPOSE OF LEGAL DESCRIPTIONS

Every parcel of real estate is unique and has its own distinctive boundary identification known as a LEGAL DESCRIPTION. Although a physical address is in most cases useful, it is not the way real estate is legally defined. To be acceptable in a court of law, we need to be able to identify real estate precisely as possible.

II. TYPES OF LEGAL DESCRIPTIONS

There are three types of legal description methods:

A. Metes and Bounds: The most accurate method to describe both regular and irregular shaped parcels of real estate is the METES AND BOUNDS legal description method. In every Metes and Bounds description, the surveyor must first identify a starting point known as the POINT OF BEGINNING (P.O.B.). The POB is often established by a predetermined marker (MONUMENT) placed in the ground. The term “metes” refers to distances, such as feet and inches. “Bounds” refer to compass bearing direction in degrees, minutes, and seconds. A surveyor divides a circle into four equal sections, known as quadrants, containing 90 degrees each. By using quadrants, finding directions is made easy. Directions are given in degrees (°), minutes (‘), and seconds (”). For example, N45°25’20”E refers to “North 45 degrees, twenty-five minutes, 20 seconds East.

Example:
B. Government Survey System: The GOVERNMENT SURVEY SYSTEM was developed by the federal government and is utilized in all states except the original thirteen states plus Tennessee, Kentucky, West Virginia, and Texas. Essentially, the Government Survey System divides a state into a checkerboard pattern with each square identified. If you can imagine placing a sheet of transparent graph paper over a map of the state of Florida, you have an idea of how the Government Survey System looks.

Florida's Government Survey System uses a legal monument marker in Tallahassee that is the axis for lines that run north and south and east and west throughout the state.

1. Meridian and Base Line: The PRINCIPAL MERIDIAN is an imaginary line that runs north and south through the legal monument located in Tallahassee, and it is the beginning point for establishing ranges east and west of Tallahassee. A RANGE is a six-mile wide strip of land running the entire distance of the state in a north-south direction. Additional lines running north and south parallel to the Principal Meridian are known as RANGE LINES. These Range Lines establish ranges to the east and west of Tallahassee.

The BASE LINE is an imaginary line that runs east and west through the legal monument located in Tallahassee and is the beginning point for establishing Townships (also referred to as a TIER). A Township is a six-mile wide strip of land running the entire distance of the state in an east-west direction. Additional lines running east and west parallel to the Base Line are known as TOWNSHIP LINES. These Township Lines establish Townships to the north and south of the monument in Tallahassee.
Meridian and Base Line:

Diagram Not To Scale
When a Township strip of land intersects with a Range strip of land, this results in the formation of a parcel of land measuring six miles on each side, or 6 miles square. This 6-mile square parcel is known as a TOWNSHIP.
CHAPTER SIX: LEGAL DESCRIPTION

Township

6 Miles

36 Square Miles or 6 Miles Square

6-6
Author's Note: Township technically has two definitions. It refers to the six-mile wide strip of land running east and west AND it also refers to the six-mile square parcel of land formed by intersecting perpendicular strips.

When a specific township and range intersect, you have narrowed the location down to within thirty-six (36) square miles in an area known as a township, which is a six-mile square.

2. Sections: Each township contains thirty-six square miles. Each square mile is known as a SECTION. Each section contains approximately six hundred-forty (640) acres. Sections within a township are numbered 1 through 36 by starting in the northeast corner of the township and then working west, and continuing the numbering system in an "S" type pattern as follows:

![Diagram Not To Scale]
Each section can be sub-divided into sub-sections in equal proportions.

3. Calculating Size: The size of any parcel utilizing the government survey method can be calculated as follows:

Enter 640 into your calculator, then simply divide by each of the denominators (bottom numbers) in the legal description.

**Example:** NW¼ of the NW¼ of the SE¼

$$640 \div 4 \div 4 \div 4 = 10 \text{ acres}$$

Sometimes the legal description contains the word "and." When that happens, separately calculate the size of the legal description on either side of the "and."

**Example:** NW¼ of the SE¼ and the SE¼ of the SW¼

$$640 \div 4 \div 4 = 40 \text{ acres} \text{ and } 640 \div 4 \div 4 = 40 \text{ acres}$$

$$40 \text{ acres} + 40 \text{ acres} = 80 \text{ acres}$$

C. Lot and Block Method: When a parcel is contained within a subdivision that is defined by a subdivision plat map, we describe each parcel in the subdivision according to the plat map when we utilize the **LOT AND BLOCK** method. For example, when referring to lot #2 in a subdivision named Regatta Plantation, the legal description would be:

Lot 2, Block B, Aspen Plantation subdivision, according to the plat thereof recorded in the Official Records of Sunshine County, Florida at Official Records Book 9999 at page 99
III. PROPERTY ASSESSMENT

Every parcel of property assessed for tax purposes receives a Parcel I.D. number assigned by the county property appraiser's office. This Parcel I.D. number is another way that we can locate and describe a particular parcel of property. Frequently, a deed will contain not only the property's legal description, but also its Parcel I.D. number for further description.

Each year, the county property appraiser will prepare a tax roll which identifies each property by its I.D. number, states the owner's name and address, and states the property's appraised value. The property appraiser will submit the tax roll to the county tax collector for subsequent collection of taxes.

SUMMARY

- Legal descriptions are utilized because of the need to precisely identify the boundary lines of all properties.
- The three methods of legal description are Metes and Bounds, Government Survey System, and Lot & Block Method.
- When a Range intersects with a Township (Tier), it creates a 6-mile square known as a Township.
- There are thirty-six sections in a Township that are numbered in an "S" pattern.
- Sections are divided into sub-sections (NE¼ NW¼ SE¼).
To calculate the number of acres contained in a Government Survey System legal description, divide 640 by all the denominators in the legal description (*Remember when the legal description contains the word "and", there is more than one legal description).

The Property Assessor's parcel I.D. number is used to identify real property.

CHAPTER SIX QUIZ

1. The horizontal line that runs east and west through Tallahassee is called:
   A. Base line
   B. Principal meridian
   C. Tier
   D. Range

2. Which method of legal description is the most accurate?
   A. Metes and Bounds
   B. Lot and Block
   C. Governmental survey system
   D. Boundary method

3. Which type of legal description method requires a point of beginning (P.O.B.)?
   A. Metes and Bounds
   B. Lot and Block
   C. Governmental survey system
   D. Boundary method

4. When utilizing the government survey system, a strip of land six miles wide running in a north-south direction is called:
   A. Township
   B. Range
   C. Section
   D. Tier
5. Which section number is directly north of Section 7?
   A. Section 14
   B. Section 1
   C. Section 21
   D. Section 6

6. How many acres are in each section?
   A. 160
   B. 360
   C. 180
   D. 640

7. How many acres are contained in the NW¼ of the SE¼ of the SW¼ of Section 21?
   A. 160
   B. 80
   C. 10
   D. 40

8. How many acres are contained in the NE¼ of the NE¼ and the S½ of the SE¼?
   A. 40
   B. 120
   C. 160
   D. 5

9. Parcels of land in a subdivision are usually described by which method?
   A. Lot and block
   B. Metes and bounds
   C. Government survey
   D. All of the above

10. Which county office is responsible for assigning parcel I.D. numbers?
    A. Tax collector
    B. Property appraiser
    C. Clerk of court
    D. County Commission
11. What is the name of the area of land six miles wide running north and south that is directly west of Tallahassee?

A. Range 1 West
B. Range 2 West
C. Township 1 West
D. Township 2 West

12. What is the name of the Township due west of Tier 1 North, Range 1 East?

A. Tier 1 North, Range 1 West
B. Tier 1 North, Range 2 East
C. Tier 1 South, Range 1 West
D. Tier 1 South, Range 2 East

13. What is the opposite direction of North 17° East?

A. North 73° East
B. South 17° West
C. East 17° North
D. South 73° West

14. How large is a Township?

A. 640 square miles
B. 36 miles square
C. 6 miles square
D. 1 square mile

15. What is the name of the Range due east of Range 17 West?

A. Range 17 East
B. Range 16 East
C. Range 18 West
D. Range 16 West
CHAPTER SEVEN: REAL ESTATE BROKERAGE ACTIVITIES

TALK THE TALK

Blind Advertisement: An advertisement of a principal's property providing only a telephone number, a post office box, and/or an address without the licensed name of the brokerage firm

Commingle: To mix together money or a deposit with personal funds; combine

Conflicting Demands: When the buyer and seller make demands for a deposit

Conversion: An unauthorized act of using the funds or property of another for one's own use

Corporation: An artificial or fictitious person formed to conduct specified types of business activities

Earnest Money Deposit: Money given as evidence of good faith to accompany an offer to purchase or rent

Escrow Account: A depository account in a bank, title company, credit union, savings association or trust company used solely for safekeeping customer funds and not for deposit of personal funds; impound account

General Partnership: Two or more parties in business together, each to share the profits and losses of business

Good Faith Doubt: When circumstance creates the overwhelming belief that a dispute may occur

Interpleader: A legal proceeding where the disputed money is deposited with the Court and the Judge decides who should receive the money

Kickback: A portion of monies received because of an agreement for referring a party to a particular vendor for services

Limited Liability Company: A business entity that may operate a real estate brokerage having characteristics similar to a partnership and a subchapter “S” corporation

Limited Liability Partnership: An alternative, hybrid business entity with the combined characteristics and benefits of both limited partnerships and “S” corporations

Limited Partnership: A business entity consisting of one or more general partners and one or more limited partners

Ostensible Partnership: A partnership formed, not by agreement, but by the representations or conduct of two or more parties that cause others to believe that a partnership exists; the parties become liable for the actions of the other

Point of Contact Information: Any means by which to contact the brokerage firm or individual licensee including mailing address (es), physical street address (es), e-mail address (es), telephone number(s), or facsimile telephone number(s)

Sole Proprietorship: Operating as an individual in business

Trade Name: Any adopted or fictitious name used to designate a business concern
CHAPTER SEVEN: REAL ESTATE BROKERAGE ACTIVITIES

AREAS OF CRITICAL CONCERN

- Identify the requirements for real estate brokerage office(s) and the types of business entities that may register
- Explain what determines whether a temporary shelter must be registered as a branch office
- List the requirements related to sign regulation
- List the requirements related to the regulation of advertising by real estate brokers
- Explain the term *immediately* as it applies to earnest money deposits
- Describe the four settlement procedures available to a broker who has received conflicting demands or who has a good-faith doubt as to who is entitled to disputed funds
- Explain the rule regarding the advertisement of rental property information lists
- Describe the obligations placed on a sales associate who changes employers

I. BROKERAGE OFFICES

All sales associates must be registered and work from an active broker's office or branch office. Sales associates may not work for themselves unless they acquire a broker's license. Every active broker must have a registered office, although the office does not have to be located in Florida. By definition an "office" must be at least one enclosed room of stationary construction where negotiations take place and records are kept.

Every brokerage office and branch office must have an official sign on or about the entrance. The contents of the sign must include the following:

1. The name of the brokerage entity (if any)
2. The name of the broker (as it appears on their license)
3. The words "Licensed Real Estate Broker"

![Wilderness Realty, Inc.]

David Crockett
Licensed Real Estate Broker

Every word must be spelled out in its entirety, except that the word "Licensed" or the word "Incorporated" can be abbreviated.

Sales associate's names are not required to appear on the official sign. However, their names may appear on the official sign provided their names and license types are separate and distinguishable from the broker.

The sign must be located where it is readily and easily visible to anyone entering the office.
II. BRANCH OFFICE

A branch office is any office other than the broker’s main office. The main office and all branch offices must be registered with the DRE with a registration period of two years. If a broker chooses to move a branch office to another location, a new registration must be obtained for the new branch office. Branch office registrations are not transferable.

Author’s Note: If a broker moves out of a branch office and then back into the same location within the same registration period, no new registration is required.

Students should be careful not to confuse the concept "temporary shelter" with the term branch office. A temporary shelter is a location where a broker operates although it is used for other necessary functions. For example, a construction trailer where agents talk to customers and give out brochures while at the same time it is used to store construction equipment and other vital information belonging to the contractor is not considered to be a branch office.

III. ADVERTISING

A. Overview: Advertising is considered to be a real estate service. Licensees must advertise in such a way that the public is not deceived or misled. False or misleading advertising is illegal.

Anyone in a real estate office can advertise. However, all advertisement must be under the direct control and supervision of the broker because advertising is considered to be a broker activity. No matter who advertises from the real estate office, the broker is ultimately responsible. In fact, any licensee who is involved in false and misleading advertising can be held responsible.

All advertising must be worded so that a reasonable person knows that the advertiser is a real estate licensee. The minimum requirement for any brokerage real estate advertisement is that it must contain the name of the brokerage. Although a sales associate’s name is not required to appear in an advertisement, it may be included provided the public is not led to believe that the sales associate is in fact the broker. If a sales associate uses his or her name in an advertisement, it must utilize his or her last name as registered with the Division of Real Estate.

Any advertisement that fails to indicate the licensed name of the brokerage firm is considered to be a BLIND ADVERTISEMENT which is a violation of the real estate license law therefore illegal.

If a brokerage elects to advertise on the internet, the advertisement must contain a POINT OF CONTACT INFORMATION area. The Point of Contact Information area must contain the name of the brokerage, address (both physical and mailing), e-mail address, and telephone numbers.
Licensees need to be cautious of "cold-calling" individuals who have registered their names on the "No Solicitation" list. Telephoning individuals whose names appear on the list can subject the violator to a fine. The U.S. Government as well as state governments have very restrictive laws regarding "cold-calling." To be safe real estate practitioners should refrain from this activity and use other techniques to contact potential clients and customers.

B. State and Federal Do Not Call Lists: Licensees need to be cautious of "cold-calling" individuals who registered their telephone number on a "No Solicitation" list. There is a Federal list and a Florida list, each with different sets of rules.

1. Federal Law: In 2003, the Federal Communications Commission (FCC) established a national "Do Not Call" Registry consisting of consumers who do not want to be contacted by telemarketers. This list is managed and enforced by the Federal Trade Commission. Violators can be fined up to $11,000.

2. Exceptions to Federal Rules: Political organizations, charities, telephone surveys, and companies that have an existing business relationship, consumers who have made an inquiry or submitted an application may be telephoned within three months or transacted business within the past eighteen months without penalty. However, if the consumer requests the company not to call again, the request must be honored to avoid future penalty.

3. Florida Law: The Federal Do Not Call law has not affected the long-standing laws under Florida's "No Call" Rules. Consumers who have placed their phone number on the Florida list may not be telephoned for solicitation purposes unless the consumer is a former client. Also, For Sale by Owners may be telephoned without penalty. Violators can be fined up to $10,000.

4. Calling For Sale by Owners: Calling a For Sale by Owner (FSBO) for purposes of soliciting a listing is a violation of the Federal Law but not a violation of Florida Law. The licensee should double check both lists since most Florida consumers are registered on both the state and federal lists.

IV. HANDLING OF DEPOSITS

A. Earnest Money Deposits: From time to time, licensees are entrusted with EARNEST MONEY DEPOSITS for the purchase of real estate. An ESCROW ACCOUNT is a place where other people's money is kept for safekeeping. Escrow accounts can be maintained at commercial banks, savings associations, credit unions, title companies, and attorneys (with trust powers), all of which must be located within the state of Florida. Real estate brokers are not required to have an escrow account. However, if the broker elects to accept an earnest money deposit, then that money must be placed in an escrow account and the broker may not COMMINGLE the funds with the broker's regular business accounts. Otherwise, the
A broker could be guilty of **CONVERSION**, defined as the unauthorized use or control of another's property. A broker may maintain, however, up to $5,000 of personal or brokerage funds in a property management escrow account or up to $1,000 in a sales escrow account.

Although a broker only has to maintain one escrow account for all deposits accepted, prudent business practice suggests that the broker should keep a separate account for sales deposits and a separate account for lease deposits. Sales associates cannot maintain an escrow account in their name. If an earnest money deposit check is made payable to the sales associate, the sales associate should endorse the check and deliver it to the broker “immediately.”

Whenever a sales associate is given an earnest money deposit for either the purchase or lease of real estate, that earnest money deposit must be turned over to the broker or brokerage business “immediately.” For sales associates, immediately means by the end of the next business day (Saturday, Sunday, and government holidays are excluded). If the check is made out in the name of the associate, the associate can either ask that a new check be written in the name of the broker or the associate can endorse the check over to his or her broker “immediately.” Once the broker is in possession of the earnest money deposit, the broker must place those funds into the escrow account "immediately", which for brokers means within 3 business days of the acceptance of the deposit by the sales associate.

For example, if a sales associate accepts an earnest money deposit on Tuesday, June 5th, the sales associate must deliver the deposit to the broker no later than 5:00 p.m., Wednesday, June 6th. Thereafter, the broker must deposit the check into an escrow account no later than 5:00 p.m., Friday, June 8th.

When a Broker uses a title company or an attorney they have ten business days to request a verification of deposit. This does not mean they are not required to deliver into that escrow within 3-business days.

Licensees may accept post-dated checks with the seller’s permission. A sales associate should still deliver the post-dated check to his or her broker by the end of the next business day. In addition, if a check is returned because of insufficient funds and the broker followed the proper procedures, the broker has no legal liability. The broker should, however, notify the seller and get direction.

**B. Escrow Account Management:** A broker's escrow account can either be interest bearing or non-interest bearing. If the account is interest bearing, the broker must receive specific instructions about who is entitled to the interest. Surprisingly, the broker can receive the interest but only if all parties knowingly consent to the arrangement. If the broker has an interest bearing escrow account, he or she must also have a non-interest bearing account that deposits must go through prior to delivery to the closing agent so that the interest accrual terminates on or before the closing date.
C. **Conflicting Demands for Deposit:** Prior to the acceptance of a bona fide offer to purchase real estate, the earnest money deposit (EMD) still belongs to the buyer (offeror). At any time prior to acceptance, the purchaser has the right to request a return of the deposit. Once the offer has been accepted and communication of the acceptance has been received by the offeror, a contract is formed and the earnest money deposit is beyond the control of either the buyer or seller. The broker is literally holding the deposit "in trust" for both the buyer and seller.

Even though a legal contract exists, sometimes the buyer and seller are motivated to withdraw from the contract or attempt to claim that the other party has defaulted. In the event both parties to the contract make a demand to receive the deposit, the broker has **CONFLICTING DEMANDS** that give rise to an actual dispute over who is to receive the money. The broker is not allowed to disburse the funds to either party, regardless of the broker's opinion. There are two situations when a broker may release escrow funds without the consent of all parties: (1) If a condominium buyer has placed a deposit then the deposit can be refunded provided that the rescission request has been made in a timely manner, and (2) If a buyer is unable to obtain financing according to the terms of the contract.

If parties and the broker are unable to voluntarily resolve the dispute, the broker must notify FREC within 15-business days from the date the last person demands the deposit. In addition, the broker should continue attempts to voluntarily resolve the dispute. However, Florida law allows the broker no more than 30-business days from the date of the last demand to resolve the dispute otherwise one of four settlement procedures must be taken. This rule only applies if the broker is holding escrow and it is not being held by a title company or an attorney.

The four settlement procedures are:

1. **Escrow Disbursement Order:** Many brokers choose to request that FREC provide guidance concerning the delivery of disputed escrow money. FREC, through its legal counsel, will review the contracts and other important documents and issue an Escrow Disbursement Order that the broker must follow. Depending on the circumstances, FREC may elect not to issue a requested Escrow Disbursement Order. In that event, the broker must utilize one of the other settlement procedures. If the dispute is resolved prior to the issuance of a requested Escrow Disbursement Order, the broker must notify the commission within ten days of the resolution.

2. **Mediation:** A third-party mediator meets with the parties and attempts to help them reach a voluntary settlement. If there is no mediated settlement within ninety days (from the date of the last demand), another settlement procedure must commence.

3. **Arbitration:** This process utilizes a trained arbitrator(s) to consider the arguments of all parties and render a decision as to the disposition of the deposit. Typically, the result of the arbitrator is binding.
Arbitration generally results in a quicker resolution than utilizing the court system.

4. Litigation: The court system can be utilized to resolve the party’s dispute over the deposit through the legal procedure known as INTERPLEADER. Basically, the case is filed with the court, the disputed funds are deposited in the court registry, the broker is excused from the remainder of the case, and, thereafter, the parties argue in court as to who should receive the money. If interpleader is not utilized, the parties (and the broker if the broker believes he or she is entitled to part of the money) file an action known as a Declaratory Judgment that permits the Judge to "declare" the various rights of all the parties.

Regardless of the settlement procedure utilized, the broker must notify FREC within 10 days and inform them of the result.

D. Good Faith Doubt: Sometimes a broker will not receive actual demands from the parties, but, based on the circumstances of the transaction, the broker has an understanding that something is wrong. For example, if a contract's closing date passes without the closing actually occurring because financing still isn't obtained, the broker would have a good faith doubt. In a way, GOOD FAITH DOUBT is equivalent to conflicting demands. The broker is, therefore required to follow the same time deadlines as if he had received conflicting demands.

V. RENTAL INFORMATION

Any broker or sales associate who attempts to negotiate a rental, or who furnishes a rental information list to a prospective tenant for a fee, must follow certain rules under Florida law.

1. The prospective tenant must be provided a receipt that states his or her rights to a refund under certain circumstances.

2. If any information contained in the rental list is inaccurate, the prospective tenant is entitled to a 100% refund provided the demand for refund is made within thirty days of the rental list purchase.

3. If the prospective tenant does not lease any properties through the assistance of the licensee, for any reason whatsoever, the prospective tenant is entitled to a 75% refund provided that a demand for refund is made within thirty days of the rental list purchase.

Violation of Florida rental list laws is a first-degree misdemeanor punishable by a fine up to $1,000 and/or up to one year in jail.

VI. BROKERS AND SALES ASSOCIATES ROLE AS EXPERTS

Brokers and sales associates should not hold themselves out to be an "expert" in areas of real estate that are unfamiliar to them. A licensee should never
give opinions of title or other types of legal advice. Licensees are allowed to give opinions of value by way of a comparative market analysis (CMA). However, they are not allowed to represent themselves to be a state certified or a licensed appraiser. Exaggerations of value when soliciting a listing may be construed as misrepresentation and must be avoided.

Misrepresentation of value by a licensee may amount to:

1. Fraud if the misrepresentation was intentional
2. Breach of contract
3. Breach of fiduciary duty

VII. COMMISSIONS

A. Overview: There are federal and state laws that prevent price fixing of real estate commissions. The Sherman-Clayton Anti-Trust Act prohibits two or more brokers joining together to set commission rates in an anti-competitive manner. It should also be understood that if two or more brokers boycott or refuse to show properties of a "discount" broker, their actions will be considered anti-competitive and a form of price fixing.

A sales associate’s commission can only be paid directly by the employer (broker) and not directly by a member of the public. In addition, a sales associate can only sue his or her broker for an unpaid commission and may not sue the broker’s principal. The only exception is at a closing when the broker has given written permission to the closing agent to pay the associate directly. In this case, the broker will still be responsible to the associates 1099 for income taxes.

Real estate brokers are prohibited from placing liens on property for the non-payment of a commission prior to performance without written permission from the property owner. The only exception is when a broker has entered into a listing agreement or a lease agreement for a commercial property. Florida allows the broker to file the agreement on public record with the subject property as a means of insuring payment of any commissions earned.

B. Kickback: The term KICKBACK refers to payment for a task performed in a real estate transaction but usually involves payment for a non-real estate service. In order for a kickback to be legal, four conditions must be fulfilled:

1. The kickback must not violate any existing federal or state law,
2. All parties to the transaction must be fully informed about the kickback,
3. The person receiving the kickback must have actually performed the service, and
CHAPTER SEVEN: REAL ESTATE BROKERAGE ACTIVITIES

4. The person receiving the kickback must be properly licensed if a license is required to perform the service (i.e. a mortgage broker paid a kickback must hold a valid mortgage broker license). Kickbacks are not permitted for title or casualty insurance transactions.

It is unlawful to share a commission with an unlicensed person unless the shared commission is in the form of a rebate to a buyer or seller involved in the subject transaction. Additionally, it is unlawful for a licensee to pay any unlicensed person for performing real estate services except $50.00 referral fees by property managers.

C. Sharing Commissions: Brokers can determine commission fees for the brokerage and establish commission splits with agents. However, the general rule is that every listing contract involves a negotiated real estate commission between the broker and the principal at the time the listing contract is signed.

Any real estate commission agreement between brokers and sales associates should be specified in the policy manual of the company as well as the independent contractor agreement between the broker and sales associate. If a broker fails to pay a commission that is legally due to a sales associate, the broker could be found guilty of Failure to Account. In order for this to occur, however, a judgment must be entered by a court of law.

VIII. CHANGE OF EMPLOYER

In order for a sales associate to change employers, the new employer must notify the DRE by filing the proper form and indicate the name, address, and signature of the new employer. Notice of employer change must be given to the DRE within 10 days.

The sales associate should remember that he or she have fiduciary obligations with his or her employer and that any information that could be harmful to the employer may not be used for the benefit of the sales associate or to the disadvantage of the employer, even after the employment terminates.

All original documents are the property of the employer and should not be removed by the sales associate after termination of employment. Unauthorized removal of original documents from a previous employer is considered to be a crime (larceny). Sales associates should be careful about taking copies without the permission of the employer. Such conduct is considered to be bad faith if done for the purpose of taking listings to a new employer.

Authors’ Note: The unauthorized display of names or insignia of real estate organizations or associations is prohibited by FREC rules. For example, if a licensee uses the term REALTOR® in an advertisement when, in fact, the licensee is not a current member of the National Association of REALTORS®, Florida Association of REALTORS®, or local board of REALTORS®, this practice would be considered prohibited.
IX. CHANGE OF ADDRESS

If a broker changes his or her main business address, the DRE must be notified within ten days. Failure to provide the change-of-address information could result in a citation and cause the license to "cease to be in force" until the proper change of address is submitted.

In addition, if a licensee changes brokers the new employing broker must notify the DRE within ten days of the change. Failure to provide the change-of-address information could result in a citation and cause the license to "cease to be in force" until the proper change of address is submitted.

The DRE requires that all licensees and brokerages provide their current physical and mailing addresses. Current mailing address is defined as a licensee’s physical address where mail is received or a post office box number if mail is not delivered to the licensee’s residence. If a licensee changes their mailing address they are required to notify the DRE within ten days. Failure to make proper notification could result in a fine up to $500.

X. PERMITTED BROKERAGE BUSINESS ENTITIES

There are several business entities that can broker real estate.

A. Sole proprietorship: A business owned by one person is a SOLE PROPRIETORSHIP. In order to offer real estate services to the public, the sole proprietor must be an active real estate broker. This person is personally liable for the business and the acts of the agents working for the brokerage.

B. General Partnership: A business owned by two or more individuals who share in the profits and losses is called a GENERAL PARTNERSHIP. No formal document must be signed or filed to create a general partnership although good business practice suggests that partners should sign a "Partnership Agreement" which outlines their respective duties, rights, and obligations. In order for a General Partnership to offer real estate services to the public, at least one of the partners must be an active real estate broker.

A General Partnership may register with the DRE to broker real estate with the following conditions:

1. At least one of the partners must be an active Florida real estate broker,

2. Sales associates and broker associates cannot be a partner of the brokerage General Partnership, and

3. Any unlicensed individuals acting as a partner (they must not provide real estate services) must register their names and addresses with the DRE.
When partnership is created out of circumstances and not choice, this is considered an **OSTENSIBLE PARTNERSHIP**. If the public perceives two or more persons to be partners, and the "partners" are responsible for that perception, then the courts may deem them to actually be partners.

For example, a real estate broker opens up an office and places his or her official sign on or about the entrance of the office. A second broker moves into the same office building but fails to post the required official sign. If that second broker defrauds the public, the law may consider them to be ostensible partners rendering both brokers liable for the fraud.

**C. Corporation:** In Florida, a **CORPORATION** is formed by filing articles of incorporation with the Florida Department of State, Division of Corporations. A corporation is owned by stockholders who are liable only to the extent of their investment. Stockholders elect a Board of Directors who acts as "goal-setters" for the corporation. The Board of Directors hires the officers, such as the President and Vice President, to handle the day-to-day activities of the corporation.

Both corporations for profit and not-for-profit can register with the DRE to broker real estate with the following conditions:

1. At least one of the officers must be an active Florida real estate broker

2. Sales associates and Broker associates cannot participate as officers or directors of the brokerage corporation

3. Any unlicensed individual acting as an officer or director (he or she must not provide real estate services) must register his or her name and address with the DRE

4. Anyone, including sales associates and broker associates, can be a stockholder in a real estate corporation provided he or she do not act in the capacity of a Director or Officer

A domestic corporation is a corporation that is domiciled in the state of Florida. A foreign corporation is a corporation that is domiciled outside the State of Florida (e.g. a Georgia corporation is considered to be a foreign corporation). Foreign corporations operating within the state of Florida must register as a foreign corporation with the Florida Department of State, Division of Corporations, in order to legally conduct business in Florida.

**D. Limited Partnership:** In Florida, a **LIMITED PARTNERSHIP** is formed by filing articles with the Florida Department of State. A Limited Partnership consists of one or more limited partners and one or more general partners. Limited partners are investors only and do not participate in the daily operations of the business. The general partner acts as not only the "goal-setter" for the business but is also responsible for all business operations.
A Limited Partnership can register with the DRE to broker real estate with the following conditions:

1. At least one General Partner must be an active Florida real estate broker.
2. Sales associates and broker associates cannot participate as general partners.
3. Any unlicensed individual acting as a general partner (he or she must not provide real estate services) must register his or her name and address with the DRE.
4. Anyone, including sales associates and broker associates, can be a limited partner provided they do not act in the capacity of a General Partner.

E. Limited Liability Partnership: A LIMITED LIABILITY PARTNERSHIP is a business entity that protects the partners from personal liability against the acts of the partnership. However, limited liability partners are responsible for their own acts, or the acts of others under their direct supervision and control. Limited Liability Partnerships are created by filing with the Florida Department of State.

F. Limited Liability Company: A LIMITED LIABILITY COMPANY is a business entity that combines some of the best features of a corporation and partnership into one entity. The members are protected against personal liability but the IRS regards the Limited Liability Company as a partnership for tax purposes. Limited Liability Companies are created by filing with the Florida Department of State.

XI. TRADE NAMES

Any person or entity doing business in a name other than his or her legal name must comply with the Florida Fictitious Name Act which requires advertising in a county wide circulated newspaper of the intent to use the fictitious name, submitting proof of publication to the Clerk of Court, and submitting an application with the Department of State.

Sales associates and broker associates cannot operate under a trade name and must operate using their legal names, as they appear on their licenses. They can, however, operate as a professional corporation (PC), limited liability company (LLC), or professional limited liability company (PLLC) provided it is in their legal name.

Brokerage entities that have registered their name with the DRE are exempt from the Florida Fictitious Name Act. For example, if Broker Dave wants to operate a sole proprietorship entitled "Dave's House of Real Estate", he simply registers that trade name with the DRE, and he has satisfied his legal requirements to use that trade name.
XII. BUSINESS ENTITIES THAT MAY NOT REGISTER TO BROKER REAL ESTATE

The following types of business entities are not authorized to broker real estate:

A. Corporation sole: A religious (ecclesiastical) organization. No formal documents are required. Title to church property is held by a senior church member (e.g. bishop) and title passes to the successor in office.

B. Joint Venture: Like a general partnership, a joint venture consists of two or more people doing business together to share in the profits and losses, but only for one specific transaction. Each joint venturer is responsible for the acts of the other joint venturers. If two brokers enter into a co-brokerage arrangement, it is technically a joint venture. These individuals are already licensed brokers, therefore, additional registration is not required.

C. Business Trust: Also known as a syndicate, the business trust is owned by unit holders (similar to stockholders of a corporation). Title is held in the name of a trustee. The business trust is created by filing a declaration of trust with the Florida Secretary of State.

D. Cooperative Association: A cooperative association is a type of business entity authorized to engage in limited forms of commercial activity. Usually, cooperative associations are organized by a group of business individuals to effectively market a product or service (e.g. Destin Fisherman's Co-operative).

E. Unincorporated Association: An unincorporated association is created when two or more individuals come together for a common purpose but do not form a traditional business organization. For example, a homeowner's association that fails to incorporate itself by filing articles with the Secretary of State would be considered an unincorporated association.

SUMMARY

- A real estate brokerage office consists of at least one enclosed room of stationary construction where negotiations can take place and records are kept. Every office has to have an official sign on or about its entrance that contains the name of the brokerage entity (if any), the name of the broker, and the words "licensed real estate broker."

- A temporary shelter is not considered to be a branch office and need not be registered. If its exclusive use is an office then it is deemed to be a main office or branch office and must be registered.
Brokers are responsible for all brokerage advertising regardless of who places the advertisement. All ads must contain the name of the brokerage entity; otherwise, it is considered a blind advertisement which is prohibited.

When dealing with earnest money deposits, the term “immediately” for sales associates means by the end of the next business day. For brokers, “immediately” means by the end of the third business day following acceptance of the deposit by the sales associate.

In the event of a dispute over the earnest money deposit, the broker must commence one of four settlement procedures within 30-business days of the last demand or upon good faith doubt. The four settlement procedures are [1] Escrow Disbursement Order, [2] Mediation, [3] Arbitration, and [4] Litigation.

Rental information lists can be sold provided that the prospective tenant is entitled to a 100% refund if the list contains any inaccurate information or a 75% refund if no property is rented by the prospect.

If a sales associate changes employers, his or her new employer must notify the DRE through the proper form within 10 days of the change.

**CHAPTER SEVEN QUIZ**

1. By definition, a real estate broker’s office:
   - A. Must be located in Florida
   - B. Must be at least one enclosed room of stationary construction where negotiations take place and records are kept
   - C. May not be in the broker’s home
   - D. All of the above

2. The official sign on or about the entrance to a real estate brokerage must include all of the following except
   - A. name of the broker
   - B. name of the sales associates, if any
   - C. name of the brokerage entity, if any
   - D. licensed (or Lic.) real estate broker
3. Which of the following may appear on a brokerage official sign?

A. Name of the broker
B. Names of all sales associates
C. Names of all broker associates
D. All of the above

4. Main office and branch office registrations with the DRE are valid for how long?

A. six months
B. one year
C. two years
D. three years

5. Every Saturday, Broker Kathy has an open house for one of her listings. In order to provide protection from the sun and rain and to attract people who drive by, Kathy has a large colorful tent set up in front of the house. There are tables and chairs under the tent but no phone lines or electricity. Does Kathy have to register this structure (tent) as a branch office?

A. Yes, because she has furniture located there
B. Yes, because she is conducting business there
C. No, because it is only a temporary shelter
D. No, because she already has a main office

6. Who is ultimately responsible for advertising done by a real estate brokerage?

A. The person placing the advertisement
B. The sales associate, but only if they actually placed the advertisement
C. The broker, but only if the broker actually placed the advertisement
D. The broker

7. A blind advertisement is a real estate advertisement that does not include which of the following?

A. The address of the subject property
B. The price of the subject property
C. The name of the real estate brokerage
D. The address of the real estate brokerage
8. Sales associate Bob sees a "For Sale by Owner" sign on his way to work. When he arrives at the office, he calls the owner to request a listing appointment. When Bob identifies himself as a real estate licensee, the owner gets angry and tells Bob that he shouldn't be calling because the owner's name is on the Federal "No Solicitation List". Has Bob broken the law by calling the owner?

A. Yes, Bob should have checked the Federal "No Solicitation List" before calling.
B. Yes, it is always a violation for licensees to call anyone that is on any "No Solicitation List".
C. No, the "No Solicitation List" rules do not apply to real estate licensees.
D. No, the "No Solicitation List" rules do not apply to "For Sale by Owners" who advertised their telephone number.

9. Broker Alan accepts an earnest money deposit from a buyer. Instead of depositing the money in his escrow account, Alan deposits the money into his personal account. Alan could be criminally charged with which of the following:

A. Culpable negligence
B. Conversion
C. Breach of fiduciary duties
D. Breach of trust

10. Sales associate Karen receives an earnest money deposit from a buyer on Tuesday. What is the deadline for her to get the money to her broker?

A. End of the day Tuesday
B. Within 24 hours
C. End of the day Wednesday
D. As soon as possible

11. Sales associate Sandy receives an earnest money deposit from a buyer on Monday. What is the deadline for the broker to properly deposit the funds into an escrow account?

A. End of the business day Monday
B. End of the business day Tuesday
C. End of the business day Wednesday
D. End of the business day Thursday
12. After a broker has received conflicting demands for escrowed funds, if holding the escrow the broker must notify the Florida Real Estate Commission within how many days?

A. Fifteen days
B. 15-business days
C. Thirty days
D. 30-business days

13. In order to resolve a dispute over an earnest money deposit, a broker can request an Escrow Disbursement Order from which of the following:

A. Division of Real Estate
B. Department of Business and Professional Regulation
C. Florida Real Estate Commission
D. Florida Association of REALTORS®

14. Ed purchased a rental list from a Florida broker for $100.00. After visiting all the rental properties stated on the list, Ed decided not to move from his present apartment. The next day, Ed verbally requested a 100% refund. Which of the following statements best describes Ed's legal rights?

A. Ed is entitled to a 100% refund.
B. Ed is entitled to no refund if the list was accurate.
C. Ed is entitled to a 75% refund.
D. Ed is entitled to a 50% refund.

15. If a buyer makes an earnest money deposit check payable to a broker associate, how should the broker associate handle this situation?

A. Deposit the check into the broker associate’s personal account, and write a new check payable to the broker.
B. Deposit the check into the broker associate’s trust account.
C. The broker associate should endorse the check and deliver it to his or her broker immediately.
D. Licensees are not allowed to accept earnest money deposit checks made payable to the licensee.
CHAPTER EIGHT: AGENCY RELATIONSHIPS, DUTIES, AND DISCLOSURES

TALK THE TALK

Agent: A person authorized by another to act on his or her behalf

Consent to Transition: A written requirement when a licensee is moving from a single agent relationship to a transaction broker

Customer: A person who is or may be a seller or buyer of real property and may or may not be represented by a licensee

Culpable Negligence: Being negligent in a manner that causes a customer or client monetary damages.

Designated Sales Associate: A single agent for different parties in the same nonresidential transaction; the buyer and seller must have assets of $1 million or more and sign disclosures stating their assets meet the required threshold

Dual Agency: Representing both buyer and seller as principals in a transaction

Fiduciary: A person in a position of utmost trust and confidence with respect to another person

General Agent: An agreement whereby the agent represents and may bind the principal or customer on transactions falling within a specific range of activities

Limited Representation: A broker who offers to buyers and/or sellers representation as a transaction broker without offering full fiduciary duties

Non-representation: Real estate brokers working with buyers and/or sellers but not representing them as single agents or transaction brokers; if a buyer or seller chooses not to be represented, a licensee can still work with them

Principal: A party employing the services of a single agent

Residential Sale: A residential property up to four units, a vacant parcel zoned for residential up to four units, or agricultural property of 10 acres or less

Single Agent: A broker who represents either the buyer or the seller in a transaction but not both the broker is the fiduciary of the party that is being represented

Special Agent: The relationship between a client and broker wherein the broker is acting for the client in one specific transaction or activity only

Sub-agency: The relationship of a sales associate working under a broker's supervision with the broker acting as a principal and the sales associate as an agent

Transaction Broker: A broker who provides limited representation to either the seller or the buyer or both in a real estate transaction (no fiduciary requirements)
AREAS OF CRITICAL CONCERN

- Describe which provisions of the Brokerage Relationship Disclosure Act apply only to residential real estate sales and list types of real estate activities that are exempt from the disclosure requirements
- Define residential transaction
- Distinguish among nonrepresentation, single agent and transaction broker
- List and describe the duties owed in the various authorized relationships
- Describe the disclosure procedures for the various authorized relationships
- Describe the required content and format of the various disclosure forms
- Explain the procedure for transition from a single agent to a transaction broker
- Describe the disclosure requirements for non-residential transactions where the buyer and seller have assets of $1 million or more
- List the events that will cause an agency relationship to be terminated

I. CONCEPT OF AGENCY

A. Overview: Over the years the relationship between real estate licensees and sellers and buyers has gone through many changes. Prior to agency laws, it was assumed that all real estate licensees automatically worked for sellers by virtue of the listing contract. In fact, the Multiple Listing Service (MLS) got its start originally by brokers co-operating to sell each other’s listings.

This co-operation between brokers basically created an automatic sub-agency with each other, meaning that all the brokers were working for their sellers. Buyers at that time were not being represented. In the mid-1980’s, buyers became aware of their rights to have representation if they wanted it.

The original agency laws created in the state of Florida brought forward several concepts. Brokers were allowed to represent sellers as a single agent, buyers as a single agent, or represent both in a DUAL AGENCY capacity that allowed the broker to represent both the seller and the buyer at the same time with full fiduciary capacities.

These laws became very confusing causing brokers to have a difficult time acting as a Dual Agent. Certainly a conflict of interest existed. Agency laws changed to be more practical while at the same time to ensure the public's protection. Today, we still have the single agency relationship with full fiduciary duties which allows a broker to represent either a buyer or seller but not both at the same time. The Transaction Broker, however, has changed its complexity, and, essentially, its basic meaning.

Today a Transaction Broker is permitted to work for both the buyer and the seller in the same transaction in a limited representative capacity. Dual Agency was repealed and is no longer a valid method of agency in Florida. The FREC has also authorized real estate brokers to work in a non-agency capacity. That is, a licensee can work with either the buyer or the seller and have no fiduciaries duties at all.
Agency relationships were first created under common law (case law) and then later were also created under statutory laws enacted by the legislature.

