

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



21E Report

A report that is the result of a site investigation conducted by a qualified environmental professional. The investigation involves visiting the property to collect samples of soil, groundwater, and any other relevant items.

30-day Demand Letter

A consumer must first provide an alleged business violator this written notice. The letter should reasonably describe the unfair or deceptive act; identify the complainants role; include a description of all losses, damages, harm, or injury suffered; and offer a proposed resolution. The business is required to make a written good faith response to the letter within 30 days or it could subject the alleged violator to triple damages and collection expenses.

6(d) Certificate

A statement from the condominium organization of unit owners that itemizes all sums, which may be due to the organization from a condominium unit owner or any reserves or deposits allocated to that unit owner.

Absolute Dominion Rule

Massachusetts is one of only eight states to function under the Absolute Dominion Rule. This rule permits a landowner to intercept groundwater that might otherwise have been available to a neighboring water user and even to monopolize the yield of an aquifer without incurring any liability.

Abstract of Title

A summary report of the legal history (chain of title) of a parcel of real property identifying all conveyances, judicial proceedings, encumbrances, liens, and satisfactions including all facts affecting the title. The abstractor typically examines back 50 years or longer. Title insurance companies use abstract of title as the basis for issuing title insurance and lawyers employ it as the basis for issuing title opinions.

Accountability

This is the “A” in the generally accepted principles of agency referred to by the acronym OLD CAR. Many states refer to this requirement as accounting. It is the duty of the agent to protect and account for all funds or other property of the principal.

Acknowledgement

An acknowledgement of a signature, also referred to as notarizing, provides legal validity of the signature and that it is a voluntary act. In Massachusetts, acknowledgements are typically made by a notary public (notary) although a justice of the peace is also authorized.

Actual notice

Express or first-hand knowledge, such as being informed directly or actually seeing a document, event, or property. It is distinguished from constructive notice.

Ad Valorem

Ad valorem is Latin for “according to value.” All property taxes in Massachusetts are assessed based upon the value of the property

Adverse Possession

A principle of law that provides a person who possesses or occupies land of another without permission of the landowner and for a minimum period of time may legally acquire title to that property without paying for it. The person claiming ownership through adverse possession must show that the possession was actual, open, notorious, exclusive, hostile, continuous, and uninterrupted for the required statutory period. In Massachusetts the adverse possessor must occupy the property being claimed continuously for 20 years. This term can be established by adding together or “tacking” successive adverse possessors. It is necessary to prove the adverse possessor was the exclusive possessor and actually entered the property. The possession must be adverse to the owner’s claim and without the owner’s

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



consent. If the owner has provided permission to occupy the property, a claim for adverse possession cannot be made. Registered land in Massachusetts cannot be claimed by adverse possession.

Affirmative Disclosure

“... any person or other legal entity subject to this act, [specifically includes all real estate licensees] who fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction.” (940 CMR 3.16 (2)) Affirmative disclosure may be best summarized as a requirement, by law, to disclose to a buyer or prospective buyer any known material facts that might influence the decision whether or not to enter into the transaction. This information must be provided whether or not the buyer or prospective buyer requests the information.

Agent

An individual authorized to act on behalf of an other person (principal or client). An agent may work in place of a principal with fiduciary obligations, or as often referenced, an agent wears the shoes of their principal.

Anti-Snob Zoning

This is a nickname or common reference to M.G.L. c. 40B, also known as the Comprehensive Permit Law. This law permits housing developers to avoid many of the typically required zoning regulations and processes to promote construction of affordable housing.

Apartment Rental

While these generic words are self-explanatory, the combined reference often relates to 254 CMR 7:00 titled “Apartment Rentals.” This regulation primarily relates to fee disclosure, and the Board of Registration of Real Estate Brokers & Salespersons acknowledges the term is a misnomer and actually applies to all residential rentals.

Appraisal Trainee

A person who is authorized by the Board of Registration of Real Estate Appraisers to gain legal real estate appraisal experience under the sponsorship of a certified or licensed real estate appraiser. The authorized appraiser trainee classification provides a person with little or no real estate appraisal experience or appraiser education to enter the real estate appraisal profession. The primary prerequisites for this license include 45 classroom hours of primary education in real estate appraisal including the 15-hour national USPAP course. There is no requirement for either experience or a state exam.

Approval-Not-Required

Defined in M.G.L. c. 41, § 81P as a plan intended to be recorded in the Registry of Deeds or filed with the Land Court where approval under the subdivision control law is not required. If such a plan qualifies, it must be endorsed with the words “approval under the subdivision control law not required” or similar words.

Arbitration

The non-judicial submission of a dispute to one or more independent and impartial parties for a final, usually binding, decision of the matter (may be non-binding by agreement of the parties). Arbitration offers a more efficient, private, quicker, and less costly alternative to courtroom adjudication of disputes.