By definition, the **PRINCIPAL** is the entity or person who has given power to the **AGENT** to act on the Principal's behalf. The Agent is then authorized to perform acts specified by the Principal. In real estate, a Principal is defined as the person who has employed the broker to perform services of real estate in a fiduciary capacity.

**CUSTOMER** is a person who is or may be a seller or buyer of real property and may or may not be represented by a licensee.

**B. Types of Agents:** A **SPECIAL AGENT** is an agent who is authorized to perform only a specific duty or task. In real estate, a broker employed by a seller to locate a buyer is considered to be a Special Agent.

If a person is given power of attorney, he or she is known as an attorney-in-fact and is authorized to sign documents for someone else. A limited power of attorney authorizes someone to sign only specific documents for a specific transaction. The limited power of attorney is not an authorization to negotiate on the principal’s behalf, but only an authorization to sign documents. A general power of attorney, however, authorizes the attorney-in-fact to sign documents, negotiate, and use his or her best judgment while representing the principal.

**A GENERAL AGENT** is an agent who is authorized to perform duties and tasks related to a specific business or employment. In real estate, a property manager who handles leases, maintenance, and tenant relations for a Principal would be considered a General Agent.

**C. Fiduciary Relationship:** Florida law defines **FIDUCIARY** as a broker in a relationship of trust and confidence between the broker as the agent and the seller or buyer as a Principal. A fiduciary relationship begins when a broker accepts employment as a single agent with either the seller or the buyer, but not both at the same time.

The concept of Caveat Emptor ("let the buyer beware") has been eliminated to protect consumers from undisclosed material defects of a property. Now a seller, or his or her agent, must disclose all known material defects to all potential buyers.

**SUB-AGENCY** can describe the relationship between two brokers who are representing the same Principal (acting as co-brokers) and it can also describe the relationship between a broker and a sales associate working for that broker; the sales associate is considered to be a sub-agent of the broker.

**D. Negligence:** Brokers should always work in a manner that is open, honest and fair with everyone they do business with. A broker could have legal liability if they fail to operate in a prudent and professional manner. Culpable Negligence occurs when a broker is negligent and that negligence causes a monetary loss to a customer or client.
II. DISCLOSURE REQUIREMENTS

Under Florida law, real estate licensees must provide prospective buyers and sellers of real estate with certain written disclosure forms. The disclosure requirements apply only to **RESIDENTIAL SALES** which are defined as improved residential properties up to four units, the sale of unimproved residential property intended for construction of up to four units, and the sale of agricultural property of ten acres or less.

The disclosure requirements do not apply to the following situations:

1. When a licensee knows that a potential seller or buyer is represented by a single agent or transaction broker,

2. When an owner is selling new residential units built by the owner and the circumstances or setting should reasonably inform the potential buyer that the owner's employee or single agent is acting on behalf of the owner, whether because of the location of the sales office or because of office signage, placards, or identification badges worn by the owner's employee or single agent,

3. Non-residential transactions or leasing of real property (unless an option to purchase is given with a residential property lease),

4. A bona fide "open house" or model home showing that does not involve eliciting confidential information, the execution of a contractual offer or an agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale,

5. Auctions, and/or

6. When acting as a Transaction Broker.

III. AUTHORIZED TYPES OF BROKERAGE RELATIONSHIPS

It is important for the real estate sales associate to realize and understand that the type of agency relationship created is technically entered into between the broker and the broker's Principal. Sales associates do not customarily participate in deciding what type of agency relationship will be created. Sales associates should consult with their brokers as to the agency policy of the brokerage office.

A. No Brokerage Relationship: The first type of authorized relationship is also called **NON-REPRESENTATION**. Although buyers and sellers have the right to representation, they can simply choose to represent themselves or work with a broker in a very limited capacity. Real estate brokers must provide a written "No Brokerage Relationship Notice" to all persons being represented in this manner prior to showing property. This form of representation carries the least amount of legal liability for the broker. Although the customer is asked to sign the disclosure form, his or her signature is not mandatory.
The following duties are owed to the customer by the broker under the **NO BROKERAGE** relationship:

1. Dealing honestly and fairly,
2. Disclosing all known facts that materially affect the value of the residential real property which are not readily observable to the buyer, and
3. Accounting for all funds entrusted to the licensee.

**B. Single Agent Relationship:** The second type of authorized brokerage relationship is the Single Agency. A **SINGLE AGENT** is a broker who represents, as a fiduciary, either the buyer or the seller, but not both in the same transaction. In this relationship, the Principal is the party who has entered into a fiduciary relationship with a broker as agent, typically through a written listing contract.

The following duties are owed to the Principal by the broker under the Single Agent relationship:

1. To deal honestly and fairly,
2. Loyalty: To look out for the Principal's best interest over all other parties, including the broker,
3. Confidentiality: Not to disclose any information that could be harmful to the Principal, even after the relationship has terminated,
4. Obedience: To obey all lawful instructions or otherwise resign,
5. Full Disclosure: Disclose all facts and rumors related to the property or a possible sale,
6. Accounting for all funds: Holding in trust all deposits given to the broker,
7. Skill, care, and diligence, and
8. Present all offers and counteroffers (oral and written) in a timely manner up until the time of closing, unless the Principal instructs otherwise.

The Single Agent Notice Disclosure Form must be presented to a prospective Principal before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, which ever occurs first. Although the customer is asked to sign the disclosure form, his or her signature is not mandatory.
CHAPTER EIGHT: AGENCY RELATIONSHIPS, DUTIES AND DISCLOSURES

When the Single Agent Notice Disclosure Form is incorporated into another document, such as a listing contract, the required disclosure notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise the potential Principal of the single agent duties.

C. Transaction Broker Relationship: A TRANSACTION BROKER refers to a broker who provides LIMITED REPRESENTATION (non-fiduciary) to a buyer, a seller, or both, in a real estate transaction but does not represent either in a fiduciary capacity or as a single agent.

The following duties are owed to the customer by the broker under the TRANSACTION BROKER relationship:

1. Dealing honestly and fairly,
2. Accounting for all funds,
3. Using skill, care, and diligence in the transaction,
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable,
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing,
6. Limited Confidentiality: Unless waived in writing by a party, this limited confidentiality will prevent disclosure that the seller will accept a price less than the listing price or that the buyer will pay a price greater than the price contained in an offer. Limited confidentiality also prohibits disclosure of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or any other information requested by a party to remain confidential,
7. Any additional duties that are mutually agreed to with a party.

Florida Statute presumes that a real estate broker is considered to be acting as a transaction broker unless a written contract has been entered into as a single agency or no brokerage relationship is agreed upon. Therefore, the Transaction Broker Disclosure Notice is not required to be given. Licensees should be mindful in their daily dealings that, although the notice is not required, they are still obligated to the responsibilities.
IV. TRANSITION FROM SINGLE AGENT TO TRANSACTION BROKER

A situation can arise that requires a broker, acting as a single agent for the seller or buyer, to withdraw his or her representation as a single agent and assume the duties of a transaction broker. This situation will typically arise when a broker (or sales associate working for the broker) wishes to show a brokerage in-house listing to a buyer who has entered into a Single Agent agreement with the same brokerage. All single agents of a principal (both seller and buyer) must transition to transaction broker. This will allow the broker to continue to work with both parties with limited representation. However, under some circumstances a broker could represent one as a Single Agent and the other in a No Brokerage Relationship.

To accomplish the transition, the single agent must provide the Principal with the CONSENT TO TRANSITION form, which must be signed by the Principal to be effective. The Consent to Transition is the only disclosure form that must be signed.

The Transaction Broker disclosure notice, given prior to signing the consent to transition document, must be in writing and submitted to the Principal either as a separate and distinct document or included as part of another document such as a listing agreement or other agreement for representation.

V. DESIGNATED SALES ASSOCIATE

In a non-residential transaction, at the request of the buyer and seller, both of whom must have at least one million dollars in assets, a broker may have two separate sales associates under his or her employ acting as single agents for both the buyer and seller. Under this arrangement, known as DESIGNATED SALE ASSOCIATE, the broker participates as an advisor to the sales associates, not as an advisor to the buyer and/or seller.

A Designated Sales Associate disclosure form must be provided to the prospective buyer or seller prior to entering an agency relationship or before being shown property, whichever occurs first.

VI. DISCIPLINE FOR FAILURE TO ABIDE BY DISCLOSURE LAWS

Failure to provide proper and timely disclosures could result in disciplinary actions against the licensee that could result is suspension, revocation, fine, or other disciplinary actions.

VII. TERMINATION OF AGENCY RELATIONSHIP

Agency relationships can terminate in any one of the following methods:

1. Performance of agent's duties,
2. Mutual agreement to terminate,
3. Expiration of agency agreement,
4. Agent resignation,
5. Revocation by the Principal,
6. Death of the Principal or agent,
7. Destruction of the property (including condemnation), and/or
8. Bankruptcy of Principal.
VIII. RECORDKEEPING

Brokers are required to develop and maintain a record keeping system for all required disclosures in transactions that result in a contract. Brokers should be prepared to show proof of this system and the disclosures if requested by the proper legal authority.

SUMMARY

- The Brokerage Relationship Disclosure Act applies to residential real estate sales only. A residential real estate sale is defined as improved residential properties up to four units, the sale of unimproved residential property intended for construction of up to four units, and the sale of agricultural property up to ten acres.

- When a broker represents a buyer or a seller with full fiduciary duties, a Single Agency relationship exists. When a broker works with a buyer, or seller, with limited representation, a Transaction Broker relationship exists. Buyers and sellers can choose to have no representation if they desire.

- Both Single Agents and Transaction Brokers have duties and responsibilities. However, only Single Agents have a duty of full disclosure, loyalty, obedience, and confidentiality (FLOC). Transaction Brokers have a duty of limited confidentiality.

- Broker disclosure forms must be given timely. The "No Brokerage Relationship Notice" must be provided before showing property. The "Single Agent Notice" must be provided before, or at the time of, entering into a representation agreement or before showing property, which ever occurs first. Although the customer is asked to sign the various disclosure forms, his or her signature is not mandatory except for the Transition to Transaction Consent Form which must be signed.

- Designated sales associates working for the same broker are allowed to represent buyers and sellers as single agents in a nonresidential transaction when the parties each have assets of one million dollars or more.

- Real Estate brokers are considered to be transaction brokers unless contracted otherwise.
CHAPTER EIGHT QUIZ

1. Which type of agency is a fiduciary relationship?
   A. Dual agent
   B. Single agent
   C. Transaction broker
   D. Designated sales associate

2. Which of the following would be considered a residential sale?
   I. Single family home
   II. 5 acre farm
   III. Vacant land zoned residential
   IV. Duplex
   A. I and III
   B. I and IV
   C. II and III
   D. I, II, III, and IV

3. When should the "No Brokerage Relationship Notice" be given to a prospective buyer or seller?
   A. At first contact
   B. Prior to showing property
   C. Prior to showing property or entering into a contract, whichever happens first
   D. Prior to signing a contract

4. Broker Rita accepts a listing from Seller Bill who instructs Rita not to show his house to any prospective buyers before 9:00 a.m. One day, Rita has a potential buyer, but he wants to see the house at 8:00 a.m. because he is leaving town that morning. How should Rita handle this situation?
   A. Rita should inform the buyer that she can't show the house until 9:00 A.M.
   B. Rita should show the house because it might lead to a full price offer.
   C. Rita can show the house at 8:00 A.M. because Bill's instructions were not in writing.
   D. Rita can show the house at 8:00 A.M. if Bill is not at home.
5. When should the Single Agent Notice be provided to a prospective seller or buyer?

A. At first contact  
B. Prior to showing property  
C. Prior to showing property or entering into a contract, whichever happens first  
D. Prior to signing a contract

6. Which type of disclosure form must be signed?

A. The No Brokerage Relationship Notice  
B. The Single Agent Notice  
C. The Transaction Broker Notice  
D. Consent to Transition to Transaction Broker

7. Which type of agency relationship has the duty of loyalty?

A. Single Agent  
B. Transaction Broker  
C. Dual Agent  
D. All of the above

8. Which type of agency relationship has been repealed in Florida?

A. Dual agent  
B. Special agent  
C. General agent  
D. Universal agent

9. Seller Carl has agreed to let Broker Stephen transition to transaction broker. What document must Carl receive and sign in order for the transition to be completed?

A. No Brokerage Relationship Notice  
B. Single Agent Notice  
C. Transaction Broker Notice  
D. Consent to Transition to Transaction Broker

10. Agency relationships can be terminated in all of the following ways except:

A. Agent resignation  
B. Bankruptcy of the agent  
C. Mutual agreement  
D. Death of principal or agent
11. In order for agents working for the same broker to operate as designated sales associates, which of the following must apply:

A. The transaction must be non-residential
B. The buyer and seller must have assets of one million dollars or more
C. Both A and B
D. Neither A or B

12. A property manager is an example of what type of agent?

A. Dual agent
B. Special agent
C. General agent
D. Universal agent
Talk the Talk

Buyer's market: The supply of available properties exceeds the demand
Demand: The quantity of goods or services wanted by consumers
Household: One individual, or a group of individuals, living in one dwelling unit
Seller's market: The demand is greater than the supply of homes available
Situs: The economic quality of a parcel because of its location, uniqueness, and immobility relative to other parcels for a given area
Supply: The product (properties) that is available at any given time
Vacancy Rate: The percentage of rental units unoccupied

AREAS OF CRITICAL CONCERN

- Describe the physical characteristics of real estate
- Describe the economic characteristics of real estate
- List the factors that influence demand
- List the factors that influence supply
- Distinguish among different ways of interpreting market conditions
- Know the different market indicators

I. PHYSICAL CHARACTERISTICS OF REAL ESTATE

Real estate is immobile in nature and cannot be moved from one area to another. External forces, such as surrounding properties, affect property values and have a direct influence on both value and future use.

Although real estate cannot be moved, adjacent properties may benefit from their relationship to one another. Combining contiguous parcels together under one ownership (assemblage) can increase their overall value (plottage).

The "highest and best use" of a site is its legal and possible use that generates the greatest value and return on the land. Sometimes a site's current use or current zoning restricts the overall potential of that site. Investors and developers must work with local government agencies to promote a positive change that will benefit the entire community.

Real estate development is generally slow to respond to changes in supply and demand. Buying a site, securing the proper building permits, plus actual construction can be time consuming. When there are more buyers (DEMAND) than current homes available for sale (SUPPLY), prices will increase on the homes that
are available. In response to an increase in demand, developers oftentimes overbuild, therefore, creating more supply than demand.

Land is indestructible and will exist into perpetuity. Certainly a building can be destroyed, but the “bundle of rights” that are the basis of ownership of real property will endure. In fact, a homeowner’s insurance policy covers all improvements but not the land itself because land does not depreciate.

Real estate is said to be heterogeneous, meaning that every parcel of land is different and unique (non-homogeneous) and every parcel of real estate has its own particular identification (legal description).

Real estate is subject to a variety of government controls, often with conflicting results. Federal, state, and local governments restrict the use and profitability of land through zoning ordinances, building codes, and taxation while at the same time provide assistance in financing and tax deductions.

II. ECONOMIC CHARACTERISTICS OF REAL ESTATE

A. Overview: Supply is the amount of product that is available. Demand is the number of people who want a particular product. The relationship between supply and demand creates economic value (price).

B. Demand Factors:

1. As prices of real estate increase, demand decreases (inversely related).

2. As population and/or HOUSEHOLD composition increases, demand increases.

3. As incomes of the consumers rise, demand increases.

4. As the availability of mortgage money increases, demand increases.

5. Consumer taste or preference can increase or decrease demand.

C. Supply Factors:

1. The more skilled labor available, the better chance of competitive product (housing) that can be produced

2. More available construction money at a reasonable rate increases the chance that a product can be sold at a lower price. When interest rates are down, homebuyers can buy a higher priced home for the same monthly payment
3. The more land that is available, the less the price of land will be; thus, the final finished product (housing) will be less expensive.

4. When materials are scarce, such as lumber, sheetrock, and concrete, there is generally less finished product (housing) available.

D. Interpreting Market Conditions: Price levels are set by the relationship between supply and demand. For example, if demand goes up and the supply remains constant, the price goes up. A good indicator of how well the housing supply is doing as it relates to demand is the vacancy rate. For example, if an apartment building is running a 5% vacancy rate, it is doing well.

Vacancy rates apply to the housing market also. Builders and developers are very mindful of absorption rates that, in effect, function as a vacancy rate. For example, if a developer is building a fifty-unit housing project and after a year of marketing only ten have sold, the developer’s absorption rate has not met expectations.

When a person buys a parcel of real estate, location is typically a primary consideration. The uniqueness of location combined with immobility is known as SITUS. Understanding the principal of supply and demand contributes to understanding the difference between a buyer’s market and a seller’s market. When there are more buyers than sellers, it is a SELLER’S MARKET. On the other hand, when there are more sellers than buyers, it is a BUYER’S MARKET. Most geographical areas contain a combination of both types of markets, varying from one location to another.

III. MARKET INDICATORS

A. Vacancy Rate: The VACANCY RATE, as was mentioned earlier, gives an indication of how well the housing market is doing by comparing supply to demand and its affect on occupancy. Generally, a decrease in vacancy rates that is not attributable to reduced rents is evidence of a reviving real estate market.

B. Market Data: Information on market conditions and vacancy rates is available from the local association of REALTORS®, Chamber of Commerce, or Homebuilders Association. One of the best housing market indicators is the issuance of new building permits. Records of building permits are available from city and/or county building departments upon request.
summary

- There are four physical characteristics of real estate:
  1. Real estate is immobile,
  2. Real estate is slow to respond to change in market conditions,
  3. Real estate is heterogeneous (non-standardized),
  4. Real estate indestructible (land does not depreciate).

- The economic characteristics of real estate are based on the relationship between supply and demand. This relationship creates economic value (price).

- Factors affecting demand are
  1. Price of real estate,
  2. Population and/or household composition,
  3. Income of the consumer,
  4. Availability of mortgage money, and/or
  5. Consumer taste or preferences.

- Factors affecting supply are
  1. Availability of skilled labor,
  2. Availability of construction financing,
  3. Availability of land, and/or
  4. Availability of materials.

- There are five ways to interpret market conditions:
  1. Price level: Are prices going up or down?
  2. Vacancy rates: Are there problems with occupancy?
  3. Sales volume: Are absorption rates meeting projections?
  4. Situs: The economic quality of location combined with immobility
  5. Determine if the market is a seller's market (more buyers than sellers) or a buyer's market (more sellers than buyers)

- There are three market indicators that should be monitored:
  1. The vacancy rate indicates how well the market is doing with relation to supply and demand.
  2. Price and/or sales information will indicate if the market is appreciating and at what rate.
  3. Building permits will indicate the anticipation level of future demand including quantity and type.
CHAPTER NINE QUIZ

1. Combining two or more parcels together to form one larger parcel is known as
   A. assemblage
   B. plottage
   C. subdivision
   D. rezoning

2. All of the following are characteristics of real estate except:
   A. Adjacent properties may benefit from their relationship to one another
   B. Real estate development is generally slow to respond to changes in supply and demand
   C. Real estate is said to be heterogeneous
   D. A property's current zoning will never restrict the overall potential of that site

3. All of the following will affect the supply of real estate except:
   A. Availability of skilled labor
   B. Availability of materials
   C. Change in consumer tastes or preferences
   D. Amount of land available for construction

4. Vacancy rate refers to the
   A. percentage of units that are vacant
   B. percentage of units occupied
   C. length of time of rental property is unoccupied
   D. percentage of units that have tenants move out early

5. The increase in value realized as a result of assemblage is known as:
   A. Plottage
   B. Appreciation
   C. Reliction
   D. Depreciation
6. A property's "highest and best use" refers to:
   A. the type of construction that will benefit the community
   B. the type of construction that will result in the highest value for that property
   C. the largest type of structure that may be built on the property
   D. the tallest possible structure that may be built on the property

7. Generally, when there are more buyers than current homes available for sale, prices will:
   A. increase
   B. decrease
   C. stay the same
   D. not enough information

8. The overall relationship between supply and demand will ultimately affect:
   A. Supply
   B. Demand
   C. Mortgage interest rates
   D. Price

9. A household is defined as:
   A. One individual, or a group of individuals, living in one dwelling unit
   B. One individual living in one dwelling unit
   C. A group of individuals living in one dwelling unit
   D. None of the above

10. Which of the following events will cause demand to decrease?
    A. Population increase
    B. Price increase
    C. Income increase
    D. Lower interest rates
CHAPTER TEN: REAL ESTATE APPRAISALS

TALK THE TALK

Appraisal: A supported, defended estimate of the value of property rights as of a given date.

Assemblage: The bringing together of two adjoining parcels of property under one ownership.

Comparative Market Analysis (CMA): An informal estimate of market value performed by a real estate licensee for the seller to assist in arriving at an appropriate listing price, or, if working with the buyer, an informal estimate of market value to assist the buyer in arriving at an appropriate offering price.

Cost-Depreciation Approach: A method for estimating the market value of a property based on the cost to buy the site and to construct a new building on the site, less depreciation.

Curable: If corrections of a deficiency or defect result in as much added value to a property as the cost to correct the deficiency or defect.

Depreciation: A decline or loss in value for any reason.

Economic Life: The total period over which improvements to real estate contribute to the value of the property.

Federal related transaction: Any loan that is insured, guaranteed, or funded by the federal government or a federally chartered institution.

Gross Rent Multiplier (GRM): The quotient of the sales price by the monthly gross rent.

Highest and Best Use: A principle of value that focuses on a property’s most profitable, legal use.

Income Capitalization Approach: A method for estimating the market value of a property based on the income the property can be expected to generate.

Incurable: When the cost of curing a deficiency or defect is greater than the value added by the cure.

Market Value: The most probable price a property will bring from a fully-informed buyer, willing but not compelled to buy, and the lowest price a fully-informed seller will accept if not compelled to sell.

Overimprovement: An addition or change to a property not consistent with its highest and best use, or a betterment that costs more than the value added to the property.

Plottage: An increase in value of property experienced through assemblage.

Principal of Substitution: A valuation principle which states that a prudent purchaser would pay no more for real property than the cost of acquiring an equally desirable substitute on the open market.

Progression: The tendency of a property to increase in value at a faster rate in order to conform to surrounding properties.
MORE TALK THE TALK

Reconciliation: The process by which an appraiser evaluates, chooses, weighs, and selects from among two or more alternative conclusions or indications to reach a single answer (final value estimate)

Regression: The tendency of a property to decrease in value or, at best, appreciate at a slower rate in order to conform to surrounding properties

Sales Comparison Approach: A method for estimating the market value of a property by comparing similar properties to the subject property

Special Purpose Property: Properties that are unique and have no comparable such as a courthouse or church

Subject property: The real property under discussion or appraisal

AREAS OF CRITICAL CONCERN

• Describe federal and state regulations pertaining to appraising
• Distinguish among the various types of value
• Define market value and describe its underlying assumptions
• Distinguish among value, price, and cost
• Describe the four characteristics of value
• Distinguish among the principles of value
• Differentiate among the three approaches to estimating the value of real property
• Calculate value using gross multiplier analysis
• Explain how to prepare a CMA

I. REGULATIONS AFFECTING APPRAISING
A. State Licensed and Certified Appraisers: Title XI of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires states to establish appraisal licensing and certification programs for appraisers who may be involved in performing appraisals which support a FEDERALLY RELATED TRANSACTION. In Florida, licensed and certified appraisers are regulated by the Florida Real Estate Appraisal Board which is outlined in Chapter 475 F.S. part II.

Systematic procedures and logical analysis as presented in the Uniform Standards of Professional Appraisal Practice (USPAP) should be followed.

Florida law prohibits brokers, sales associates, or broker associates from performing appraisals unless they hold an appraiser’s license also.
II. CONCEPT OF VALUE

A. Overview: By definition, an APPRAISAL is a supported, defended estimate of the value of property rights as of a given date. In appraising, there are several types of value that an appraiser may be trying to ascertain:

1. **Investment value** is a value that is determined because of individual investor’s requirements.

2. **Assessed value** is determined by the local property appraiser to establish value for real estate taxes.

3. **Liquidation value** is the amount a property is most likely to sell at a forced or hurried sale (foreclosure).

4. **Salvage value** is the amount that part or all of a property’s improvements can be sold for at the end of its economic life taking into consideration the cost of removing those improvements from the land.

5. **Insurable value** is often estimated for insurance coverage purposes which are based on replacement cost.

B. Market Value: **MARKET VALUE** is the most common purpose of real estate appraising. The USPAP defines market value as the most probable price which a property should bring in a competitive and open market with the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus.

Implicit in the definition of market value is the consummation of a closing on a particular date and the transferring of title from the grantor to the grantee under the following conditions:

1. Both seller and buyer are motivated under normal conditions;

2. Both parties are well informed and properly advised and acting in a manner that places their best interests first;

3. A reasonable amount of time is allowed in the open market for adequate exposure;

4. Payment is made in U.S. dollars or its equivalent; and

5. The price represents an arms length transaction (no special pricing and the parties are not related).

C. Concept Cost, Price, and Value: Cost of production is the expenditure of resources necessary to bring a property into existence. It is measured in monetary terms and includes compensation of all factors of production including, but not limited to, land, utilities, improvements, and carrying costs. Price is the amount of money that is actually paid for a property. The most direct way to determine value is what
someone is willing to pay. Value is an imaginary number that the appraiser believes
a property will sell for. In appraisal, market value is a result of the interaction of
supply and demand.

It should be remembered that in an active market, cost, price, and value may
be similar, but one does not create the other. For example, a home may cost
$200,000 to build, but that does not mean that the market will be willing to pay that
price.

D. Characteristics of Value: For a property to have economic value,
four characteristics must be present (DUST):

1. Demand: those who want the property,
2. Utility: what the property can be used for,
3. Scarcity: the number of properties that are available, and
4. Transferability: title must be transferable to another.

III. PRINCIPLES OF VALUE

A. Substitution: The basic premise of appraising is found in the
PRINCIPLE OF SUBSTITUTION which states that an informed buyer will pay no
more for a property than the cost of acquiring an equally desirable substitute
property.

B. Highest and best use: This principle establishes the greatest
economic value or return possible. HIGHEST AND BEST USE is a residual concept
(net value after expenses) that determines what a property can be used for that will
cause it to be worth the most money. The site residual technique is used to
determine how a site can be used most beneficially. Highest and best use is defined
as the specific use of a site that will provide the greatest income (value) to the site
after deducting an appropriate return to the capital invested in the improvement.

The highest and best use of an improved property must consider three things:

1. Should the improvement be used "as is",
2. Should the improvement be renovated which could increase
   rents/value, and
3. Should the improvement be demolished and a new
   improvement built?

Regardless of the choice, the property should logically achieve its greatest
net value potential. Often renovations or new construction can be more costly than
the additional income it generates, and, therefore, highest and best use has not been
achieved.
C. **Increasing and Decreasing Returns:** Home buying is, for the most part, an emotional experience. It stands to reason that people have a tendency to improve properties without considering the economic consequences. This is known as over improving a property. A philosophy that passes the test of time is “you should never buy the largest home in a neighborhood; rather, buy the smallest.” Smaller, less expensive homes tend to appreciate faster than their larger neighbors. A good example of an **OVERIMPROVEMENT** might be a swimming pool or the addition of an extra bathroom.

D. **Conformity:** The principle of conformity states that property values will be enhanced if architectural designs are similar and conform to each other. Conformity is achieved through the use and implementation of restrictive covenants.

E. **Other Valuation terms:** **PROGRESSION** is a term that is used when properties increase in value while **REGRESSION** refers to those properties that lose value.

The combining of two or more parcels of real estate into a single ownership is known as **ASSEMBLAGE.** The increase in value because of assemblage is known as **PLOTTAGE.**

IV. **THE THREE APPROACHES TO VALUE**

A. **Overview:** There are three approaches used by the appraiser when doing an appraisal. They are the Comparable Sales Approach, the Cost-Depreciation Approach, and the Income Approach. All three approaches are used when applicable.

B. **Sales Comparison Approach:** In the comparable sales approach, the appraiser looks at other properties that are similar to the property being appraised. The comparables should be similar in construction quality, location, and size and should have sold recently. The comparable sales approach is based on the principle of substitution and is relied upon heavily when appraising residential homes, vacant land, and small investment properties.

There are three steps required in the **SALES COMPARISON APPROACH:**

1. Data collection for comparable properties that have sold recently,

2. Adjustment of the comparables’ sales prices, and

3. Reconciliation of the adjusted sales price into a final value conclusion.

Obtaining data on sales of comparable properties requires the appraiser to gather information about not only the property but also the transaction itself. Property data includes the physical factors such as size, number of bedrooms and baths, age, architecture, and zoning. Transactional characteristics include such
items as financing terms, market condition (sale date), and condition of sale (arms
length). This data can be collected from public records and the MLS system of the
local Association of REALTORS®. The minimum number of comparables to be used
is three; however, between eight and ten are recommended.

Once the proper comparables have been gathered, the appraiser then adjusts
the comparables to be as similar to the SUBJECT PROPERTY as possible. Only the
comparables are adjusted, not the subject property being appraised. If the
comparable is better than the subject, the appraiser must deduct the value difference
from the comparable to make it like the subject. If the comparable is inferior, value
must be added to the comparable to make it like the subject. Remember Robin
Hood: "take from the rich and give to the poor."

In the adjustment process there is a specific sequence that must be followed.
Transactional characteristics are adjusted first then the adjustment of property
characteristics follows.

The final step in the sales comparison approach is the value conclusion
process. This process is known as RECONCILIATION which is a weighted
averaging that gives more validity (weight) to those properties more like the subject
and less validity to those less similar.

C. Cost-Depreciation Approach: The COST-DEPRECIATION
APPROACH is based on the premise that a potential buyer will pay no more for a
property than the cost of acquiring a comparable lot and constructing a new
improvement of equal utility. Therefore, new construction of equal utility tends to set
the upper limits of value. The cost-depreciation approach to value is based on the
principal of substitution and is relied upon extensively when appraising unusual or
SPECIAL PURPOSE PROPERTIES (no comps available).

There are several steps in the cost-depreciation approach: estimating
reproduction cost, estimating accrued depreciation, subtracting depreciation from
reproduction cost, estimating land value, estimating the value of any other
improvements, and adding the site value and other improvement value to the
deprecated value of the building.

1. Reproduction cost is the amount of money that would be
required to construct a new building that is an exact replica of the structure
being appraised. Do not confuse reproduction cost with replacement cost.
Replacement cost refers to the expense of building a property of equal utility
that is similar but not identical. The appraiser determines reproduction cost,
not replacement cost.

There are three methods of determining reproduction cost:

a. Unit comparison method (per square foot method) is
the most common method used by appraisers. This method
usually requires the use of a cost service manual that gives the
estimated cost per square foot. Examples of the cost
estimating manuals are Marshall and Swift Cost Handbook; Residential Appraisal Manual; and Boeckh Building Valuation Manuals.

b. Unit-in-place method (component method) is the method used by builders and architects but seldom used by appraisers.

c. Quantity survey method ("cash-register tape method") is the method used by architects.

2. Accrued depreciation is a loss of value over a period of time.

There are three categories of depreciation that the appraiser relies upon.

1. Physical deterioration (ordinary wear and tear)
2. Functional obsolescence (a design problem)
3. External obsolescence (outside the subject property boundary)

The cost-depreciation approach relies on an additional concept that is expressed on a time line. The observed condition breakdown method gives a property an ECONOMIC LIFE (how long it should last with no maintenance) and an effective age (how old the improvement looks). The effective age, which considers maintenance, represents the amount of depreciation that has accrued to the building. The remaining balance of time represents the depreciated value of the building.

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<tr>
<th>amount depreciate</th>
<th>years remaining</th>
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<tr>
<td>effective age</td>
<td>economic life</td>
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<td>(how old it appears)</td>
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DEPRECIATION can be either curable or incurable. CURABLE depreciation occurs when something has been added to or repaired on a property and the owner is able to get his or her money back in value. INCURABLE depreciation occurs when something has been added to or repaired on a property and the owner is unable to get his or her money back in value.

Cost Depreciation Formula

1. Cost ÷ economic life x effective age = Depreciation of Building
2. Cost – depreciation = Depreciated Value of Building
3. Depreciated Value of Building + Land = Depreciated Value of the property

Authors’ Note: The appraiser uses the sales comparison approach to determine the value of the land.
D. **Income-Capitalization Approach:** The **INCOME-CAPITALIZATION APPROACH** to value infers that the cash flows from rental properties have value. The income approach to value is based on the principal of anticipation and is relied upon heavily when appraising commercial and investment properties. All calculations in this approach should be annualized.

There are five steps in the income-capitalization approach to value:

1. Estimate potential gross income (PGI)
2. Estimate and subtract vacancy & collection losses (V&C) to get effective gross income (EGI)
3. Estimate and subtract operating expenses to get net operating income (NOI)
4. Estimate a capitalization rate
5. Apply the IRV formula to get value (income div. by rate = value)

Potential gross income (PGI) is considered to be the maximum revenue a property can generate under the best conditions with full occupancy. PGI is determined in two ways: market rent (comparable) and contract rent (current leases).

Vacancy and collection losses exist when a property is not fully occupied or the tenants are not paying according to their leases. If the property has other income, such as vending machines, it should be added only after vacancy has been factored out.

Effective gross income (EGI) is the actual income that a property owner has available to pay bills. It is calculated by subtracting V&C losses from PGI.

Operating expenses maintain properties and are classified in three categories:

1. Fixed expenses will be payable regardless of the occupancy rate. Taxes and insurance are considered fixed expenses.
2. Variable expenses will fluctuate depending on occupancy. Maintenance, management and utilities are considered variable expenses.
3. Reserves for replacement are simply money set aside to pay for items that will break down later.

Operating expenses do not include the mortgage payment (debt service) or depreciation (for tax purposes).
Net operating income is calculated by subtracting operating expenses (fixed, variable, and reserves) from effective gross income. It is the net operating income (NOI) that is capitalized into a present value.

The capitalization rate, also known as the cap rate or overall rate, is determined by comparing other similar properties that have sold (value) to their net income. The cap rate is considered to be either a required return or a return that is market driven.

Factors involved: Income (NOI), Rate, and Value. If you know two factors, you can find the third.

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<thead>
<tr>
<th>I</th>
<th>I = Net Operating Income</th>
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<tr>
<td>R</td>
<td>R = Capitalization Rate</td>
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<tr>
<td>V</td>
<td>V = Value (purchase price)</td>
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E. The GROSS RENT MULTIPLIER (GRM) is a simplified method in determining the value of smaller income producing properties. It expresses the relationship between a property’s current market rent and a multiplier (a number) that determines market value. Generally speaking, the GRM is a monthly calculation using a property’s monthly gross rent. This approach is applied when the monthly rent is stable throughout the year.

In situations where rents fluctuate throughout the year, the Gross Income Multiplier (GIM) is used. For example, a condominium on the beach may rent for one amount during the summer and another amount during the winter.

Factors involved: Value, Rent, and Multiplier. If you know two factors, you can find the third.

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<thead>
<tr>
<th>V</th>
<th>V = Value (purchase price)</th>
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<tbody>
<tr>
<td>R</td>
<td>R = Rent</td>
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<tr>
<td>M</td>
<td>M = Multiplier</td>
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F. COMPARATIVE MARKET ANALYSIS (CMA)

The primary function of a real estate licensee is to acquire listings as part of an inventory to market. Listings usually create an employment agreement that is the foundation of the real estate industry. Therefore, proper evaluation of a property is essential in listing properties.

The licensee performs a comparative market analysis that is comprised of three parts:

1. Evaluating sold properties: This will be the key indicator of the subject property’s value.
2. Evaluate what is currently on the market "For Sale": This will provide information on the competition.

3. Evaluate "expired" listings: This will provide insight as to what the market is unwilling to pay.

The comparative market analysis is performed in the same manner in which the comparative sales approach is done:

1. Locate viable comparable properties that sold recently,
2. Adjust the comparables and make them as similar to the subject property being listed as possible, and
3. Reconcile the comparables to a value range that would be appropriate for the subject property being listed.

**CASE STUDY FOR CMA:**

A broker is preparing information that will be used when making a listing presentation. The broker selects three recent sales of comparable properties within the neighborhood that are similar to the subject property. The comparable properties have been increasing in value at the rate of 1% per month.

Subject Property: Three bedrooms, two bathrooms, two-car garage, swimming pool with a screened patio, and central air conditioning

Comparable #1: Four bedrooms, three bathrooms, central air conditioning, screened patio, and two car garage. Sale date: six months earlier; sale price: $175,000

Comparable #2: Three bedrooms, two bathrooms, two-car garage, swimming pool, fenced back yard, and central air conditioning. Sale date: 4 months earlier; sale price: $168,000

Comparable #3: Four bedrooms, two bathrooms, two-car garage, fenced back yard, central air conditioning, and screened patio. Sale date: 1 year earlier; sale price: $162,000

The broker should list all characteristics of the comparable properties and then make adjustments based upon the characteristics of the subject property.

- A bedroom has a value difference of $10,000
- A bathroom has a value difference of $6,000
- A swimming pool has a value difference of $12,000
- A fenced back yard has a value difference of $2,000
- A screened patio has a value difference of $4,000

The adjustments are added or subtracted from the comparable properties' sale prices, giving a range of value. The final list price is a judgment based upon this range.
Based on the above information, complete the CMA form:

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<td>Adjusted Price:</td>
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<tr>
<td>Value Range:</td>
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**CMA FORM**

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<th>Sale #1</th>
<th>Sale #2</th>
<th>Sale #3</th>
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<tbody>
<tr>
<td><strong>Sales Price:</strong></td>
<td>$175,000</td>
<td>$168,000</td>
<td>$162,000</td>
</tr>
<tr>
<td><strong>Adjustments</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Time</strong></td>
<td>$10,500+</td>
<td>$6,720+</td>
<td>$19,440+</td>
</tr>
<tr>
<td><strong>Bedrooms</strong></td>
<td>$10,000-</td>
<td>$10,000-</td>
<td>$10,000-</td>
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<td><strong>Bathrooms</strong></td>
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<td><strong>Garage</strong></td>
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<tr>
<td><strong>Pool</strong></td>
<td>$12,000+</td>
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<td><strong>Central Air</strong></td>
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<td>$</td>
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<tr>
<td><strong>Fence</strong></td>
<td>$</td>
<td>$2,000-</td>
<td>$2,000-</td>
</tr>
<tr>
<td><strong>Screening</strong></td>
<td>$</td>
<td>$4,000+</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total Adjustments:</strong></td>
<td>$6,500+</td>
<td>$8720+</td>
<td>$19,440+</td>
</tr>
<tr>
<td><strong>Adjusted Price:</strong></td>
<td>$181,500</td>
<td>$176,720</td>
<td>$181,440</td>
</tr>
<tr>
<td><strong>Value Range:</strong></td>
<td>$176,000 - $182,000</td>
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The purpose of every appraisal is to determine some type of value. That value could be investment value, assessed value, insurable value, or market value.

Market value is the most common type of value that an appraiser looks for. Simply put, it is market driven under normal market conditions.

Cost is the actual dollars spent to create a property; Price is the dollars actually paid for the finished product; and Value is an imaginary number that a property is thought to be worth.

In order for a property to have economic value there must exist: Demand, Utility, Scarcity, and Transferability (DUST).

Highest and best use determines what a property can be used for that will cause it to have the greatest net value.

There are three approaches to value:

1. The sales comparison approach, which considers other properties that are similar and have sold recently,

2. The cost-depreciation approach, which reproduces the subject building, subtracts accrued depreciation, and adds the site and other improvements, and

3. The income-capitalization approach, which implies value based on cash flows.

The gross rent multiplier (GRM) calculates value by multiplying the monthly rent by a multiplier. It is used on residential homes and small income properties.

The comparative market analysis functions in the same manner as the sales comparison approach. The difference is that, in addition to comparing properties that have sold recently, the licensee also looks at properties that are currently on the market as well as those that have expired.
CHAPTER TEN QUIZ

1. Sales associate Tom is hired to perform an appraisal on his neighbor’s house. May Tom perform the appraisal?

A. Tom may perform an appraisal provided he is not paid more than $50.00.
B. Tom may perform the appraisal provided he does not charge a fee.
C. Tom may not perform the appraisal unless he is a certified or state licensed appraiser also.
D. Tom may not perform the appraisal as long as he holds a sales associate’s license.

2. The expenditure of resources necessary to bring a property into existence is known as

A. cost
B. price
C. value
D. market value

3. The concept that an informed buyer will pay no more for a property than the cost of acquiring an equally desirable substitute property is known as

A. principal of conformity
B. principal of substitution
C. principal of value
D. principal of market

4. The gross rent multiplier multiplied by the monthly rent will be equal to

A. value
B. capitalization rate
C. annual rent
D. depreciation
5. Which of the following appraisal methods would be appropriate for a subject property when comparable sales data is unavailable?