Assessed Value

Estimates of the value of real property for purposes of determining real estate taxes are generally called assessments. Unlike in many states, city and town assessors in Massachusetts are required to assess property at full and fair cash value, which could also be described as market value or fair market value. Massachusetts law defines full and fair cash value as the price an owner, willing but not under compulsion to sell, ought to receive from a buyer willing but not under compulsion to buy.

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



Bait and Switch

A marketing ploy in which a low-priced item or service is used to lure potential buyers who are then encouraged to acquire a more expensive similar item or service. This tactic is illegal under federal law and is specifically identified as a violation of M.G.L. c. 93A, the Massachusetts Consumer Protection Act.

Blockbusting

The illegal act of affirmatively soliciting for the sale or lease of residential property on the grounds of alleged change of value due to the presence or the prospective entry into the neighborhood of a person or persons of another race, economic level, religion, or ethnic origin. Distributing material or making statements designated to induce a residential property owner to sell or lease their property due to such change in the neighborhood is an example.

Board of Registration

The licensing authority for those candidates who meet the statutory and regulatory requirements for real estate brokers and Salespersons. The Board regulates real estate schools, licensee curriculum, and contracts with a testing vendor to provide the licensee examination. An important role is to protect consumers by exercising its authority to discipline those real estate brokers and salespersons who violate licensing laws and regulations. The full name is Board of Registration of Real Estate Brokers & Salespersons.

Broker

The statutory definition of a real estate broker is "... any person who for another person and for a fee, commission or other valuable consideration, or with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission or other valuable consideration, does any of the following: sells, exchanges, purchases, rents or leases, or negotiates offers, attempts or agrees to negotiate the sale, exchange, purchases, rents or leases or negotiates, or

offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of any real estate, or lists or offers, attempts or agrees to list any real estate, or buys or offers to buy, sells or offers to sell or otherwise deals in options on real estate, or advertises or holds himself out as engaged in the business of selling, exchanging, purchasing, renting or leasing real estate or assists or directs in the procuring of prospects or the negotiation or completion of any agreement or transaction which results or is intended to result in the sale, exchange, purchase, leasing or renting of any real estate..." (M.G.L. c. 112, § 87 PP)

Brownfields Act

A Massachusetts law passed in 1998 that established new financial incentives to motivate parties to clean up and redevelop contaminated real property in Massachusetts. This Act (M.G.L. c. 206 of the Acts of 1998) provided liability relief and financial incentives to attract new investment for contaminated properties while ensuring that the Commonwealth's environmental standards are in compliance. The actual name of this law is "An Act Relative to Environmental Cleanup and Promoting the Redevelopment of Contaminated Property."

Building Code

An exercise of the Commonwealth's police power. The rules regulate minimum design, construction, and quality standards in all buildings for the purpose of protecting the health, safety, and welfare of the public. The Massachusetts state building code supersedes and prevails in the event of any conflict with local building codes.

Building Permit

The official written authority from a local community that authorizes most new construction, demolition, or significant repair or remodeling of existing structures. The issuance of such a permit is evidence that the plans comply with the building code and local zoning.

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



Carbon Monoxide (CO)

A colorless, odorless, poisonous gas that can readily kill before an awareness that it is in the home. At lower levels of exposure, CO causes mild effects often mistaken for the flu. Fossil fuel appliances, furnaces, water heaters, fireplaces, and pellet or woodstoves fueled with natural gas, liquefied petroleum (LP gas), oil, propane, kerosene, coal, or wood may produce CO. It is actually produced by the incomplete burning of such fuels.

Caveat Emptor

Latin for “let the buyer beware.” This very old business doctrine requiring the customer to be totally responsible for determining the merits of a purchase is increasingly in conflict with the growing proliferation of consumer protection laws. In Massachusetts, caveat emptor is in direct contravention to M.G.L. c. 93A, the Massachusetts Consumer Protection Act.

Certificate of Occupancy

The final requirement verifying a property is safe and suitable for occupancy and all building, zoning, and other requirements have been complied with. The local building department issues the certificate only after they have validated that all inspectional services have been satisfied with the required final inspections.

Certificate of Title

The legal Land Court declaration identifying the owner of a particular parcel of property that is registered land. Title only passes on registered land when the registry of deeds (operating as an office of the Massachusetts Land Court) issues a new property owner a certificate of title. The certificate of title lists all of the liens, mortgages, encumbrances, and rights that go with the property.

Certified Appraiser

A person who holds a valid certification as a state-certified general real estate appraiser or a state-certified residential real estate appraiser.

Cesspool

A one-component system with a pipe carrying waste from the home to a leaching pit that distributes the liquid waste through holes as it enters into the soil.

Co-Ownership

When two or more persons or entities simultaneously own an undivided interest in a specific real property, often referred to as a concurrent estate. Massachusetts law (M.G.L. c. 184, § 7) recognizes tenancy-in-common, joint tenancy, and tenancy-by-the-entirety as the only three types of co-ownership.

Community Preservation Act

An enabling act (M.G.L. c. 44B) permitting a community to determine whether to create a community preservation fund to function under local control by local vote. The purpose is to assist communities with funding that may contribute to open space preservation, affordable housing, and historic preservation planning goals.

Comprehensive Permit Law

This law (M.G.L. c. 40B) permits housing developers to avoid many typically required zoning regulations and processes to promote construction of affordable housing. Also known as anti-snob zoning. A Comprehensive Permit is an all-encompassing single permit that includes all permits and approvals normally issued by several local boards.

Concurrent Estates

When two or more persons or entities simultaneously own an undivided interest in a specific real property. Often referred to as co-ownership. Massachusetts law (M.G.L. c. 184, § 7) recognizes tenancy-in-common, joint

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



tenancy, and tenancy-by-the-entirety as the only three types of concurrent estates.

Condo Super Lien

A priority or super lien that is superior in right to the first mortgage only up to the first six months of delinquent assessments. It secures a condominium association's right to collect unpaid common expenses plus all costs and attorney fees incurred in pursuing the overdue payments.

Condominium Conversion

The process of converting a multi-unit rental property to condominium ownership.

Condominium Declaration

The condominium declaration of trust along with the bylaws create both the condominium association and its governing rules and are recorded with the master deed. The declaration of trust includes the parameters for payments of common expenses.

Condominium Documents

Various filings, known as condominium documents, include the master deed, the declaration of trust, bylaws, and floor plans. Also a budget of the operational expenses of the property as a whole is often included.

Conservation Easement

Massachusetts law (M.G.L. c. 184, § 27~38) that creates a framework for negative easements to protect conservation lands, historic properties, watersheds, agricultural lands, and affordable housing facilities.

Constructive Eviction

Is the result of action or failure to act by the landlord that significantly disturbs or impairs a tenant's enjoyment or habitability of the leased premises. The result is the tenant is effectively forced to vacate the premises and terminate the lease without liability for any further rent.

Constructive Notice

Information that is available to be discovered by inquiry. Documents publicly recorded provide constructive notice of their contents. This information is available for anyone. Once obtained the party has actual notice. Constructive notice is often referred to as legal notice.

Continuing Education

Prerequisite to the renewal of a broker or salesperson real estate license is the completion of 12 hours of continuing education of approved coursework during each two-year license term and from a school authorized by the Board.

Cooperative

Cooperatives are similar to condominiums as they are individual units in a multi-unit complex. However, they differ dramatically in terms of ownership, title, and financing. Stockholders with proprietary leases share one mortgage loan and one real estate tax bill as well as maintenance costs and therefore are collectively financially responsible for one another's payments of these obligations. When a stockholder subsequently sells or otherwise transfers their stock, the proprietary lease is transferred with the stock.

Curtesy

The husband's interests in his wife's property. Dower and curtesy have generally become obsolete in the modern world. Massachusetts has eliminated the distinction between dower and curtesy. Any remaining rights are now only called dower as a gender-neutral term.

Deleading

Activity conducted that effectively eliminates lead-based paint as a potential health hazard.

Designated Agency

A designated agent (in a designated agency firm) is a licensee appointed by a broker or salesperson acting as

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



the authorized appointing agent (designator) to represent a buyer as a designated buyer's agent or to represent a seller as a designated seller's agent. In either case such designation is an individual agency and, unlike traditional agency, is to the exclusion of all other licensees in that firm.

Devise

The transfer of property resulting from the instructions contained in a will.

Dominant Tenement

With an appurtenant easement, the land that benefits from the easement is known as the dominant tenement. It is often referred to as the dominant estate.

Dower

The wife's interest in the husband's property. Dower and curtesy have generally become obsolete in the modern world. Massachusetts has eliminated the distinction between dower and curtesy. Any remaining rights are now only called dower as a gender-neutral term. In fact, the term dower is rarely used and is more typically referred to as the spouse's statutory share. The spouse's statutory share (dower rights) as they exist today in Massachusetts provide for a surviving spouse to receive a life estate in one-third of all land owned by the deceased spouse at the time of death.

Dual Agency

A disclosed dual agent is not an additional type of brokerage relationship, but rather is a simultaneous combination of both seller and buyer agency. Unlike disclosed dual agency, undisclosed dual agency is illegal in Massachusetts.

Due-on-Sale Clause

The clause in a mortgage that provides the mortgagee may demand the entire loan amount if the mortgaged premises is sold or conveyed. Also referred to as an alienation or non-alienation clause, it is strictly enforced in Massachusetts.

Dwelling Unit

A separate housekeeping unit comprised of a room or group of rooms used or intended for use by one family or household and providing complete, independent facilities for living, eating, cooking, sleeping, and sanitation.