I. Sales Comparison Approach
II. Income Capitalization Approach
III. Cost-Depreciation Approach

A. I only
B. II only
C. I and II
D. II and III

6. The expense of building a property of equal utility that is similar but not identical to the subject property is known as its:

A. Replacement cost
B. Reproduction cost
C. Appraisal value
D. Market value

7. After seven years, a motel building in Lake City, Florida, is worth less money due to wear and tear. This is an example of

A. physical deterioration
B. functional obsolescence
C. external obsolescence
D. market obsolescence

8. Karen owns a large home with a master bedroom that has only a small, single closet. Karen’s home is suffering from a condition known as

A. functional obsolescence
B. Design transition
C. Over improvement
D. None of the above

9. Robert is preparing to sell his residence. The interior needs repainting at a cost of $5,000. However, Robert is encouraged because, after the interior is repainted, it will add $10,000 to the property’s value. The status of the interior paint condition is known as:

A. Functional obsolescence
B. Curable depreciation
C. Incurable depreciation
D. Economic life
10. Effective gross income less operating expenses (including reserves for replacements) is equal to:

A. Potential gross income
B. Vacancy and collection losses
C. Before tax cash flow
D. Net operating income

11. According to the income capitalization method, if the capitalization rate remains the same but net operating income is increased, how will value be affected?

A. Value goes up
B. Value goes down
C. Value remains the same
D. Not enough information

12. If a comparable property has a feature that is $5,000 superior to the subject property, how should this difference be reflected in the reconciliation?

A. The subject property value should be adjusted by a $5,000 reduction.
B. The comparable property value should be adjusted by a $5,000 reduction.
C. The subject property value should be adjusted by a $5,000 increase.
D. The comparable property value should be adjusted by a $5,000 increase.

13. The amount of money actually spent to acquire a property is known as its:

A. Value
B. Cost
C. Price
D. All of the above

14. Which of the following are characteristics of value?

I. Demand
II. Scarcity
III. Transferability
IV. Utility

A. I only
B. II only
C. I, II, and III
D. I, II, III, and IV
CHAPTER ELEVEN:
REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

Talk the Talk

Appreciation: An increase in a property's value
Basis: The purchase price plus closing costs and other added improvements
Capital Gain: The positive difference between the sales price and the basis of the property after appropriate adjustments for fix-up expenses, closing costs, allowable depreciation, etc.; taxable profit
Cash Flow: The resulting amount when annual debt service, tax liability and capital improvement costs are subtracted from net operating income
Equity: The difference between the market value of a property and the mortgage debt
Going Concern Value: The value of a business considered as an operating enterprise as opposed to its value merely as a collection of assets and liabilities
Goodwill: An intangible asset (value) of a business based on its reputation or expectation of customer loyalty
Leverage: The use of borrowed funds to finance the purchase of an asset
Liquidation Value Approach: Comparing the value of assets to liabilities, the difference typically representing minimum value (Liquidation Analysis)
Liquidity: The ability to convert assets to cash or its equivalent within a reasonable period of time
Tax Shelter: An investment that shields income or gain from payment of income taxes; a term used to describe some tax advantages of owning real property (or other investments), including postponement or even elimination of certain taxes

AREAS OF CRITICAL CONCERN

• Identify the advantages and disadvantages of investing in real estate
• Distinguish among the risks associated with general business conditions
• Distinguish among the risks that affect return
• Describe the similarities and differences between real estate brokerage and business brokerage
• Describe the types of expertise required in business brokerage
• Distinguish among the methods of appraising businesses
• Describe the steps in the sale of a business
I. INVESTMENT REAL ESTATE TERMINOLOGY

A. CASH FLOW is the amount of money that can be generated from an investment. Cash flow is often perceived as the actual amount of money that an investor will have after all expenses and debt service has been paid. There are several ways to define cash flow:

1. Potential gross income is the maximum dollars that can or could be generated from a property under the very best of situations (100% occupancy).

2. Effective gross income is the actual dollars generated after considering vacancy and collection losses. Other miscellaneous incomes, such as vending machines or paid parking, are added after vacancy and collection losses are factored out.

3. Net operating income is calculated by taking Effective gross income and subtracting all operating expenses. An operating expense is paid to maintain the operations of the property. There are three categories of operating expenses: [1] fixed, [2] variable, and [3] reserves.

4. Cash throw-off, also known as before-tax cash flow, is calculated by taking net operating income and subtracting the appropriate debt service (principal and interest portion of the mortgage payment).

5. After-tax cash flow, or true cash flow, is found by taking the before-tax cash flow and subtracting the appropriate state and federal income tax.

B. LEVERAGE is the act of borrowing money to acquire an asset. Leverage is sometimes known as O.P.M., or other people's money. Leverage increases an investor's buying power because the asset's purchased can be financed in whole or in part. Leverage may increase an investor's yield (profit) at the time of sale as well. For example, an investment cost $100,000 and the investor puts $20,000 down. If the property appreciates 6% in the first year ($6,000), the return on the $20,000 investment is 30% ($6,000 div by $20,000). Obviously, if the property depreciates in value the yield would be negative.

C. CAPITAL GAIN occurs when a person sells a capital asset for a profit. A capital loss occurs when a person sells a capital asset and loses money. What is, then, a capital asset? A capital asset is anything that a party purchases for income, business, or investment. Capital gains and losses are taxed according to special IRS rules.

D. A property's BASIS is the amount of money that a person pays for a property, plus closing costs, plus any capital improvements made to the property.

E. APPRECIATION occurs when a property increases in value.
F. **EQUITY** is the difference between the value of the property and the mortgage(s). Equity is also known as the down payment required to purchase a property.

G. **LIQUIDITY** is being able to sell an asset in a short period of time (one year) and getting at least the original investment back. Liquidity should not be confused with marketability. Marketability is defined as the ability to sell an asset at a price that the market is willing to pay. Every asset is marketable but does not always have liquidity.

H. Risk is inherent with every investment. Risk is measured as the difference between the amount of money an investor expects and the amount actually collected. There are some risks that can be insured (static risk) such as fire, theft, or completion while some risks are uninsurable (dynamic risk). Dynamic risk includes capital risk (construction cost overruns), operating business risk (lower cash flows/higher expenses than expected), and operating financial risk (ability of a property to pay expenses from operational income).

I. A tax-sheltered real estate investment is one in which taxable income is less than the cash flow generated by the investment. Depreciation allowances generally create **TAX SHELTERS**. In other words, income that is protected from income taxes because of an authorized tax deduction (interest or depreciation) is a tax shelter.

II. **TYPES OF INVESTMENT PROPERTIES**
Investment properties come in all sizes, shape, and types. The following are the most common types of investment properties:

A. **Residential**: These properties include apartments, condos, and single family homes for rent.

B. **Commercial**: Commercial properties include shopping centers, office buildings, and warehouse just to mention a few.

C. **Industrial**: These properties include factories and manufacturing plants.

D. **Agricultural**: These are our farms and Greenbelt areas.

E. **Business Brokerage**: These are going concern operations being sold.

III. **ADVANTAGES OF REAL ESTATE INVESTMENTS**
A. **Good Rate of Return**: Rental investment real estate may provide periodic returns (positive cash throw-off). Investors are able to borrow the majority of the price paid for an investment which creates a greater return on the actual dollars invested (equity).
B. **Tax Advantages:** Real estate has certain tax advantages that make investing more lucrative. During ownership of investment property, an owner can deduct all operating expenses (except reserves for replacements), interest paid on the debt service, and depreciation. Upon the sale of an asset, the investor pays a reduced tax rate on the gain (long term capital gains tax rate).

C. **Hedge Against Inflation:** A good real estate investment can act as a hedge against inflation. The return on the investment is greater than the cost to invest.

D. **Leverage:** Leverage is the use of borrowed funds to finance the acquisition of a capital asset. The two major reasons for using leverage are (1.) The high cost of real estate (the cost of purchasing real estate for cash exceeds the ability of most investors) and (2.) the hopes of positive leverage (the investor's equity yield is enhanced when the interest rate on borrowed funds is lower than the overall rate of return on the investment).

E. **Equity Build-Up:** Equity build-up is the increase of an investor's equity investment in a property over time. Equity build-up occurs through either appreciation and/or reduction of the mortgage's principal balance through amortized mortgage payments.

IV. **DISADVANTAGES OF INVESTING IN REAL ESTATE**

A. **Illiquidity:** Investors expect to buy an investment with the anticipation of selling it at a later date for a profit. Unfortunately, not all properties can be sold for a profit. Sometimes a property is sold, and the investor is unable to get his investment back.

B. **Local Market:** Real estate is considered to be local in nature. Unlike buying and selling stock through global stock markets, real estate is limited to a smaller geographic marketing area.

C. **Need for Expert Help:** Because of the complex nature of real estate investing, the investor often needs expert assistance in matters such as financing, cash flows, and tax consequences from investing.

D. **Management:** Many investors are unable to have "hands-on" management; therefore, professional property managers are required. Absentee ownership and the complex nature of certain investment properties have popularized property management firms.

E. **Risk:** Buying investment real estate is not risk free. In fact, buying investment real estate is based on the principal of "risk vs. reward." In most cases, the greater the risk involved, the greater the reward anticipated.
V. ASSESSMENT OF RISK

A. Risks Associated with General Business Conditions:

1. Business risk is the risk income earned may be lower than projected, and actual operating expenses may be higher.

2. Financial risk may occur when available funding/cash flows may be insufficient to finance the operations.

3. Purchasing-power risk is directly related to inflation. During periods of inflation, investment properties that were once profitable become less profitable depending on the rate of inflation.

4. Interest-rate risk is influenced by the interest rates that currently exist in the market. The higher the interest paid to finance an investment, the less an investor is willing to pay for a given property. A property’s mortgage payment (debt service) is a critical factor in projecting future cash flows.

B. Risks that affect Return:

1. Liquidity risk involves selling a property in a relatively short period of time which returns the full amount invested.

2. Safety risk involves market risk (positive leverage vs. negative leverage) and the risk of default (payments are not made according to an agreement).

VI. COST, PRICE AND PROFIT

COST refers to the amount of money required to build or create the subject real estate. PRICE refers to the amount someone actually paid for the real estate. PROFIT refers to the spread between Cost and Price. The formula is as follows:

\[
\text{MADE (profit)} = \frac{\text{PAID (initial cost)}}{\text{PAID (initial cost)}}
\]

Example: Tom buys a house for $125,000 and then sells it one year later for $150,000. What is the percentage of profit?

Answer: $150,000 - $125,000 = $25,000 (profit)

\[
\frac{\$25,000}{\$125,000} = 20\% \text{ profit}
\]
CHAPTER ELEVEN: REAL ESTATE INVESTMENT 
AND BUSINESS OPPORTUNITY BROKERAGE

Example: Deborah buys a house for $175,000 and sells it one year later for $150,000. What is the percentage of loss?

Answer: $175,000 - $150,000 = $25,000 loss

$ 25,000 = 14.29 % loss
$175,000

VII. NATURE OF BUSINESS BROKERAGE

A. Similarities to Real Estate Brokerage: In almost every business brokerage transaction, the transfer of an interest in real property takes place (sale or lease). For this reason, a real estate licensee is required to practice business brokerage.

B. Differences from Real Estate Brokerage: Business brokerage involves the transfer of a going-concern operation. Business brokerage is a highly specialized field that requires the understanding of financial statements and the principals of accounting. It involves the transfer of a going-concern operation, which includes the transfer of real property (tangible asset) and also the transfer of intangible assets (GOODWILL).

The value of a business could be more than, equal to, or less than the value of the real property that is part of the transaction. Real property value and GOING CONCERN VALUE are often different.

Another major difference is the marketplace itself. Real estate is local in nature and marketing is limited. Marketing the sale of a business can be done on a much larger geographic area.

C. Expertise Required in Business Brokerage: Business brokerage is a highly specialized field that requires the understanding of financial statements, balance sheets, and other principles of accounting. Business brokers must understand the difference between corporations, partnerships, and sole proprietorships.

There are four approaches to valuing a business:

1. Sales Comparison Approach: comparing the subject business to other businesses that have recently sold

2. Cost Depreciation Approach: reproducing the business new, then subtracting accrued depreciation

3. Income Capitalization Approach: determining the value of a business based on its income
4. **Liquidation Value Approach**: taking a business’ assets and comparing them to a business’ liability. This liquidation analysis reveals the difference between assets and liabilities providing the minimum value of the business. This approach to value helps determine if a business is profitable or unprofitable. The liquidation value approach is unique to business brokerage valuation.

D. **Steps in the Sale of a Business**: The steps involved in the sale of a business are similar to those of selling real property. First, a value must be established (an appraisal), secondly, determine the type of business entity and who the principals are, and, thirdly, the closing may involve the assistance of a lawyer or an accountant to insure proper transfer.

### SUMMARY

- There are five advantages to owning investment real estate:
  1. Good rate of return
  2. Tax advantages
  3. Hedge against inflation
  4. Leverage
  5. Equity build-up

- There are five disadvantages to owning investment real estate:
  1. Illiquidity
  2. Market is local in nature
  3. Need for expert assistance
  4. Management assistance
  5. Risk

- There are four areas of risk associated with business conditions:
  1. Business risk
  2. Financial risk
  3. Purchasing-power risk
  4. Interest-rate risk

- There are two areas of risk associated with risk that affects return:
  1. Liquidity risk
  2. Safety risk (market risk and risk of default)
There are two similarities between real estate and business brokerage:

1. The sale or lease of real property is involved in the transaction
2. A real estate license is required to practice business brokerage

Business brokerage is a very specialized field that requires the understanding of accounting, financing, and business valuation.

There are four approaches to value a business:

1. Comparable sales approach
2. Cost-depreciation approach
3. Income capitalization approach
4. Liquidation value approach (unique to business brokerage only)

CHAPTER ELEVEN QUIZ

1. Net operating income less debt service is known as:
   I. Cash throw-off
   II. Before Tax Cash Flow
   III. After Tax Cash Flow
   IV. Effective Gross Income

   A. I and II
   B. II only
   C. III only
   D. IV only

2. Johnny decided to finance the purchase of his second home by mortgaging the property with his local bank. This method of acquiring an asset is known as:
   A. Leverage
   B. Capital gain
   C. Tax shelter
   D. Homestead

3. Tom owns his home which has a value of $200,000 with a mortgage of $140,000. What is the value of Tom's equity?
   A. $ 60,000
   B. $140,000
   C. $200,000
   D. $340,000
4. All of the following are advantages of investing in real estate except:
   A. Illiquidity
   B. Good rate of return
   C. Tax advantages
   D. Leverage

5. All of the following are disadvantages of investing in real estate except:
   A. Need for expert help
   B. Risk
   C. Need for management
   D. Leverage

6. The risk that income earned may be lower than projected and actual operating expenses may be higher than expected is known as:
   A. Business risk
   B. Financial risk
   C. Purchasing power risk
   D. Liquidity risk

7. Which of the following is not an accepted approach to valuing a business?
   A. Sales comparison approach
   B. Income capitalization approach
   C. Cost-depreciation approach
   D. Goodwill value approach

8. An intangible asset (value) of a business based on its reputation or expectation of customer loyalty is known as:
   A. Chattel
   B. Goodwill
   C. Market value
   D. Publicity value

9. If a business is operating at the time of its sale, its added value as an ongoing enterprise is known as its
   A. goodwill
   B. going concern value
   C. market value
   D. market price
10. Which of the following are tax advantages to owning investment real property?

I. Deduction for operating expenses
II. Deduction for mortgage payments
III. Deduction for real estate taxes paid
IV. Deduction for depreciation

A. I and II
B. II and III
C. I, III, and IV
D. I, II, III, and IV

11. What type of risk occur when the mortgage market tightens and money is difficult to obtain?

A. Mortgage risk
B. Financial risk
C. Investment risk
D. Purchasing Power risk

12. Leverage increases an investor’s buying power and it may:

A. Decrease yield
B. Increase yield depending on appreciation
C. Increases interest rates
D. Decreases capitalization rate
CHAPTER TWELVE:
REAL ESTATE TAXES

Talk the Talk

Ad Valorem: According to value; annual real estate taxes are ad valorem taxes
Assessed Value: A property’s value for ad valorem tax purposes as established by the county property appraiser
Exempt Property: Real property excused for payment of ad valorem taxes
Greenbelt Laws: A lower assessed value associated with agricultural properties
Homestead Tax Exemption: A deduction from the value of homestead properties that results in a savings on real estate taxes
Immune Property: Real property that is never assessed or required to pay ad valorem taxes, such as government buildings
Installment Sale: When the buyer pays the purchase price over time in separate installment payments
Just Value: A fair and reasonable value; the property appraiser is required to assess properties at their Just Value
Like Kind Exchange: An exchange of one property for another with a deferral of tax consequences; also known as a “1031 exchange”
Mill: One one-thousandth (.001)
Special Assessment: A one-time tax assessed against a property that will directly benefit from some public improvement
Tax Rate: The millage rate; the tax rate is multiplied by the taxable value of a property to determine the levy
Taxable Income: Income that is subject to taxation
Taxable Value: Value of property for tax purposes determined by subtracting all exemptions from the assessed value

AREAS OF CRITICAL CONCERN

• Distinguish among immune, exempt, and partially exempt property
• Describe the various personal exemptions available to qualified owners of homestead property
• Compute the property tax on a specific parcel, given the current tax rate, assessed value, and eligible exemptions
• List the steps involved in the tax appeal procedure
• Describe the purpose of Florida’s Green Belt Law
• Calculate the cost of a special assessment, given the conditions and amounts involved
• Describe the tax advantages of home ownership
• Explain how to determine taxable income of investment real estate
• Distinguish between installment sales and like-kind exchange
I. REAL PROPERTY TAXATION

A. Local Importance: Real property taxation is determined and influenced by local factors. Under the U.S. Constitution, the federal government may not levy a tax on real property. Each state, however, does have that right. In Florida, there is technically no state property tax, although various documentary stamp taxes and intangible taxes are charged at real estate closings. Florida has given real property taxation to the local authorities. Primarily, the taxing districts, such as counties, cities, school districts, emergency medical service, and others, collect real estate taxes.

Revenues from real property taxation are the primary sources of funds for these taxing districts although other sources of revenue may be available such as sales tax, user taxes (permitting and impact fees), public utility revenues, and other fees charged by the taxing district.

Real property taxes are said to be **AD VALOREM**, meaning "according to value." That is, the greater value a property has, the larger the tax levy will be.

B. Determining Just Value: Real property is taxed according to its fair and equitable value, known as the **JUST VALUE**, which will be determined by the county property appraiser. Once "Just Value" has been determined, all local taxing districts use that value for taxing purposes. Although it is the Property Appraiser's duty to determine the Just Value of properties, the actual amount of tax dollars due (Levy) is equal to the Just Value multiplied by the applicable **TAX RATE**.

After the assessed value of a property has been determined, the Property Appraiser's office will notify the owner of the assessment for tax purposes. If the owner disagrees with the determined assessed value, there is a protest procedure that can be utilized.

1. After receiving the assessment notice, the owner files a protest directly with the Property Appraiser's office within 25 days of receiving the assessment notice. The Property Appraiser will either reject the protest or modify the assessment.

2. If the owner is unsatisfied with the results of the first step, the owner may then file a written objection to the local Value Adjustment Board provided the objection is filed within 25 days after receiving the assessment notice. The Value Adjustment Board is comprised of three County Commissioners and two School Board members.

3. If the Value Adjustment Board rejects the owner's request, the final step available is to commence litigation by filing a lawsuit in certiorari (asking a court to review a case). The owner must first pay the taxes under protest and then file the suit.
C. Exceptions from Property Taxes: Sometimes, real properties are granted a full or partial release from having to pay ad valorem taxes.

1. IMMUNE PROPERTIES consists of government properties (e.g. courthouses and military bases) that are never assessed for tax purposes.

2. EXEMPT PROPERTIES are owned by qualified not-for-profit organizations and churches. These properties are assessed for tax purposes, but, due to the status of the owner and the property's use, the owner is released from the obligation to pay the tax on the full assessed value.

3. Under the Florida HOMESTEAD TAX EXEMPTION, a head of a household (including single persons) may declare his or her property to be a homestead which will then entitle the owner to a $25,000 exemption from the assessed value of his or her property when calculating city, county, and school board tax levies. If the assessed value of the property is for more than $50,000, there is an additional exemption of up to $25,000. This additional exemption, however, does not apply to school tax levies.

Florida real estate tax laws provide for an assessment growth limitation of 10% for all non-homestead properties and a 3% annual cap on homestead properties. The owner is not required to live in the homestead for the majority of the year, but it must be the owner's principal residence as evidenced by his or her driver's license, voter registration card, or tax return. A person can have only one homestead at a time.

To obtain the homestead exemption, the owner needs to apply in person at the local Property Appraiser's office no later than March 1st of the first year he or she seeks to claim the exemption. Once the homestead exemption is obtained, some counties have an automatic renewal while other counties required a new registration each year.

4. Various $500 Exemptions: Unmarried widows or widowers and/or legally blind individuals may deduct $500 from their assessed value for each.

5. Military Related Disabilities: If an honorably discharged veteran is totally and permanently disabled as a result of military service, then that individual is granted a total exemption from ad valorem property taxes on his or her homestead. Persons with at least a 10% military service related disability and non-veterans that are totally and permanently disabled are all entitled to a $5,000 exemption from the assessed value of the homestead.

6. Greenbelt Laws: The State of Florida is very sensitive to the financial issues facing today’s agricultural property owners. GREENBELT LAWS entitle any owners of these properties to a beneficial tax treatment. If the subject property is identified as an agricultural property, the property will be assessed for that purpose which will typically result in a lower assessed value. To qualify for the exemption, the owner must justify its applicability each year.
D. Calculating Property Taxes: TAXABLE VALUE is calculated by subtracting any exemptions from a property's assessed value. Once this is done the appropriate TAX RATE can be applied.

A Tax Rate of .008 is expressed as 8 mills. A "mill" is one-thousandth of a dollar or .001. Seven mills is equivalent to .007. Twenty mills is equivalent to .020 or .02. To calculate the property tax owing on a subject property, multiply the Taxable Value of the property by the Tax Rate.

Example: A house is assessed at $49,000 and qualifies for a homestead exemption. If the tax rate is 25 mills, what are the property taxes owed on this property?

Step 1: $49,000 - $25,000 = $24,000 (Taxable Value)
Step 2: $24,000 x .025 = $600 (Levy)

E. Special Assessments by Government: SPECIAL ASSESSMENTS are one-time taxes levied against properties that will directly benefit from a government expenditure or improvement such as a new sidewalk or street pavement. In order for a special assessment to be proper, the improvement must directly benefit the subject property. If the government decides to pave a certain street, it is possible that a special assessment could be charged to only those properties which are located on the paved street. The cost is based on the front feet (running feet). It should be noted that in better than 50% of the time there will be a property owner across the street that will equally share the cost of the improvement.

F. Non-Payment of Real Property Taxes: Real property taxes begin to accrue on January 1st of each year and are immediately considered to be a lien on the subject property. The taxes are payable on November 1st of that year but must be paid no later than April 1st of the following year to avoid delinquency.

After a tax is delinquent, the county tax collector will sell tax certificates at a public auction. The purchaser of a tax certificate bids on the interest rate which starts at 18 percent and decreases as the bidding continues until the lowest interest rate bid has been established.

The purchaser of the tax certificate pays the amount of the delinquent tax and is entitled to the interest rate determined from the bidding process. The holder of the tax certificate will either be repaid the delinquent tax amount plus interest, or the tax certificate holder may apply for a tax deed after holding the tax certificate for at least 2 years but not more than 7 seven years. A tax certificate is valid for a maximum of 7 years at which point it expires.

After a proper request for a tax deed, there will be another public auction, but this time the highest bidder acquires title through a tax deed. The proceeds from the tax deed auction are first used to pay the tax certificate plus interest and expenses.
II. FEDERAL INCOME TAXES

A. Sale of Real Property: When an owner sells real property for a profit, a tax is charged against that profit unless excluded by IRS rules. For federal tax purposes, the profit is considered to be a capital gain which can be either a short-term capital gain or long-term capital gain. A short-term capital gain applies to properties held for one year or less while a long-term capital gain applies to properties held for more than one year. Short-term capital gains are taxed as ordinary income while long-term capital gains are taxed at lower more favorable rate.

The sales price less any sales expenses is known as the "Amount Realized." Technically speaking, the Amount Realized less the adjusted basis is classified as the "Capital Gain" (or Capital Loss).

B. Sale of Principal Residence: Some or all of the gain realized from the sale of a principal residence may be excluded from federal income tax. If the subject property was the taxpayer's principal residence for at least two of the last 5 years, the taxpayer may exclude up to $500,000 of gain if married, filing a joint return or $250,000 if single or married filing separately. That means that the profit earned from the sale of your principal residence could be tax free!

C. Tax Benefits Associated with Ownership: There are other tax advantages of owning real property:

1. Mortgage Interest Deduction: A taxpayer is allowed to deduct the amount of interest paid on any mortgage for a first or second home.

2. Property Tax Deduction: A taxpayer is allowed to deduct the amount of property taxes paid on a first or second home.

3. IRA Withdrawal: A first-time homebuyer may make a tax free withdrawal of up to $10,000 from an IRA account to fund a down payment toward the purchase of a first home.

D. Investment Real Estate: Many people purchase income-producing real estate as an investment such as rental condominiums or apartments. When analyzing income producing properties, and their respective cash flows, the following formula must be evaluated:
As one might expect, income produced from real estate investments is taxable. To calculate the **TAXABLE INCOME**, note the following formula:

\[
\text{Net Operating Income} + \text{Reserves} - \text{Mortgage interest} - \text{Allowable Depreciation} = \text{Taxable Income}
\]

The Taxable Income is then multiplied by the investor's tax rate to determine the amount of income tax to be paid.

**E. INSTALLMENT SALE:** If the purchase price is paid in installments, the taxpayer only pays taxes on money collected or earned in any given year. For example, when the seller takes back a purchase money mortgage and collects payments over time, taxes are only paid on the payments received.

**F. LIKE KIND EXCHANGE:** When real estate is exchanged for another "like kind" property, the tax on the gain may be deferred. These types of exchanges are governed by Internal Revenue Code Section 1031 and are called "1031 exchanges." The property exchange must be "like kind", meaning anything that has been acquired for income, business, or investment. Personal residences and builder inventories cannot qualify under the 1031 exchange laws. "Un-like kind" properties include cash and mortgages which are known as "boot". Like-kind exchanges must be completed within 180 days.
SUMMARY

- Immune properties are never assessed for tax purposes (courthouse).
- Exempt properties are assessed, but the owner is excused from paying the levy (churches). Partially exempt properties are assessed, but the owner is excused from paying taxes on a portion of the assessed value (homestead).
- In addition to the homestead tax exemption, a property may be entitled to the following additional exemptions:
  1. Surviving spouse ($500)
  2. 10% or more military disability ($5,000)
  3. Blind ($500)
  4. Non-veteran 100% disability ($5,000)
  5. Permanent and total military disability (100% exempt)
- A tax levy is calculated as follows:
  1. Assessed value less exemptions equals taxable value
  2. Taxable value multiplied by tax rate equals tax levy
- To appeal a tax assessment, the property owner must first request an adjustment from the property appraiser's office. If that request is denied, the property owner files a request with the Value Adjustment Board for a hearing. If the property owner is unsatisfied with the Value Adjustment Board's decision, the property owner can ask the courts to hear the case.
- Florida Greenbelt Laws are enacted to provide agricultural property owners relief from high taxes by assessing their properties at a lower amount.
- Special assessments are calculated by determining the size of the property, the per foot cost of the improvement, and apportioning the cost of the improvement between the government and the property owners.
- Home ownership provides three tax advantages:
  1. Mortgage Interest Deduction
  2. Real Estate Tax Deduction
  3. Exclusion of gain from sale of principal residence
- A real estate installment sale occurs when a seller accepts partial payments over a period of time. No tax is due until the payment is collected.
- When a property is exchanged for another like-kind property, the taxes on the exchange are deferred.
CHAPTER TWELVE QUIZ

1. Which of the following is an “ad valorem tax”?
   A. Income tax
   B. Special assessment
   C. Real property tax
   D. Corporate tax

2. The county property appraiser assesses real property according to its fair and equitable value, known as
   A. market value
   B. taxable value
   C. equitable value
   D. just value

3. If a property owner disagrees with assessed value determined by the county property appraiser, the first step for the property owner should
   A. file litigation
   B. refuse to pay the tax
   C. file a protest directly with the property appraiser’s office
   D. file a petition with the Value Adjustment Board

4. Which of the following is an example of an exempt property?
   A. Courthouse
   B. Residential property
   C. Church
   D. Restaurant

5. Carl has a homestead property assessed at $49,000. If city taxes are 8 mills, county taxes are 10 mills, and school taxes are 7 mills, what are the tax savings?
   A. $600
   B. $625
   C. $650
   D. $700
6. What is the tax levy on a property assessed at $150,000 and the millage rate is 14 mills?
   A. $2,100
   B. $2,350
   C. $2,730
   D. $20,030

7. A one-time tax levied against properties that will directly benefit from a government expenditure or improvement is known as:
   A. Ad valorem tax
   B. Special assessment
   C. Primary tax
   D. Levy

8. The auction bidding on tax certificate interest begins at what rate?
   A. 8%
   B. 10%
   C. 18%
   D. 24%

9. Real property taxes begin to accrue on January 1st of each year. When are they first due and payable?
   A. January 1st
   B. April 1st
   C. November 1st
   D. December 31st

10. Ed purchased a tax certificate in May. How many years must he wait before he may timely request a tax deed be issued?
    A. One month
    B. One year
    C. Two years
    D. Seven years
11. Bob and Terri have lived in their principal residence for the last three years. When they sold the property, they realized an $80,000 gain. If they are in the 35% tax bracket, how much money will they owe in taxes as a result of the sale?

   A. $28,000  
   B. $22,400  
   C. $16,000  
   D. $0  

12. What type of laws are designed to provide agricultural property owners relief from high taxes by assessing their properties at a lower value?

   A. Ad valorem laws  
   B. Citrus belt laws  
   C. Greenbelt laws  
   D. Eminent Domain  

13. An exchange of one property for another with a deferral of tax consequences is known as:

   I. Like kind exchange  
   II. 1031 exchange  
   III. Mutual exchange  
   IV. IRS exchange  

   A. I and II  
   B. I and III  
   C. II and III  
   D. III only  

14. Bill owns an apartment building and would like to do a 1031 tax deferred exchange. Which property will not qualify for this exchange?

   A. Vacant land  
   B. Builder home for sale  
   C. Shopping center  
   D. Office building
15. The city is going to pave your street at a cost of $50 per front foot and has agreed to pay 40% of the cost. Your property measures 120'x 145'. What is the amount of the special assessment for your property?

A. $1,800  
B. $2,160  
C. $3,600  
D. $4,350
CHAPTER THIRTEEN: REAL ESTATE CONTRACTS

Talk the Talk

**Bilateral Contract**: A contract in which both parties enter into mutual promises

**Competency**: Having the mental and age capacity to enter into a contract

**Contract**: An agreement between two or more competent parties, supported by consideration, to do, or not to do, a certain legal act

**Exclusive Agency Listing**: Listing agreement whereby the seller may find a buyer without owing a commission although the seller agrees not to list the property with any additional brokers

**Exclusive Right of Sale**: Listing agreement whereby the broker earns a commission no matter who procures the buyer

**Liquidated Damages**: A specific dollar amount of damages to be paid by a breaching party as specified in the contract

**Meeting of the Minds**: An agreement and understanding between the parties concerning the intent of their contractual terms

**Net Listing**: A listing agreement whereby the broker keeps any funds over a definite net amount to be received by the seller

**Novation**: Substitution of a contract and a party for another contract and another party

**Open Listing**: Listing agreement whereby the seller promises to pay a broker a commission if that broker procures a buyer; the seller may sell the property without owing a commission, and the seller may enter an open listing with several different brokers simultaneously

**Option**: A right, given as a continuing offer, to purchase real property upon specific terms within a given period of time

**Statute of Frauds**: Body of law that states that certain types of contracts must be in writing to be enforceable

**Statute of Limitations**: Establishes time limits for filing litigation

**Unenforceable**: Status of a contract when it violates the Statute of Frauds

**Unilateral Contract**: A contract whereby only one party undertakes a promise or obligation

**Void**: A contract the law will not recognize under any circumstances

**Voidable**: Contract involving a minor or other incompetent party wherein the incompetent part has a choice to enforce or rescind the contract
AREAS OF CRITICAL CONCERN

• List and describe the essentials of a contract
• Distinguish among the various classifications of contracts
• Describe the various ways in which an offer is terminated
• Describe the various methods of terminating a contract
• Explain the remedies for breach of a contract
• Describe the effect of the Statute of Frauds and the Statute of Limitations
• Describe the elements of an option
• Differentiate among the various types of listings
• Describe the various disclosures required in a real estate contract

I. CONTRACTS IN GENERAL

A. Contracts Defined: A CONTRACT is an agreement that is a mutual
meeting of the minds. It is supported by consideration in which one party or more
than one party agrees to perform, or not to perform, a specific act, and the
agreement is enforceable by law if certain requirements are fulfilled. Those
requirements can include legal subject matter, COMPETENCY of the parties (age or
mental competency), and, in some cases, whether the contract is in writing.

B. Preparation of Contracts: Contracts can be either oral (also known
as a parol contract) or written. Real estate licensees are permitted to prepare three
types of contracts:

1. Sale and Purchase Contract: The contract between a buyer
and a seller of real property

2. Listing Agreement: An employment agreement between a
broker and a seller (principal) to perform a real estate service

3. Option Contract: A contract in which a potential seller gives
an OPTION to a potential buyer granting the right to purchase property upon
terms and conditions stated in the option

Licensees are not permitted to prepare deeds, mortgages, contracts for
deeds, or other legal documents. Leases should be prepared by an attorney
although licensees are permitted to fill in the blanks on Florida Supreme Court pre-
approved lease forms that do not exceed one year.

C. Statute of Frauds: The STATUTE OF FRAUDS is a body of law
which requires that certain types of contracts be in writing in order to be enforceable.
Examples of types of contracts that must be in writing in order to be enforceable
include:

1. Sale and Purchase Contracts
2. Option Contracts
3. Leases for more than one year
4. Exclusive Right to Sell Listing Contract
The general rule is that if these types of contracts are not in writing, they are not enforceable. However, there are exceptions to the general writing requirement rule:

1. **Partial Performance Doctrine:** In a Sale and Purchase Contract, if the Buyer has paid part of the purchase price to the Seller and has either (1) taken possession of the premises or (2) commenced repairs or improvements, then the Statute of Frauds requirement does not apply.

2. **Full Performance Doctrine:** In a Sale and Purchase Contract, if the parties go to closing, the purchase price is paid, and title is conveyed to the Buyer, then the Statute of Frauds does not apply and cannot be raised as a defense after the sale.

**D. STATUTE OF LIMITATIONS:** Every potential legal action to enforce a contract must be filed before the time deadline expires. The time period for filing legal action to enforce contractual rights vary depending if the subject contract is written or oral. If the contract is written, the time period deadline is 5 years. If the contract is oral, the time period deadline is 4 years.

**E. Void, Voidable, and Unenforceable Contracts:** A **VOID** contract is one that the law will not recognize. For example, if the subject matter of the contract is illegal, such contracting to purchase illegal drugs, the agreement is void under the law. Also, a legal contract that has terminated or expired properly is also considered to be void.

A **VOIDABLE** contract occurs when one of the parties is incompetent, either because of mental incapacity or because they are under age. In Florida, a person under 18 years of age is considered to be incompetent. The law states that the incompetent party may choose to enforce the contract, or they may choose to have the contract declared void. The competent party has no choice and is obligated to abide by the incompetent party’s decision.

An unenforceable contract is one that has not met the requirements of the statute of frauds or has gone beyond the legal time limit provided by the statute of limitations.

**F. Power of Attorney:** Power of attorney is a legal document that allows another person to perform certain contractual duties. Specific or special power of attorney will allow a person to sign certain legal documents that are pre determined and understood whereas the general power of attorney may even allow an individual to negotiate contracts. The person who has the power of attorney is know as an attorney in fact.
II. CONTRACT ESSENTIALS

There are four essential elements to a contract:

A. Contractual capacity of the parties: In order for a person to enter into a valid contract, he or she must be at least 18 years of age and mentally competent. If an incompetent party enters into a contract, the contract is voidable only by the incompetent party.

B. Meeting of the Minds: Every contract must have a mutual agreement (MEETING OF THE MINDS) between the parties. This mutual agreement is demonstrated through the presentation of an offer, the acceptance of the offer, and communication of the acceptance to the party presenting the offer.

C. Legality of Object: The contract must have a legal subject matter. If the subject matter is illegal, no valid contract exists.

D. Consideration: Consideration refers to the "force" that encourages the parties to perform the terms of their agreement. It may be either valuable consideration (money or even a promise) or "good" consideration (love and affection).

III. REAL ESTATE CONTRACTS

In order for a real estate contract to be enforceable, it should be in writing and signed by the parties. It does not need to be notarized or witnessed.

Every real estate contract must contain some type of consideration. Typically, a real estate buyer will tender an earnest-money deposit at the time of contract. A promise, however, in exchange for another promise is sufficient consideration without the earnest-money deposit.

Actual title to real property exists when a party owns real estate. Equitable title exists when a party has an interest in real estate that is less than outright ownership. For example, when a Buyer contracts to purchase property, the Seller has legal title and the Buyer has equitable title.

IV. CLASSIFICATION OF CONTRACTS

A. Bilateral vs. Unilateral Contracts: A BILATERAL CONTRACT exists when the promise of one party is given in exchange for the promise of the other party (a promise is given for a promise). For example, in a Sale and Purchase Contract the Seller promises to sell and the Buyer promises to buy.

A UNILATERAL CONTRACT exists when only one party has made a promise to perform. For example, in an option contract the Seller makes the promise to sell upon terms and conditions stated in the option. The Buyer has made no promise and is under no obligation to buy.
B. Expressed vs. Implied Contracts: An expressed contract exists when all of the details are understood by the parties, whether oral or in writing. An implied contract exists when some of the terms and conditions are not stated but rather are inferred by the nature of the transaction or the conduct of the parties. For example, if a "For Sale by Owner" knowingly accepts the services of a real estate licensee and the licensee is the procuring cause of the sale, a real estate commission would probably be due the licensee even though an actual expressed listing contract did not exist.

C. Executed vs. Executory: Anytime there is something remaining to be done under a contract, its status is considered to be executory. For example, a duly signed Sale and Purchase Contract is executory because the closing has not yet occurred. An executed contract is one in which all the terms and conditions agreed upon have been completed. For example, after a real estate closing is completed, the Sale and Purchase Contract has been executed.

D. Formal vs. Informal: A formal contract is one that is in writing and under seal (under seal does not mean notarized). However, the presence or absence of a seal has no effect on the legality of a contract. An informal contract is a contract that does not meet all the requirements of a formal contract (oral or not under seal). An oral contract is also known as a parol contract.

V. CONTRACT NEGOTIATION

A. Parties to an Offer: In negotiating any real estate contract, it must be understood that all terms and conditions of the contract are negotiated between the parties. There are at least two parties in every contract negotiation. The offeror is the party who is making the offer. The offeree is the party who considers the offer. Remember, "or's" are givers and "ee's" are receivers.

Author's Note: Since the Statute of Frauds requires real estate Sale and Purchase contracts to be in writing, the preferred practice is for real estate offers to be in writing as well. Then, if the offer is accepted, the offeree can sign the written offer, and an enforceable real estate contract can be established.

In all contract negotiations, in order for there to be a contractual meeting of the minds, there must be an offer, acceptance, and then the acceptance must be communicated to the person making the offer. If the acceptance is not communicated to the offeror (or its agent), then technically under the law a contract has not been formed. Licensees should present all offers (written and oral) unless otherwise instructed in writing by the client.
Example: Broker Dave lists an office building for First Mutual Bank. An offer was presented that was $20,000 less than the asking price. Broker Dave presented the offer to the Bank at 4:00 p.m. on Monday. The Bank accepted the offer within an hour and notified its agent, Broker Dave, of its acceptance. Broker Dave, thinking that the contract was now formed, did not notify the purchaser immediately but planned on calling the Buyer the next morning. When the next morning arrived, Broker Dave received a message from the Buyer that he had changed his mind and was withdrawing his offer. Result: Although both buyer and seller had signed the contract (indicating an offer and acceptance), there was no communication of the acceptance prior to the offeror’s withdrawal, and no contract was legally formed.

B. Terminating an Offer: There are a number of ways that an offer can terminate:

1. Acceptance: Accepting the offer (plus communicating the acceptance to the offeror) terminates the offer and creates a contract.

2. Withdrawal: If an offer is withdrawn prior to notification of acceptance, then the offer is terminated. Unless otherwise stated, an offer may be withdrawn at any time before notification of its acceptance.

3. Rejection: If an offeree rejects the offer or part of the offer, the original offer is terminated. For example, Buyer makes an offer to purchase a house for $100,000. The Seller initially rejects the offer but an hour later changes her mind and attempts to accept the $100,000 offer. In this case, she is too late because her initial rejection terminated the offer.

4. Counteroffer: A counteroffer is a rejection of the original offer followed by a new offer. Under these conditions, the original offeree now becomes an offeror, and the original offeror is now an offeree. In a counteroffer, the original offer is terminated.

5. Lapse of time: Offers are considered to be open for a reasonable amount of time. If the offer contains an expiration date, then that specified date will control. The term “reasonable amount of time” is deliberately vague so that Judges can use their discretion on a case-by-case basis.

6. Destruction of the Subject Property: If the subject property is destroyed (e.g. fire), an offer will be considered terminated.

7. Death or Insanity: The death or insanity of the offeror or offeree will terminate an offer.
VI. TERMINATION OF CONTRACTS

A. Methods of terminating contracts: Like offers, contracts can be terminated under a variety of methods:

1. Performance: Each party is obligated to perform under the terms of the contract. Once performance has been concluded, then the contract terminates.