Easement

An easement is a non-possessory property right that provides its holder an interest in another person's land.

Easement in Gross

A limited personal right of easement provided for the benefit of a person or business. It benefits the holder of the easement rather than another parcel of land. An easement in gross is distinguished from an appurtenant easement by the lack of a dominant estate. Easements in gross are most commonly used for electricity, phone, TV cable, public water, sewer, and storm drain utility service.

Electronic Signature

A paperless method or electronic equivalent of a handwritten signature. Today, contracts and signatures created electronically may be as legal as handwritten signatures inked on paper.

Enabling Act

A law creating new powers for other entities to promulgate their own laws or regulations. For example, M.G.L. c. 40A, The Zoning Act, creates zoning authority for the cities and towns (except Boston) to enact their own ordinances in the Commonwealth.

Encapsulation

A process of employing an approved coating over dangerous materials such as lead paint or asbestos. This process provides an effective barrier between the paint or asbestos and the environment and precludes the offensive material from migrating to the surface to reintroduce the hazard.

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



Entry by Possession

A seldom-used alternative to non-judicial foreclosure, it is often employed as a backup in the event of procedural error in the non-judicial sale process. The entry will be fulfilled after three years. The mortgagor may redeem the property at any time during the three years by payment of all money due to the mortgagee. Two individuals must witness the entry.

Equitable Title

Often referred to in law as equitable conversion, equitable title provides for the gradual transfer of title. Equitable title is the interest of a buyer in a property from the moment the purchase and sale agreement is signed by both parties until actual closing occurs and the buyer assumes legal title. Although the seller has legal title, the buyer has the right to gain legal title by payment of consideration and/or satisfaction of the terms of the purchase and sale agreement. While the seller retains possession until closing, the seller is under a legal obligation to maintain the property for the buyer and ensure the property does not suffer waste or damage.

Escheat

Pursuant to state law, when an individual dies intestate and there are no known heirs, title to property transfers to the Commonwealth.

Escrow Account

An account where only the broker has access to deposit and maintain the funds of other parties in a real estate transaction. As a fiduciary, the broker has no claim to such funds. An escrow account may be interest or non-interest bearing. An escrow account must be beyond the reach of the broker's creditors.

Estate for Years

The distinguishing feature of this type of leasehold estate is the lease term provides a specific beginning date and a specific ending date regardless of the length

of the lease. Accordingly, no notice is required to vacate because the lease agreement terminates on a date certain. Also known as a tenancy for a term or tenancy for a specific period.

Exclusions

A community can assess taxes in excess of its levy limit by successfully voting either debt or capital outlay exclusions. The amount of the exclusion does not become a permanent part of the levy limit base. It allows a community to assess taxes for a certain period of time in excess of its levy limit for the payment of either certain debt service costs or for the payment of certain capital expenditures. Exclusions must first be approved by a two-thirds vote of the local Selectmen or city council before appearing on the ballot. Exclusions are limited to the life of the expenditure. Additionally, and for a very few and limited purposes, a community may assess taxes in excess of its levy limit without voter approval referred to as a special exclusion.

Exclusive Agency

The listing agent is the exclusive agent for the seller. The listing agent receives a commission or fee only if any licensee is involved in the ultimate sale. If the seller sells the property without employing either the agent's assistance or involvement of any other licensee, no compensation may be due to the listing agent.

Exclusive Buyer Agency

The buyer's agent is the exclusive agent for the buyer. The buyer's agent receives a commission or fee only if any licensee is involved in the ultimate sale. If the buyer purchases the property without employing either the agent's assistance or involvement of any other licensee, no compensation may be due to the buyer's agent.

Exclusive Buyer Representation

The buyer's broker will receive compensation per the terms of the agreement between the buyer and the buyer's broker regardless of who is involved or not

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



involved in the purchase as long as the purchase is within the pendency of their agreement.

Exclusive Right to Sell

The seller's broker will receive compensation per the terms of the agreement between the seller and the seller's broker regardless of who is involved or not involved in the purchase, as long as the purchase is within the pendency of their agreement.

Facilitator

A licensee acting as a non-agent and therefore having no fiduciary relationship with the buyer or seller. Also known as a non-agent, transaction-broker, or transaction-salesperson, the facilitator works to complete the transaction.

Fair Housing Law

In Massachusetts reference to the fair housing law generally refers to M.G.L. c. 151B.

FAIR Plan

A residual market insurance association in which all companies writing basic property insurance in the Commonwealth are required to participate with losses shared among the member companies on a premium volume basis. The FAIR Plan exists to make basic property insurance more available to all eligible applicants who have been unable to secure insurance in the voluntary market. The FAIR Plan operates similar to a conventional insurance company in that it underwrites and inspects risks, accepts premiums, issues policies, and adjusts claims.

Federally Related Transaction

Any real estate-related financial transaction in which a federal agency, including the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of Currency, the Office of Thrift Supervision, the National Credit Union Association, and the Resolution Trust Corporation, requires the services of an appraiser.

Foreclosure Rescue

Any transaction when the homeowner conveys his/her residential property while maintaining a legal or equitable interest including, without limitation, a lease interest, an option to acquire the property, or other interest in the property conveyed, designed, or intended by the parties to avoid or delay actual or anticipated foreclosure proceedings against the homeowner's residential property.

Fossil Fuel

Fossil generally means excavated from the Earth. A fossil fuel is any naturally occurring hydrocarbon deposit formed in the Earth's crust and retrieved from the ground or under the sea that can be burned or consumed to produce heat and release stored energy, such as petroleum, coal, and natural gas.

Fractional Ownership

The concept of vacation ownership identified as fractional ownership falls within the legal definition of a time-share in Massachusetts. The practical aspects of owning a fraction or percentage of a property are often quite different from the typical time-share ownership concept.

Friable

Asbestos that can be reduced to dust by hand pressure.

Grandfathered

A term referring to a permissible use or act that continues to be allowed despite changes in the law that make it illegal or no longer applicable. For example, a house on a 12,000-square-foot lot is legal even after the lot size has been changed from 10,000 square feet to 20,000 square feet.

Handicapped/ Disabled

Interchangeable terms that mean physical or mental impairment that substantially limits one or more major life activities of a person. The term major life activities means functions including, but not limited to, caring for

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Homestead Declaration

A document filed at the Registry of Deeds in the county where the property is located that will protect a principal residence against most non-exempt debts up to \$500,000 of the equity in the home. Alternatively, it may be designated in the deed at the time the property is purchased. There are two types of Homestead Declaration. An owner of a home for the benefit of his or her family may file the standard form under Section 1 of the Homestead Act. The second form is for an elderly or disabled person providing individual protection and is filed under Section 1A. A declaration of homestead for a mobile home (manufactured home) must be filed at the city or town clerk's office in the city or town where the mobile home is located.

Homestead Exemption

The exempt dollar amount of \$500,000 of the equity in the principal residence. The homestead exemption will not prevent a judgment debtor's property from being sold, but does assure up to \$500,000 will go to the debtor prior to any funds allocated to creditors for any non-exempt debts.

Inactive Status

Licensed brokers and salespersons who fail to comply with the continuing education requirement but pay their renewal fee to the Board. Brokers and salespersons designated inactive are prohibited from practicing as such. An inactive salesperson or broker may receive a referral fee from a licensed active real estate broker when making a referral of a person to such licensed active broker. To change an inactive license to active status, the individual must complete the 12 hours of continuing education requirement.

Informed Consent

Agreement to allow or not allow certain activity only after full knowledge of all risks, consequences, and alternatives required to make an informed decision.

Installment Contract

A method of financing. Much like traditional mortgage loan products, an installment contract can be structured over many years or amortized over a shorter period with a balloon payment due on a specified date. These types of contracts are generally used for short-term financing where the buyer makes little or no down payment. The buyer gains equitable title while legal title remains with the seller. Also known as a contract for deed or installment land contract.

Intestate

An individual who dies without a valid will. An intestate decedent's property is distributed according to the state's Law of Descent and Distribution of Real and Personal Property.

Joint Tenancy

Undivided ownership by two or more co-owners who take title at the same moment via the same document and with identical ownership interests; includes the right of survivorship.

Land Bank

National, state, and local public or private not-for-profit enterprises engaged in preserving land. The purposes are usually preserving open space, protection of water supplies or water access, and preservation for myriad public uses. There are presently three public land banks created by special legislation in Massachusetts operating on Cape Cod, Martha's Vineyard, and Nantucket.

Land Court

Located in Boston, it is a specialized state court that exclusively addresses real property issues. The primary role of the court is the registration of land titles. It also

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



addresses many other real property matters, such as mortgage foreclosures, land use disputes, zoning and planning laws, petitions for partition, and certain civil actions involving land use and environmental permitting. Additionally, the court has authority over the registered land office in each registry of deeds throughout the Commonwealth.

Law of Descent

State statute titled Descent and Distribution of Real and Personal Property. This law creates a will for a decedent who dies intestate. The law prescribes both the persons to whom the decedent's property will pass to and the division of the estate among those persons.

Levy Limit

The maximum amount in real and personal property taxes a community can levy in a given year. The limit can grow by 2.5 percent of the prior year's levy limit plus new growth, overrides, or exclusions. It can never exceed 2.5 percent of the total assessed value of the municipality.

License

- 1) Generally a revocable, non-exclusive, and non-assignable permission to use or enter property of another or to perform some act.
- 2) Express right from a lawful authority to engage in a specific business or professional activity, such as a real estate broker, medical doctor, lawyer, or electrician.