2. Mutual Rescission: If both parties agree, they can elect between themselves to terminate (cancel) their contract. In real estate, there may still be outstanding issues concerning whether a real estate licensee is entitled to compensation.

3. Destruction of the Subject Property: If the subject property is destroyed during the executory time period, the contract will be terminated.

4. Breach: If one of the parties fails to satisfy its contractual obligations, the non-breaching party may terminate the contract and commence legal proceedings.

B. Remedies for Breach: A non-breaching party has a number of remedies available under the law:

1. Liquidated Damages: When a contract specifies a fixed dollar amount that may be claimed by a non-breaching party, the fixed dollar amount is known as LIQUIDATED DAMAGES. If the buyer breaches a contract, typically the seller claims the earnest money deposit as liquidated damages. In addition, the broker can receive compensation provide the compensation does not exceed the normal commission that would have been paid had the transaction gone to closing.

2. Specific Performance: If a party does not want money damages, he or she has the option to seek specific performance through judicial proceedings. A judge can order a party to perform in accordance with the contract terms. A non-breaching party typically has a choice of either accepting liquidated damages (earnest money deposit) or specific performance but may not choose both.

3. Unliquidated Damages: These are compensatory money damages that cannot be determined from the contract but rather are determined by a court after presenting evidence in court.

4. Rescission: A non-breaching party may be entitled to rescission of the contract by having a court of law cancel the contract. Typically under rescission, the non-breaching party is entitled to a return of any monies paid under the contract.
5. **Declaratory Judgment:** If either of the parties is unsure about his or her rights and obligations, he or she may ask a judge to clarify or interpret the contract through the judicial process of construction. Once the legal determination has been made, the court will issue a declaratory judgment that will define and determine the parties’ obligations.

C. **Assignment of Contracts:** If a person desires to transfer his or her legal rights under a contract, an assignment of the contract can be made. The party transferring his or her rights is called the assignor. The party receiving the contractual rights is called the assignee. Most contracts are assignable, unless there is language in the contract that limits this right. Be aware that because a party has assigned a contract to someone else, that fact does not relieve the assignor of legal responsibility. If the assignee breaches the contract, the assignor and assignee are responsible for the breach.

Rather than assign a contract, the parties may elect to execute a [NOVATION](#), which is the substitution of a contract for another contract. Under a novation, the original party to the contract is released from liability.

### VII. IMPORTANT REAL ESTATE CONTRACTS

A. **Authority to Prepare Contracts:** The preparation of contracts is an important function and responsibility of a real estate licensee. Licensees are specifically authorized to prepare Sales and Purchase Contracts, listing agreements, option contracts, and certain pre-approved residential lease forms. The preparation of any other type of real estate contract or conveyance instrument could be considered the unauthorized practice of law which is prohibited.

B. **Listing Agreements:** The contract between a seller of real property and the broker is called the Listing Agreement. The sales associate is employed by the broker and is working on behalf of the broker when negotiating listing contracts. A sales associate cannot directly enter into a listing agreement with a potential seller, but the sales associate may sign the listing agreement on behalf of the broker. Most types of listing agreements can be oral or written although the written agreement is preferred.

A well-drafted listing agreement will include the names of the parties, expiration date, seller’s disclosure of known property defects, legal description, amount of the commission, the listing price of the property plus any other conditions agreed upon by the seller, and the conditions which establish when a commission has been earned. In addition, a copy of the listing contract must be furnished to the principal within 24 hours after the written agreement is obtained.

If the listing agreement requires the licensee to "find a purchaser", the commission is earned when the licensee finds a purchaser who is ready, willing, and able at a price and terms acceptable to the seller. If a price and terms contract according to the listing agreement is presented, the broker has performed even if the seller rejects the offer.
If the listing agreement requires the licensee to "effect a sale", the commission is earned only if the prospective buyer actually closes on the property.

C. Types of Listings: There are three types of Listing Agreements available:

1. Open Listing: In an OPEN LISTING, the seller promises to pay a commission if the broker successfully performs by finding a purchaser for the property. The seller reserves the right to sell the property him or herself without owing the listing broker a commission. In addition, the seller reserves the right to list the property with other brokers paying only the broker who procures the sale. In an oral open listing agreement if the seller accepts the fruits of a broker's efforts and accepts a contract which ultimately closes, the seller will owe the broker a commission, subject to a court ruling.

2. Exclusive Agency Listing: In an EXCLUSIVE AGENCY listing, the seller promises to list with only one broker and promises to pay a commission if that broker successfully performs by finding a purchaser for the property. The seller reserves the right to sell the property him or herself without owing the listing broker a commission.

3. Exclusive Right of Sale Listing: In an EXCLUSIVE RIGHT OF SALE listing, the seller promises to pay a commission to the broker regardless of who procures the sale of the property during the listing period. A seller may have the power to revoke a listing contract, but may not have the legal authority. If the seller cancels an exclusive right of sale listing contract and relist with another broker, the seller may owe two separate commissions if the property sells during the first broker's listing period. The Exclusive Right of Sale listing is the most advantageous for the broker because the broker gets paid regardless of who finds the buyer. This type of listing agreement must be in writing to be enforceable and is considered to be a bilateral contract.

D. Multiple Listing Service: The MLS is a computerized, data bank system that allows brokers to cooperate and share listing information. Licensees can access current information on all MLS listings.

Occasionally, sellers may be confused over the type of listing contract they have signed. Due to the nature of the Multiple Listing Service, sellers often think they have signed an exclusive right of sale listing and an open listing because other brokers have the ability to sell and show their property. That is not the case. Sellers sign only one type of listing agreement, even though their property may be advertised in the MLS system. Typically, open listings are prohibited from participating in the MLS system.

E. Net Listing: A NET LISTING is utilized when a seller is only concerned with how much money he or she will receive after closing regardless of the purchase price. The seller expects to net a certain amount of money at closing. Funds in excess of the net amount requested by the seller are paid to the broker as a
commission. The net listing should be avoided (it is illegal in many states) because it frequently results in dissatisfied sellers and brokers and could create a conflict of interest.

F. Buyer-Broker Agreement: It is possible for a buyer to enter into an agreement with a broker providing for the exclusive representation of that buyer. This type of arrangement is similar to a listing contract for buyers. The broker is entitled to a commission when the buyer purchases a property. Although commissions are typically paid by the seller's broker, the buyer guarantees that the Buyer-Broker agent will be paid if no commission funds are forthcoming from the seller.

G. Procuring Cause: A licensee is considered to be the procuring cause of the sale when he or she has set into motion events that were ultimately responsible for the formation of a contract. Recent court decisions, however, have narrowed the definition of "procuring cause" to mean the broker obtaining the signed contract is considered to be the procuring cause. When determining commission disputes between two competing brokers, the broker who is the procuring cause will be the party entitled to the commission.

H. Soliciting Listings: Brokers and sales associates obtain listing contracts through various sources such as working farm areas, advertising, and telephone solicitation of prospective sellers. Ethically, licensees should avoid soliciting listings that are already listed with competing brokers until those listings have expired. If a licensee is calling an expired listing for the purpose of getting that seller to list their property, the licensee should first call the original listing agent to confirm that the listing has in fact expired.

Licensees need to be cautious when soliciting potential listings by telephone. Under Florida law, persons who do not wish to receive telephone solicitations of any kind can register their names with the Florida Department of Agriculture, Division of Consumer Services, and have their name placed on the "no solicitation" list. Violation of this law can result in a fine up to $10,000. Before soliciting prospective sellers by telephone, licensees should confirm that those persons are not listed on the "No Solicitation" list.

Even if a person's name is on the "no solicitation" list, under certain conditions, this person can still be solicited by telephone. Licensees may telephone their prior clients (with whom they have conducted business with during the last 18 months) for solicitation purposes even if those prior clients are on the "no solicitation" list.

VIII. SALES AND PURCHASE AGREEMENT

A. Overview: A real estate sales and purchase agreement is an agreement by a seller (vendor) to sell specific real property to a buyer (vendee). In order to be enforceable, real estate sales contracts must be in writing. Additionally, in order for a real estate sales contract to be valid there must be two or more parties, consideration, accurate identification of the property (preferably a legal description),
and lawful subject matter. As with all contracts, there must be an offer, acceptance, and communication of the acceptance to the offeror. If there is a counteroffer, it has the effect of extinguishing the original offer with a replacement offer. Sufficient consideration for a valid real estate sales contract exists when a buyer promises to buy and the seller promises to sell. Although an earnest money deposit is not required to make a contract valid, it shows good faith by the buyer and protects the seller in the event of default.

B. Equitable Title: In a real estate Sale and Purchase Contract, the seller retains legal title and the buyer has equitable title while the contract is executory. Equitable title is a beneficial interest in real estate that implies legal title at a later date. At closing, the buyer’s equitable title is replaced with legal title.

IX. IMPORTANT TERMS
The following terms should be included in all well-drafted real estate Sale and Purchase Contracts:

1. Date, time, and place of closing
2. Purchase price
3. Legal description (complete)
4. Financing terms
5. Quality of title to be conveyed (unless otherwise specified, a fee simple estate is expected)
6. Type of deed (unless otherwise specified, a general warranty deed is expected)
7. Items of personal property should be included
8. Title evidence to be provided (unless otherwise specified, an owner’s title insurance commitment is expected)
9. Closing costs and other expenses
10. Items to be prorated (taxes, homeowner’s dues, rent)

X. REQUIRED DISCLOSURES
Under certain state and federal laws, various disclosures must be given to prospects.

A. Radon Gas Disclosure: Must be provided prior to signing a real estate sales or leasing contract. This disclosure warns about the possible health hazards of radon gas but does not require a radon gas inspection. Radon gas has become more of a health concern due to energy-efficient housing.
B. Lead Based Paint: Federal law requires a disclosure about lead-based paint if the subject property was built before 1978. The disclosure must be provided to prospective buyers prior to the signing of a real estate sales contract while buyers and renters must be provided with an EPA pamphlet about lead based paint prior to contract.

C. Energy Efficiency Disclosure: Requires that real estate buyers be provided, prior to contract, a brochure entitled "Florida Building Energy Efficiency Rating System."

D. Homeowner Association Disclosure: Requires that buyers of properties which require membership in a homeowner's association be given, prior to contract, a disclosure which states that any owner will be required to join a homeowner's association, that dues must be paid by all members, that failure to pay the dues may result in a lien being filed against the property, that the bylaws can be amended by the developer without membership approval, and that the bylaws are recorded in the county records if further review is desired. Failure to timely provide the homeowner's association disclosure will give the buyer a 3-business day right of rescission that will begin once the disclosure is provided.

E. Flood Insurance Disclosure: Prospective buyers must be informed, prior to closing, whether the subject property is located in a Flood Hazard Area, as defined by the Federal Emergency Management Agency. If located in a Flood Hazard Area there must be a disclosure about the availability of flood insurance.

F. Condominium and Cooperative Disclosures: Prospective buyers of condominiums and cooperatives must be given disclosure statements about the property description, form of title, description of common areas and amenities, existence of judgments or liens, management agreements, escrow provisions for deposits, restrictions on the sale or transfer of units, apportionment of common expenses, construction completion date, estimating operating budget, estimating closing costs, and copies of all key documents.

G. Stigmatized Property: Florida Law does not require real estate licensees to disclose the claim that a property may be stigmatized. The site of a homicide, suicide, or death is not a material fact that must be disclosed in a transaction.

XI. OPTION CONTRACTS

An OPTION contract is a unilateral agreement between an Optionor (potential seller) and an Optionee (potential buyer). An option contract must be in writing. In an option contract, the Optionor grants an Optionee the right to buy the subject property within a specified period of time for a specified price and other terms. During the option period, the Optionor agrees not to sell the property to anyone else. The Optionee is under no obligation to purchase.
In an option contract, the Optionor promises to sell. Since the Optionee is under no obligation to purchase, in order for there to be a binding contractual agreement, the Optionee is required to give definite, valuable consideration which is considered to be more than a promise and is often in the form of money. The parties can agree whether the consideration is refundable in full, in part, or may be applied to the purchase price if there is a sale.

XII. INSTALLMENT SALE CONTRACT
An Installment Sale Contract, also known as a Land Contract or Contract for Deed, is considered a financing device. The buyer takes possession of the property, makes installment payments, and, when the final payment is made, the deed is delivered to the buyer. If there is a breach by the buyer and the Contract for Deed has been recorded, the seller must file a foreclosure action. Licensees should exercise great caution when involved with an Installment Sale Contract and should advise their clients to consult with an attorney before signing such a contract.

XIII. DEFECT DISCLOSURE
Sellers of real estate are required to disclose all known property defects that are not openly visible to potential buyers as soon as possible. In the Florida Supreme Court decision of Johnson v. Davis, the seller was found guilty of concealing defects, and the Court rescinded the sales contract. If a licensee is aware of any material defects of a property, those defects must be disclosed as soon as possible but, in any event, no later than the parties entering a Purchase and Sale Agreement.

A seller can sell property in "as is" condition, but if the seller is aware of any material defects, those defects must be disclosed.

SUMMARY

- The essentials of a contract include contractual capacity of the parties, offer and acceptance, legality of object, and consideration.
- A contract can be either formal (written) or parol (oral), unilateral or bilateral, implied or express, executory or executed.
- Offers can be terminated by acceptance, withdrawal, rejection, counteroffer, or lapse of time.
- Contracts can be terminated by performance, mutual rescission, destruction of the subject property, or breach.
Remedies for breach of contract include liquidated damages, specific performance, unliquidated damages, rescission, or declaratory judgment.

The Statute of Frauds requires certain types of contracts to be in writing in order to be enforceable. The Statute of Limitations establishes time deadlines for filing legal proceedings in the event of a breach.

An option contract must be in writing, must provide definite consideration, and must be unilateral in nature. All terms and conditions must be specified.

There are three types of listings: the open listing (least preferred by brokers), the exclusive listing, and the exclusive right of sale listing (most preferred by brokers).

There are numerous disclosure requirements that must be provided in real estate sales or rental agreements. They include radon gas, energy efficiency, lead-based paint, homeowner’s association, flood insurance, condo, and co-op.

CHAPTER THIRTEEN QUIZ

1. Which of the following contracts are required to be in writing in order to be enforceable?

   I. Real Estate Sale and Purchase Contracts
   II. Open Listing Contracts
   III. Option Contracts
   IV. Leases for more than one year

   A. I and II
   B. I only
   C. I, III, and IV
   D. II, III, and IV

2. Which of the following conditions must occur if an oral real estate sale and purchase contract is enforceable under the partial performance doctrine?

   A. Part of the purchase price must be paid.
   B. The buyer must take possession.
   C. The buyer must make improvements.
   D. The property must be located in Florida.
3. Which of the following is an example of a voidable contract?

A. An oral lease for 6 months
B. A real estate contract signed by a seller who is 17 years old
C. A verbal contract wager on the Super Bowl
D. A contract to pay a kickback

4. All of the following are essentials of a valid contract except

A. capacity of the parties
B. legality of subject matter
C. consideration
D. in writing

5. In order for a real estate sale and purchase contract to be valid, it must contain which of the following:

I. Signed by the parties
II. Witnessed
III. Notarized
IV. Earnest money deposit

A. I only
B. I and II
C. I, II, III
D. I, II, III, and IV

6. An option contract is a type of:

A. Unilateral contract
B. Bilateral contract
C. Voidable contract
D. Unenforceable contract

7. Offers can be terminated in each of the following ways except:

A. Acceptance
B. Rejection
C. Counteroffer
D. Closing
8. Most real estate sale and purchase contracts provide that if the Buyer defaults, the seller may retain the earnest money deposit as

A. damages
B. liquidated damages
C. unliquidated damages
D. special damages

9. Buyer Kathy defaults and refuses to buy a house from Seller Cindy. What are Cindy's possible remedies?

I. Liquidated damages
II. Specific performance
III. Unliquidated damages
IV. Rescission

A. I and II
B. II and III
C. II, III, and IV
D. I, II, III, and IV

10. Buyer Tom has lawfully assigned his rights to a Purchase and Sale Agreement to Jeff. One day before closing, Jeff announces he is not going to perform and defaults the contract. What are the Seller's rights?

A. The seller can sue Tom for specific performance.
B. The seller can sue Jeff for specific performance.
C. The seller can sue either Tom or Jeff for specific performance or compensatory damages.
D. The seller can sue only Jeff for specific performance or compensatory damages.

11. If a listing agreement is in writing, the seller is entitled to a copy of the agreement within:

A. 24 hours
B. 48 hours
C. 7 days
D. 14 days
12. The type of listing that is most beneficial to a real estate licensee is the:
   A. Open listing
   B. Exclusive Right of Sale listing
   C. Exclusive Agency listing
   D. Preferred listing

13. Which type of listing is disfavored in Florida and should be avoided:
   A. Open listing
   B. Exclusive Agency listing
   C. Preferred listing
   D. Net listing

14. Beth has entered into a written contract to purchase Bob’s home. Prior to closing this contract is considered to be:
   A. Parol
   B. Voidable
   C. Executory
   D. Executed

15. Federal law requires lead based paint disclosures for properties that were constructed prior to:
   A. 1977
   B. 1978
   C. 1979
   D. 1980

16. In an option contract, which party is considered to be the Optionor?
   I. Potential buyer
   II. Potential seller
   III. Person receiving the option
   IV. Person giving the option
   A. I
   B. I and III
   C. II
   D. II and IV
17. A parol contract
A. is an oral contract
B. is also known as a formal contract
C. is unenforceable
D. has nothing to do with real estate

18. The Florida Statute of Limitations requires actions based upon breach of a written contract to be filed within what period of time?
A. 2 years
B. 4 years
C. 5 years
D. 7 years
CHAPTER FOURTEEN: RESIDENTIAL MORTGAGES

Talk the Talk

**Acceleration Clause:** A condition in a loan contract that permits the lender to require immediate repayment of the entire loan balance of the loan if the contract is breached or conditions for repayment occur, such as sale or demolition.

**Assumption:** The taking over of an existing mortgage by a buyer.

**Contract for Deed:** An instrument by which a prospective buyer pays for a property in installments; legal title is conveyed in the future after payment of the full price or an otherwise specified amount.

**Deed in Lieu of Foreclosure:** A deed from an owner to a mortgage lender to avoid the necessity of a foreclosure lawsuit.

**Defeasance Clause:** Provides the borrower with a satisfaction of mortgage once the note has been repaid (a mortgage is "defeated" and the real property is no longer pledged as collateral).

**Discount Point:** Pre-paid interest charged by the lender at the time of closing; a discount point is equal to 1% of the loan amount.

**Due-On-Sale Clause:** A mortgage clause that causes the entire loan balance to become due upon the sale of the property.

**Equity:** The market value of a property less any mortgages attached.

**Equity of Redemption:** The right of a mortgagor, before a foreclosure sale, to reclaim forfeited property by paying the entire indebtedness.

**Escrow:** A depository account in a bank, trust company, title company or attorney having trust powers, credit union, or savings and loan association within the state of Florida where funds are placed and held in trust until disposition is authorized.

**Estoppel Certificate:** A written statement by a mortgagee verifying the balance due on the mortgage.

**Exculpatory Clause:** The borrower is not personally responsible for the debt (a non-recourse loan); the lender will not seek a deficiency judgment.

**Hypothecation:** To pledge something without turning it over (mortgage)

**Interest:** The price paid for the use of borrowed money.

**Lien Theory:** Legal concept that regards a mortgage as a just claim (lien) on specific property pledged as security for a mortgage debt.

**Lis Pendens:** Constructive notice of a pending legal action.

**Loan Origination Fee:** A separate fee charged by a mortgage lender added to the closing costs of the buyer.

**Loan Servicing:** Collecting and processing payments on behalf of the mortgagee.

**Loan-to-value Ratio:** The relationship between the loan amount to the value of a property.

**Mortgage:** A document providing written evidence of a creditor’s right to have a debtor’s real property sold upon default and foreclosure.

**Mortgagee:** The lender; the one to whom the property is pledged.

**Mortgagor:** The borrower; the one pledging the collateral as security for a debt.
MORE TALK THE TALK

Note: Legal evidence of a debt that must accompany a mortgage in Florida; a legally executed pledge to pay a stipulated sum of money

Novation: Substitution of a new contract for an existing contract between the same or different parties

PITI: A mortgage payment that includes principal, interest, taxes, and insurance

Prepayment Clause: Mortgage provisions permitting the borrower to make loan payments in advance of their due dates

Prepayment Penalty: Mortgage provision that allows a monetary penalty to be imposed if the loan is paid off ahead of schedule

Right to Reinstate: The ability to recover from default by bringing current all payments due

Satisfaction of Mortgage: Document signed by mortgagee indicating the entire loan is satisfied and the mortgage is discharged

Subject to mortgage: A grantee taking title to real estate "subject to the mortgage" is not assuming personal liability to the mortgagee for the payment of the mortgage note; in the event of a default on payment of the note, the grantee could lose the property and any equity he has in the property in a foreclosure sale

Subordination Agreement: An agreement whereby the holder (mortgagee) of a higher priority mortgage agrees to subordinate or relinquish its priority position to an existing or subsequent mortgage

Title Theory: A concept in lending whereby title temporarily transfers to the mortgagee until the debt is repaid

Wraparound Mortgage: In general, a second mortgage with a face amount equal to the balances due under the first and second mortgage; the wrap around mortgagee collects all the money and makes the monthly payment due on the first mortgage

AREAS OF CRITICAL CONCERN

• Distinguish between title theory and lien theory
• Describe the essential elements of the mortgage instrument and the note
• Describe the various features of a mortgage including down payment, loan-to-value ratio, equity, interest, loan servicing, escrow account, PITI, discount points, and loan origination fee
• Explain assignment of a mortgage and the purpose of an estoppel certificate
• Explain the foreclosure process and distinguish between judicial and non-judicial foreclosure
• Describe the mortgagor’s and mortgagee’s rights in a foreclosure
• Calculate loan-to-value ratio
• Explain the use of discount points and calculate approximate yield on a loan
• Distinguish among the various methods of purchasing mortgaged property
I. MORTGAGE DEBT
   A. Overview: Buying a home is one of the largest investments a family makes today. Most people are unable to pay cash; therefore, the need to borrow money is critical to making such a large purchase.

   For many years when a person borrowed money to buy a home, the lender required the borrower to relinquish title to the lender until the debt was repaid. This practice is followed in states that adhere to the TITLE THEORY of mortgages.

   In other states (including Florida), the borrower keeps title to the property while at the same time providing the lender with a mortgage (lien) to secure the debt. This practice is known as the LIEN THEORY of mortgages.

   Authors Note: It should be noted that regardless of the type of theory (lien or title), if the borrower defaults on the promissory note, foreclosure is required to clear title

   B. Loan Instruments: When a person borrows money to purchase a home, the lender will require him or her to sign a promissory NOTE, which is a personal acknowledgement of the debt with a promise to repay the debt created. The promissory note contains all of the loan details, such as the principal debt, interest rate, amount of periodic payment, and the number of periodic payments. Anyone who witnesses a promissory note is a “co-signor” and jointly held liable for the debt also. Therefore, promissory notes are not witnessed.

   Although the lender has the borrower's personal guarantee (promissory note) that payments will be made and the loan will be repaid, there are still many things that could happen which might lead to default by the borrower. Sickness or a loss of employment could be disastrous. That's why most lenders will require some type of collateral to secure the loan.

   A MORTGAGE is a security instrument that the borrower signs voluntarily to pledge the property as collateral. The borrower is known as the MORTGAGOR while the lender is known as the MORTGAGEE. The lender will record the mortgage in the public records which gives notice that there is a debt outstanding and the property has been given as security. Typically only the mortgage is recorded, not the promissory note.

   When a debt has been repaid in full, the property is no longer required to act as collateral. In order to release a mortgaged property as security, the lender will provide the mortgagor a SATISFACTION OF MORTGAGE that is recorded on public records providing constructive notice of the release.

   C. First Mortgage vs. Junior Mortgage: The general rule is that the time and date of the recording documents determine their priority. Most lenders will not accept a junior position in lien priority. In some cases, a mortgagee might agree to step down in priority in order to allow another mortgage to take a higher position. This is known as SUBORDINATION.
Example: Dave purchased a lot to build his house and got the seller to finance the purchase. Before the construction lender would make the construction loan, the seller had to first allow the bank to take a superior position in lien priority.

II ESSENTIAL ELEMENTS

A. Important Mortgage Provisions: If the borrower fails to meet the terms and conditions of the note, the mortgage provides that the lender may file suit to have the collateral sold at public auction to pay the outstanding debt (foreclosure). The mortgage outlines the obligations of the mortgagor in order to prevent foreclosure. The mortgage typically provides the following:

1. The promise to repay the debt by making payments according to the note
2. The promise to pay all taxes and keep the property insured
3. The promise to maintain the property in good repair and condition
4. The promise not to remove the building or any part that is pledged as security

B. Other Mortgage Provisions: A PREPAYMENT CLAUSE in a mortgage outlines the mortgagor's rights, if any, to repay some or all of the existing debt ahead of time. Most mortgages allow prepayment without any penalties. There are some situations, however, when lenders do not want the debt to be paid early and will insist on a prepayment penalty.

The ACCELERATION CLAUSE allows the mortgagee, upon default, to call the entire debt due and payable. Banks do not like to foreclose; however, in order to protect their position, foreclosure is the only remedy. The foreclosure process cannot begin unless the entire debt is delinquent. Once the acceleration of the entire debt has been demanded, the mortgagor has thirty days to pay the debt in full. If not, they is considered to be in default of the entire debt and foreclosure can begin.

There are some circumstances in which a bank may change its mind regarding foreclosure. The bank may, at its discretion, rescind the foreclosure and reinstate the mortgagor with continued monthly payments. Generally speaking, a bank will not start the foreclosure procedures unless the mortgagor is at least ninety days in default. Government regulations require a lender to foreclose if default has extended past a certain point in time.

The DUE ON SALE CLAUSE prevents owners from selling mortgaged property without the lender's permission. This prevents unauthorized transfers of title.

The EXCULPATORY CLAUSE removes the borrower from personal liability form borrowed money. The lender must only look to the property for security and repayment. This is generally found in commercial-investment lending.
III. IMPORTANT MORTGAGE FEATURES

A. Down Payment: Most mortgage lenders require borrowers to invest some of their own money before qualifying for financing. A borrower’s down payment is known as **EQUITY**. Equity is the difference between the purchase price and the loan amount.

B. Loan to Value Ratio: The **LOAN-TO-VALUE RATIO** is the percentage of the loan (mortgage) as it relates to the value of the property. The definition of value is either the contract price or the appraised value, which ever is less. Most loan-to-value ratios for residential mortgages range from 70% to 100%, depending on the borrower’s ability (income) and willingness (credit) to repay.

\[
\text{Mortgage + Equity} = \text{Value}
\]

C. Interest Rate: The **INTEREST** rate is the price individuals pay to borrow money. Mortgage interest is expressed as an annual percent but is calculated and paid monthly along with the payment of principal. Interest is normally paid in arrears or at the end of the month.

D. Loan Servicing: If a loan is originated with a local lender, more than likely that loan will be sold to an investor. Monthly payments, however, will continue to be paid to the original owner of the loan. The local lender will take a small fee out and send the balance to the investor. This is known as **LOAN SERVICING**.

E. **ESCROW ACCOUNT**: When a mortgage loan is made, most lenders require the borrower to not only make principal and interest payment each month, but they insist that the payment include 1/12 of the required annual real estate taxes and property insurance. This type of payment is called a budget mortgage (PITI). Taxes and insurance are collected in advance and are placed in a special escrow or impound account.

F. Discount Points: **DISCOUNT POINTS**, by definition, are pre-paid interest. A borrower can get a slightly lower interest rate by paying points at closing. A point is equal to a percent charged against the loan amount.

**Example:** $75,000 loan with 2 points would be $75,000 \times .02 = $1,500 paid by the borrower at closing. Lenders don’t mind charging points because for every point that a lender charges, it increases their yield by 1/8 of one percent. For example: 7% interest rate with 2 points charged to the borrower at closing would equal 7.25% true interest (yield) (2 points = 2/8 or .25%).

G. Origination Fee: A **LOAN ORIGINATION FEE** is considered to be a commission paid to lenders for originating a loan. They may also be known as mortgage brokerage fees. Origination fees are paid as a certain percent of the loan amount.
H. Take-Out Commitment: When a person decides to buy a lot and build a new home, it may require a construction loan. The construction loan is for a short period of time, and, when the construction is completed, the homeowner will be required to have a long-term mortgage ready to replace the construction loan. This is known as a take-out loan. Generally, a takeout commitment is secured at the same time the construction loan is made. Most lenders will not make a construction loan without having a takeout commitment in place.

IV. MORTGAGE ASSIGNMENT

When a local lender sells a mortgage to an investor in the secondary market, the process used to do this is known as assignment. The investor who is buying the mortgage will get an ESTOPPEL CERTIFICATE verifying the amount of the debt prior to the assignment. Fannie Mae and Freddie Mac are the most common secondary investors.

V. METHODS OF BUYING MORTGAGED PROPERTY

A. Assumed: When a person buys a property and takes over the payments of an existing debt, this is known as buying property "ASSUMPTION OF" the mortgage. As a practical matter the bank will require the buyer to qualify for the loan and sign a promissory note. Because of the due-on-sale clause in most residential mortgage, this process is necessary to prevent default and possible foreclosure.

B. Subject To: When a person buys a property and takes over the payments of an existing debt and is not required to sign a note or take personal liability, this is known as buying a property "SUBJECT TO" the mortgage. There are not many non-qualifying assumable loans that are available, but at one time FHA and VA loans could be bought and sold in this manner.

Generally speaking, if a seller of property allows a buyer to assume the mortgage, the seller remains legally responsible because of the note that was signed when the debt was created. In order for a seller to be released from liability, NOVATION from the lender must be requested and granted.

C. Wraparound: A WRAPAROUND mortgage is a new mortgage that includes the unpaid principal balance of an existing debt. Under most conditions, a seller makes a wraparound to a buyer who is weak in qualifying for a regular third-party loan. The wraparound is never a first lien position when it is created but rather is junior to the existing mortgage being wrapped. The wraparound usually carries a higher interest rate than the market dictates. The new buyer makes payments to the seller on the wraparound, and, in turn, the seller makes payments on the first mortgage. The due-on-sale clause in mortgages will prevent the wraparound from being used.
D. Contract for Deed: A CONTRACT FOR DEED, also known as a land contract, is the sale of property with seller financing that has a slight twist at closing. At contract, the seller retains legal title with a promise to transfer legal title to the buyer at a later date. The buyer is said to receive equitable title which is an interest in real estate with the expectation of future title.

Some contract for deeds are prohibited from being recorded making it easier for a seller to take the property back in the event of default. Buyers are in a vulnerable position because title remains in the seller's name and is subject to liens incurred by the seller.

VI. DEFAULT
A. Consequences: If a mortgagor defaults on the terms of the promissory note, the mortgagee has the right according to the terms of the mortgage to have the property pledged as security sold for the remaining debt owed. The process to accomplish this task is known as foreclosure.

B. Judicial and Non-Judicial Foreclosure: Foreclosure is a judicial process whereby the lender sues in court requesting a summary judgment to have the property sold by the courts to pay an outstanding debt. The first step in any lawsuit is the filing of a LIS PENDENS which is public notice of the suit commencing.

From commencement of the lawsuit through foreclosure sale, the mortgagor has the right to redeem the property by paying the debt in full prior to the foreclosure sale. This is known as EQUITY OF REDEMPTION. At the public auction, however, the mortgagor's rights in the property will be extinguished and a new owner will take title.

The mortgagee can only sue for the amount of money that is owed on the mortgage. If there is any money left over after the sale of the property that money is given to the mortgagor. If, however, the public auction does not generate enough money to pay the amount owed, the lender has the right to obtain a deficiency judgment for that amount.

In a foreclosure, the lienholder foreclosing is paid and any lien of lesser priority is eliminated if there are no remaining monies for disbursement. Any lien in a superior position will not be eliminated; rather, the new owner will take title subject to the superior lien still attached to the property.

DEED IN LIEU OF FORECLOSURE occurs when a person defaults and instead of going through the foreclosure process and simply gives title to the lender. Before accepting title, the lender should first check for other liens that may remain with the property. Deed in lieu of foreclosure is a non-judicial proceeding.
SUMMARY

- In title theory states, title temporarily transfers to the lender until the debt is repaid. In lien theory states, title remains with the mortgagor, and the property is pledged to the lender as collateral by way of a mortgage.

- The essential elements of a mortgage are:
  1. The promise to repay
  2. The promise to pay taxes and insurance
  3. The promise to maintain the property in good condition
  4. The promise not to remove real property from the premises

- The equity plus the mortgage balance equals the value of the property.

- Local lenders usually sell mortgages to investors through assignment.

- Foreclosure in Florida is a judicial process that requires a public auction to be managed by the courts.

- Upon default by the mortgagor, the mortgagee has the right to sell property that is pledged as collateral. The mortgagor has the time period up to the public auction to redeem the default (equity of redemption).

- The loan-to-value ratio is a percent that is calculated by dividing the loan amount by the value of the property.

- A discount point is pre-paid interest. For every point that a lender charges a borrower, it increases the lender’s yield 1/8 of one percent.

- A person buying property "subject to" the mortgage is not responsible for the debt while persons buying property "assumption of" the mortgage becomes legally liable for the debt by signing a note.
CHAPTER FOURTEEN QUIZ

1. A mortgage clause that permits the lender to require immediate repayment of the entire balance of the loan in the event of default is known as the
   A. acceleration clause
   B. defeasance clause
   C. redemption clause
   D. default clause

2. After a mortgage is paid in full, a mortgagor should request that the mortgagee sign and record a
   A. promissory note
   B. mortgage deed
   C. satisfaction
   D. estoppel certificate

3. A superior mortgagee voluntarily allows a subsequent mortgagee to assume a priority position under the principal of:
   A. Assumption
   B. Novation
   C. Foreclosure
   D. Subordination

4. The due-on-sale clause:
   A. Accelerates the mortgage debt balance upon conveyance to a third party
   B. Is contained on most mortgages
   C. Prevents mortgage assumption
   D. All of the above

5. Karen owns a house worth $250,000 with a mortgage debt of $200,000. What is her loan-to-value ratio?
   A. 20%
   B. 40%
   C. 75%
   D. 80%
Facts for Questions 6 and 7:

Tara finances the purchase of a condominium with a $300,000 mortgage at 8% interest and a charge of 4 points.

6. How much money will the points cost Tara?
   A. $4,000
   B. $6,000
   C. $9,000
   D. $12,000

7. What will be the lender's effective yield?
   A. 3%
   B. 8%
   C. 8½%
   D. 8¾%

8. Miranda works for a closing attorney and needs to verify the balance of an existing mortgage on the subject property so that the lender can be fully paid at closing. Miranda should contact the lender and request which of the following?
   A. Due on sale clause
   B. Estoppel certificate
   C. Mortgage deed
   D. Exculpatory clause

9. A mortgagor has the right to stop a foreclosure sale up until the very last minute before the auction if the entire balance is paid plus costs and fees. The mortgagor's right to keep his or her property is under the principal of
   A. equity of redemption
   B. deficiency judgment
   C. lis pendens
   D. lien theory

10. A non-judicial proceeding that voluntarily transfers title to the mortgagee without the need for a foreclosure is known as:
    A. Equity of redemption
    B. Due on sale clause
    C. Surrender of title
    D. Deed in lieu of foreclosure
11. Which of the following is not an essential element of a mortgage?

A. The promise to pay taxes and insurance
B. The promise to live on the premises as the mortgagor’s primary residence
C. The promise to maintain the property in good condition
D. The promise not to remove real property from the premises

12. Which of the following transactions will require a buyer to be liable for an existing mortgage?

A. Assumption
B. Subject to
C. Novation
D. All of the above

13. The market value of a property, less the value of existing mortgages, is known as:

A. Price
B. Cost
C. Value
D. Equity

14. A form of constructive notice concerning the existence of a pending litigation, such as a foreclosure, is known as

A. lis pendens
B. recording
C. estoppel certificate
D. satisfaction

15. To which theory of mortgages does Florida subscribe?

A. Lien theory
B. Title theory
C. Mortgage theory
D. Debt theory
1

CHAPTER FIFTEEN:

TYPES AND SOURCES OF MORTGAGE MONEY

3

Talk the Talk

4 Adjustable Rate Mortgage (ARM): A mortgage loan with a calculated interest rate that may increase or decrease during the term of the loan
5 Amortizing: A fully repaid loan according to a periodic and consistent schedule that includes both principal and interest
6 Balloon Payment: A final installment payment on a note that is much larger than the previous monthly payments on the note
7 Biweekly Mortgage: Mortgage payments that are made every other week (26 payments a year)
8 Blanket Mortgage: A mortgage that is secured by two or more items of real property
9 Conforming Loan: A loan that meets FNMA and FHLMC borrowing requirements
10 Disintermediation: When depositors withdraw money from savings for direct investment with a borrower
11 Home Equity Loan: A mortgage secured by a personal residence up to the value of the mortgagor's equity
12 Index: Financial indicator that will be the basis for an adjustable rate mortgage interest fluctuation
13 Intermediation: The process of depositing funds in financial institutions that serve as "intermediaries" for flow of funds for investment and borrowing
14 Land Contract: An agreement in which the seller of real estate obligates his or herself to deliver a merchantable title to the buyer upon buyer's performance of certain agreed upon conditions such as payment of a certain number of installment payments; also known as a Contract for Deed
15 Level Payment Plan: A method for amortizing a mortgage whereby the borrower pays the same amount each month
16 Lifetime Cap: Sets the upper and lower interest limits for an adjustable rate mortgage
17 Margin: The additional rate of interest charged over and above the index rate in an adjustable rate mortgage
18 MIP: Mortgage Insurance Premium; payment for mortgage insurance which protects the lender in the event of default
19 Negative Amortization: When the monthly payment is insufficient to pay the accumulated interest for that month resulting in an increase in the amount of the principal
20 Package Mortgage: A debt secured by pledging both real property and personal property (building plus furniture)
21 Partially Amortized Mortgage: Mortgage loan repayment with equal monthly payments but with a large balloon payment due at the end of the term

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MORE TALK THE TALK

Private Mortgage Insurance (PMI): Non-governmental mortgage insurance needed to insure the portion of the mortgage balance that exceeds an 80% loan to value ratio

Purchase money mortgage: A mortgage given by the buyer as part or all of the purchase price consideration for real property

Reverse annuity mortgage: A loan arrangement in which a lender makes payments to the borrower

Teaser rate: Below-market introductory rate for an adjustable rate mortgage

Term mortgage: A mortgage loan that provides for periodic payments of interest only with a balloon payment at the end of the loan term

UFMIP: Up Front Mortgage Insurance Premium; lump sum mortgage insurance premium paid at closing for FHA loans

AREAS OF CRITICAL CONCERN

- Describe the mechanics of an adjustable rate mortgage and the components of an ARM
- Describe the features of an amortized mortgage and amortize a level-payment plan mortgage when given the principal amount, the interest rate, and the monthly payment amount
- Distinguish among the various types of mortgages
- Describe the characteristics of FHA mortgages and common FHA loan programs
- Identify the guarantee feature of VA mortgage loans and the characteristics of VA loan programs
- Explain the process of qualifying for a loan and how to calculate qualifying ratios
- Distinguish among the primary sources of home financing
- Describe the role of the secondary mortgage market and know the features of the major agencies active in the secondary market
- Describe the major provisions of the federal laws regarding fair credit and lending procedures
- Recognize and avoid mortgage fraud

I. TYPES OF MORTGAGES
   A. Amortized Mortgage: AMORTIZING is a systematic payment method that retires the principal loan amount at the end of a specified period. The mortgage payment remains constant; however, the principal and interest change each payment (LEVEL PAYMENT PLAN). The interest portion of the payment is based on the principal balance of the loan. As the principal balance gets smaller, the corresponding interest payment gets smaller. Over the life of the loan, the interest part of the payment gets smaller while the principal part of the payment gets larger.

   There are several mortgage terms that are available. The most common is the thirty-year term. The monthly payments are lower with more interest paid over the life of the loan. The fifteen-year mortgage has a larger monthly payment but builds equity faster and pays less interest over the life of the loan.
B. Adjustable Rate: An ADJUSTABLE RATE MORTGAGE (ARM) is one in which the monthly payments may change on a periodic basis based on a predetermined INDEX. The adjustable rate mortgage is made up of the index and the margin. The index is set by a monetary policy such as the one-year T-Bill or the Cost of Funds Index published by the Federal Reserve Board. Once the index is set, it is beyond the control of either the mortgagee or the mortgagor. MARGIN is simply profit. Although the index may adjust up or down depending on the movement of a market, the margin is fixed and remains constant throughout the life of the loan. The index plus the margin equals the loan's calculated interest rate.

The adjustable rate mortgage is designed to ease market risk in that as interest rates go up, the adjustable rate goes up. As interest rates go down, the adjustable rate goes down. The adjustments have caps. The most common is the 2/6 cap. That is to say, the adjustments cannot go up more than 2% each year with a 6% adjustment increase over the life of the loan (LIFETIME CAP). If the payment caps are less than the index, the result could be a NEGATIVE AMORTIZATION (instead of reducing the principal balance of a loan, the loan balance actually gets larger).

A TEASER RATE is a below market interest rate offered by the lender to sell the loan. There is normally a pre-payment penalty during the first year or two because of the below-market rate. Most homebuyers keep a home for an average of seven years, and the lender is able to make up the deficit over that time.