Licensed Appraiser

A person who holds a current, valid license as a state-licensed real estate appraiser but lacks the experience or expertise of a certified appraiser.

Licensed Site Professional (LSP)

An individual licensed by the Massachusetts Department of Environmental Protection (DEP) to provide assistance to disposal site owners to ensure the site is cleaned up following the Massachusetts

Contingency Plan (MCP) process. The LSP minimizes DEP involvement in site activities by overseeing action conducted at the site.

Licensee

A person or entity who has a valid real estate license, either active or inactive.

Limited Liability Company (LLC)

A company providing the limited liability of a corporation without the double taxation because income is only reported on the owner's personal tax return. It is an alternative to a partnership or a corporation. Those who hold an equity interest in the LLC are referred to as "members" A minimum of one member is required to form the LLC.

Limited Liability Partnership (LLP)

Massachusetts has adopted the Uniform Partnership Act (M.G.L. c. 108A), making a limited liability partnership a legal entity. Individual partners of a partnership organized under this act share ownership in the real property but only as members of the partnership. Any estate in real property may only be acquired or conveyed in the name of the partnership. Such a partnership is referenced as a limited liability partnership or LLP. Limited liability partnerships are distinct from limited partnerships in that limited liability is granted to all partners, not to a subset of non-managing limited partners.

Limited Partnership

Massachusetts has adopted the Uniform Limited Partnership Act (M.G.L. c. 109), making limited partnership a legal entity. The distinguishing feature of a limited partnership is the presence of one or more general partners, as well as limited partners. A limited partner has no liability to creditors beyond their capital contribution as opposed to a general partner who maintains such liability. If any limited partners

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



participate in the direct management of the business they will lose their defense against liability to creditors.

Liquidated Damages

A predetermined and agreed amount of consideration by the parties to a contract as the amount of damages the injured party will receive if the other party to the contract defaults.

Lot and Block

A method of legal description of real property referenced by lots and blocks, especially within subdivisions or other property developments. This system uses lot and block numbers referred to in a plat that has previously been approved by a local planning board and filed in the public records of the county where the land is located. The plat identifies each parcel or lot within assigned block and lot numbers for easy (usually) reliable reference.

Massachusetts Contingency Plan (MGP)

A regulatory framework for cleaning up hazardous waste sites. It outlines the schedule and procedures at disposal sites to make the necessary and appropriate response actions to provide protection of health, safety, public welfare, and the environment.

Master Deed

The condominium master deed creates the condominium once it is recorded at the registry of deeds. It defines the common areas, the boundaries for each unit, and the rights and obligations of all unit owners along with the master plan for each floor and the site plan.

Master Plan

Every community in Massachusetts is required by law (M.G.L. c. 41, § 81D) to maintain and develop a long-term plan of the physical development of the municipality. A master plan, also known as a comprehensive plan, is a fluid planning process that theoretically never achieves finality.

McCarthy v. Tobin

A landmark decision by the Massachusetts Supreme Judicial Court (429 Mass. 84 (1999)) ruled an offer to purchase real estate, once signed by both the buyer and the seller, may be a binding contract between the parties despite language stating the offer to purchase is contingent on the signing of a purchase and sale agreement sometime in the future. The court ruled that the contingent purchase and sale agreement might be viewed merely as a "polished memorandum of an already binding contract."

Mechanic's Lien

A statutory, involuntary encumbrance on privately owned real property much like a mortgage. The lien is filed by and in favor of anyone who provides construction services such as carpentry, electrical, or painting, as well as any supplier of building materials for the project. The lien is placed on the subject property to secure payment for work performed or goods supplied. If the contractor or supplier is not paid, they can foreclose on the lien and sell the property at public auction to satisfy the lien, similar to foreclosing on a mortgage loan.

Mediation

Mediation is an alternative process of dispute resolution in which one or more impartial and independent third parties intervene to mediate a conflict with the consent of the parties to assist in negotiating a consensual and informed solution. Here the decision-making authority remains with the participants themselves. The mediator does not have the authority to make a binding decision.

Megan's Law

In 1996 President Bill Clinton signed legislation directing state legislatures to adopt statutes to require convicted sex offenders to register with local law enforcement agencies as well as grant access of these registries to

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



the public. This legislation, known federally as Megan's Law, is embodied in M.G.L. c. 6 §§ 178C-178P.

Metes and Bounds

A method of legal description of real property referenced by a description of the property beginning at the point of beginning (POB) and traveling the entire perimeter of the property and ending at the POB. Metes means measure and bounds means boundaries. In theory, the surveyor walks the perimeters of the parcel of land beginning at the POB, citing distances, compass directions, and monuments while proceeding until arriving back at the POB.