II. CUSTOM MORTGAGES

A. Partial Amortization: A PARTIALLY AMORTIZED MORTGAGE is one in which principal and interest is made but not enough is paid by the end of the loan term to pay the loan amount in full. A partially amortized mortgage usually requires a BALLOON PAYMENT for the unpaid balance.

B. Biweekly: A BIWEEKLY mortgage is one in which payments are made twenty-six times each year rather than twelve times. This type of mortgage accelerates the principal debt reduction which satisfies the mortgage debt sooner.

C. Package Mortgage: A PACKAGE MORTGAGE accepts both real property and personal property (chattel) as collateral. This is not a common practice in residential mortgages; however, commercial loans often accept chattels as part of the mortgage. Example: Bob buys a fully furnished restaurant, and, as collateral, the lender accepts not only the building but also the kitchen equipment, tables, and chairs.

D. Blanket Mortgage: A blanket mortgage is when two or more items of real property are pledged as collateral in one mortgage loan. Typically, a BLANKET MORTGAGE will contain a release clause providing that each item of real property will be released from the mortgage upon its sale, provided the lender receives all of the sale proceeds minus commissions and closing cost.
Brokers are not allowed to accept a listing on real property covered by a blanket mortgage unless there is a release clause in place. Brokers violating this rule are committing a fraud.

E. **Home Equity**: A **HOME EQUITY LOAN** is typically a junior loan that is based on the equity in a home. A person is able to borrow on the equity portion of the home value.

F. **Land Contract**: A **LAND CONTRACT** is also known as a contract for deed. It is considered a type of mortgage because the seller finances the transaction. Because of the outstanding debt the buyer owes the seller, the seller withholds title at closing and agrees to deliver title when the loan has been repaid in full or reaches a pre-agreed upon amount.

G. **Purchase Money Mortgage**: A **PURCHASE MONEY MORTGAGE** (PMM) is often associated with seller financing. It differs from a traditional mortgage in that the mortgage is exchanged for a debt without money actually transferring. Ordinarily the bank will send a check in the amount borrowed to the closing whereas, with a PMM, the seller allows the buyer to pay an agreed amount over time without money actually passing hands.

H. **Reverse Annuity**: The **REVERSE ANNUITY MORTGAGE** (RAM) was designed to help senior citizens stabilize their income. Homeowners 62 years of age or older can "sell their equity" to the bank for payments over the remaining portion of their lives. When the homeowner dies, there is a lien placed on his or her property and will be paid back when the property sells.

I. **Term Mortgage**: Banks often make short-term loans where the borrower make scheduled payments of interest only. This type of loan is known a **TERM MORTGAGE**.

III. **GOVERNMENT INSURED FHA PROGRAM**

A. **Overview**: The Federal Housing Administration (FHA) was created in 1934 to assist in the recovery of the nation’s second worst economic depression. The purpose of the FHA was and is to stimulate construction of new homes and homeownership by encouraging lenders to release greater amounts of funds for financing residential homes. In addition, the FHA was designed to upgrade and improve housing standards and to establish sound lending practices.

The FHA does not lend money but rather insures loans in the event the borrower defaults. It is the primary mortgage market that originates FHA insured loans. The interest rate is set by the market which means it is negotiated between the lender and the borrower. The buyer, the seller or any party can pay discount points that may be charged by the lender. In fact, all closing costs are negotiated between the buyer and the seller.
CHAPTER FIFTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

The Department of Housing and Urban Development (HUD), after taking charge of the FHA insurance in the 1960’s, designed a very complex and complicated calculation for the down payment. In addition, FHA has established loan limits in each area of the country. Areas that have a higher "cost-of-living" will have a higher loan limit. Real estate licensees and borrowers should contact the local HUD office for specifics.

The borrower pays the FHA mortgage insurance premium up-front at closing (UFMIP) which is percentage of the loan amount. In addition, the borrower is required to pay an additional premium which is a percent of the loan balance calculated annually and paid monthly (MIP).

The FHA insurance has established qualifying ratios that allow the borrower easier accesses to financing. The housing expense ratio (PITI divided by monthly gross income) cannot exceed 31% while the borrower's total obligations (PITI + other payments divided by monthly gross income) cannot exceed 43%.

The FHA insurance is committed to providing quality housing. In that regard, the lending standards of FHA are generally higher than that of conventional lending standards. The FHA will not insure loans on obsolete homes or on properties poorly located with respect to vital community services and adequate transportation. The appraisal that is done for FHA insured loans have strict guidelines that insure these standards.

Prior to December 1, 1986, all FHA loans could be assumed without qualification. Today all FHA loans require the same qualifications of the buyer who is assuming the mortgage as it would of a new borrower. In addition, FHA assumptions do not allow prepayment penalties.

B. FHA Loan Programs: The FHA 203b program was the first and is the most common program available. It is for residential homeownership (up to 4 units) with a 30-year fixed rate mortgage. The FHA 251 program is similar but is based on an adjustable rate mortgage. The FHA 234 program is insurance for condominiums loans which is quite common in Florida.

IV. VA LOAN GUARANTEE PROGRAM

A. Overview: The Veterans Administration was created in 1944 to assist returning war veterans readjusting to normal civilian life. Home buying was an essential part of that assistance. The Department of Veterans Affairs has two areas of authority:

1. The power to partially guarantee mortgage loans made to veterans by qualified VA lenders

2. The power to make direct loans to veterans in areas where VA mortgage loans are not available
B. Characteristics of VA Mortgage Loans: Only veterans, the surviving spouse of veterans, or active military personnel qualify to originate a VA loan although in some cases non-veterans can assume these loans. A certificate of eligibility will provide the amount of entitlement available to the borrower.

The VA loan eligibility requirements are as follows:

1. Ninety days of active duty during any or all of WWII, Korea, Vietnam, or the Persian Gulf
2. 181 days of active duty during non-war/conflict periods (peacetime). 24 months after 9/8/80 during peacetime
3. Six years of service in the National Guard or Reserves

Local lenders originate VA loans. Most lenders are authorized to directly underwrite VA loans ("supervised lenders") simplifying the process. Real estate licensees should rely on the borrower and the lender to determine the eligibility that is available.

The VA will guarantee loans made for the purchase of a home or the construction of a home by a veteran or an active military serviceman. The property may be from one to four units and must be owner-occupied.

One of the unique characteristics of a VA guaranteed loan is that the veteran is not required to have a down payment (100% financing). Interest rates, discount points (pre-paid interest), loan origination fees, and most closing costs can be paid by either the buyer or the seller. All lender agent commissions must be paid by the seller. The qualifying ratio for a VA loan requires the borrower's total obligations ratio not to exceed 41%. There is no housing expense ratio for VA guaranteed loans.

Loan closing or settlement fees, document preparation fees, interest lock-in fees, loan application fees, and fees charged by loan brokers cannot be paid by the borrower.

The VA does not have loan limits; however, there are guarantee limits. Currently, the maximum guarantee is $104,250. The guarantee depends on the loan amount. The maximum V.A. loans with 100% financing is $417,000. Any amount above this will require 25% as a down payment.

<table>
<thead>
<tr>
<th>Mortgage Amount</th>
<th>Guarantee (Entitlement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. $45,000 or less</td>
<td>50% of the loan</td>
</tr>
<tr>
<td>2. $45,001 to $56,250</td>
<td>$22,500</td>
</tr>
<tr>
<td>3. $56,251 to $144,000</td>
<td>$36,000 or 40%</td>
</tr>
<tr>
<td>4. More than $144,000</td>
<td>$104,250 or 25%</td>
</tr>
</tbody>
</table>

15-6
The veteran can have the guarantee reinstated when the loan is paid off.

The appraisal for a VA loan must be done by an appraiser approved by the DVA. The appraisal is called a Certificate of Reasonable Value (CRV).

Since VA loans are not insured but rather guaranteed, the veteran is required to pay a funding fee rather than an insurance premium. First time VA borrowers will pay 2.15% of the loan amount. With subsequent VA loans, 3.3% of the loan amount will be required. These percentages will decrease if the loan-to-value ratio is less than 95%.

The DVA requires that veterans can pre-pay all or a portion of the principal balance ahead of time without penalty.

Currently, the assumption of VA guaranteed loans is allowed provided the new borrower is able to show creditworthiness. The party assuming a VA loan can either be a veteran or non-veteran. If the buyer is a non-veteran, the eligibility of the veteran is not automatically reissued. Unless the veteran has been released of liability by the DVA, the veteran remains liable for the loan.

V. CONVENTIONAL MORTGAGES

Conventional mortgages are different from FHA insured loans and VA guaranteed loans in that conventional mortgages are insured by private insurance companies. The Mortgage Guarantee Insurance Company is the largest private mortgage insurance company.

Conventional mortgages have larger equity requirements than government underwritten loans. In most cases, conventional lenders require 5%-10% down (equity). If a person has lower than average credit scores, lenders may require as much as 30% down. It should be understood that lending money is like any other business which is based on risk and reward; that is to say, the greater the risk to the lender, the greater the reward expected. Anytime the loan-to-value ratio is greater than 80%, conventional lenders will require PRIVATE MORTGAGE INSURANCE (PMI). Once the home has 20% or more equity realized, however, PMI can be canceled with the proper request and proof (appraisal).

Conventional lenders use qualifying guidelines to assist in determining if a borrower qualifies. The Housing Expense Ratio (PITI divided by monthly gross income) should not be more than 28%. The Total Obligation Ratio (PITI + other debt divided by monthly gross income) should not be more than 36%. These are only guidelines and lenders have latitude, depending on credit scores. The credit score becomes critical because this single item reflects the borrower’s willingness in the past to repay a debt. Past payment patterns usually don’t change; therefore, poor payment patterns will probably continue.

The relationship between the supply and demand of lendable funds ultimately creates the price that the consumer pays to borrow. The interest rate on conventional mortgages is set by the market and is negotiated between the lender
and the borrower. Most fixed rate mortgages are non-assumable while adjustable rate mortgages can be assumed with pre-determined qualification criteria. Generally speaking, there are no prepayment penalties involved. Some adjustable rate loans, however, have a lower than-market-starting rate (teaser rate) and will have a prepayment penalty required during the early stages of the loan.

VI. QUALIFYING FOR THE LOAN

Anytime a person is required to obtain a loan to purchase a property, the lender will want to qualify both the borrower and the property. Most lenders use an application form that allows general information to be obtained about the borrower's ability to repay a loan as well as his or her willingness in the past to repay. The Uniform Residential Loan Application (FNMA form 1003) is the most common; however, modern technology allows "on-line" processing and approval with ease and speed.

Lenders are able to qualify the properties by having an appraisal done to estimate its current market value. The appraiser works for the lender, and it is the appraiser's job to protect the lender from over investing in a property.

Loan underwriting is simply evaluating the risk before making a loan. Information required to make this type of decision include current employment, job security, assets acquired, cash on hand, and credit worthiness.

VII. PRIMARY SOURCES OF HOME FINANCING

The primary mortgage market is the place where the consumer makes application for a mortgage loan. Applications are taken, underwriting is performed, and loans are approved. Most lenders participate in the process known as INTERMEDIATION by acting as middlemen between depositors and borrowers by allowing consumers to deposit funds and in turn invest that money for a profit. DISINTERMEDIATION removes the intermediary and allows individuals to lend money to borrowers directly.

There are several sources of financing available:

A. Savings and Loan Associations: Savings and Loan Associations were created in 1816 as a place where individuals deposited their money in savings and were allowed to borrow to buy a home. Local citizens would join these associations, pool their funds with other members, and then make the funds available to members who needed financial assistance when buying a home.

Since that time, Savings and Loans have gone through a lot of changes, including a financial crisis in the late 1980’s. Most Savings Associations are federally chartered by the Federal Home Loan Bank System (FHLBS). The FHLBS was created to regulate Savings Association very much like the Federal Reserve System regulates commercial banks. Depositors in Savings Associations are insured by the Depositors Insurance Fund (DIF) up to $250,000 per account per bank. DIF is a function of the Federal Deposit Insurance Corporation (FDIC).
B. Commercial Banks: Commercial banks are the largest lenders of short-term commercial or construction loans. Their lending policies are much more conservative than other lending sources. Generally speaking, commercial banks charge a higher interest rate, require more money down, and give a shorter length of time to repay the loan.

Most commercial banks are federally chartered and regulated by the Federal Reserve System (FRS). Depositors in commercial banks are insured up to $250,000 per account per bank by the Depositors Insurance Fund (DIF). DIF is a function of the Federal Deposit Insurance Corporation (FDIC).

C. Credit Unions: Credit unions, until recently, have been known as a place for short-term consumer loans such as cars, boats, etc. Today, credit unions are working with many secondary investors to originate long-term mortgage loans. Although some credit unions are state chartered most are now federally chartered and work with federal regulators in home mortgage lending.

D. Mortgage Bankers: Mortgage bankers (mortgage companies) are on the cutting edge of technology in home mortgages. Mortgage bankers do not provide savings but rather focus on lending only. Mortgage bankers have the ability to approve and make loans from their own funds as well as service loans once they are originated. They are able to earn income from both originating and servicing mortgages.

E. Mortgage Brokers: A mortgage broker brings the lender and the borrower together for a fee (a middleman). A mortgage broker does not make or approve loans nor can they service loans once they are originated. Mortgage brokers sometimes have an advantage over commercial banks because they can go directly to the wholesale market where interest rates and other fees are oftentimes less.

F. Life Insurance Companies: Life insurance companies are the largest lenders of large-scale commercial properties (shopping centers, hotels, etc.). Life insurance companies provide an invaluable source of funds that would otherwise not be available. There are two major reasons that life insurance companies are so successful in this regard:

1. Liquidity: Tremendous amount of available cash to lend
2. Less regulated: Regulated only in and by the states in which they do business (no federal regulations to impair the lending efforts)

G. Private Funding: There are other sources of lending available that are not considered part of the traditional lending market:

1. Seller financing
2. Private investors
3. Nonconforming loans (B & C lenders for difficult borrowers)

H. Government Programs: Federal, state, and local governments provide special assistance through bond financing. First-time homebuyers are given lower than market interest rates to purchase a home.

VIII. FEDERAL RESERVE BANK

The Federal Reserve Bank (Feds) was created in 1913 to act as the central banking system for the U.S. Government. Its function is to implement monetary policies to insure stability in the banking system. It is owned by private stockholders as well as participating banks throughout America and functions separately from the government. The Federal Reserve System (the “Fed”) has the ability to influence the cost of borrowing money in the banking system and control the amount of money in circulation with several economic tools.

1. Changing the Discount Rate: The Discount Rate is the interest rate that the Federal Reserve System charges its member banks. It primarily affects short-term interest rates like credit cards and automobile loans. It does not have an immediate or direct affect on long-term mortgage interest rates, but it does curtail the amount of money in circulation which helps control inflation. When the Fed raises the Discount Rate, short term interest rates also go up.

2. Changing the Reserve Requirement: The Reserve Requirement indicates the percentage of deposits that a bank must keep on hand and in the vault at all times. If the Fed raises the reserve requirement, then banks have less money available for loans which causes interest rates to rise.

3. Open Market Operations: The most effective method of influencing long-term mortgage interest rates (increase or decrease) is through open market operations. The U.S. Government is the biggest borrower of money from the Federal Reserve Bank. The loan is secured by a bond (note). When the government borrows money from the Feds, it reduces the amount of money remaining in the system for everyone else to borrow. This causes interest rates to increase (supply and demand). When the government repays the loan (buy back the note), it injects money back into the central banking system causing interest rates to decrease.

IX. SECONDARY MORTGAGE MARKET

Local lenders do not have unlimited funds for lending; therefore, a far greater source of money must be made available to insure the proper supply to meet the ever growing demand by consumers. The secondary mortgage market is where mortgages are bought from the primary market. The secondary market provides liquidity to local lenders which allows the uninterrupted flow of mortgage money to qualified borrowers. The secondary market will purchase mortgages that conform to requirements set forth in their underwriting guidelines (CONFORMING LOANS).
The three agencies that are the major contributors in the secondary mortgage market are the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC).

1. The Federal National Mortgage Association (FNMA), known as "Fannie Mae", was created in 1938 to purchase the newly created FHA mortgages from local Savings and Loans. The FHA insurance program was created to assist in the recovery of an economic depression, and FNMA was created to make sure FHA loans could continue being made. In 1948, FNMA was authorized to purchase VA guaranteed loans and, in 1970, authorized to purchase conventional mortgages. Today "Fannie Mae" purchases all three types of loans. Although FNMA was a government agency when it was created, it has since become a corporation traded on the New York Stock Exchange.

2. The Government National Mortgage Association (GNMA), known as "Ginnie Mae", was created in 1968 to act as a subsidy function assisting qualified homebuyers with low interest loans. GNMA works with FNMA in what is called "the tandem plan" paying the difference between the subsidized rate and current market rate. GNMA is a government agency guaranteeing funding through mortgage-backed securities. GNMA does not lend money but rather acts as a guarantor with the support of the full faith and credit of the United States Government.

3. The Federal Home Loan Mortgage Corporation (FHLMC), known as "Freddie Mac", was created in 1970 to purchase conventional mortgages from local S & Ls. Today "Freddie Mac" buys not only conventional loans but FHA and VA loans as well. FHLMC is a quasi-government agency that competes with FNMA and is a corporation traded on the New York Stock Exchange.

X. LAWS AFFECTING FAIR CREDIT AND LENDING PROCEDURES

A. Equal Credit Opportunity Act (ECOA): The Equal Credit Opportunity Act was created in 1974 to prohibit discrimination by lenders based on race, religion, age, sex, marital status, national origin, or receipt of money from public assistance programs.

B. Consumer Credit Protection Act (TILA): The Truth in Lending Act was created to provide disclosure to borrowers of the cost of borrowing. The cost of borrowing includes the interest rate charged plus other costs involved in borrowing. These cost are expressed as a percentage and are known as the Annual Percentage Rate (APR). This disclosure must be made by the lender within three business days of taking the application. The Consumer Credit Protection Act applies to all consumer loans made by institutional lenders.

The Truth in Lending Act is implemented by the Federal Reserve Regulation "Z."
CHAPTER FIFTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

C. Real Estate Settlement Procedures Act (RESPA): The Real Estate Settlement Procedures Act applies to all federally related residential loans. RESPA was created primarily to provide to borrowers the disclosure of closing costs that might be incurred while buying a home. Lenders are required to provide applicants:

1. An information booklet on borrowing within three business days of application

2. A good-faith estimate of closing costs within three business days of application

3. RESPA prohibits lenders from receiving referrals or kickbacks from closing related businesses unless an actual service was provided.

D. TILA/RESPA Integrated Disclosure (Closing Disclosure): Consumer Financial Protection Bureau has been given the authority to require lenders to provide borrowers the TILA/RESPA Closing Disclosure at least 3 business days prior to closing.

E. Mortgage Fraud: Fraud in the mortgage industry is not rampant but does exist to some degree. Federal regulations attempt to protect the public from banking fraud, but is not full-proof.

Buyers applying for a first mortgage while at the same time seeking an undisclosed second mortgage are doing so fraudulently. Agents are prohibited from taking part in this type of activity.

A Straw Borrower is a person whose credit was used to purchase a home. Identity theft is one occurrence. Also buying and flipping with an unauthorized assumption.

SUMMARY

- The adjustable rate mortgage is designed to change with the market. The interest rate can go up, down, or remain the same, depending on the current market conditions. The adjustable rate mortgage is comprised of an index and margin (index + margin = ARM).

- Amortization is the systematic method of paying a loan down by making payments that consists of both interest and principal. In the early stages of the amortization process, the interest part of the payment is considerably larger than the principal portion.
CHAPTER FIFTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

- There are three types of mortgages available: FHA, VA and Conventional.

- FHA is a government insurance program that protects lenders in the event of borrower default.

- VA loans are guaranteed by the federal government which protects lenders in the event of default. Generally speaking, the VA does not fund loans. However, the VA will fund a loan if the property is located in an area where VA loans are not available.

- In order for a person to qualify for a loan, he or she must show they have the ability and the willingness to repay the loan. In addition, lenders consider two ratios in evaluating the ability: the housing expense ratio (PITI div. by monthly gross income) and the total obligation ratio (TOR div. by monthly gross income).

- There are several sources that a borrower can go to for home loans (primary market): Savings Associations, Mortgage Bankers, Mortgage Brokers, Credit Unions, and Commercial Banks.

- The secondary mortgage market buys mortgages from the primary market to provide liquidity. There are three major agencies that make up the secondary market: (1) Federal National Mortgage Association (Fannie Mae) which buys VA, FHA, and conventional mortgages; (2) Government National Mortgage Association (Ginnie Mae) which acts as a subsidy function; and (3) The Federal Home Loan Mortgage Corporation (Freddie Mac) which buys VA, FHA, and conventional mortgages.

- There are four major laws that govern lending practices:
  1. Equal Credit Opportunity Act prohibits discrimination in loan underwriting based on sex, marital status, race, religion, age, or national origin.
  2. Consumer Credit Protection Act (Truth in Lending) requires lenders to disclose the cost of borrowing (APR).
  3. Real Estate Settlement Procedures Act requires lenders to provide certain disclosures at the time of application and before closing.
  4. TILA/RESPA now require lenders to provide borrowers the Closing Disclosure Forms at least 3 business days prior to closing.
CHAPTER FIFTEEN QUIZ

1. In a fully amortized mortgage, although the monthly payment stays the same, the portion of each monthly payment that is applied to reduce the principal debt

   A. stays the same
   B. increases each month
   C. decreases each month
   D. not enough information

2. The component of an adjustable rate mortgage that remains constant throughout the term of the loan is the:

   A. Index
   B. Margin
   C. Calculated interest rate
   D. None of the above

3. A below-market interest rate offered on adjustable rate mortgages utilized to attract new borrowers is known as the:

   A. Teaser rate
   B. Preferred rate
   C. Calculated interest rate
   D. Index rate

4. Which of the following applies to a biweekly mortgage?

   I. The loan is typically paid off faster
   II. Twenty-six payments are made annually
   III. The interest rate is typically higher

   A. I only
   B. II only
   C. I and III
   D. I and II
5. Christina has entered into a mortgage for a condominium that she intends to rent on a weekly basis. The lender has accepted a mortgage which covers the condominium plus all its furnishings. Which type of mortgage has Christina entered into?

A. Blanket
B. Bilateral
C. Package
D. Chattel

6. Which type of mortgage requires an upfront mortgage insurance payment plus a monthly mortgage insurance payment?

A. VA
B. FHA
C. Conventional
D. Rural Housing

7. The qualifying ratios for an FHA loan are:

A. 28% housing expense ratio / 36% total obligations ratio
B. 28% housing expense ratio / 43% total obligations ratio
C. 36% housing expense ratio / 38% total obligations ratio
D. 31% housing expense ratio / 43% total obligations ratio

8. Mortgage bankers are an example of:

A. Disintermediation
B. Intermediation
C. Package mortgage
D. Blanket mortgage

9. The amount of a VA guarantee on a mortgage loan depends on:

A. the credit rating of the borrower
B. the geographical location of the property
C. the amount of the loan
D. the amount of the down payment
10. A person who borrows money directly from the owner of the funds is an example of:

A. Capitalization
B. Intermediation
C. Disintermediation
D. Leverage

11. All of the following are sources of lendable funds for mortgages except:

A. Credit unions
B. Savings associations
C. Life insurance companies
D. Federal Reserve System

12. The association known as "Fannie Mae" is the:

A. Federal National Mortgage Association
B. Government National Mortgage Association
C. Federal Home Loan Mortgage Corporation
D. Federal Reserve System

13. Which of the following secondary mortgage market agencies is a government agency?

A. Federal National Mortgage Association
B. Government National Mortgage Association
C. Federal Home Loan Mortgage Corporation
D. Federal Mortgage Group

14. The Federal Truth in Lending Act is governed by Regulation:

A. S
B. T
C. X
D. Z
CHAPTER SIXTEEN:
REAL ESTATE CLOSINGS

Talk the Talk

Arrears: When payment is due at the end of the term
Credit: On a closing statement, credit refers to money that is paid or payable
Debit: On a closing statement, debit refers to money that is owed or a payment
Pre-closing Inspection: On-site review and inspection of a property shortly before closing
Proration: To apportion an expense between the buyer and seller so that each party pays his or her pro rata share

AREAS OF CRITICAL CONCERN

• Compute the sales commission
• Calculate the percent of profit or loss given the original cost of the investment, the sale price, and the dollar amount of profit or loss
• List the preliminary steps to a closing
• Prorate the buyer’s and seller’s expenses using either the 30-day-month method or the 365-day method
• Calculate the dollar amount of transfer taxes on deeds, mortgages, and notes
• Allocate taxes and fees to the proper parties and compute individual costs
• Explain the rules of thumb for closing statement entries

I. BASIC REAL ESTATE COMPUTATIONS

A. Fractions, Decimals, and Percentages: When a number (or a whole unit) is divided into parts, each part is a fraction and a percentage of the entire number. If a parcel of real estate is divided into 4 parts, each part is 1/4 (or 25%) of the whole parcel.

Sometimes a real estate licensee is asked to convert a fraction into a decimal. To do so, perform the following steps on your calculator:

1. Enter the number on the top of the fraction (the numerator)
2. Press the divide key
3. Enter the number on the bottom of the fraction (denominator)
4. Press the "=" key
CHAPTER SIXTEEN: REAL ESTATE CLOSINGS

Example: Express 1/5 as a decimal.

Answer: \( \frac{1}{5} = 0.20 \)

Sometimes a real estate licensee is asked to convert a percentage to a decimal. To do so, place a decimal point two places to the left and delete the percentage symbol.

Example: Express 76% as a decimal

Answer: 0.76

B. Sales Commission: To calculate a sales commission due a real estate licensee, multiply the sales price by the commission rate (expressed as a decimal).

Example: What is the dollar amount of a sales commission if the purchase price is $275,000 and the commission rate is 6%?

Answer: $275,000 \times 0.06 = $16,500

Sometimes, the commission rate can be graduated, depending on the sales price.

Example: Broker Bob has entered into a listing agreement with Owner Otis. The commission rate is as follows: 5% for the first $200,000, 6% for the next $100,000, and 7% for the amount over $300,000. If the house sells for $350,000, what is the sales commission?

Answer: $200,000 \times 0.05 = $10,000

plus $100,000 \times 0.06 = $6,000

plus $50,000 \times 0.07 = $3,500

Total Commission earned: $19,500
In the real estate profession, it is customary for commissions to be split between the sales associate and the broker. To determine a sales associate's commission, first calculate the total commissions due from the seller then divide it between the sales associate and the broker.

Example: Salesperson Sally is working for Broker Barbara. Their commission agreement states that Sally will earn 80% of any commission, and Barbara will earn 20%. Owner Oliver has listed his house for $450,000 and has agreed to a 6% commission. If the house sells for the full listed price, how much money has Sally earned?

Answer: $450,000 x 6% = $27,000 (total commission)

$27,000 x 80% = $21,600 (Sally's share)

II. PRELIMINARY STEPS TO CLOSING

Even after a Purchase and Sales Agreement is signed, there are many tasks to accomplish before the closing can take place. Even though a contract is signed, technically the property is not "sold." Once a contract has been signed, the licensee should notify the MLS that the property is "under contract."

The earnest money deposit must be delivered to the broker "immediately" and timely placed in an escrow account. Some contracts provide for additional deposits to be remitted after the initial earnest money deposit. Those additional deposits should also be placed in an escrow account.

If the buyer intends to finance the transaction, the appropriate mortgage application should be submitted as soon as possible. If the Purchase and Sale Agreement contains a financing contingency, the buyer will be entitled to cancel the contract if unable to obtain mortgage financing. The contract may also contain other contingencies which must be satisfied before a party is obligated to perform, such as a satisfactory structural report (home inspection), approved title search and commitment, or termite inspection.

As part of the financing process, the property will have to be appraised by an appraiser acceptable to the lender. The appraisal must confirm the property's value so that the bank's collateral will be sufficient in the event of a payment default.

Sometimes, the buyer will require certain items to be repaired or replaced as a condition of closing. Obviously, such items should be addressed as soon as possible, preventing last minute concerns and anxieties.

Other matters that must be addressed prior to closing include having a survey performed (if required by the lender or title insurance company) and providing the closing agent with proof of hazard, flood, and homeowner's insurance.
As the closing day approaches, the agent(s) should arrange a property **PRE-CLOSING INSPECTION** and co-ordinate the actual date, place, and time of the closing. The agents should also review all closing documents with their respective clients at least one day before closing. That way, all issues, questions, and problems can be addressed and resolved without delaying the closing. Also, the escrow agent must deliver the earnest money deposit for closing.

### III. PRORATIONS AND EXPENSES

#### A. Overview:

Some expenses associated with the subject property are shared between the buyer and the seller through the process of **PRORATION**. At closing, each party's obligation is calculated as either a debit or credit to the buyer or the seller.

A **DEBIT** is an item (expense) that is charged to a party. A **CREDIT** is an item (amount of money) that is being paid to the party receiving the credit. All items on a closing statement are characterized as either a debit or a credit.

Expenses that are prorated at closing include property taxes, homeowner's fees, rent (if a tenant will continue to reside on the property after closing), and pre-paid interest on an assumed mortgage loan. Pro-ration calculations are temporal, meaning they are based upon a period of time. For example, property taxes are based upon a calendar year. Rent and pre-paid mortgage interest are typically based upon a monthly schedule.

When calculating the pro-ration, either the 365-day method or 360-day method is utilized. If the expense is truly a yearly amount (such as property taxes), the 365-day method is used. That is, the annual taxes are divided by 365 to determine the daily amount. Once the daily amount is known, the closing agent determines the number of days allocated to each party and calculates the appropriate debit/credit.

If the expense is based upon a 12 month/30-day method (such as mortgage interest), the annual amount is divided by 360 to determine the daily amount. All months are considered to have 30 days. Banks like the 360-day method because it gives the bank just a little more interest every day. When multiplied by thousands of mortgage loans, the additional amount can be significant.

#### B. Prorating Rent:

If a property is being sold and the tenant is going to remain in possession, the rent for the month of closing must be shared between the buyer and seller. Because rent is paid in advance, the seller collects the full amount on the first day of the month. Since it would be unfair to allow the seller to keep all of the money when the seller doesn't own the property for the entire month, the rent must be prorated (shared) between the seller and the buyer. The Purchase and Sale Agreement should state which party is entitled to the closing day rent.
Example: A closing takes place on June 10th. The tenant pays monthly rent of $900. The parties have agreed that the seller should receive the rent for June 10th (day of closing goes to the seller). Prorate the rent between the seller and the buyer.

Answer:

<table>
<thead>
<tr>
<th>Seller share</th>
<th>Buyer share</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/1 to 6/10</td>
<td>6/11 to 6/30</td>
</tr>
<tr>
<td>10 days</td>
<td>20 days</td>
</tr>
</tbody>
</table>

Since rent is paid in advance, we are interested in the period of time from the day of closing until the last day of the month (buyer share).

1. Calculate the daily rent: $900 ÷ 30 days = $30 per day
2. Calculate # days entitled to the buyer: 20 days (buyer)
3. Multiply the # of buyer days by the daily rent: $30/day x 20 days = $600
   debit seller/credit buyer

C. Prorate Property Taxes: Property taxes (also known as ad valorem taxes) are calculated on a yearly basis and are paid in ARREARS, meaning that they are due and payable at the end and not paid in advance. At closing, the seller gives the buyer a credit for the seller’s portion of the yearly taxes. The seller’s portion begins on January 1st and continues until the day of closing.

Example: Annual real estate taxes are $900, and the day of closing is May 10th. If the day of closing belongs to the seller, how are the pro-rate the taxes calculated?

Answer:

| 1/1 to 5/10 | 12/31 
|-------------|------|

$900 ÷ 365 = $2.4658 (per day) x 130 days = $320.55
   debit seller/credit buyer
D. Prorate Interest on Assumed Mortgage: When a buyer assumes a mortgage from a seller, the mortgage interest for the closing month must be prorated between the seller and the buyer. When the buyer makes the next mortgage payment, the buyer is paying the mortgage interest for the entire prior month. For instance, if a closing is in April, the buyer will make a mortgage payment on May 1st that will pay the interest for April.

Example: Buyer is assuming a $50,000 mortgage at 9% interest, closing scheduled for April 14th. If the day of closing goes to the buyer, prorate the interest on the assumed mortgage using the 365-day method:

Answer:

<table>
<thead>
<tr>
<th>Seller Share</th>
<th>Buyer Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1</td>
<td>4/14</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>4/30</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 days</td>
<td>17 days</td>
<td></td>
</tr>
</tbody>
</table>

Since mortgage interest is paid in arrears, we are concerned with the period of time from the date of closing back to the first day of the month (April):

1. Calculate the daily interest: $50,000 x 9% = $4,500
   $4,500 ÷ 365 days = $12.3288 per day

2. Calculate the # of days: 13 days

3. Multiply the # of days $12.3288 x 13 days = $160.27
   debit seller/credit buyer
IV. STATE TRANSFER TAXES

A. Documentary Stamp Tax on Deed: The state of Florida raises revenue by charging a tax on every transfer of real property. The actual tax rate is stated as $.70 for every $100 of purchase price.

To calculate the tax due on a sale, convert the purchase price into units by dividing by 100 then multiply the number of units by $.70. If the number of units is a decimal, always round up to the next highest whole unit number.

Example: What is the deed documentary stamp tax due if the purchase price is $175,000?
Answer: $175,000 ÷ 100 = 1,750 units
1,750 units x $.70 = $1,225

Example: What is the deed documentary stamp tax due if the purchase price is $95,425?
Answer: $95,425 ÷ 100 = 954.25 units round to 955 units
955 units x $.70 = $668.50

B. Documentary Stamp Tax due on Notes: The state of Florida raises revenue by charging a tax on every promissory note, including promissory notes that finance the purchase of real property. The tax is charged on new loans, assumed loans, and seller financing. The actual tax rate is stated as $.35 for every $100 of loan amount.

To calculate the tax due on a note, convert the principal loan amount into units by dividing by 100 then multiply the number of units by $.35. If the number of units is a decimal, always round up to the next highest whole unit number.

Example: What is the note documentary stamp tax due if the loan is $150,000?
Answer: $150,000 ÷ 100 = 1,500 units
1,500 units x $.35 = $525

Example: What is the note documentary stamp tax due if an assumed loan balance is $45,230?
Answer: $45,230 ÷ 100 = 452.3 units round to 453 units
453 units x $.35 = $158.55
C. State Intangible Tax on New Mortgages: The state of Florida raises revenue by charging an intangible tax on every new mortgage (no intangible tax on mortgage assumptions). The tax rate is stated as 2 mills (.002) multiplied by the loan amount. There is no need to convert to units when calculating intangible taxes.

Example: What is the intangible tax if the new mortgage loan is $150,000?

Answer: $150,000 x .002 = $300

V. Other Charges Payable at Closing (Expense Items)
In addition to taxes, there are other charges that must be paid at closing, typically by one party or the other. These types of charges are always debits on the closing statement. Examples of additional "closing costs" include:

A. Document preparation fees charged by the closing agent
B. Recording fees charged by the clerk of court
C. Broker commission, usually paid by the seller
D. Title insurance premium charged by the title insurance company

VI Rule of Thumb for Closing Costs
A. Items usually credited to the seller:
   1. Purchase price
   2. Other pre-paid items
B. Items usually debited to the seller:
   1. Mortgages paid off
   2. Mortgages assumed
   3. Prorated taxes, interest, and rent
   4. Doc. stamps on the deed
   5. Deed preparation and recording fees
   6. Broker's commission
C. Items usually credited to the buyer:
   1. Earnest money deposit
   2. New or assumed mortgage
   3. Prorated taxes, interest, and rent
D. Items usually debited to the buyer:

1. Purchase Price
2. Mortgage lender charges
3. Doc. stamps on the note
4. Intangible tax
5. Mortgage recording fee

SUMMARY

- Sales commissions are calculated upon the purchase price according to terms and percentages established in the listing agreement.

- The preliminary steps to closing include depositing the earnest money funds, submitting mortgage application paperwork, satisfying contingencies, ordering title insurance, performing any necessary repairs, termite inspection, survey, pre-closing inspection, review closing documents, and scheduling the closing time and place.

- Taxes, rent, and interest on assumed loans are prorated at closing between the buyer and the seller.

- State taxes related to closings include documentary stamp tax on deeds, documentary stamp tax on notes, and intangible tax on new mortgages.

- The uniform settlement statement (closing document) contains the parties credits, debits, and net amount to be received (seller) or net amount to be funded (buyer) at closing.
CHAPTER SIXTEEN QUIZ

1. If Broker Bob has a property listed for $250,000 with a 6% commission, how much will his commission be if he sells it for $220,000?

   A. $13,200  
   B. $13,500  
   C. $13,800  
   D. $14,200

2. Which of the following appears as a credit on seller's closing statement?

   A. Tax proration  
   B. Down payment  
   C. Purchase price  
   D. Realtor's commission

3. The tax rate for intangible taxes on real estate financing is

   A. .02  
   B. .002  
   C. .2  
   D. 2.0

4. Which of the following usually appear as a debit on the buyer's closing statement?

   A. Purchase price  
   B. Lender charges  
   C. State taxes on the loan  
   D. All of the above

5. Which type of payment is paid in advance?

   A. Property taxes  
   B. Mortgage interest  
   C. Rent  
   D. Mortgage payoff at closing
6. Which of the following is typically pro-rated at closing?

A. Property taxes
B. Purchase price
C. Real estate commission
D. Doc. stamps on the deed
CHAPTER SEVENTEEN:
PLANNING AND ZONING

Talk the Talk

**Buffer Zone:** A parcel of land separating two other parcels or areas, such as a parcel of land between residential and commercial properties

**Building Code:** Codes adopted by local governments governing acceptable building construction standards and materials

**Building Permit:** Written authority by a unit of government (county or city) for the construction of a new building or other improvement or for the repair or demolition of an existing structure

**Certificate of Occupancy:** Issued after construction is substantially completed indicating that the premises are habitable

**Environmental Impact Statement (EIS):** A report of the probable effect of a development on the surrounding area

**Health Ordinance:** Local laws that protect the health and well-being of the citizens in a community

**Nonconforming Use:** A use of property which no longer conforms to the current zoning regulations but its continued use is allowed because the use was lawfully established and maintained prior to the change in zoning

**Planned Unit Development:** Residential project with mixed land uses and high residential density

**Special Exception:** An individual ruling in which a property is granted the right to a use otherwise contrary to law

**Special Flood Hazard Area:** Flood zones "A" and "V" are considered to be areas prone to flooding at least 1% of the time each year

**Variance:** An exception to strict compliance with zoning regulations or ordinances granted to relieve a hardship

**Zoning Ordinance:** Local law that restricts the use of land to various classifications, such as residential and commercial

AREAS OF CRITICAL CONCERN

- Describe the composition and authority of the local planning agency
- Distinguish among the five general zoning classifications
- Distinguish among zoning ordinances, building codes, and health ordinances
- Explain the purpose of a variance, special exception, and a nonconforming use
- Describe the impact of the Comprehensive Environmental Response Compensation and Liability Act
CHAPTER SEVENTEEN: PLANNING AND ZONING

MORE AREAS OF CRITICAL CONCERN

• Calculate the number of lots available for development given the total number of acres contained in a parcel, the percentage of land reserved for streets and other facilities, and the minimum number of square feet per lot
• Describe the characteristics of a planned unit development
• Explain the provisions of the national flood insurance program

I. PLANNING AND ZONING

City planning is not a new concept. Pensacola and St. Augustine, two of the oldest cities in the United States, were well-planned communities settled by the Spanish. Many communities were developed in an unplanned manner that was not conducive to growth. Most governments followed a laissez-faire philosophy which allowed city development to occur as free markets provided the direction.

As the industrial revolution progressed, more and more people were moving to the cities for jobs. Controlling growth became an important issue and local governments began making laws that would protect the rights of property owners. Eventually, government took on the task of coordinating zoning laws with other community needs. Goals of city planning include:

1. Preventing urban sprawl which saves tax dollars that can be spent for other community needs
2. Providing adequate services such as sewer, water, garbage collection, and transportation
3. Providing for road right-of-ways and adequate set back restrictions to prevent buildings from becoming too cramped
4. Insuring against costly flooding and environmental problems by providing adequate drainage facilities for the community
5. Monitoring and controlling the impact of undesirable uses that may be required in a community such as landfill locations and prison sites

II. LOCAL PLANNING AGENCIES

A. Overview: The planning of a community is regulated by local governments through the Community Planning Act. Both City and County Planning agencies have the responsibility of overseeing the future growth of their community.

Planning agencies throughout Florida are operated on a local level. Local legislative groups such as the county commission and/or city council appoint members to the planning commission. Members of the planning commission represent a cross-section of the community and are not professional planners. The planning commission acts in an advisory role to the city council and/or county commission.
B. Authority of the Planning Commission: A Planning Commission has three primary areas of responsibility and authority:

1. **Subdivision Plat Approval:** This is required when a developer intends to develop subdivisions. **BUILDING PERMITS** will not be issued until the planning commission has approved the plat.

2. **Site Plan Approval:** This is similar to the subdivision plat approval but requires more details in areas such as traffic, impact on neighbors, and environmental issues.

3. **Sign Control:** Sign Control protects motorists by restricting hazardous and distracting signs. Community pride demands that sign companies be sensitive to the overall aesthetics of a community.

C. Planning Commission Support Staff: The planning commission acts in an advisory capacity to the local government and are not planning professionals. In order to be properly prepared in this regard, a professional support staff is hired on a full-time basis to provide the in-depth research required.