Monuments

In a metes-and-bounds legal description, monuments can be natural or artificial objects and used to identify the lines and boundaries of a survey, for example, rocks, trees, streams, rivers, and man-made objects such as stakes, iron pipes, walls, telephone poles, or buildings.

Mortgage Broker

Any person who, for compensation or gain, negotiates, places, assists in placement, finds, or offers to negotiate, place, assist in placement, or find mortgage loans funded by others.

Mortgage Lender

Any lending source that takes a mortgage on property as security for a loan.

Mortgage Originator

Any person who negotiates, solicits, arranges, provides, or accepts mortgage loan applications, or assists consumers in completing such applications.

Mouthable Surface

The only surfaces that must be deleaded or encapsulated, even if intact, are surfaces up to five feet from the floor that can be mouthed by a child. These could include but are not limited to wall comets, doors,

stairs, railings, windows, baseboards, chair rails, and parts of windows (With sills below five feet) that move or touch moving parts.

Municipal Lien Certificate

A statement issued by the city or town collector of taxes stating the amount of property taxes assessed against a particular piece of property plus other assessments including water, sewer, and other charges due to municipal lighting plants where applicable. This statement is only issued upon the request of a property owner or their authorized representative.

National Flood Insurance Program (NFIP)

A federally backed flood insurance program to limit the cost of such coverage. It is available to property owners in more than 330 Massachusetts communities that have agreed to adopt and enforce floodplain management ordinances.

Net Listing

A listing from an owner or a landlord for the sale or rental of real property in which the commission is unspecified as either a dollar amount or a percentage of the transaction.

New Growth

A community may increase its levy limit in excess of 2.5 percent annually by the value of new construction and newly taxable parcels. The purpose of this provision is to recognize that new development results in additional municipal costs.

Nicole's Law

State law requiring carbon monoxide detectors in every dwelling unit with fossil fuel burning equipment or adjacent enclosed parking areas. The law applies to all dwelling units in the Commonwealth and not just those being sold.

Non-Friable

Asbestos too hard to be reduced to dust by hand.

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



Non-Judicial Foreclosure

The non-judicial process of foreclosure is used when a power-of-sale clause exists in a mortgage or deed of trust. A power-of-sale clause is the clause in a deed of trust or mortgage in which the borrower preauthorizes the sale of property to pay off the balance on a loan in the event of their default. The foreclosure sale must be conducted exactly as provided in the power-of-sale clause. In deeds of trust or mortgages where a power of sale exists, the power given to the lender to sell the property may be executed by the lender or their representative, typically referred to as the trustee.

Notary Public

A person authorized by the state to administer oaths, certify documents, and attest to the authenticity of signatures.

Notice of Sale

In a foreclosure process the notice must contain the place, time, and date of the foreclosure hearing, the date the mortgage was recorded, the borrower's name, the amount of the default, and the terms of the sale. A notice of sale must be recorded in the county where the property is located. The notice must also be sent, by registered mail, to the borrower at his/her last known address at least fourteen days prior to the foreclosure sale. It must be published once a week for three weeks, with the first publication being at least twenty-one days before the sale, in a newspaper of general circulation within the county where the property is located.

Notice to Quit

A written notice from a landlord to a tenant that officially terminates a tenancy. If a tenant receives a notice to quit, this does not mean he or she has to move out by the date on the notice. A landlord must always get a court's permission to move a tenant out.

Offer to Purchase Contract

This preliminary contract is used to determine if there is a meeting of the minds on the critical elements of a purchase and sale such as purchase price, deposit amount, date of closing, mortgage loan amount, and the buyer's right to inspect the property. This is a relatively brief document, often one or two pages. In most every case it is clearly provided that it is contingent upon a purchase and sale agreement at terms and conditions acceptable to both buyer and seller. Notwithstanding such a contingency, Massachusetts law has provided this offer contract may be binding upon the parties.

Open Buyer Representation

This is an open, non-exclusive agreement whereby the buyer may employ a number of unrelated licensees to purchase a property. The licensee who brings the property that the buyer ultimately purchases is entitled to the compensation. All other licensees involved are summarily discharged. This type of agreement may be in writing, but is often oral.

Open Listing

This type of listing agreement provides that the seller may employ any number of unrelated licensees to sell the property. The licensee who brings the ready, willing, and able buyer and completes the transaction is entitled to the commission or fee. All other licensees involved are summarily discharged. Open listings may be in writing but are often oral.

Overrides

A city or town can assess taxes beyond the 2.5 percent levy limit by voting an override. Overrides change the community's levy limit permanently and remain the base number from which the following years levy limit is determined. Overrides must first be approved by a majority vote of the local selectmen or city council before appearing on the ballot. All proposed overrides

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



must be presented in dollar amount and specify the purpose of the override.