III. COMMUNITY PLANNING ACT

The Community Planning Act was signed into law 2011 which moved community development from the Department of Community Affairs back to the local governments. Florida’s Comprehensive Plan was repealed to make way for Department of Economic Opportunity which is now run by the Division of Community Development.

Concurrency and other stringent rules were removed to make way for local planners to decide on what is best for their particular community.

IV. ZONING, LAND USE RESTRICTIONS, AND BUILDING CODES

A. **Zoning:** **ZONING ORDINANCES** are created and designed to protect the public from the intrusion of undesirable use of adjacent property owners. Zoning is an example of a local government’s exercise of police power. An important function of zoning is to assist the implementation of the Growth Management Plan.

There are five classifications of zoning:

1. **Residential Zoning** is based on the number of units per acre (density). This zoning addresses setback requirements and specifies that the structure must be used for residential purposes only.

2. **Commercial Zoning** is based on the degree of use (intensity). This zoning addresses size, height, and traffic.
3. **Industrial Zoning** is also based on intensity. This zoning addresses issues such as noise, smoke, odors, and other industrial concerns.

4. **Agricultural Zoning** addresses agricultural and farming needs.

5. **Special Use Zoning** considers the public needs with regards to schools, courthouses, and other public facilities. In addition, there may be areas that are known as **BUFFER ZONES** that separate residential areas from other uses that are commercial in nature.

B. **Building Codes**: **BUILDING CODES** protect the health and safety of the public by regulating the quality and method of construction. There are state building codes and local building codes throughout Florida. In order to obtain a **CERTIFICATE OF OCCUPANCY** (CO), the building must first be inspected and meet all the requirements for fireproofing, ventilation, wind-load strength, rest rooms, and other construction features relevant to public safety.

C. **Health Ordinances**: **HEALTH ORDINANCES** also protect the public from unnecessary harm in a number of commercial uses. Restaurants, taverns, grocers, public water, and public sewer are a few of the important areas that the local Health Department regulates.

V. **APPEALS AND EXCEPTIONS**

A. **Zoning**: Zoning laws are designed to protect the property rights of owners in a community. Therefore, it would be impossible for zoning laws to be fair for every individual. Understanding the need to be flexible, local governments establish and maintain a zoning board of adjustment. The board holds hearings concerning individual problems and has the authority to grant either a **Variance** or **Special Exception** from the current zoning requirements. It should be remembered that if a person is not satisfied with the outcome of a board of adjustment hearing, he or she can appeal the case to the judicial system.

A **VARIANCE** provides relief from the literal enforcement of a zoning law if that law creates an unnecessary hardship. For example, if a residential zoning ordinance requires at least 70 feet of road front in order to build a home, a property owner with a 68-foot lot can request a variance that would permit the owner to build even though the lot dimensions were inadequate.

A **SPECIAL EXCEPTION** is an authorized departure from current zoning laws. For example, if a property owner wanted to build a convenience store on a residentially zoned lot, the owner could request a special exception. The property owner would request a permit to build a convenience store with no other use allowed and try to demonstrate that the special exception will benefit the surrounding community.

A legal **NONCONFORMING USE** is a use that began prior to the current zoning laws which prevail. This is also known as being "grandfathered in."
B. Development of Regional Impact: A Development of Regional Impact (DRI) is the process of identifying and promoting the control of areas such as water quality, air pollution, and waste disposal. A DRI is a development that will affect more than one county.

A PLANNED UNIT DEVELOPMENT (PUD) takes a large site with low-density zoning and creates a “self-contained” community. It incorporates residential use with multi-family, commercial, and common area use. A good example of a PUD is the Sandestin resort community located in Northwest Florida.

The state of Florida is committed to protecting structures and endangered lands which have significant impact upon historical, archeological, or environmental resources of critical concern. An ENVIRONMENTAL IMPACT STATEMENT (EIS) will show the effects of long-term land use on energy, air quality, vegetation, and automobile and air traffic.

VI. SUBDIVISION CALCULATIONS

Sometimes a developer will know the total number of acres contained in a vacant tract of land but still must mathematically determine the total number of lots available for development. This information is important to developers in evaluating the overall economic soundness of the potential investment.

To calculate the total number of potential lots, the developer must first determine the total number of square feet in the tract then deduct the square footage of common areas, roads, and other non-buildable areas.

After determining the total number of square feet available for construction, the developer then divides that number by the minimum area for each lot.

VII. NATIONAL FLOOD INSURANCE PROGRAM

A. Overview: Local communities are often vulnerable to bad weather and flooding, especially coastal properties. The National Flood Insurance Act (NFIA) of 1968 established the National Flood Insurance Program (NFIP), a federal program enabling property owners to purchase federally subsidized insurance protection against losses from flooding in SPECIAL FLOOD HAZARD AREA (SFHA). SFHA is an area within a floodplain having a 1% or greater chance of flooding in any given year (A and V zones).

Residential structures in the SFHA must have the first floor above the Base Flood Elevation, and all new development must be restricted in a manner so as not to obstruct the natural flow of floodwaters.

Non-residential structures in the SFHA must meet the residential requirement or must be watertight below the Base Flood Elevation.

Flood insurance requirements only apply to insurable improvements that are located in SFHA. If the land is in the hazard area but the structures are not, no flood insurance is required. Over 40% of purchasers of National Flood Insurance are located in Florida.
VIII. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,
AND LIABILITY ACT

A. Overview: In 1980, the Congress of the United States enacted
the Comprehensive Environmental Response, Compensation, and Liability Act, also
known as CERCLA. The purpose for this legislation is to provide the United States
government and any participating states the authority to respond to the presence of
hazardous substances in properties that pose a health risk. As part of the law, a
National Priorities List (NPL) was established to identify contaminated sites. If a
property is listed on the National Priorities List, it becomes eligible for "Superfund"
funds to assist in the clean-up and waste removal.

B. Superfund Amendment and Reauthorization Act (SARA): The
"Superfund" is a trust fund established by the Federal Government under CERCLA
and later broadened through a 1986 amendment to CERCLA known as the
Superfund Amendment and Reauthorization Act (SARA). This amendment provides
for funding through various taxes charged on petroleum and other chemical products.

Under CERCLA, a person who can be held responsible is known as a
POTENTIALLY RESPONSIBLE PERSON. Liability for the presence of hazardous
substances is broad and far-reaching, and the government does not need to show
fault or prior knowledge of the substances present. A person who could be liable for
the site's clean-up is known as a Potentially Responsible Person, defined by CERLA
as either:

1. The present owner of a site that is contaminated;
2. Former owners if the contamination occurred during their ownership
   period;
3. The manufacturer or producer of the hazardous substance, whether
   created on site or transported to the site; or
4. Persons who transported the hazardous substance to the site.

Under the SARA amendment to CERCLA, a person can avoid liability by
performing certain preventative tasks at the initial purchase of a property. One of the
best ways to prevent future problems is to have the site evaluated by an expert and
tested if necessary. Property buyers can protect themselves from future liability by
utilizing the INNOCENT-LANDOWNER DEFENSE and follow its procedures and
requirements. An owner of a property may be held harmless if hazardous
substances are discovered on a property under these conditions:

1. The owner was not aware of any contamination at the time of
   purchase.
2. Upon discovery of the contamination, the owner acted prudently.
3. Prior to purchase, the owner exercised due diligence in an attempt to
   discover if the property was contaminated and inquired into any past
   uses of the property that may have led to contamination.

C. Environmental Due Diligence: Prior to purchasing a property,
especially a commercial property or properties that are suspected of having
environmental problems, a smart buyer will undertake certain preliminary steps to
determine if a property is contaminated. Often, a mortgage lender will be concerned
about a property's environmental health and will require a borrower to take certain
steps to determine if the property is contaminated in order to protect the bank's
investment in the event of foreclosure. **ENVIRONMENTAL DUE DILIGENCE** is the process in which a buyer attempts to discover the presence of hazardous substances.

The environmental site assessment includes the following phases:

1. **PHASE I ASSESSMENT**: An investigation into a property’s prior use to determine the likelihood of hazardous substances being present. This phase also includes a general, on-site inspection of the property and improvements and a review of prior aerial photographs. In addition, the Phase I Assessment will review the National Priorities List, review government lists of underground storage tanks, determine if radon or asbestos is present, and review prior building records. A title search will also reveal past owners that may have participated in a potential contamination as a result of their business activities.

2. **PHASE II ASSESSMENT**: If Phase I yields indicators that suggest the hazardous substances may be present, then the Phase II Assessment is utilized. On-site field testing, analysis, and further inspections are performed in the continuing process to discover contaminants.

3. **PHASE III ASSESSMENT**: A complex and detailed inspection of the site including core soil sampling and testing, water and air analysis, and discussions of corrective actions to be taken if contaminants are discovered in Phase II.

4. **PHASE IV ASSESSMENT**: Designation of parties or agencies to prevent and avoid possible future contamination.

Buyers should carefully proceed with any transaction which may involve the purchase of a site that could be potentially contaminated. Brokers should also advise their clients to utilize the services of expert inspectors and attorneys to ensure that the clients’ interests are protected. Remember, an owner is responsible for contamination even though the contamination occurred during previous ownership unless the Buyer conducts due diligence prior to closing.

**SUMMARY**

- The Planning Commission is comprised of a cross-section of the community and is appointed by either the City Council or County Commission. There are three areas of responsibility for the Planning Commission: (1) subdivision plat approval, (2) site plan approval, and (3) sign control.
Zoning can either be changed or used for different purpose through the following:

1. Variance
2. Special Exception
3. Non-conforming Use

There are five classifications of zoning:

1. Residential (based on density)
2. Commercial (based on intensity)
3. Industrial (based on intensity)
4. Agricultural
5. Special use (government properties)

Zoning ordinances divide a community into areas of use. Building codes set criteria for the quality of construction. Health ordinances set guidelines to protect the public's safety and health.

The purpose of a variance is to provide relief from the strict letter of the zoning law while a special exception provides a use other than what the zoning laws allow. A legally non-conforming use is one in which a particular use pre-dates current zoning laws (grandfathered in).

A Planned Unit Development (PUD) is a large parcel of land that combines residential, multifamily, commercial, and common area use into a self-contained community.

The National Flood Insurance Program enables homeowners to purchase federally subsidized insurance protection against losses from flooding in Special Flood Hazard Areas.

CERCLA is legislation to make sure properties that have been contaminated will be cleaned.
CHAPTER SEVENTEEN QUIZ

1. Goals of city planning include which of the following?
   I. Preventing urban sprawl
   II. Providing adequate services such as sewer, water, garbage collection and transportation
   III. Providing for road right-of-ways and adequate set back restrictions to prevent buildings from becoming too cramped
   IV. To ensure against costly flooding and environmental problems by providing adequate drainage facilities for the community

   A. I and III
   B. II and III
   C. III only
   D. I, II, III, and IV

2. Which of the following best describes the Community Planning Act?
   A. Require the State of Florida to approve any new development
   B. Allows local governments to determine how their community will develop
   C. Environmental Protection Agency must be notified when development projects are being approved
   D. Subdivision Plat Maps are no longer required when developing a subdivision

3. Which of the following statements apply to local planning commissions?
   I. Planning commission members are elected.
   II. Planning commission members typically have extensive professional training.
   III. Planning commission members act in an advisory role.
   IV. Planning commissions typically have responsibility in subdivision plat approval, site plan approval, and sign control.

   A. I and IV
   B. II and III
   C. III and IV
   D. I, II, III, and IV
4. A person that has been using a property as a restaurant for over 40 years, even though the zoning has been changed to residential, can continue this use through:

A. Non-conforming Use
B. Special Exception
C. Variance
D. Continuance would be prohibited

5. Which of the following is an example of laws created under a government's police power?

A. Zoning
B. Health ordinances
C. Construction codes
D. All of the above

6. Maria wants to build a house that will encroach upon the setback area of her property. If Maria wants permission to build on the setback area, she should seek a

A. variance
B. special exception
C. non-conforming use permission
D. any of the above

7. A large property site which incorporates residential use with multi-family, commercial, and common area use is known as a

A. planned unit development
B. subdivision
C. concurrency use
D. mixed use
CHAPTER SEVENTEEN:  PLANNING AND ZONING

8. Which of the following types of zoning is concerned with intensity?

A. Residential
B. Commercial
C. Agricultural
D. Mixed use

9. A parcel of land separating two other parcels or areas, such as a parcel of land between residential and commercial properties, is known as a:

A. Buffer zone
B. Transitional property
C. Mixed use
D. Planned unit development

10. Ralph just finished building his own house. He will be issued a certificate of occupancy:

A. When he moves in and lives there
B. When his building permit is approved
C. When the house is substantially completed
D. When construction begins
CHAPTER EIGHTEEN: STATE AND FEDERAL REAL ESTATE LAWS

Talk the Talk

Blockbusting: The illegal practice of inducing homeowners to sell their property by making misrepresentations regarding the entry or prospective entry of minority persons in order to cause a turnover of properties in the neighborhood; discriminatory acts against sellers

Familial Status: Refers to the status of a pregnant woman or a family with children under 18 years of age

Handicap Status: Federal or state status for an individual unable to perform mental or physical functions under normal conditions

Lottery: Inducing a person to purchase with the hopes to win something. Brokers are prohibited from offering lotteries.

Property Report: A brief summary of a subdivision property

Public Accommodation: A hotel, motel, or other facility to which the general public has access

Redlining: A lending institution’s illegal refusal to make mortgage loans in certain areas

Subdivision: A tract of land partitioned into lots for homes or other uses and improved by roads, water and sewage systems, etc.

Steering: The illegal practice of directing buyers to or from certain neighborhoods based on minority status; prohibited by federal, state, and local fair housing laws

AREAS OF CRITICAL CONCERN

• List the groups protected under the 1968 Fair Housing Act
• List the property exempt from the 1968 Fair Housing Act
• Describe the types of discriminatory acts that are prohibited under the 1968 Fair Housing Act
• Explain the significance of the Jones vs. Mayer court case
• Describe the HUD process for handling a complaint under the 1968 Fair Housing Act
• Describe the objectives and major provisions of the Americans with Disabilities Act
• Describe the major provisions of the Florida Residential Landlord and Tenant Act
• Describe the major provisions of the Interstate Land Sales Disclosure Act and the Florida Uniform Land Sales Practices Act
I. FEDERAL LAWS

The real estate industry is highly regulated. Not only do licensees need to understand the real estate license laws in Florida, they must also be familiar with federal laws regulating the housing industry.

A. Civil Rights Act of 1866: The Civil Rights Act of 1866 was enacted after the Civil War in an effort to abolish discrimination based on race. The Civil Rights Act of 1866 is still good law and in full force. As this law relates to real estate, it assures that every citizen is entitled to all rights in real property regardless of his or her race. In 1968, the United States Supreme Court upheld this law in the Jones vs. Mayer case.

B. Civil Rights Act of 1964: This Act expanded the 1866 Law to include race, color, religion, sex, and national origin in voting, jobs, and public accommodations.

C. Civil Rights Act of 1968: In 1968, new legislation was enacted that strengthened the concept of non-discrimination in real property. The Civil Rights Act of 1968 includes the Fair Housing Act which expanded prohibited housing discrimination based on race, color, religion, sex, and national origin. This law applies not only to the sale or leasing of real estate but also financing and any other real estate related industries.

The types of real estate transactions covered by the 1968 Fair Housing Act include:

1. Single-Family Residences:
   a. Residential property that is not privately owned
   b. Privately owned residential properties if a real estate licensee is involved in a sale or rental
   c. Owns four or more residential units, then all of those properties are covered under the law
   d. Sells two or more homes within the past two years in which they did not reside in at the time of sale

2. Multi-family Housing:
   a. Any multi-family dwelling with five or more units
   b. Any multi-family dwelling with four units or less, if the owner does not occupy any of those units

In 1988 Congress passed an amendment to the 1968 Fair Housing Act that expanded the law's jurisdiction to include handicapped individuals and families with children. To have HANDICAP STATUS, a person must have physical or mental
imperfections that interfere with day-to-day activities. **FAMILIAL STATUS** includes families with minors (persons under the age of 18) and pregnant women.

Although discrimination based on familial status is outlawed, exemptions apply to federal or state approved retirement communities if:

1. All the residents are age 62 or older, or;

2. A development has 80% or more of the homes occupied by someone age 55 years or older. Additionally, the development must provide activities that are inherent with senior citizen lifestyle such as line dancing or water aerobics.

The following groups are not considered to be a "protected class" and are, therefore, not covered by the 1968 Fair Housing Act:

1. Marital status
2. Occupation
3. Age

It should be remembered that individuals who reside in their homes and are marketing the property on their own behalf ("For Sale by Owner") are generally excluded from the dictates of the 1968 Fair Housing Act. When an individual owns multiple units or hires a real estate broker to assist in marketing, then the 1968 Fair Housing Act does apply. However, a "For Sale By Owner" or "For Rent By Owner" may not discriminate based on race because the Civil Rights Act of 1866 applies.

The following actions taken by property owners or brokers representing property owners are prohibited under the 1968 Fair Housing Act:

1. Refusing to sell or lease or to negotiate to sell or lease to persons who are protected under the Fair Housing Act

2. Quoting different terms, conditions, or prices to persons who are protected under the Fair Housing Act

3. **STEERING**: Directing a member of a protected class to or from a property based upon discriminatory reasons

4. **BLOCKBUSTING**: Inducing a person to sell or lease a property because the area is becoming "transitional"

5. Denying access to the Multiple Listing Service (MLS) or other private marketing systems or discriminating in any advertising

6. Making false statements regarding the availability of certain properties for sale or lease
7. **REDLINING**: Denying mortgages or other real estate services (such as insurance) located in certain geographical areas because of discriminatory reasons.

Enforcement of the 1968 Fair Housing Act falls under the jurisdiction of the U.S. Department of Housing and Urban Development (HUD). Complaints must be filed, and it will be the complainant's responsibility to prove that discrimination has occurred. The 1968 Fair Housing Act is federal law and, therefore, the federal court system has jurisdiction of any alleged violation.

Real estate licensees must be very careful not to engage in any discussions which might be construed to be discriminatory. If a person wants to see a particular home, show it to them. Do not assume that he or she would prefer an area because of his or her race, color, religion, sex, national origin, family status, or handicap.

Although age is not a protected category under the 1968 Fair Housing Act, the Equal Credit Opportunity Act includes age as a protected class in lending transactions. If a person has the willingness and ability to repay the debt, he or she should not be denied the opportunity to borrow money because of age.

The 1968 Fair Housing Act requires businesses in the housing industry to prominently display an Equal Housing Opportunity poster that affirms their desire to extinguish discrimination in real estate.

**D. Additional Federal Legislation:** The amendment to the Fair Housing Act in 1988 encouraged Congress to take further steps to strengthen laws concerning handicapped persons. In 1990, The Americans with Disabilities Act (ADA) was passed to insure that handicapped individuals are afforded access to public transportation, commercial facilities, and other PUBLIC ACCOMMODATIONS. All new construction and renovations must meet strict ADA codes. Examples of ADA requirements include grab rails or bars in bathrooms and wider doors for wheelchair accessibility.

The Interstate Land Sales Full Disclosure Act requires that a PROPERTY REPORT be provided to all prospective purchasers at least three days prior to entering into a purchase agreement if the subject development consists of 25 lots or more. The prospective buyer has seven days to rescind the contract if the property report was given in a timely manner. In the event the property report is not timely delivered, the buyer has up to two years to rescind the contract with a full deposit refund.

**II. STATE LAWS**

**A. Overview:** The Florida Fair Housing Law was enacted to run in conjunction with the 1968 Fair Housing Act but to be oriented to particular needs of Florida residents. In the event of a conflict, it should always be remembered that federal laws will supersede state laws.
The Florida Americans with Disabilities Accessibility Implementation Act was created to give enforceability to the already existing Federal ADA. As with most laws, enforcement is far more effective on a local level.

B. Landlord/Tenant Law: The Florida Residential Landlord and Tenant Act was designed and created to bring about a balance and fairness for both landlords and tenants. This law regulates residential properties which are defined as any property where a person or persons live. Landlords are prohibited from imposing "unconscionable" rental provisions while at the same time insuring the landlord's rights to inspect and/or enter the property with proper notification.

Under the Florida Residential Landlord and Tenant Act, the landlord is required to maintain security deposits and advanced rents in a safe, secure, and otherwise equitable location on the tenant's behalf. If the landlord is acting on his or her own behalf, one of the following procedures must be followed:

1. Place the deposit in a separate non-interest bearing escrow account, or;

2. Place the deposit in a separate interest bearing account. The landlord owes the tenant either 5% simple interest or 75% of the interest actually earned (landlord choice), or;

3. Landlord may co-mingle the deposit with his own funds provided the landlord posts a surety bond with the clerk of court in the amount of the deposit or $50,000 (whichever is less) and pay the tenant 5% simple interest.

In the event the landlord is acting in the role of a licensed real estate agent or if the landlord has hired a broker to act as an agent, the Florida Landlord and Tenant Act no longer applies as it pertains to deposits and is replaced with the Florida Real Estate License Law (F.S. 475) or other state laws that are appropriate.

The landlord has an obligation to maintain the premises in normal working order including hot water, heat, and pest control. The tenant is required to maintain the property in a clean and sanitary condition consistent with ordinary wear and tear.

Upon termination of a rental agreement, the premises may or may not require repairs. If the security deposit is to be utilized for repairs or damage, the landlord must notify the tenant within 30 days of the termination date by certified mail of the intention of use some or all of the deposit. The landlord gives up any claim to the deposit if these procedures are not followed. If the landlord is uncertain as to where the certified mail is to be delivered, it should be delivered to the tenant's last known address. If no repairs are required all security deposits must be returned within 15 days of termination.

In the event the tenant breaches the lease agreement, the landlord can have the tenant evicted. If the landlord breaches the lease agreement, the tenant, through...
the proper legal channels, can seek rent reduction or pay rent directly to the clerk of the court while litigation is pending.

C. Florida Uniform Land Sales Practices Act: Under this law (Chapter 498, F.S.), the Division of Land Sales, Condominiums, and Mobile Homes regulates the sale of SUBDIVISION lots in Florida if the subdivision contains 50 or more lots. This law requires delivery of a public offering statement and provides a prospective buyer with a seven-day rescission period after entering into a contract to purchase.

D. Lotteries: A LOTTERY occurs when a person is induced to purchase something with the hopes of winning something. Although the state of Florida can legally operate a lottery, brokers are prohibited by law. An example might be if a broker advertises a drawing for a free hot-tub for the first ten buyers. It’s okay to give a hot-tub to the first ten buyers, but not a drawing where one out ten will win the hot-tub.

SUMMARY

- The Fair Housing Act of 1968, as amended, prohibits discrimination in housing or housing related practices based on race, color, religion, sex, national origin, handicap, or familial status as it pertains to the sale or lease of single-family homes and multi-family housing.

- Examples of prohibited discriminatory acts include blockbusting, steering, and redlining.

- The Civil Rights Act of 1866, which prohibits discrimination in real estate based upon race, was upheld by the U.S. Supreme Court in the landmark case of Jones v. Mayer (1968).

- HUD prosecutes complaints filed by individuals claiming that a violation of the Fair Housing Act has been committed.

- The major provisions and protections afforded under the 1990 Americans with Disabilities Act include access to public transportation, commercial facilities, and public accommodations.

- The Florida Uniform Land Sales Practices Act applies to developments of 50 lots or more and requires meaningful disclosure (public offering statement) that accurately describes all important facts about the property and the development.

- The 1968 Fair Housing Act provides limited exemptions that allow a person to discriminate the sale or rental of his or her single-family residence as long as a licensee is not involved. However, 1866 Civil Rights Act prohibits discrimination in housing based on race.
CASE STUDY

Department of Business and Professional Regulation,
Division of Real Estate,
Petitioner,

vs.

Respondent

Administrative Complaint:

The Petitioner seeks disciplinary action against the Respondent and against her license to practice real estate. In the aftermath of Hurricane Andrew, John Johnson and Kim Jones sought to rent a place to live until repairs could be made to their home. Johnson responded to a newspaper advertisement placed by the Respondent and her brokerage firm on behalf of the owners, The Martins. The Respondent, a licensed real estate sales associate, showed Johnson and Jones the house, and they indicated they wished to rent it. Before finalizing the rental, the Respondent called the Martins to discuss the agreement. Ms. Martin proceeded to inquire of the Respondent regarding race and ethnic background of Johnson and Jones. The conversation included, in part:

Ms Martin: Are they Hispanic?
Respondent: No
Ms. Martin: Are they Black?
Respondent: Yes
Ms. Martin: No, I cannot rent the house to black people because I live in part of the house and because of what the neighbors will say about something like that.
Respondent: We are not supposed to discriminate that way.
Ms. Martin: Look for someone else.

The Respondent contacted Johnson and Jones and informed them that the owners did not want persons of color in their house. The Respondent recommended that Johnson and Jones retain a lawyer. Ultimately, the Martins were found guilty of discrimination by the HUD and ordered to pay a $10,000 fine and damages of $35,000 each to Johnson and Jones. HUD also fined the Respondent (licensee) $100 and required her to attend fair housing training. The FREC voted, in its separate disciplinary case, to suspend the sales associate’s license for two years and impose a $1,000 fine. The Ruling was, however, overturned on appeal on the grounds that FREC did not have the disciplinary guidelines in place for the type of violation charged. Following this case, Rule 61J2-24.001, FAC was amended.

Class discussion
CHAPTER EIGHTEEN QUIZ

1. Racial discrimination was outlawed by the:
   A. Civil Rights Act of 1866
   B. Civil Rights Act of 1964
   C. Civil Rights Act of 1968
   D. Johnson v. Mayer case

2. All of the following are protected classes covered by the Civil Rights Act of 1968 except:
   A. Race
   B. Religion
   C. Age
   D. National origin

3. "For Sale By Owners", although typically not covered by the Civil Rights Act of 1968, are still prohibited from racial discrimination under the:
   A. Civil Rights Act of 1964
   B. Civil Rights Act of 1866
   C. Johnson v. Mayer case
   D. Common law

4. Directing a member of a protected class to or from a property based upon discriminatory reasons is known as
   A. steering
   B. blockbusting
   C. redlining
   D. channeling

5. Broker Wang has a listing on a home, but the owner is instructing Wang not to sell the property to "anyone of color." How should Wang handle this situation?
   A. Not show the property to anyone of color
   B. Explain that the instruction is illegal and refuse to follow the instruction or withdraw from the listing relationship
   C. Show the property to only people Wang thinks will please the owner
   D. Consult with the Florida Real Estate Commission
6. Landlord Larry accepts a $1,000 damage deposit from a tenant. Larry may lawfully handle the deposit in all of the following ways except:

A. Place the deposit in a separate non-interest bearing escrow account
B. Place the deposit in a separate interest bearing account and pay the tenant either 5% simple interest or 75% of the interest actually earned
C. Place the money in his personal account and pay the tenant 5%
D. Co-mingle the deposit with his own funds and post a $1,000 surety bond with the clerk of court and pay the tenant 5% simple interest

7. If Landlord Larry wants to impose a claim on the damage deposit, he must notify the tenant within how many days after the lease is over?

A. 5
B. 10
C. 15
D. 30

8. Which agency is responsible for prosecuting alleged violations of the Fair Housing Act of 1968?

A. Florida Real Estate Commission
B. DBPR
C. Housing and Urban Development
D. U.S. Attorney General

9. The Civil Rights Act of 1866 was upheld by which U.S. Supreme Court case?

A. Jones v. Mayer
B. Roe v. Wade
C. Miranda v. Arizona
D. Johnson v. Mayer

10. The Florida Uniform Land Sales Practices Act applies to subdivisions of 50 or more lots and requires which of the following:

A. Estimation of closing costs
B. Delivery of a public offering statement
C. Provide a prospective buyer with a ten-day rescission period after entering into a contract to purchase
D. Notice of Non-Representation
CHAPTER NINETEEN: LICENSE LAW VIOLATIONS, PENALTIES, AND PROCEDURES

Talk the Talk

Citation: A minor infraction of the license law that generally results in a small fine
Complaint: A charge or accusation that a licensee has committed a specified offense
Final Order: Considered to be FREC’s final decision as to guilt or innocence of the licensee
Formal Complaint: An outline of charges brought by the DBPR against an applicant or licensee after a finding of probable cause
Legally Sufficient: When the initial complaint alleges a violation of any Florida Statute, DBPR rule, or FREC rule
Notice of Non-Compliance: A warning that allows a licensee 15 days to correct a minor infraction without consequence
Probable Cause: Reasonable grounds or justification for prosecution
Recommended Order: A final report prepared by an Administrative Law Judge (hearing officer) containing finding of facts, conclusions, and suggested penalties, if any.
Subpoena: A legal process of ordering a witness to appear and testify before a court of law or formal administrative hearing
Summary Suspension: Emergency or immediate suspension of a license

AREAS OF CRITICAL CONCERN

• Explain the procedures involved in the reporting of violations, the investigation of complaints, and the conduct of hearings
• Describe the elements of a valid complaint
• Describe the composition of the probable-cause panel
• Recognize events that would cause a license application to be denied
• Recognize actions that would cause a license to be suspended or revoked
• Identify individuals who would be eligible and the procedure to seek reimbursement from the Real Estate Recovery Fund
• Identify individuals who are not qualified to make a claim for recovery from the Real Estate Recovery Fund
• Describe the monetary limits imposed by law on the Real Estate Recovery Fund
• Explain the penalty for a first and second degree misdemeanor and which real estate activities are first degree misdemeanors
I. DISCIPLINARY PROCEDURE

License law violations are based on the principal that a person is innocent until proven guilty through the legal process that is afforded each applicant and licensee. Disciplinary actions are considered to be quasi-judicial and are governed by Florida statutes and the rules of the Florida Administrative Code (F.A.C.).

Those Florida statutes include:

Chapter 120: Administrative Hearing Rules and Procedures
Chapter 455: Division of Professions and Occupations
Chapter 475: Real Estate License Law

In addition, sections of the Florida Administrative Code (F.A.C.) that apply include:

Rule 61J2: FREC Rules and regulations
Rule 60Q: Division of Administrative Hearings

Sometimes people feel that they have been mistreated in a real estate transaction and desire to attain some level of satisfaction regarding the person who has allegedly injured them. The complaint process is the vehicle that the public can pursue in an attempt to rectify injustices committed by licensees. It must be understood that the FREC only has authority and jurisdiction over applicants and licensees. However, violations of Florida Statute 455 and 475 are criminal events and can be prosecuted by the Florida State Attorney through criminal proceedings. The FREC can discipline any licensee who has been found guilty of crimes other than those referenced above.

Every license is entitled to due process and the opportunity to be heard and respond to a complaint. The disciplinary process contains seven steps:

1. Complaint
2. Investigation
3. Probable Cause Panel
4. Formal Complaint
5. Informal Conference or Formal Hearing
6. Final Order
7. Appeal
CHAPTER NINETEEN: LICENSE LAW VIOLATIONS
PELIMITIES, AND PROCEDURES

STEP ONE: The Complaint

The process begins when a signed, written COMPLAINT is submitted to the Department of Business and Professional Regulation, Division of Real Estate (DRE). The complaint is LEGALLY SUFFICIENT if it alleges that a violation of Florida real estate law, FREC rule, or DBPR rule has been committed. The allegations in the complaint do not have to be real estate related. For example, a person could file a complaint against a licensee because he or she believes that the licensee did not properly deposit earnest money.

STEP TWO: The Investigation

Once a complaint is determined to be legally sufficient, the DBPR will investigate the complaint. The investigators will typically speak with all the parties involved and collect as much evidence and information as possible. At the conclusion of the investigation, a report will be prepared and delivered to the Florida Real Estate Commission to determine if probable cause exists or not. The Chairperson of FREC will appoint two members to serve on the Probable Cause Panel.

STEP THREE: The Probable Cause Panel

The PROBABLE CAUSE PANEL is assigned the task of determining if there exists probable cause in the subject case. The panel consists of two members of FREC. One of the members may be a former active member of FREC, and one of the members must hold a real estate license. The probable cause panel must decide if probable cause exists which will warrant a continuation of the complaint process. If the panel decides that probable cause does not exist, it may elect to draft a "Letter of Guidance" informing the licensee that although no technical violation may have occurred, the licensee may want to handle this type of situation with more care in the future.

STEP FOUR: The Formal Complaint

If probable cause is found to exist, the next step is the drafting, filing, and service of a FORMAL COMPLAINT that specifies the alleged violation. The Formal Complaint is drafted by the DBPR and is served on the licensee who has 20 days to file a written response that either admits or denies each allegation. In the event a written response is not filed, a default (legal forfeit) will be entered against the licensee and his or her license will usually be revoked. In response to the complaint, the licensee will request either an informal conference or formal hearing.
STEP FIVE: Informal Conference or Formal Hearing

If the licensee's response indicates that all parties agree on the facts, then the licensee can ask for an informal conference to be heard directly by the FREC. All evidence is admitted by stipulation since there is no disagreement about the facts. At the conclusion of the informal conference, the FREC will issue a Final Order.

If the facts are in dispute, a formal hearing is appropriate. A formal hearing is similar to a trial. All parties must be given reasonable prior notice of the date, time, and place of the hearing. The parties can make an opening statement, present evidence, elicit testimony from witnesses, conduct cross-examination, and present closing arguments.

An Administrative Law Judge (ALJ) presides over the hearing. The ALJ has authority to issue a SUBPOENA which commands a witness to appear at the hearing in person for the purpose of giving testimony, presenting documents, or both. Failure to obey a subpoena could subject the individual to contempt of court proceedings and ultimately be fined or imprisoned.

The Administrative Law Judge will prepare a RECOMMENDED ORDER that will contain findings of fact, conclusions, and a recommended penalty, if any. The Recommended Order is submitted to FREC for its consideration. If there is any objection by the DBPR or licensee, the objection must be filed within 10 days. This is known as a Written Exception.

STEP SIX: Final Order

After the hearing process, the matter is submitted to FREC for final review and disposition. Members of the FREC (excluding the probable cause panel members in the subject case) will review the matter and issue a FINAL ORDER ending the quasi-judicial process. The Final Order is considered to be FREC's final decision as to guilt or innocence of the licensee. The Final Order becomes effective 30 days after it has been entered.

A licensee has the right to practice real estate through the complaint process and 30 days after the final order has been issued. If, however, the DBPR or the FREC believes the licensee could be of danger to the public, a SUMMARY SUSPENSION can be issued temporarily preventing the licensee from practicing real estate until the complaint process has ended.

STEP SEVEN: Appeal

A licensee has the right to challenge a Final Order by filing a Notice of Appeal with the District Court of Appeals within 30 days. In order for a licensee to continue practicing real estate during the appeal process, a request to stay the enforcement of the final order should be considered. Otherwise, the final order will take effect in 30
CHAPTER NINETEEN: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

days. To obtain a stay of the final order, a court must issue a Writ of Supersedes until the appeal process is concluded.

When an appeal is filed, the appellant is requesting the court to issue a Writ of Certiorari which means the court has certified the appeal.

II. VIOLATIONS AND PENALTIES
A. Administrative remedies (FREC):

1. Deny a license application: Applications can be denied because the application is deficient in some way such as failing to completely fill out the application, failing to submit the proper fee, failing to correct an application after it has been returned by the DPBR, failing to pass the state exam within two years after a completed application is received, or failing to pass the state exam within two years of completing FREC course I. An application will also be denied if the applicant does not meet the necessary minimum qualifications, does not possess good character, was guilty of prior acts that would be grounds for revocation or suspension, or cheated on a final exam.

2. Refuse to renew a license: Renewal applications can be denied if the applicant has not completed his or her post-license or continuing education requirement or if the applicant is unable to demonstrate good character.

3. Suspend a license for up to 10 years: License suspension is a temporary penalty. During the time of suspension, the licensee may not practice real estate. Any violation or Florida statute, FREC rule, or DBPR rule can be grounds for suspension, but usually a more serious offense or repeated offense is required.

4. Revoke a license: The most severe penalty of all is revocation of licensee which is permanent. Although in some cases a licensee may be able to apply for reinstatement after 5 years, it is difficult to be reinstated after a revocation. Technically, any act that could result in suspension could also result in revocation although, usually, the act is quite serious if revocation is imposed.

5. Citation: Issue a CITATION for minor infraction.

6. Fine: Impose a fine of up to $5,000 per violation of F.S. 475 (DBPR may impose a fine of up to $5,000 for a violation of F.S. 455).

7. Probation: Impose probation which allows the licensee to continue to practice real estate under the guidance of FREC.
CHAPTER NINETEEN: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

8. Notice of Non-compliance: First time minor violations may result in the issuance of a NOTICE OF NON-COMPLIANCE if the violation does not endanger the health, safety, or welfare of the public. The licensee has 15 days to correct the infraction with no consequence. Failure to abide by a notice of non-compliance will result in additional disciplinary procedures. For example, a broker fails to have copies of all licenses of agents working for that brokerage.

9. Letter of Reprimand: This carries no discipline other than a letter that is placed in the licensees file for future reference.

B. Judicial Remedies (imposed by a court of law):

1. Second degree misdemeanor (punishable up to $500 fine and/or up to 60 days in jail)

2. First degree misdemeanor (punishable up to $1,000 fine and/or up to 1 year in jail). Violating Rental Information laws and false advertising are first degree misdemeanors.

3. Civil penalties: A licensee could be denied the right to a sales commission or be sued in civil court.

C. DBPR: A licensee may also be fined up to $5,000 by the Department of Business and Professional Regulation for any violation of Chapter 455, F.S.

III. REAL ESTATE RECOVERY FUND

A. Overview: The Florida Real Estate Recovery Fund was established to reimburse individuals who were financially injured by a licensee. In order for a person to collect from the recovery fund, he or she must show proof of an unpaid judgment establishing compensatory damages (not punitive damages) and conduct an asset search demonstrating that the licensee has insufficient assets to pay the judgment. If the licensee has assets or partial assets to cover the judgment, the plaintiff must first look to those assets for payment.

B. Persons not qualified to make a claim: The following individuals are not eligible to make a claim to the Real Estate Recovery Fund:

1. A licensee who participated in the subject transaction as an agent is not entitled to make a claim for an unpaid commission

2. A licensee who participated in the subject transaction as an agent and the licensee owned or controlled the subject property

3. Anyone who bases a claim against a licensee who did not hold a valid and current license at the time of the transaction
4. A spouse of the judgment debtor or the spouse's personal representative

5. If the judgment is against a business entity such as corporation, partnership, limited liability company, or limited liability partnership

C. Payment from Fund: If money is paid from the recovery fund because of licensee's misconduct, the licensee will be automatically suspended indefinitely until the money is repaid plus interest. If the broker obeys an Escrow Disbursement Order that later results in litigation and a payment being made from the real estate recovery fund, then FREC will take no action against the broker and will reimburse the broker for all cost and attorneys fees.

If the recovery fund balance is reduced below $500,000, a fee of $1.50 per year for sales associates ($3.50 per year for brokers) is added to all new license applications and renewal applications.

D. Authorized Fund limits: The recovery fund will pay up to $50,000 per single judgment and not more than $150,000 for multiple judgments.

SUMMARY

- The complaint procedure is a seven-step process involving a complaint, investigation, probable cause panel, formal complaint, informal conference or formal hearing, final order, and appeal.

- A valid complaint must be in writing. It is legally sufficient if it alleges a violation of any Florida statute, DBPR rules, or FREC rules.

- The probable cause panel consists of two FREC members. At least one of the members must hold a valid real estate license. Former FREC members can serve on a probable cause panel, but there must always be at least one current member.

- A license application can be denied because of errors and omission in the application or because the applicant lacks the necessary good character.

- The Real Estate Recovery Fund is available to certain individuals who have been financially harmed by a Florida real estate licensee. The injured party must first obtain a judgment against a licensee and attempt to convert the judgment into cash. If the injured party is unable to be paid on his or her judgment, the fund will pay up to $50,000 of the uncollected portion per judgment with a maximum payment of $150,000 if the injured party has multiple judgments against the same licensee.
Certain categories of individuals are not eligible to receive payment from
the Real Estate Recovery Fund, including a licensee who participated in
the subject transaction as an agent, anyone who bases a claim against a
licensee who was unlicensed at the time of the transaction, a spouse of
the judgment debtor or the spouse's personal representative, or anyone
who did not get a judgment against an actual person.

Any violation of Chapter 475 is a second degree misdemeanor
(punishable by a fine of up to $500 and/or up to 60 days in jail). Violating
Rental Information laws is a first degree misdemeanor (punishable by a
fine of up to $1,000 and/or up to one year in jail). Violation of rental list
rules is a first degree misdemeanor.

CHAPTER NINETEEN QUIZ

1. Which agency is responsible for investigating complaints filed against a real
estate licensee?

A. Florida Real Estate Commission
B. Department of Business and Professional Regulation
C. State Attorney
D. Division of Real Estate

2. The probable cause panel is comprised of how many Florida Real Estate
Commission members?

A. 2
B. 3
C. 4
D. 5

3. If a licensee does not timely respond to a formal complaint, what will the
result be?

A. Default
B. Continuance
C. Summary judgment
D. Unanimous verdict
4. Who prepares the Recommended Order?
   A. Department of Business and Professional Regulation
   B. Florida Real Estate Commission
   C. Administrative Law Judge
   D. Attorney for the licensee

5. How many Florida Real Estate Commission members participate in the Final Order process?
   A. 5
   B. 6
   C. 7
   D. All members who did not serve on the Probable Cause Panel

6. Someone files a complaint against Broker Katrina because her official sign is not readily visible. What will the DBPR’s probable response be if this is Katrina’s first complaint?
   A. Letter of reprimand
   B. Notice of non-compliance
   C. Citation
   D. Probation

7. To obtain a stay of a Final Order while an appeal is pending, what type of writ must be entered?
   A. Mandamus
   B. Habeas Corpus
   C. Supersedes
   D. Execution

8. An application for a real estate license may be refused for all of the following reasons except:
   A. Failing to completely fill out the application
   B. Failing to submit the proper fee
   C. Applicant is not a U.S. citizen
   D. Applicant does not possess good character
9. What will happen to a real estate licensee if the Real Estate Recovery Fund has to make a payment in response to a claim made against that licensee?

A. Probation  
B. Suspension until the money is repaid, plus interest  
C. Revocation  
D. Letter of reprimand

10. A real estate license may be suspended for a maximum of:

A. 1 year  
B. 2 years  
C. 5 years  
D. 10 years

11. What are the penalties for a first degree misdemeanor?

A. One year in jail and a $1,000 fine  
B. Up to one year in jail and up to a $1,000 fine  
C. Up to one year in jail and/or up to a $1,000 fine  
D. Up to one year in jail and/or a $1,000 fine

12. Which of the following is a first degree misdemeanor?

A. Violation of agency disclosure rules  
B. Failure to account  
C. Violation of rental fee rules  
D. Violation of fiduciary duties

13. Alice obtains a $79,000 judgment against Broker Derek and is unable to collect any money on the judgment. If she applies to the Real Estate Recovery Fund, how much money will she receive?

A. $50,000  
B. $75,000  
C. $79,000  
D. $150,000
14. A complaint is legally sufficient if it contains any violation of a:
   
   A. Florida real estate law
   B. Florida Real Estate Commission rule
   C. Department of Business and Professional Regulation rule
   D. All of the above

15. Which step comes after the filing of a complaint?
   
   A. Investigation
   B. Probable cause panel
   C. Informal hearing
   D. Formal complaint
CHAPTER TWENTY: REAL ESTATE MATH

I. Common Areas
II. Appraising Real Estate
III. Real Estate Investment
IV. Real Estate Taxes
V. Mortgage Amortization
VI. Closing Cost of Real Estate

Math Exam

LESSON ONE
COMMON AREAS

In order for a person to properly practice real estate, a complete understanding of the mathematical equations of common areas is required. There are several important numbers and area sizes that are significant:

* 43,560 square feet in an acre
* Base x height = the area of a square or rectangle

To find the number of acres in a given parcel of land:

1. determine the number of square feet in the parcel
2. divide the number of square feet by 43,560 (feet in an acre)

Square Example Problem:

A parcel of land measures 400’ x 400’ (square). How many acres are contained in this parcel?

Base x Height = Area  
400’ x 400’ = 160,000 square feet

Area ÷ 43,560 = # of Acres  
160,000 sq. ft. ÷ 43,560 = 3.6731 acres
CHAPTER TWENTY: REAL ESTATE MATH

Rectangle Example Problem:

A parcel of land measures 500' x 300' (rectangle). How many acres are contained in this parcel?

Base x Height = Area
500' x 300' = 150,000 square feet

Area ÷ 43,560 = # of Acres
150,000 sq. ft. ÷ 43,560 = 3.4435 acres

Common Area Problem:

1. Developer Dan recently purchased 20 acres in which to develop a subdivision. The county requires that the subdivision contain 10% of the total to be used for common areas. In addition, the development will require a road that is 500 feet by 30 feet. Each lot must contain at least 12,000 square feet. How many lots will Dan be able to offer for sale?

A. 52
B. 64
C. 75
D. 81

LESSON TWO
APPRAISING

The three approaches used to appraise real property are the comparable sales approach, the cost-depreciation approach, and the income approach.

Comparable Sales Approach Example:

In determining the market value of vacant land, the appraiser should take the following steps:

1. Determine the square footage of comparables (at least 3)
2. Determine the selling price of the comparables
3. Determine the price per square foot of each comparable
4. Determine the average cost per square foot of all comparables
5. Apply the average cost per square foot to the square feet of the subject
**Example:** You have been asked to determine the value of a vacant parcel of land with the dimensions of 125’ x 150’. There are four comparables available that sold within the last year. There are no other adjustments to be made other than square footage.

<table>
<thead>
<tr>
<th>Sale</th>
<th>Lot Size</th>
<th>Sales Price</th>
<th>Sq. Ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1</td>
<td>130’ x 150’</td>
<td>$19,500</td>
<td>130’ x 150’ = 19,500 s.f.</td>
</tr>
<tr>
<td>#2</td>
<td>125’ x 125’</td>
<td>$12,500</td>
<td>125’ x 125’ = 15,625 s.f.</td>
</tr>
<tr>
<td>#3</td>
<td>100’ x 125’</td>
<td>$15,000</td>
<td>100’ x 125’ = 12,500 s.f.</td>
</tr>
<tr>
<td>#4</td>
<td>100’ x 150’</td>
<td>$16,500</td>
<td>100’ x 150’ = 15,000 s.f.</td>
</tr>
</tbody>
</table>

1. $19,500 \div 19,500 \text{s.f.} = \$1.00 \text{ per sq. ft.}$
2. $12,500 \div 15,625 \text{s.f.} = \$0.80 \text{ per sq. ft.}$
3. $15,000 \div 12,500 \text{s.f.} = \$1.20 \text{ per sq. ft.}$
4. $16,500 \div 15,000 \text{s.f.} = \$1.10 \text{ per sq. ft.}$

Average cost per square foot = \$1.03
Subject property 125’ x 150’ = 18,750 sq. ft. \times \$1.03 = \$19,312.50 ±/

Market Value of the Subject Property: \$19,300

**Example:** An appraisal is being done on a single family home that is three bedrooms, two baths, two-car garage, and a pool. The comparable, a four bedrooms, two baths, two-car carport, and no pool, sold for $150,000. A bedroom has an additional value of $8,000, a pool $6,000, while the difference between a two-car garage and a two-car carport is an additional $3,000 to the garage. With no other adjustment necessary, what is the market value of the subject property?

<table>
<thead>
<tr>
<th>Sales Price</th>
<th>Bedroom adjustment</th>
<th>Carport adjustment</th>
<th>Pool adjustment</th>
<th>Market Value of the Subject:</th>
</tr>
</thead>
<tbody>
<tr>
<td>$150,000</td>
<td>-8,000</td>
<td>+3,000</td>
<td>+6,000</td>
<td>$151,000</td>
</tr>
</tbody>
</table>
Cost-Depreciation Approach Example:

In determining the value of a property using the cost-depreciation approach, the appraiser should take the following steps:

1. Determine reproduction cost
2. Determine accrued depreciation
3. Subtract depreciation from reproduction cost
4. Determine the value of the land and any other improvements

\[
\text{REPRODUCTION COST} - \text{DEPRECIATION} + \text{SITE VALUE (LAND)} = \text{DEPRECIATED VALUE OF THE PROPERTY}
\]

The observed condition breakdown method (effective age/economic life) is an easy way to calculate the depreciated value of an improved property.

If a building has an economic life of 40 years and appears to the appraiser to be 10 years old (effective age), the amount of depreciation would be 25% (10/40) while the depreciated value remaining of the building would be 75% (30/40).

Example:

A home has a living area of 50' x 30' and an attached garage that is 20' x 25'. In today's market, the cost to build the main part of the house (living area) is $75.00 per square foot while the garage costs $40.00 per square foot. The home is 10 years old with an effective age of 6 years and an economic life of 30 years. The lot the home is located on has been appraised for $15,000. What is the depreciated value of this property?

\[
\begin{align*}
50' \times 30' &= 1,500 \text{ s.f.} \times $75 = $112,500 \\
20' \times 25' &= 500 \text{ s.f.} \times $40 = $20,000 \\
\text{Total Reproduction Cost:} &= $132,500 \\
\text{6 years of depreciation which is 6/30 or 20\%} \\
\text{24 years of depreciated value remaining which is 24/30 or 80\%} \\
$132,500 \times .80 &= $106,000 \text{ (depreciated value)} + $15,000 = $121,000 \\
\text{Depreciated Value of the Property} &= $121,000
\end{align*}
\]
Income Approach:

The income capitalization approach calculation is:

\[
\frac{I}{R \times V}
\]

I = Net Operating Income
R = Capitalization Rate
V = Value

The Gross Rent Multiplier (GRM) is an easy calculation to determine the value of a small residential rental property. The calculation is:

\[
\frac{V}{R \times M}
\]

V = Value
R = Monthly Rent
M = Multiplier

The steps to find value are:

1. Find the average multiplier in the market
   \[V \div R = M\]

2. Apply the market multiplier to the subject property’s gross monthly rent
   \[R \times M = V\]

The Gross Income Multiplier (GIM) is the same calculation. However, annual rent is used rather than monthly rent.
Appraisal Problems:

1. A house has a living area of 60' x 40' and an enclosed garage that is 20' x 25'. The cost to construct this home today is $80 per square foot for the main living area and $35 per square foot for the garage. The home is 5 years old and has an estimated useful life of 25 years. The lot is appraised for $25,000. What is the depreciated value of the property?

A. $192,600
B. $167,600
C. $157,125
D. $182,125

2. Over the past six months, there have been three sales that can be used for an appraisal of a vacant parcel of land. The subject parcel is 110' x 125'. There are no other adjustments required other than square footage. What is the value of the subject lot?

<table>
<thead>
<tr>
<th>Sales</th>
<th>Size</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1</td>
<td>100' x 125'</td>
<td>$15,000</td>
</tr>
<tr>
<td>#2</td>
<td>110' x 150'</td>
<td>$16,500</td>
</tr>
<tr>
<td>#3</td>
<td>100' x 100'</td>
<td>$11,000</td>
</tr>
</tbody>
</table>

A. $11,600
B. $12,500
C. $13,700
D. $15,125

3. If annual income of a commercial property is $80,000 and the sales price is $680,000, what is the Gross Income Multiplier?

A. 6.5  
B. 7.5  
C. 8.5  
D. 9.5  

4. If the net operating income of a rental property is $50,000 and the overall capitalization rate is 9%, what is the value of the property (round to the nearest $100)?

A. $500,000
B. $555,600
C. $575,350
D. $595,000
5. If a commercial property sold for $400,000 that had a net operating income of $48,000, what is the applicable capitalization rate for the sale?

A. 10%
B. 11%
C. 12%
D. 13%

6. You are appraising a warehouse that measures 150' x 200'. Reproduction cost is estimated to be $40 per square foot. Accrued depreciation is estimated to be as follows: physical deterioration $90,000; functional obsolescence $120,000; and external obsolescence $25,000. The subject land has been appraised for $300,000. What is the total value of this property?

A. $ 900,000
B. $ 965,000
C. $1,265,000
D. $1,345,000

LESSON THREE
REAL ESTATE INVESTMENT

Percentage of Profit Example:

Bill purchased two parcels of property for $30,000 each. He later subdivided the land into 6 lots, and sold them for $12,000 each. What was his profit percentage?

\[
\begin{align*}
\text{MADE} & = 2 \times $30,000 = $60,000 \\
\text{PAID} & = 6 \times $12,000 = $72,000 - $60,000 = $12,000 \\
\text{Profit} & = \frac{$12,000}{$60,000} = 0.20 \text{ or } 20% 
\end{align*}
\]
LESSON FOUR
REAL ESTATE TAXES

In order to determine taxable value, total exemptions must first be determined. They are: Homestead $25,000 plus an additional $25,000 if the assessed value exceeds $50,000. School Board taxes are not part of the second $25,000 exemption. Surviving Spouse $500; Blind $500 and 10% or better military disability $5,000. Individuals that are 100% military disabled, are exempt from real estate taxes on their homestead.

There are other exemptions to consider. A person over 65 years of age whose income is $20,000 or less can receive an additional $25,000 exemption and a person who is qualified as total and permanent military disabled pays no taxes on the homestead.

A Tax Rate of .008 is expressed as 8 mills. A "mill" is one-thousandth of a dollar or .001. Seven mills is equivalent to .007. Twenty mills is equivalent to .020 or .02. To calculate the property tax owing on a subject property, multiply the Taxable Value of the property by the Tax Rate.

Example: A house is assessed at $200,000 and qualifies for a homestead exemption. If city taxes rate is 6 mills, county tax rate is 10 mills, and school tax rate is 8 mills, what are the property taxes (levy) owed on this property?

Step 1: $200,000 - $50,000 = $150,000 x .024 = $3,600
Step 2: $25,000 x .008 = $200 (no-exempt)
Step 3: $3,600 + $200 = $3,800 (total taxes due)

Special Assessment Problem:

Example: The county government has decided to pave the street in front of Parcel “A” which measures 80’ by 120’ (first number is road frontage). The cost of paving the street is $12.00 per foot and the county will assume 40% of the expense. Calculate the total special assessment for Parcel “A”

Step 1: 80’ x $12 = $960 (total cost of paving)
Step 2 $960 x 60% = $576 (cost paid by adjacent property owners)
Step 3 $576 x 1/2 = $288 (cost paid by Parcel “A”)

Remember: For testing purposes, there is always someone owning property across the street who will pay the other 50%.
CHAPTER TWENTY: REAL ESTATE MATH

Tax Rate Problems:

1. If your home is assessed at $250,000, what are your taxes if the city tax rate is 9 mills, county tax rate is 10 mills, and school tax rate is 5 mills?

   A. $6,000
   B. $2,050
   C. $1,200
   D. $1,075

2. Mrs. Keller lives in Orlando, Florida. The City tax rate is 7 mills, the county tax rate is 8.25 mills, and the school board tax rate is 6 mills. Mrs. Keller’s husband recently died in a golfing accident, and she qualifies for the surviving spouse exemption. If her home is assessed for $350,000, what will Mrs. Keller pay in property taxes?

   A. $0
   B. $6,214.38
   C. $6,364.38
   D. $6,514.38

3. The city is going to pave your street at a cost of $50 per running foot and has agreed to pay 40% of the cost. Your property measures 120’x145’. What is the amount of the special assessment for your property?

   A. $1,800
   B. $2,160
   C. $3,600
   D. $4,350
LESSON FIVE
MORTGAGE

Discount Points:

Discount points are pre-paid interest. For every point a lender charges, their yield increases 1/8 of one percent. When a lender charges points, they are paid at closing by the borrower. One point is calculated as one percent of the loan amount; two points, two percent; etc.

Example:

If the purchase price is $250,000, the loan amount is $200,000, and the lender is charging 1 discount point with a 6% interest rate, this is the calculation:

$200,000 x .01 = $2,000 cash at closing
1 discount point = 1/8% or 6.125% (6\frac{1}{8}) yield

Amortization:

Amortization is the systematic process of paying down a debt through payments of principal and interest. The principal portion of the payment is the part that amortizes the debt.

\[ I = P \times R \times T \]

\( I \) = Amount of interest paid in dollars
\( P \) = Principal balance of a loan
\( R \) = Rate of Interest
\( T \) = Time length of the loan in terms of years

Nine months = .75 of a year
Six months = .50 of a year
Three months = .25 of a year

To amortize a loan, the steps are:

1. Loan amount x Annual interest rate = Annual interest div by 12 = Monthly interest
2. Mortgage payment (principal & interest) – Monthly interest = Principal portion
3. Principal balance of loan – principal portion of payment = New loan balance
4. Repeat same steps for next payment amortization.

Example Amortization:

$80,000 loan for 30 years at an annual interest rate of 8% with monthly principal and interest payments of $587.01:

$80,000 x .08 = $6,400 (annual interest) ÷ 12 = $533.33 (monthly interest)
$587.01 (P&I) - $533.33 (I) = $53.68 (P)

$80,000 - $53.68 = $79,946.32 new principal balance after the 1st payment.

$79,946.32 x .08 = $6,395.71 ÷ 12 = $532.98 $587.01 - $532.98 = $54.03
$79,946.32 - $54.03 =  $79,892.29 new principal balance after the 2nd payment.

Mortgage Problems:

1. A home was purchased for $130,000 and Shifty Savings and Loan has agreed to provide a 90% loan-to-value mortgage to the buyer. What is the amount of equity the buyer will need to purchase the home?
   A. $10,000
   B. $11,000
   C. $12,000
   D. $13,000

2. Buyer Bill is buying a new home for $150,000 and is getting a 95% loan. The lender is charging 1½ points to originate this loan. How much money will the lender charge?
   A. $2,137.50
   B. $4,750
   C. $7,500
   D. $9,637.50

3. Shifty Savings and Loan is making a 90% loan with an annual interest rate of 7%. If the lender charges 3 discount points at closing to make the loan, what is the yield to the lender?
   A. 7.25%
   B. 7.375%
   C. 7.5%
   D. 10%
4. What is the principal balance if the interest amount is $800 at 8% interest for six months?

A. $16,000  
B. $20,000  
C. $32,000  
D. $40,000

5. Bob borrows $20,000 at 15% interest from Guido. When the loan has been paid in full, Bob has paid $2,250 in interest. How long did Bob owe Guido?

A. 3 months  
B. 6 months  
C. 9 months  
D. 12 months

6. Steve borrows $30,000 at 8% interest for a period of 25 years. If monthly payments (P&I) were $231.54, what is the principal balance of the loan after the third monthly payment?

A. $29,968.46  
B. $29,936.71  
C. $29,904.75  
D. $29,872.58

LESSON SIX
CLOSING

Commissions and Percentages:

Understanding percentages is an important part of a licensee's daily activities. A quick review:

<table>
<thead>
<tr>
<th>Percentage Amount</th>
<th>Decimal Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>½ %</td>
<td>.005</td>
</tr>
<tr>
<td>1 %</td>
<td>.01</td>
</tr>
<tr>
<td>10 %</td>
<td>.10</td>
</tr>
<tr>
<td>100 %</td>
<td>1.00</td>
</tr>
<tr>
<td>125 %</td>
<td>1.25</td>
</tr>
</tbody>
</table>
Example:

A broker has a listing on a large parcel of vacant land. The broker agrees to accept 8% on the first $500,000 of the selling price and 10% on the balance. The property sells for $740,000. What is the broker’s commission?

Solution:

$500,000 \times 0.08 = $40,000$ 
$240,000 \times 0.10 = $24,000$

$40,000 + 24,000 = $64,000$ total commissions due to the broker

Calculated Net Listing Example:

Example:

The Seller wants to net $180,000 in the sale of her property which includes $4,000 of closing costs. If the Broker wants to earn a 7% commission, how much will the property have to sell for?

$180,000 + 4,000 = $184,000$ total to net

\[
\frac{184,000}{0.93} = 197,849
\]

Commission Problems:

1. Broker Bob has agreed to pay Sales Associate Sam 60% of the total commissions earned by Sam. Sam sold a home for $375,000 with an agreed upon commission of 7.5% of the sales price. What is Bob's share of the commission?

A. $11,250
B. $16,875
C. $28,125
D. $37,500

2. A broker lists a property for $259,000 and agrees to accept a 5% commission on the first $50,000 of the selling price, 6% of the next $45,000 of the selling price, 7.5% of the next $40,000 of the selling price, and 9% of the balance of the selling price. What is the broker's total commission on a sales price of $235,300?

A. $9,027
B. $12,231
C. $15,731
D. $17,227
3. Seller Sam notifies his broker that he wants to net $100,000 from the sale of his home. The seller’s closing cost will be $3,000 and the broker would like to earn a commission of 10%. What should the selling price on the property be?

A. $110,000  
B. $113,333  
C. $114,444  
D. $117,777

State Documentary and Intangible Taxes:

When a property sells, a documentary stamp tax on the deed is paid to the Department of Revenue regardless if the transaction is cash or financed. The doc stamp on the deed is .70 per $100 of the purchase price and any fraction of 100 must be rounded up. The seller usually pays this stamp tax.

If the buyer finances the property, a new mortgage and note is created on behalf of the lender. The lender will required the payment of an intangible tax on the new mortgage and a documentary stamp tax on the new promissory note. In addition, there will be a doc stamp on any assumed debt as well. These taxes are required by law and the buyer typically pays them.

The doc stamp on the note is .35 per $100 and any fraction of $100 must be rounded up.

The intangible tax is .002 (2 mills) on the new mortgages

Tax Problem:

Sally sells her home to Dan for $159,000. Dan secures a new first mortgage from Shifty Savings and Loan in the amount of $130,330. The taxes due on this transaction are:

$159,000 div by 100 = 1,590 (units of $100) x .70 = $1,113.00 (doc on deed)

$130,330 div by 100 = 1,303.3 (round to 1304 units of $100) x .35 = $456.40 (doc on note)

$130,330 x .002 = $260.66 (intangible on mortgage)
Expenses:

Expenses are items paid by either the buyer or seller to third parties outside of closing. Expenses are always single-entry debit items. Examples of outside third parties include, but are not limited to, surveyors, appraisers, real estate brokers, and the Department of Revenue.

Pro-Rations:

Pro-rations are items that are shared by the buyer and seller. It is an amount of money that one party owes to the other party. Pro-rations will be a double entry with a debit to one party and a credit to the other party. Pro-rated items include but are not limited to rents, real estate taxes, and interest on the assumed mortgage.

<table>
<thead>
<tr>
<th>Item</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes are paid in arrears</td>
<td>S-------------------------------------------B</td>
</tr>
<tr>
<td>Rent is paid up-front</td>
<td>S-------------------------------------------B</td>
</tr>
<tr>
<td>Interest is paid in arrears</td>
<td>S-------------------------------------------B</td>
</tr>
</tbody>
</table>

Remember, when calculating a proration, you are always looking for the amount of time on the other side of closing from when the bill was paid or due.

For the tax proration, you will be looking for the front part of the time line from closing whereas rents, you will be looking for the back side of the time line from the day of closing.

There are two methods of calculating pro-rations:

1. The 365-day method assumes there are 365 days in the year and the days in each month are actual days (i.e. January 31, February 28, etc.).

2. The 30-day month method assumes there are 30 days in each month. This method is also known as the 360-day method.

Closing Problems:

4. A duplex has been sold with the day of closing scheduled for May 12th. Total rent collected on the first is $760. Using the 365-day method and the day of closing belonging to the buyer, how will the rent pro-ration be handled?

   A. $490.32 debit to seller, $490.32 credit to buyer
   B. $269.68 debit to seller, $490.32 credit to buyer
   C. $490.32 credit to seller, $490.32 debit to buyer
   D. $269.68 credit to seller, $269.68 debit to buyer
CHAPTER TWENTY: REAL ESTATE MATH

5. How is $880 in property taxes pro-rated when the day of closing is on June 21st and belongs to the seller?

A. $465.32 debit to buyer, $414.68 credit to seller
B. $414.68 credit to buyer, $414.68 debit to seller
C. $414.68 debit to buyer, $465.32 credit to seller
D. $465.32 credit to seller, $465.32 debit to buyer

6. A $130,000 mortgage is being assumed as of October 15th and interest for the month is $760. How is the interest to be pro-rated if the day of closing belongs to the seller?

A. $405.33 credit to buyer, $367.74 debit to seller
B. $405.33 credit to seller, $405.67 debit to buyer
C. $367.74. credit to buyer, $367.74 debit to seller
D. $367.74 credit to seller, $405.33 debit to buyer

7. A house sells for $175,000. There is a cash down payment of $25,000 and the buyer assumes the existing first mortgage of $92,550. The balance of the purchase price is in the form of a new second mortgage. Calculate the state taxes due on the documents used at closing.

A. Doc stamp on the deed $____________________
B. Doc Stamp on Notes $____________________
C. Intangible Tax $____________________
1. How many acres are contained in a rectangular property that measures 300 feet by 240 feet?

   A. 1.44
   B. 1.65
   C. 1.80
   D. 1.93

2. The net income of a rental property is $15,000, and the overall cap rate is 12%. What is the value of the property?

   A. $100,000
   B. $112,000
   C. $117,500
   D. $125,000

3. How many acres are in the N ½ of the NE ¼ of the SW ¼ of Section 22?

   A. 20
   B. 40
   C. 80
   D. 160

4. Annual real estate taxes for the current year are $1,370, and the day of closing is March 12. Using the 365-day method, how are the taxes to be pro-rated if the day of closing belongs to the seller?

   I. 266.49 credit to buyer
   II. 1,103.51 debit to seller
   III. 266.49 debit to seller
   IV. 1,103.49 credit to buyer

   A. I and II
   B. II and IV
   C. I and III
   D. III and IV
5. City taxes are 7 mills, County taxes are 6 mills, and school taxes are 5 mills. If a property is assessed for $365,000, how much are the total taxes?

A. $5,670
B. $6,310
C. $6,570
D. $6,840

6. A property sells for $135,500 with the buyer securing a new first mortgage in the amount of $100,000. What are the total taxes due on this transaction?

A. $1,060.00
B. $1,346.40
C. $1,383.90
D. $1,498.00

7. A property is 300' x 550' and costs $150,000. What is the cost per front foot?

A. $.91
B. $1.50
C. $500
D. $750

8. A broker has a listing in which the seller has agreed to pay 8% commission on the first half of the sales price and 6% on the balance. If the property sells for $260,000, how much is the broker’s commission?

A. $18,200
B. $10,400
C. $7,800
D. $18,550

9. A property costs $130,000 based on $5.00 per square foot. How many acres are contained in the property?

A. .40
B. .50
C. .60
D. .70
10. What is the principal balance of a $100,000 mortgage at 7% interest after two monthly payments of $775.30?
   A. $99,808.03
   B. $99,614.94
   C. $99,420.73
   D. $99,225.38

11. A home sells for $185,000. The buyer assumes an existing first mortgage of $103,225 with the seller taking back a purchase money mortgage in the amount of $50,000. Calculate the documentary stamps on the deed.
   A. $1,295.00
   B. $1,931.55
   C. $1,756.55
   D. $1,831.55

12. Sally sales associate is entitled to 55% of all commissions earned, and she sells a property for $220,000. If the brokerage receives a 6% commission, how much will the broker’s share of the commission be?
   A. $5,940
   B. $6,320
   C. $7,260
   D. $13,200

13. The seller wishes to net $100,000 at closing, and the broker is to receive a 10% commission for her work. What must the property sell for?
   A. $100,999
   B. $110,000
   C. $111,111
   D. $102,999
14. A developer purchased three lots that are 100’ x 200’ each and cost $500 per front foot. He later subdivided the lots into five parcels and sold them for $40,000 each. What is the developer's percent of profit?

A. 25%
B. 28%
C. 31%
D. 33%

15. An investment property was purchased for $400,000, and the buyer is investing $100,000 as a down payment. What is the loan to value ratio?

A. 25%
B. 50%
C. 75%
D. 95%
1. Bob, who owns an orange grove near Orlando, was appointed by a court to appraise a grove near Tampa. Bob can:

   A. Not be compensated for the appraisal unless he is licensed
   B. Apply for a temporary license from the state
   C. Be compensated as long as the judge notifies the Florida Real Estate Commission before the farmer does the appraisal
   D. Be compensated for the appraisal

2. During the week, Jane works for Dolphin Realty, Inc. as a sales associate. On weekends, she holds open house for Grouper Homes Realty and is paid a 2% commission directly by Broker Grouper on any sales she helps procure. Which is correct?

   A. This is a violation of F.S. 494 stating that a sales associate may have only one real estate employer.
   B. She can work for both companies provided all parties are informed in writing.
   C. This activity is legal provided a group license is obtained.
   D. This is a prohibited activity.

3. Which of the following statements best describes a group license?

   A. It is issued to sales associates who work for more than one employer.
   B. A broker may be issued a group license for each branch office.
   C. It is issued to sales associates and broker-associates when working for several business entities provided there exists a common ownership.
   D. It is issued to licensees who serve as the broker of record for more than one business entity.

4. The No Brokerage Relationship notice forms must be given:

   A. At first contact
   B. No later than closing
   C. Only to persons known to be represented
   D. Prior to showing
5. A licensed sales associate of a brokerage corporation may:
   A. Be a corporate stockholder
   B. Serve as an officer
   C. Serve as a director
   D. Be a general partner

6. John and Harry own investment property together. Harry dies and his interest in the property passes to his estate. John and Harry owned the property as:
   A. Tenants by the entireties
   B. Tenants in common
   C. Tenants at will
   D. Joint tenancy

7. The comparable sales approach is based upon which principle?
   A. Anticipation
   B. Diminishing returns
   C. Appreciation
   D. Substitution

8. Jane purchased several adjacent parcels of land for $1.75 per square foot. She plans to combine these lots and sell them as one parcel at a price of $2.50 per square foot. This increase in value attributable to the combining of the parcels is known as:
   A. Alluvial
   B. Plottage
   C. Accretion
   D. Assemblage

9. To determine the buyer's willingness to pay, the lender should consider the applicant's:
   A. Income
   B. Housing expense ratio
   C. Total obligations ratio
   D. Credit Rating
10. Which of the following is the best example of external obsolescence?
   A. Fading exterior paint
   B. A five bedroom house with one bathroom
   C. A change in zoning
   D. Stained carpet

11. In a lien theory state, the mortgage:
   A. Is a lien on the property and the mortgagee has title
   B. Is an encumbrance on the property and the mortgagee has title
   C. Is a lien on the property and the mortgagor has title
   D. Is a deed restriction on the property and the mortgagor has title

12. All of the following statements about a real estate brokerage corporation's official sign are correct except:
   A. The official sign must be readily visible.
   B. The official sign must list the name of the corporation and at least one active broker.
   C. The official sign can have the names of all sales associates and broker-sales associates, but the sign must include his/her license status.
   D. The official sign must list all of the officers and the members on the board of directors of the corporation.

13. Information which has been published by recording it in the official public records is called:
   A. Actual notice
   B. Constructive notice
   C. Equitable notice
   D. Judicial notice

14. Tom and Sally's home was taken so that a county road could be expanded. This type of governmental action is known as:
   A. Estoppel
   B. Police power
   C. Eminent domain
   D. Escheat
15. A sublease is best defined as:
   A. A lease of the entire premises by a new tenant
   B. A lease of the entire premises located underground
   C. A portion of the leased rights and interests
   D. A lease for a certain type of sandwich shop

16. Which of the following is a requirement under RESPA provisions?
   A. Provide the buyer an information booklet no later than closing.
   B. Provide seller and buyer a good faith estimate of closing costs within three days of application.
   C. Provide the buyer a good faith estimate of closing costs within three days of application.
   D. Provide the seller and buyer a settlement statement no later than closing.

17. Which of the following business entities can register to broker real estate?
   A. Corporation
   B. Limited Partnership
   C. Limited Liability Company
   D. All of the above

18. A broker lists a house for $200,000. Later, the broker and his brother form a corporation that buys the house from the principal for $170,000 although the broker does not inform his principal of his participation with the corporation. Has any Florida law been violated?
   A. No, because the broker was only a part owner of the corporation
   B. No, because the broker was the seller's single agent during the transaction
   C. Yes, because the corporation did not pay the full price for the house
   D. Yes, because the broker did not disclose to the principal that he was affiliated with the buyer

19. Title to real property is legally conveyed when the deed is:
   A. Recorded
   B. Delivered and accepted
   C. Signed and witnessed
   D. Signed, notarized and recorded
20. Ann remits an earnest money deposit of $37,500 on a property that is listed for $150,000. The broker then defrauds Ann out of the $37,500. Ann takes the broker to court and wins a judgment of $37,500 plus $15,000 punitive damages. The broker has no assets, so Ann requests relief from the Florida Real Estate Recovery Fund. Since she has a judgment for $52,500, how much can she receive from the Florida Real Estate Recovery Fund?

A. $15,000  
B. $37,500  
C. $52,500  
D. $75,000

21. The statute of frauds applies to:

A. All legal contracts and other documents  
B. The transfer of personal property  
C. Real property sales contracts  
D. Acts of fraud by licensees

22. The term applied to the use of borrowed funds to finance the purchase of real estate is called:

A. Leverage  
B. Liquidity  
C. Intermediation  
D. Equity

23. Bob, a resident of Maine, wishes to become a Florida real estate licensee. Which of the following will be required of Bob?

A. Apply for a Florida Alien’s License and take a 40 question exam on Florida Law a pass with a score of 75%  
B. Become a Florida resident within the initial license period  
C. Complete the required educational course and pass the state exam with a score of 75% or better.  
D. Accept permanent revocation of his license should any violation of the real estate law be upheld

24. Members of the Florida Real Estate Commission are prohibited from serving more than:

A. Two years  
B. Four years  
C. Eight years  
D. Two consecutive terms
25. The Florida Real Estate Commission decides to modify an existing rule concerning brokerage advertising. This is an exercise of the Commission’s:

A. Executive power  
B. Ministerial power  
C. Quasi-legislative power  
D. Quasi-judicial power

26. Broker Betty is moving to Germany for three years with her husband who is transferring there with the U.S. Air Force. Before she leaves for Germany, she places her license on voluntary inactive status. What are Betty’s obligations to keep her license in good standing?

A. She must pay her renewal fees only.  
B. She must pay her renewal fees and complete her educational requirements.  
C. She must take a 30-hour broker management class upon her return to Florida.  
D. She is exempt from all renewal requirements while she is in Germany and for six months after her husband’s discharge from the Air Force.

27. An active sales associate allowed his license to expire. At that point, the licensee was involuntarily inactive. What must this sales associate do to obtain another active license after five years have lapsed?

A. Complete the FREC I course  
B. Complete 35 hours of continuing education  
C. Complete 28 hours of activation education  
D. Complete the post-licensing and continuing education requirements

28. Which of the following best describes a transaction broker relationship?

A. Full fiduciary duties owed to the principal  
B. Limited representation to the customer(s)  
C. Full fiduciary duties owed to all parties involved  
D. A transaction broker owes no duties to any party

29. In Florida, a broker and his principal enter into an agency relationship. Which of the following Florida laws will govern that relationship?

A. F.S. 494  
B. FREC regulations  
C. Florida agency law  
D. Both B and C
30. A broker may not collect a commission from both parties to a contract without:
   A. Having an exclusive listing
   B. Notifying both parties of the transaction
   C. Obtaining the informed consent of both parties
   D. Violating Florida statutes

31. All advertisements by brokers must include which of the following:
   A. Name and address of the broker's principal
   B. Name of the licensee that obtained the listing
   C. Name of the broker and office telephone number
   D. Name of the brokerage firm

32. When a broker has a "good faith doubt" concerning which party is entitled to the earnest money deposit, that broker has how many business days to notify FREC in writing of the dispute?
   A. 5
   B. 10
   C. 15
   D. 30

33. A dispute arises between a buyer and seller two days before closing with each party demanding ownership of the earnest money deposit. Both parties agreed in their Purchase and Sale Contract that, in the event of a dispute, the matter should be submitted to a neutral third party in an effort to reach a voluntary settlement. This procedure is known as:
   A. Mediation
   B. Escrow Disbursement Order
   C. Arbitration
   D. Litigation

34. If a listing agreement provides that a broker is to "find a purchaser", the broker earns his commission:
   A. When the broker finds a purchaser
   B. When any reasonable offer is made
   C. Upon closing and conveyance of title
   D. When the broker finds a buyer ready, willing, and able to purchase on terms and conditions specified by the seller
35. A broker may lawfully place escrow deposits in all of the following except:
   A. Commercial bank
   B. Mutual Fund
   C. Title company with trust powers
   D. Savings Association

36. In Florida, if a real estate broker registers as a "foreign corporation", it means the business entity is chartered:
   A. In a foreign country
   B. Outside the continental United States
   C. Outside the 50 states
   D. Outside the state of Florida

37. A Florida corporation operating as a real estate brokerage is created in which of the following ways?
   A. Application to the Internal Revenue Service
   B. Private agreement between the stockholders
   C. Filing a certificate with the local Clerk of Court
   D. Filing articles of incorporation with the Florida Department of State

38. Sales associate Sidney and Broker Beth wish to start a new real estate brokerage general partnership. Which of the following best applies?
   A. They are prohibited from this activity.
   B. The partnership must be registered as a joint venture.
   C. They must register the partnership with Beth as the broker of record.
   D. They must register as the partnership with the Secretary of State.

39. A Florida general partnership operating as a real estate brokerage can be created by which of the following methods?
   A. Filing a partnership charter with the Florida Secretary of State
   B. Filing a certificate of partnership with the DBPR
   C. Oral agreement between the partners
   D. File an application with the Florida Division of Partnerships

40. Which of the following can issue subpoenas pursuant to a formal hearing?
   A. The director of the DRE
   B. Chairman of FREC
   C. President of the Florida Association of REALTORS®
   D. Administrative law judge
41. If a legally sufficient complaint has been filed, investigated, and found valid, the next step in the complaint process is:

A. Informal hearing
B. Formal hearing
C. Probable cause determination
D. Final Order issuance

42. A broker followed the dictates of an escrow disbursement order issued by FREC requiring the return of an earnest money deposit to a buyer. Later, the seller sued the broker to recover the amount of the deposit. After the trial, the judge rules in favor of the seller and issues a judgment for $7,000.00 against the broker. If the Real Estate Recovery Fund makes payment to the seller as a result of the lawsuit, what action will be taken against the broker?

A. The broker's license must be suspended.
B. The broker's license may be revoked.
C. The broker could be fined up to $1,000.
D. No action will be taken by FREC.

43. An owner possessing littoral rights owns land abutting a:

A. City or county line
B. Highway or interstate
C. River or stream
D. Lake, sea, or ocean

44. If two or more persons have an interest in real property, which of the following estates cannot be created unless specific wording in a deed provides for right of survivorship?

A. Joint tenancy
B. Tenancy by the entireties
C. Tenancy in common
D. Tenancy at will

45. Recording a deed:

A. Creates equitable title
B. Provides actual notice of ownership
C. Provides constructive notice of ownership
D. Establishes a future right of redemption
46. An instrument that transfers possession of real property but does not transfer ownership is called a(n):
   A. Deed
   B. Lease
   C. Easement
   D. Mortgage

47. A real estate contract signed by a minor is:
   A. Enforceable
   B. Terminated
   C. Voidable
   D. Void

48. Jack offers to purchase Carly's home for $150,000. The listing broker submits the offer to Carly, but Carly responds with a counteroffer of $165,000. Jack rejects the counteroffer. Later, Carly wants to accept the original offer of $150,000 and notifies Jack of her acceptance. Jack has changed his mind and does not want to buy Carly's home at any price. The result is:
   A. Carly's broker has earned a commission
   B. Jack is obligated to accept his original offer of $150,000
   C. No valid contract exists
   D. An enforceable contract exists

49. The Truth in Lending Law of 1969, enacted to protect consumers, is implemented by:
   A. RESPA
   B. Regulation Z
   C. Regulation D
   D. A "Property Report"

50. The Real Estate Settlement Procedures Act does NOT require that:
   A. A uniform settlement statement be used if an escrow agent is used for closing
   B. Sellers be informed of their closing costs prior to closing
   C. Lenders give borrowers, who are to pay closing costs, an estimate of the lender's closing agent's charges
   D. Lenders provide prospective borrowers with a HUD special information booklet
51. When a landlord accepts a security deposit, what may the landlord legally do with the funds?

A. Commingle the funds provided sufficient bond is posted with the clerk of court and pay the tenant interest
B. Deposit such funds in a separate non interest-bearing account
C. Both A and B
D. Neither A nor B

52. Existing mortgages are bought and sold:

A. In Washington, D.C.
B. In the primary market
C. By the Federal Reserve System
D. In the secondary market

53. A purchase money mortgage:

A. Is always a junior mortgage
B. Is often called a chattel mortgage
C. Is any mortgage used to finance the purchase of real property
D. Cannot include personal property

54. Which of the following mortgages accepts both real property and personal property as collateral?

A. Adjustable rate mortgage
B. Home equity loan
C. Package Mortgage
D. Purchase money mortgage

55. Under the provisions of the Truth In Lending Act, all of the following are correct except:

A. All closing costs must be disclosed to the buyer and seller
B. Finance charges include loan origination fees, points, and insurance
C. It is administered through Regulation Z
D. It is designed to inform consumers of the actual costs of borrowing money
56. Tom, a non-licensed Alabama resident, referred a prospect to Broker Dave in Pensacola, Florida. If Dave reimburses Tom for his expenses only, which of the following statements best applies?

A. Dave can pay Tom's expenses without violating Florida law.
B. Both Dave and Tom have violated Chapter 475, Florida Statutes.
C. Dave may reimburse Tom's expenses but only if Tom does not accompany the prospects to Florida.
D. Only Dave has violated Chapter 475, Florida Statutes.

57. An agency relationship is created:

A. When valuable consideration is given by the parties
B. By the personal trust between the broker and the principal
C. When a broker and principal enter into an employment contract
D. All of the above

58. A broker may lose the right to claim a commission if:

A. He fails to disclose a known defect to a buyer
B. His license is not in good standing at the time a ready, willing and able buyer is procured
C. He violated Chapter 475, F.S. while performing a service of real estate
D. All of the above

59. After Broker Sharon listed Todd's home for $200,000 as a single agent, Buyer Bert offers $190,000 and states that he will pay more if Todd does not accept the offer. Sharon is required to:

A. Immediately submit the $190,000 offer to Todd
B. Submit the $190,000 offer and tell Todd that the prospect may pay more
C. Insist that Bert offer $200,000
D. Withhold the offer since it was not full price

60. Which of the following statements is correct regarding a single agency relationship in Florida?

A. It is governed by Florida Statute 475
B. It is a fiduciary relationship
C. The agency relationship must be in writing
D. All of the above
61. If Karen is registered with Broker Bob when his license is suspended:

A. She may continue to operate under the broker's license if the DBPR approves
B. She must become registered under another broker before performing any services of real estate for compensation
C. She is temporarily out of the real estate business until Bob's suspension ends
D. Her license will be cancelled or suspended at the option of FREC

62. After a proper investigation indicates that a licensee could be harmful to the public when selling real estate, the DBPR can:

A. Suspend his or her license up to 10 years
B. Apply for a summary suspension
C. Revoke his or her license
D. Impose an administrative fine

63. Under which of the following circumstances may a broker or sales associate lawfully refuse to show a home to a minority prospect who has specifically asked to see that property?

A. When the owner is exempt under the 1968 Fair Housing Act
B. When the broker believes that showing the property to this prospect will create blockbusting in the neighborhood
C. When the owner is not at home and has directed the broker not to show the property during his absence
D. Never

64. A Georgia buyer comes to Florida and contacts Broker Bob who shows him a parcel of land. The buyer makes a written offer on the property and gives Bob a binder deposit in the form of his personal check drawn on an Atlanta Bank. The seller accepted the offer and signed the contract, and Bob told the seller that the deposit was a check. However, he did not mention that it was a personal check written on a Georgia bank. A few days later, Bob learns that the check was returned due to insufficient funds, and the seller refuses to proceed on the deal. The broker is guilty of:

A. Nothing if the check was immediately deposited into his escrow account
B. Culpable negligence because he didn't verify the amount of the buyer's funds in the Georgia Bank
C. Nothing, but he is responsible for one-half of the deposit amount
D. Gross negligence because he didn't inform the seller that the check was drawn on a Georgia Bank
65. Randy makes an oral offer for $151,000 on property that Broker Tom has listed for $155,000. However, before the offer can be presented to the seller, Al makes an oral offer of $155,000. How should Broker Tom handle this situation?

A. Present the first offer only
B. Present both offers
C. Not present either offer because they were oral
D. Present both offers after they are submitted in writing

66. Broker Dave asks his unlicensed assistant Bryan to drive a potential buyer to view a house that Dave has listed. Upon arrival, the potential buyer asks for information about the property, but Bryan only gives an information sheet that provides information about the property, including the price. The potential buyer now desires to make an offer. Which of the following statements is accurate?

A. Dave violated Florida law by using his unlicensed assistant in this manner.
B. Florida real estate law was not violated.
C. Both Dave and Bryan violated Florida real estate license law.
D. Only Bryan violated Florida real estate license law.

67. If Broker Bill has been sentenced to prison for mail fraud:

A. FREC cannot take action because the violation did not involve real estate
B. This will likely be grounds for suspension or revocation
C. Broker Bill will be automatically revoked by FREC
D. This will likely be grounds for suspension only

68. The economic concept that sets an upper limit of value for any particular property is called the:

A. Depreciation rule
B. Principle of substitution
C. Capitalization process
D. Scarcity principle

69. The Federal National Mortgage Association (FNMA):

I. Is regulated by the federal government
II. Has privately held stock
III. Provides for a secondary mortgage market
IV. Deals directly with borrowers

A. I and II
B. I and III
C. II and IV
D. I, II and III
70. The Federal National Mortgage Association (Fannie Mae) presently buys and sells which types of mortgages?

A. FHA  
B. VA  
C. Conventional  
D. All of the above

71. The most accurate method of describing land is the:

A. Metes and bounds  
B. Government survey  
C. Lot and block  
D. Monuments

72. Which power of government represents the broadest power of government to limit or regulate the rights of property owners?

A. Police power  
B. Eminent domain  
C. Escheat  
D. Taxation

73. The term "real property" can best be described as:

A. The physical components of real estate  
B. Land only  
C. Land plus all improvements on it  
D. A bundle of legal rights, land, and all improvements

74. The rights included in real property ownership under the allodial system include which of the following?

A. Buy, sell, use, and possess  
B. Use, dispose, improve, and possess  
C. Acquire, use, dispose, and possess  
D. Enjoyment, exclude, dispose, possess, and control

75. Which of the following offenses is a first-degree misdemeanor?

A. Publishing false or misleading information  
B. Violation of rental list rules  
C. Breach of trust in a real estate transaction  
D. Having improper sign of the entrance of office
76. Which of the following documents can a Florida real estate licensee legally prepare?

A. Commercial leases, sales contracts, and deeds
B. Listing, sales contracts, and option contracts
C. Deeds, sales contracts, and residential leases
D. Mortgages, residential leases, and all types of listing and sales contracts

77. The Fair Housing Act of 1968, as amended, prohibits discrimination based upon:

A. Race, color, religion, sex, national origin, familial status, or handicap
B. Race or age
C. Religion, race, familial status, or handicap
D. Race, color, religion, creed, or national origin

78. The executive powers of FREC include the:

A. Regulation of real estate practices
B. Creation of 61-J2 (F.A.C.) rules
C. Filing of registrations
D. Both A and B

79. Sandra Sales associate listed Tom’s house on May 1 and sold it ten days later. The transaction closed June 5, but Sandra’s license had expired on March 31. If her employing broker’s license did not expire until September 30, which of the following statements best applies?

A. Tom does not owe a sales commission to anyone.
B. A violation of the license law will not occur if Tom merely pays the broker’s share of the commission.
C. Sandra’s broker can legally pay her commission after her license expires.
D. Sandra will not violate Chapter 475, F.S. if she receives her sales commission directly from the property owner.

80. If an active broker’s for four years license expires, her license will immediately become:

A. Ineffective
B. Cancelled
C. Involuntary inactive
D. Cease to be enforced
81. Broker Betty sold John a rental information list on June 1st for $400. If John decides not to rent and calls Betty on July 4th to let her know, which applies?

A. Betty should give John a full refund of $400
B. Betty is required to give John a refund of $300
C. Betty is required to give John a refund of $200 since the demand was after 30 days of the purchase
D. Betty is not required to give any refund

82. Which of the following best describes leverage in real estate?

A. Pledging real property as security for a loan
B. It requires intermediation
C. It requires disintermediation
D. Borrowing funds to purchase an asset

83. Broker Ted rents space in offices shared by Brokers Al and Bob. Each broker has separate business cards, stationary, and phone numbers, but they do share the services of one secretary. If Broker Ted defrauds prospect Sam before his sign is placed near the office entrance, which of the following statements is true?

A. Only Broker Bob could be charged with defrauding Sam.
B. Brokers Al and Bob could not be held liable because Ted's act was not intentional.
C. All of the brokers could be charged with fraud and are equally liable as ostensible partners.
D. All of the brokers could be charged with fraud, but only Ted has any financial liability.

84. The most important aspect of a real estate investment is its:

A. After tax cash flow
B. Net operating income
C. Economic soundness
D. Property location

85. Gordon receives an offer to purchase his home after listing it with Broker Fred. If Gordon's acceptance is not communicated to the buyer:

A. A valid contract exists
B. There is an offer and acceptance but not a valid contract
C. Broker Fred alone controls the binder deposit
D. The buyer, seller, and broker are parties to the contract that has been created
86. A licensee who fails to renew can remain involuntarily inactive for:
   A. Two years
   B. Four years
   C. Six years
   D. An indefinite period of time

87. If a citation has been issued to a real estate broker:
   A. The licensee may refuse to pay the citation and request a hearing
   B. It becomes a final order of FREC if the licensee does not dispute the subject matter of the citation
   C. It pertains to a violation by the licensee that did not involve the public health, safety or welfare
   D. All of the above

88. A deed restriction is:
   A. An encroachment
   B. An encumbrance
   C. Non-transferable
   D. All of the above

89. An encroachment can only be proven by:
   A. A title insurance policy
   B. An up to date abstract
   C. An up to date survey
   D. All of the above

90. Which type of agency relationship provides for full fiduciary duties?
   A. Single agent
   B. Transaction broker
   C. Dual agent
   D. All of the above

91. The city has decided to pave the street in front of your house. The total cost of paving will be $25.00 per running foot. The city agrees to pay 30 percent of the cost of paving. The remaining costs are to be apportioned between the owners on both sides of the street. What will the assessment of your property be if your lot is 80 feet wide?
   A. $350
   B. $700
   C. $1,400
   D. $2,000
92. How many acres are contained in a square property that measures 250 feet by 250 feet?

A. 1.56
B. 1.43
C. 2.93
D. 3.11

93. Sales Associate Dave works for Broker Bob. Dave sells a parcel of vacant land described as the NE ¼ of the SW ¼ of Section 25, T1N, R29W and the S ½ of the SE ¼ of the NW ¼ of Section 25, T1N, R29W located in Escambia County, Florida. The listing contract calls for a 7% commission to be paid to the broker, and the broker has agreed to accept 30% of the total commission if Dave sells the property. Dave secured a contract with a purchase price of $8,000 per acre. What is Sales associate Dave's share of the commission?

A. $23,520
B. $10,080
C. $33,600
D. $14,400

94. A sales associate accepts employment with a broker at 45% of sales commissions earned as a result of his sales efforts. The broker lists a property for $48,000 with a 7% sales commission agreed by the owner. The sales associate sells the property at the listed price. What is the broker's share of the commission?

A. $1,512
B. $1,848
C. $1,884
D. $3,360

95. An investor buys a property which has a net income of $1,750 per month. It has a capitalization rate of 14%. What did the investor pay for the property?

A. $12,500
B. $21,000
C. $125,000
D. $150,000

96. Calculate the deed documentary stamp tax on a purchase price of $325,750.00 with a purchase money mortgage of $250,000.00.

A. $2,280.25
B. $1,140.13
C. $2,280.60
D. $1,750.00
97. A developer purchases two adjacent lots for $125,000 each. She subdivides
the land into 6 parcels which sell for $50,000 each. What is the developer's
percentage of profit?

A. 20%
B. 50%
C. 25%
D. 40%

98. How much of the 2nd monthly payment will be applied to the principal balance
of a $80,000 mortgage at 7.5% interest for 30 years if each monthly payment is
559.37?

A. $59.37
B. $59.74
C. $60.11
D. $60.49

99. A property closes on June 18, 2001. The ad valorem taxes are $2,200 for the
year. Prorate the taxes for this transaction (day of closing goes to the buyer).

A. $1,012.60 Credit to the Seller/Debit to the Buyer
B. $1,012.60 Credit to the Buyer/Debit to the Seller
C. $1,091.16 Credit to the Buyer/Debit to the Seller
D. $1,091.16 Credit to the Seller/Debit to the Buyer

100. A property’s price is $300,000 of which $60,000 is allocated to the cost of
land. The property has an economic life of 25 years and an effective age of 5 years.
Given this information and using the straight-line depreciation method, what is the
value of the property?

A. $192,000
B. $240,000
C. $250,000
D. $252,000
# End of Chapter Quiz Answer Key

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<th>CHAPTER 1</th>
<th>CHAPTER 2</th>
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16. D
17. A
18. C
### ANSWER KEY

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### CHAPTER 20 - MATH REVIEW

#### LESSON ONE - COMMON AREAS

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<td>5.</td>
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#### LESSON TWO - APPRAISAL

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#### LESSON FOUR - REAL ESTATE TAXES

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#### LESSON FIVE - MORTGAGE

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#### LESSON SIX - CLOSING

#### COMMISSIONS AND PERCENTAGES:

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#### CLOSING PROBLEMS:

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<td>7.</td>
<td>C ($111,111.11)</td>
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<td>8.</td>
<td>A ($3,333%)</td>
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<td>9.</td>
<td>C (75%)</td>
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Final Practice Exam Answer Key

1. D  45. C  89. C
2. D  46. B  90. A
3. C  47. C  91. B
5. A  49. B  93. A
7. D  51. C  95. D
8. B  52. D  96. C
12. D  56. B  100. D
13. B  57. C
14. C  58. D
15. C  59. B
16. C  60. D
17. D  61. B
18. D  62. B
20. B  64. A
22. A  66. B
23. C  67. B
24. D  68. B
25. C  69. D
26. D  70. D
27. A  71. A
28. B  72. A
29. D  73. D
30. C  74. D
31. D  75. B
32. C  76. B
33. A  77. A
34. D  78. A
35. B  79. A
36. D  80. C
37. D  81. B
38. A  82. D
39. C  83. C
40. D  84. C
41. C  85. B
42. D  86. A
43. D  87. D
44. A  88. B
45. C
46. A
47. A
48. A
**Glossary**

**Absentee Owner**: A property owner who does not reside on the property and who usually relies on a property manager to oversee the investment.

**Abstract of Title**: A compilation of the recorded documents relating to a parcel of land from which an attorney may give an opinion as to the condition of title (a history of title).

**Acceleration Clause**: A condition in a loan contract that permits the lender to require immediate repayment of the entire loan balance of the loan if the contract is breached or conditions for repayment occur, such as sale or demolition.

**Acknowledgment**: A written declaration by a person signing a document, given before an officer authorized to give an oath (notary public), stating that the signing is the person’s voluntary act.

**Actual notice**: Giving oral or written notice, presenting a deed, giving verbal notice, or physically moving into a property.

**Ad Valorem**: According to value; annual real estate taxes are ad valorem taxes.

**Adjudication Withheld**: When a criminal final judgment is withheld or not recorded in public record.

**Adjustable Rate Mortgage (ARM)**: A mortgage loan with a calculated interest rate that may increase or decrease during the term of the loan.

**Adverse Possession**: A method of acquiring title by possession under open, notorious, exclusive, and hostile conditions for seven or more years.

**Agent**: A person authorized by a principal to act on the principal’s behalf.

**Amortized Mortgage**: A mortgage loan that is fully repaid according to a periodic and consistent schedule that includes both principal and interest.

**Appraisal**: A supported, defended estimate of the value of property rights as of a given date.

**Appreciation**: An increase in a property’s value.

**Arrears**: When payment is due at the end of the term.

**Asbestos**: A fire resistant material believed to be carcinogenic.

**Assemblage**: The bringing together of two adjoining parcels of property under one ownership.

**Assessed Value**: A property’s value for ad valorem tax purposes as established by the county property appraiser.

**Assignment**: A transfer to another of any property, real or personal, or of any rights or estates in said property.

**Assumption**: The taking over of an existing mortgage by a buyer.

**Balloon Payment**: A final installment payment on a note that is much larger than the previous monthly payments on the note.

**Base Line**: The horizontal line that runs east and west through Tallahassee that is the starting point for all other horizontal lines north and south of Tallahassee.

**Basis**: The purchase price plus closing costs and other added improvements.

**Benchmark**: Survey mark made which is permanently fixed in the ground showing the height of that point in relation to sea level.

**Bilateral Contract**: A contract in which both parties enter into mutual promises.

**Biweekly Mortgage**: Mortgage payments that are made every other week (26 payments year).

**Blanket Mortgage**: A mortgage that is secured by two or more items of real property.
 Blind Advertisement: An advertisement of a principal's property providing only a telephone number, a post office box, and/or an address without the licensed name of the brokerage firm

Blockbusting: The illegal practice of inducing homeowners to sell their property by making misrepresentations regarding the entry or prospective entry of minority persons in order to cause a turnover of properties in the neighborhood; discriminatory acts against sellers

Broker: One who is licensed by the State of Florida to carry on the business of dealing in real estate; a broker may receive a commission for his or her part in bringing together parties in a real estate transaction

Broker Associate: An individual qualified to be issued a broker’s license but who operates as a salesperson in the employ of another

Buffer Zone: A parcel of land separating two other parcels or areas, such as a parcel of land between residential and commercial properties

Building Code: Codes adopted by local governments governing acceptable building construction standards and materials

Building inspection: Performed by local government inspectors before a certificate of occupancy is issued to assure that the structure satisfies code requirements

Building permit: Written authority by a unit of government (county or city) for the construction of a new building or other improvement or for the repair or demolition of an existing structure

Business Opportunity Brokerage: The marketing and sale of a going-concern operation; Florida requires that business brokers have a real estate license to market business opportunities

Buyer’s Market: The supply of available properties exceeds the demand

Cancelled: License status of salesperson when employing broker’s license is ineffective or void

Capital Gain: The positive difference between the sales price and the basis of the property after appropriate adjustments for fix-up expenses, closing costs, allowable depreciation, etc., (taxable profit)

Casement: A window hinged on its side so that it can swing open

Cash Flow: The resulting amount when annual debt service, tax liability, and capital improvement costs are subtracted from net operating income

Caveat Emptor: “Let the buyer beware”

Cease to be in force: If a broker or real estate school changes its business address or if a real estate licensee or real estate instructor changes their employer without notifying the DRE within 10 days

Certificate of Occupancy: Issued after construction is substantially completed indicating that the premises are habitable

Chain of Title: The chronological order of conveyance of a parcel of land from the original owner to the present owner

Check: A 24-mile square that is created when a guide meridian and a correction line intersect

Citation: A minor infraction of the license law that generally results in a small fine

Commingle: To mix together money or a deposit with personal funds; combine

Committee’s Deed: Utilized when the grantor is mentally incompetent

Comparative Market Analysis (CMA): An informal estimate of market value performed by a real estate licensee for the seller to assist in arriving at an appropriate listing price, or, if working with the buyer, an informal estimate of market value to assist the buyer in arriving at an appropriate offering price
Compensation: Any form of remuneration, payment, or value
Competent: Having the mental and age capacity to enter into a contract
Complaint: A charge or accusation that a licensee has committed a specified offense
Concurrence: A state mandate that infrastructure needed to support additional growth must be in place before any new development is permitted
Condominium: Single unit ownership in a multiple unit dwelling
Conflicting Demands: When the buyer and seller make demands for a deposit
Conforming Loan: A loan that meets FNMA and FHLMC borrowing requirements
Consent to Transition: A written requirement when a licensee is moving from a single agent relationship to a transaction broker
Constructive Notice: Notice given by publishing in a newspaper, public records, or other method
Contract: An agreement between two or more competent parties, supported by consideration, to do, or not to do, a certain legal act
Contract for Deed: An instrument by which a prospective buyer pays for a property in installments; legal title is conveyed in the future after payment of the full price or an otherwise specified amount
Conversion: An unauthorized act of using the funds or property of another for one’s own use
Cooperative: Form of real property ownership where a corporation or association divides a single property into portions with each user owning stock in the corporation
Corner Lot: A parcel of land contiguous to two intersecting streets
Corporation: An artificial or fictitious person formed to conduct specified types of business activities
Cost-depreciation Approach: A method for estimating the market value of a property based on the cost to buy the site and to construct a new building on the site, less depreciation
Credit: On a closing statement, credit refers to money that is paid or payable
Cul de sac lot: Lot located at the end of a street which ends in a rounded, closed end to provide for U-turns
Culpable Negligence: Being negligent in a manner that causes a customer or client monetary damages.
Curable: If corrections of a deficiency or defect result in as much added value to a property as the cost to correct the deficiency or defect
Customer: A person who is or may be a seller or buyer of real property and may or may not be represented by a licensee
Debit: On a closing statement, debit refers to money that is owed or a payment
Debt Service: Annual mortgage payments, including principal and interest
Declaration: The recorded document that creates a condominium
Dedication: A deliberate transfer of land by its owner for public use and accepted for such use by the public
Deed: Any one of many conveyance or financing instruments, but generally a conveyance instrument given to pass title to property upon sale
Deed in Lieu of Foreclosure: A deed from an owner to a mortgage lender to avoid the necessity of a foreclosure lawsuit
Deed Restriction: Limitations on the use of property placed in a deed by the grantor which binds all future owners
Demand: The quantity of goods or services wanted by consumers
Depreciation: A decline or loss in value for any reason
Designated Sale Associate: A single agent for different parties in the same nonresidential transaction; the buyer and seller must have assets of $1 million or more and sign disclosures stating their assets meet the required threshold.

Discount Point: Pre-paid interest charged by the lender at the time of closing; a discount point is equal to 1% of the loan amount.

Disintermediation: When depositors withdraw money from savings for direct investment with a borrower.

Dormer: A roof section that rises vertically above the main roofline.

Double Hung: A type of window that opens vertically from the top to bottom.

Dual Agent: Representing both principals in a transaction.

Due-On-Sale Clause: A mortgage clause that causes the entire loan balance to become due upon the sale of the property.

Earnest Money Deposit: Money given as evidence of good faith to accompany an offer to purchase or rent.

Easement: The legal right that a party has to use another’s property.

Economic Life: The total period over which improvements to real estate contribute to the value of the property.

Eminent Domain: The legal right that government and quasi-government agencies have to take property from individuals for public use.

Encroachment: A physical intrusion or trespass that can be detected by an up-to-date survey.

Environmental Impact Statement (EIS): A report of the probable effect of a development on the surrounding area.

Equity: The difference between the market value of a property and the mortgage debt.

Equity of Redemption: The right of a mortgagor, before a foreclosure sale, to reclaim forfeited property by paying the entire indebtedness.

Escheat: When a person dies intestate (without a will) and with no heirs, all real and personal property transfers to the state of Florida.

Escrow: A depository account in a bank, trust company, title company or attorney having trust powers, credit union, or savings and loan association within the state of Florida where funds are placed and held in trust until disposition is authorized.

Escrow Account: A depository account in a bank, title company, credit union, savings association, or trust company used solely for safekeeping customer funds and not for deposit of personal funds; impound account.

Estate for Years: A lease that has a beginning date, has an ending date, and is in writing.

Estoppel Certificate: A written statement by a mortgagee verifying the balance due on the mortgage.

Exculpatory Clause: The borrower is not personally responsible for the debt (a non-recourse loan); the lender will not seek a deficiency judgment.

Exclusive Agency Listing: Listing agreement whereby the seller may find a buyer without owing a commission although the seller agrees not to list the property with any additional brokers.

Exclusive Right of Sale: Listing agreement whereby the broker earns a commission no matter who procures the buyer.

Exempt Property: Real property excused for payment of ad valorem taxes.

Familial Status: Refers to the status of a pregnant woman or a family with children under 18 years of age.

Farm Area: A selected and limited geographical district to which a salesperson devotes special attention and study.
**Federal Related Transaction**: Any loan that is insured, guaranteed, or funded by the federal government or a federally chartered institution.

**Fee Simple Estate**: The most popular type of estate with the greatest “bundle of rights” available.

**Fiduciary**: A person in a position of utmost trust and confidence with respect to another person.

**Fixed Window**: A glass window with no movable parts.

**Fixture**: Personal property that is permanently attached to real property.

**Flat Roof**: A roof that is almost level except for a slight grading for drainage.

**Florida Resident**: A person who has resided in Florida for at least four months or a person who is residing in Florida with an intent to remain for at least four months.

**Follow-Up**: A post-closing communication initiated by a licensee to maintain customer contact and goodwill.

**Formal Complaint**: An outline of charges brought by the DBPR against an applicant or licensee after a finding of probable cause.

**Freehold Estate**: An estate that consists of ownership rights of an unknown duration.

**Further Assurance**: The grantor agrees to obtain and deliver any legal documents or instruments that might be required to clear title in the future.

**Gable**: A roof with two sloping edges of approximately equal size.

**Gambrel**: A roof with two sloping edges with the lower edge being more inclined.

**General Agent**: An agreement whereby the agent represents and may bind the principal on transactions falling within a specific range of activities.

**General Partnership**: Two or more parties in business together, each to share the profits and losses of business.

**General Warranty Deed**: The most common type of conveyance instrument with full covenant and warranty.

**Going Concern Value**: The value of a business considered as an operating enterprise as opposed to its value merely as a collection of assets and liabilities.

**Good Faith Doubt**: When circumstance creates the overwhelming belief that a dispute may occur.

**Goodwill**: An intangible asset (value) of a business based on its reputation or expectation of customer loyalty.

**Government Survey System**: A method of describing land developed by the U.S. Government using surveying lines; the entire state of Florida is mapped out in a large checkerboard.

**Grantee**: The person or party receiving the deed.

**Granting Clause**: Words of conveyance found in the premises clause.

**Grantor**: The person or party giving the deed.

**Gross Lease**: A lease in which a tenant pays a specified rent payment and the landlord pays any operating expenses required for maintenance.

**Gross Rent Multiplier (GRM)**: The quotient of the sales price by the monthly gross rent.

**Ground Lease**: A lease on the land only.

**Group License**: License issued to sales associates and broker associates when there is proof that ownership or control of various properties is substantially held by the same individual(s), although the properties are owned in the name of different interlocking or affiliated entities.

**Guardian’s Deed**: Utilized when the grantor is under 18 years of age.

**Habendum**: The clause in which the type of estate is declared (i.e.: fee simple).

**Handicap Status**: Federal or state status for an individual unable to perform mental or physical functions under normal conditions.
Health Ordinance: Local laws that protect the health and well-being of the citizens in a community

Highest and Best Use: A principle of value that focuses on a property’s most profitable, legal use

Hip: A roof with four sloping sides that rise to meet a ridge; usually found on garages or church steeples; sometimes referred to as a pyramid roof

Home Equity Loan: A mortgage secured by a personal residence up to the value of the mortgagor’s equity

Homestead: The dwelling of the head of household that is afforded certain privileges such as protection from judgment liens and a special real estate tax exemption

Horizontal Sliding: Type of window or door that opens horizontally

Household: One individual, or a group of individuals, living in one dwelling unit

Immune Property: Real property that is never assessed or required to pay ad valorem taxes, such as government buildings

Income Capitalization Approach: A method for estimating the market value of a property based on the income the property can be expected to generate

Incurable: When the cost of curing a deficiency or defect is greater than the value added by the cure

Index: Financial indicator that will be the basis for an adjustable rate mortgage interest fluctuation

Ineffective: When a license is suspended, cancelled, or ceases to be in force

Installment Sale: When the buyer pays the purchase price over time in separate installment payments

Insulation: Materials that hinder the passage of sound, cold, heat, or electricity

Interest: The price paid for the use of borrowed money

Interior Lot: Parcel of land not located on a corner

Intermediation: The process of depositing funds in financial institutions that serves as “intermediaries” for flow of funds for investment and borrowing

Interpleader: A legal proceeding where the disputed money is deposited with the Court and the Judge decides who should receive the money

Intestate: When a person dies without a will

Involuntary Inactive: A licensee fails to renew his or her license in a timely manner

Jalousie: Fixed or adjustable slats (louvers) in a door or window

Joint Tenancy: Ownership by two or more persons with the “unities” of time, title, interest, and possession present plus the right of survivorship

Just Value: A fair and reasonable value; the property appraiser is required to assess properties at their Just Value

Key Lot: A strategically located lot and the location adds value to itself and adjacent lots. Also, a lot adjacent to a corner lot along the rear property line with frontage along the secondary street

Kickback: A portion of monies received because of an agreement for referring a party to a particular vendor for services

Land Contract: An agreement in which the seller of real estate obligates him or herself to deliver a merchantable title to the buyer upon buyer’s performance of certain agreed upon conditions such as payment of a certain number of installment payments; also known as a Contract for Deed

Land: Actual surface of the subject property

Leasehold Estate: An interest in real property where ownership or possession is measured in calendar time (non-freehold estate)
Legal Description: A method of geographically identifying a parcel of land which is acceptable in a court of law.

Legally Sufficient: When the initial complaint alleges a violation of any Florida Statute, DBPR rule, or FREC rule.

Level Payment Plan: A method for amortizing a mortgage whereby the borrower pays the same amount each month.

Leverage: The use of borrowed funds to finance the purchase of an asset.

License: A document issued by the Department of Business and Professional Regulation which certifies that the licensee is or was duly licensed on the effective date shown.

Lien: An encumbrance against a property for money, either voluntary or involuntary.

Lien Theory: Legal concept that regards a mortgage as a just claim (lien) on specific property pledged as security for a mortgage debt.

Life Estate: An ownership in real property that is tied to the death of a pre-determined party.

Lifetime Cap: Sets the upper and lower interest limits for an adjustable rate mortgage.

Like Kind Exchange: An exchange of one property for another with a deferral of tax consequences; also known as a “1031 exchange”.

Limited Liability Company: A business entity that may operate a real estate brokerage having characteristics similar to a partnership and a subchapter “S” corporation.

Limited Liability Partnership: An alternative, hybrid business entity with the combined characteristics and benefits of both limited partnerships and “S” corporations.

Limited Partnership: A business entity consisting of one or more general partners and one or more limited partners.

Limited Representation: A broker who offers to buyers and/or sellers representation as a transaction broker without offering full fiduciary duties.

Liquidated Damages: A specific dollar amount of damages to be paid by a breaching party as specified in the contract.

Liquidation Analysis: Comparing the value of assets to liabilities, the difference typically representing minimum value.

Liquidity: The ability to convert assets to cash or its equivalent within a reasonable period of time.

Lis Pendens: Constructive notice of a pending legal action.

Loan Origination Fee: A separate fee charged by a mortgage lender added to the closing costs of the buyer.

Loan Servicing: Collecting and processing payments on behalf of the mortgagee.

Loan-to-Value Ratio: The relationship between the loan amount to the value of a property.

Lot and Block: A common type of legal description used for single-family properties located in subdivisions (recorded plat maps).

Mansard: A four-sided roof with each side having two separate slopes of different angle degrees; the lower slope is at a steeper angle than the upper slope.

Margin: The additional rate of interest charged over and above the index rate in an adjustable rate mortgage.

Market Value: The most probable price a property will bring from a fully informed buyer, willing but not compelled to buy, and the lowest price a fully informed seller will accept if not compelled to sell.
** Marketable Record Title Act:** If a continuous chain of title has existed for at least 30 years, any potential title defect more than 30 years old is considered cured.

**Meeting of the Minds:** An agreement and understanding between the parties concerning the intent of their contractual terms.

**Metes and Bounds:** The most accurate method to legally describe both regular and irregular shaped parcels of real estate and is based on distances (metes) and directions (bounds); also known as the “surveyor’s system.”

**Mill:** One one-thousandth (.001)

**MIP:** Mortgage Insurance Premium; payment for mortgage insurance which protects the lender in the event of default.

**Monument:** An object used to establish boundaries (both natural and man-made).

**Mortgage:** A document providing written evidence of a creditor’s right to have a debtor’s real property sold upon default and foreclosure.

**Mortgagee:** The lender; the one to whom the property is pledged.

**Mortgagor:** The borrower; the one pledging the collateral as security for a debt.

**Multiple License:** Additional license(s) issued to a broker when necessary for the conduct of brokerage business.

**Negative Amortization:** When the monthly payment is insufficient to pay the accumulated interest for that month resulting in an increase in the amount of the principal.

**Net Lease:** A lease in which the tenant pays a specified rent plus a portion of typical landlord costs.

**Net Listing:** A listing agreement whereby the broker keeps any funds over a definite net amount to be received by the seller.

**Nolo Contendre:** A plea of no contest entered in a criminal court of law.

**Nonconforming Loan:** A loan that does not meet FNMA and FHLMC borrowing requirements.

**Nonconforming Use:** A use of property which no longer conforms to the current zoning regulations, but its continued use is allowed because the use was lawfully established and maintained prior to the change in zoning.

**Non-Representation:** Real estate brokers working with buyers and/or sellers but not representing them as single agents or transaction brokers; if a buyer or seller chooses not to be represented, a licensee can still work with them.

**Note:** Legal evidence of a debt that must accompany a mortgage in Florida; a legally executed pledge to pay a stipulated sum of money.

**Notice of Non-Compliance:** A warning that allows a licensee 15 days to correct a minor infraction without consequence.

**Novation:** Substitution of a new contract for an existing contract between the same or different parties.

**Open Listing:** Listing agreement whereby the seller promises to pay a broker a commission if that broker procures a buyer; the seller may sell the property without owing a commission, and the seller may enter an open listing with several different brokers simultaneously.

**Option:** A right, given as a continuing offer, to purchase real property upon specific terms within a given period of time.

**Ostensible Partnership:** A partnership formed, not by agreement, but by the representations or conduct of two or more parties that cause others to believe that a partnership exists; the parties become liable for the actions of the other.
**Overimprovement:** An addition or change to a property not consistent with its highest and best use, or a betterment that costs more than the value added to the property.

**Package Mortgage:** A debt secured by pledge of both real property and personal property such as range, refrigerator, or furniture.

**Partially Amortized Mortgage:** Mortgage loan repayment with equal monthly payments, but with a large balloon payment due at the end of the term.

**Percentage Lease:** A lease in which a tenant pays a specified rent to the landlord plus a percentage of the income the property generates.

**Periodic Cap:** Limits the time period interval for ARM interest rate adjustments.

**Personal Property:** All property that is not real property such as a car, a boat, stocks, or a mortgage; also known as a chattel.

**Personal Representative’s Deed:** Utilized when the grantor is deceased.

**Planned Unit Development:** Residential project with mixed land uses and high residential density.

**Plotage:** An increase in value of property experienced through assemblage.

**Point of Beginning:** The reference point that is the starting place for all metes and bounds legal descriptions.

**Point of Contact Information:** Any means by which to contact the brokerage firm or individual licensee including mailing address(es), physical or street address(es), e-mail addresses(es), telephone number(s), or facsimile telephone number(s).

**Police power:** Legislated power given to governments to protect the public’s health, safety, or welfare (zoning ordinances and building codes).

**Pre-closing Inspection:** On-site review and inspection of a property shortly before closing.

**Prepayment Clause:** Mortgage provisions permitting the borrower to make loan payments in advance of their due dates.

**Prepayment Penalty:** Mortgage provision that allows a monetary penalty to be imposed if the loan is paid off ahead of schedule.

**Prima Facie Evidence:** Evidence that is valid and admissible on its face requiring no further proof of authenticity.

**Principal:** A party employing the services of an agent.

**Principal Meridian:** The north and south line that runs through Tallahassee and is the starting place for all other meridian lines that help measure distances east and west throughout Florida.

**Principal of Substitution:** A valuation principle which states that a prudent purchaser would pay no more for real property than the cost of acquiring an equally desirable substitute on the open market.

**Private Mortgage Insurance (PMI):** Non-governmental mortgage insurance needed to insure the portion of the mortgage balance that exceeds an 80% loan to value ratio.

**Probable Cause:** Reasonable grounds or justification for prosecution.

**Profit:** The difference between the selling price and the cost price of an asset.

**Progression:** The tendency of a property to increase in value at a faster rate in order to conform to surrounding properties.

**Property Management:** The process of directing, controlling, operating, and maintaining real estate for a third party.

**Property Report:** A brief summary of a subdivision property.
**Proprietary Lease**: A lease that is created for individual use within a cooperative

**Prorate**: To apportion an expense between the buyer and seller so that each party pays his or her pro rata share

**Public Accommodation**: A hotel, motel, or other facility to which the general public has access to

**Purchase Money Mortgage**: A mortgage given by the buyer as part or all of the purchase price consideration for real property

**Quiet Enjoyment**: The grantor guarantees the grantee peaceful possession undisturbed by other claims of title

**Quitclaim Deed**: The grantor deeds property to the grantee but provides no warranty of title or promise of ownership; often used to cure defects in title

**Range**: A vertical strip of land six miles wide that runs north and south and helps determine distances east and west across Florida

**Range Line**: The vertical lines six miles apart that border a range

**Real Estate Brokerage**: A commercial activity in which the sale, purchase, leasing, rental, exchange, or management of real property is conducted by qualified and licensed individuals acting either for themselves or for others for compensation

**Real Estate**: The land and all improvements permanently attached to the land (tangible)

**Real Estate Services**: Buy, advertise, rent, sell, auction, lease, and exchange (BAR SALE)

**Real Property**: Real estate plus the legal “bundle of rights” that a person acquires by having an interest in real estate

**Recommended Order**: A final report prepared by an Administrative Law Judge (hearing officer) containing finding of facts, conclusions, and suggested penalties, if any.

**Reconciliation**: The process by which an appraiser evaluates, chooses, weighs, and selects from among two or more alternative conclusions or indications to reach a single answer (final value estimate)

**Redlining**: A lending institution’s illegal refusal to make mortgage loans in certain areas

**Registration**: Authorization by the state to place an applicant on the register (record) of officially recognized individuals and businesses

**Regression**: The tendency of a property to decrease in value, or at best, appreciate at a slower rate in order to conform to surrounding properties

**Remainderman**: When a life estate terminates, the property reverts to a predetermined third party, not the original grantor

**Residential Sale**: A residential property up to four units, a vacant parcel zoned for residential up to four units, or agricultural property of 10 acres or less

**Reverse Annuity Mortgage**: A loan arrangement in which a lender makes payments to the borrower

**Right of Survivorship**: Surviving owners in a Joint Tenancy or Tenancy by the Entireties absorb all interest and rights in a property

**Right to Reinstate**: The ability to recover from default by bringing current all payments due

**R-Value**: Insulation rating number; the higher the R-value, the greater amount of resistance to temperature fluctuation is provided

**Sales Comparison Approach**: A method for estimating the market value of a property by comparing similar properties to the subject property
Sales Associate: A licensed individual who, for compensation, is employed by a broker or owner/developer.

Satisfaction of Mortgage: Document signed by mortgagee indicating the entire loan is satisfied and the mortgage is discharged.

Section: A one-mile square found within a township.

Seisen: A statement of ownership or title to real property.

Seller’s market: The demand is greater than the supply of homes available.

Single Agent: A broker who represents either the buyer or the seller in a transaction but not both; the broker is the fiduciary of the party that is being represented.

Situs: Relationships and influences created by location of a property which affect value (e.g., accessibility, personal reference).

Sole Proprietorship: Operating as an individual in business.

Special Agent: The relationship between a principal and broker wherein the broker is acting for the principal in one specific transaction or activity only.

Special Assessment: A one-time tax assessed against a property that will directly benefit from some public improvement.

Special Exception: An individual ruling in which a property is granted the right to a use otherwise contrary to law.

Special Flood Hazard Area: Flood zones “A” and “V” are considered to be areas prone to flooding at least 1% of the time each year.

Special Purpose Property: Properties that are unique and have no comparable such as a courthouse or church.

Statute of Frauds: Body of law that states that certain types of contracts must be in writing to be enforceable.

Statute of Limitations: Establishes time limits for filing litigation.

Steering: The illegal practice of directing buyers to or from certain neighborhoods based on minority status; prohibited by federal, state, and local fair housing laws.

Sub-agency: The relationship of a salesperson working under a broker’s supervision with the broker acting as a principal and the salesperson as an agent.

Subdivision Plat Map: The layout of a subdivision showing lots, roads, and other infrastructure by the developer to a local government agency.

Subdivision: A tract of land partitioned into lots for homes or other uses and improved by roads, water and sewage systems, etc.

Subject Property: The real property under discussion or appraisal.

Subject to Mortgage: A grantee taking title to real estate “subject to the mortgage” is not assuming personal liability to the mortgagee for the payment of the mortgage note; in the event of a default on payment of the note, the grantee could lose the property and any equity he has in the property in a foreclosure sale.

Sublease: A tenant who transfers less than the entire leasehold estate.

Subordination agreement: An agreement whereby the holder (mortgagee) of a higher priority mortgage agrees to subordinate or relinquish its priority position to an existing or subsequent mortgage.

Subpoena: A legal process of ordering a witness to appear and testify before a court of law or formal administrative hearing.

Summary Suspension: Emergency or immediate suspension of a license.

Supply: The product (properties) that is available at any given time.

Tax Rate: The millage rate; the tax rate is multiplied by the taxable value of a property to determine the levy.
Tax Shelter: An investment that shields income or gain from payment of income taxes; a term used to describe some tax advantages of owning real property (or other investments), including postponement or even elimination of certain taxes.

Taxable Income: Income that is subject to taxation.

Taxable Value: Value of property for tax purposes determined by subtracting all exemptions from the assessed value.

Teaser Rate: Below-market introductory rate for an adjustable rate mortgage.

Tenancy at Sufferance: When a lease expires and no agreement has been made as to future occupancy (the tenant is a holdover).

Tenancy at Will: A lease agreement that is not in writing or does not have a beginning date and an ending date or both (a month-to-month tenant).

Tenancy by the Entireties: Ownership of real property by husband and wife only.

Tenancy in Common: Ownership of real property whereby the co-owners may or may not have acquired title at the same time, may or may not have the same interest and right of use, and do not have the right of survivorship.

Term Mortgage: A mortgage loan that provides for periodic payments of interest only with a balloon payment at the end of the loan term.

Testate: A person who dies with a will.

Time-Share: Selling or leasing a single unit to multiple owners or tenants with specific rights to use.

Title Theory: A concept in lending whereby title temporarily transfers to the mortgagee until the debt is repaid.

Title: The evidence one has of ownership to real property.

Township Line: The horizontal lines six miles apart that border a township (tier).

Township: A six-mile square area that is created when two six-mile wide bands called townships (tiers) and ranges intersect.

Township or Tier: The horizontal strip of land six miles wide that runs east and west and helps determine distances north and south across Florida.

Toxic Waste: A hazardous substance found in soil or water.

Trade Name: Any adopted or fictitious name used to designate a business concern.

Transaction Broker: A broker who provides limited representation to either the seller or the buyer or both in a real estate transaction (no fiduciary requirements).


Underground Storage Tanks: Below ground containers used typically for petroleum product storage.

Unenforceable: Status of a contract when it violates the Statute of Frauds.

Unilateral Contract: A contract whereby only one party undertakes a promise or obligation.

USPAP: Rules and guidelines that must be followed by any professional conducting an appraisal.

Vacancy Rate: The percentage of rental units unoccupied.

Valid: When a contract satisfies all legal requirements.

Variable Lease: The tenant pays rent based on a pre-determined index.

Variance: An exception to strict compliance with zoning regulations or ordinances granted to relieve a hardship.

Void: Having no legal force or binding effect.

Voidable: Contract involving a minor or other incompetent party wherein the incompetent part has a choice to enforce or rescind the contract.
Voluntary Inactive: When a licensee chooses not to have an active license or files the proper form with the DRE requesting inactive status.

Wraparound Mortgage: Creating a new second mortgage (generally owner financing) that encompasses any existing mortgages.

Zero Lot Line: Lot with no setback requirements.

Zoning Ordinance: Local law that restricts the use of land to various classifications, such as residential and commercial.
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