Payoff Statement

A written statement provided by a mortgagee upon an authorized request delineating all principal, interest, and other charges assessed related to the mortgage and required to satisfy the obligation within a period of 30 days. Often referred to as a payoff letter.

Percentage of Ownership

The percentage of undivided condominium ownership of the common areas. The percentage determines the size of the vote each unit owner is entitled to in the condominium association business as well as the percentage of the budget that the unit owner is responsible to pay. Each unit is designated an undivided interest in the common areas in the percentage set forth in the master deed.

Planning Board

The two major functions of a planning board are subdivision control and the ongoing development of a community comprehensive plan (master plan) including the city/town official map. For small towns that do not maintain a planning board, the board of selectmen will act in this capacity. In lieu of a planning board, Boston vests all planning responsibilities in the Boston Redevelopment Authority (BRA). Some towns still have a board of survey whose duties are very similar to a planning board; however, by statute no board of survey could be created after 1936.

Plot Plan

A plan of the property, buildings, and improvements based upon a visual inspection of the site. The plot plan often includes reference to recorded surveys and descriptions and rough on-the-ground measurements as prepared by a licensed professional. While a plot plan is less expensive than a full instrument survey, it

may also be less accurate. It is not recorded at the registry of deeds nor relied upon for a legal description.

Point of Beginning (PUB)

The known starting point in a metes-and-bounds legal description. A metes-and-bounds description is simply stated as beginning at the POB, traveling the entire perimeter of the property, and ending at the POB. In theory, the surveyor walks the perimeters of the parcel of land beginning at the POB, citing distances, compass directions, and monuments while proceeding until arriving back at the POB.

Power-of-Sale Clause

The clause in the mortgage pre-authorizing the sale of the property to retire the outstanding balance of the mortgage loan in the event the mortgagor is in default.

Pre-Existing Nonconforming Use

The Zoning Act specifically does not apply to any structures, uses, or special permits lawfully in existence or initiated before the first publication of notice of the public hearing of a change in zoning. If zoning is changed to be more restrictive, the use changes to a pre-existing nonconforming use and the lot, building, or special permit is grandfathered. Such status may not necessarily apply to any reconstruction of a structure or to a different or expanded use of the property.

Pre-Payment Penalty

A penalty required by the mortgagee from the mortgagor for either early prepayment of the loan or significant principal reductions in addition to that required as periodic installments.

Predatory Lending

Lending practices that encourage a consumer to enter into a loan at more onerous terms than the borrower could have obtained shopping other sources for the same loan at the same time. Often referenced as loans made by lenders whose primary objective is to profit the lender when an objective third party would

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



reasonably anticipate that the borrower cannot comply with future payments and has a high probability of default.

Prescriptive Easement

An easement acquired by adverse use (Without the owner's permission) on the land of another. This adverse use must be open, notorious, actual, hostile, uninterrupted, and continuous for twenty years. An easement by prescription is not available for registered land.

Principal

A person or entity represented by an agent. A principal relationship is a fiduciary relationship, often referenced as a client.

Private Deed Restriction

Limitations regarding the future use of property may be placed in the deed at the time a property is transferred.

Private Tidelands

The intertidal area between the high and low-water lines defined in M.G.L. c. 91, § 1 as "tidelands held by a private party subject to an easement of the public for the purposes of navigation and free fishing and fowling and of passing freely over and through the water."

Procuring Cause

The efforts of the licensee that clearly originated the series of events that resulted in the actual purchase or sale of the property, without a break in continuity, resulting in entitlement to a brokerage commission.

Proposition 2-1/2

Statutory constraints on the maximum amount of the tax levy on real and personal property as well as a limit on the annual increase in the tax levy. This law restricts a community's property tax levy to 2.5 percent of the full and fair cash value of taxable real and personal property. It also restricts the amount the property tax levy can increase in a given year in excess of the

previous year's levy. It affects the total amount of tax a community can raise annually but has no direct effect on individual property tax bills.

Proprietary Lease

A written lease in a cooperative building between the corporation/owner of the building and the stockholder/tenant. The lease includes the right to occupy a specific unit within the cooperative as well as defining the tenant/stockholder obligations and financial responsibilities to the corporation/owner.

Psychological Impact

Certain non-material defects identified as psychological impacts are not required to be disclosed by the licensee or seller. Such facts include if the property was the site of a felony, homicide, suicide, alleged ghosts, other supernatural phenomena, or if an occupant of the property is now or has been suspected to be infected with the human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), or any other disease that reasonable medical evidence suggests is highly unlikely of being transmitted through occupancy of a dwelling.

Public Assistance

Discrimination against families on welfare or other public assistance is illegal. Examples of protected citizens include a recipient of government-sponsored public assistance such as medical assistance, or a tenant receiving federal, state, or local housing subsidies such as rental assistance.

Public Trust Doctrine

A body of common and statutory laws mandating that the state holds title to navigable waters in trust for public purposes. The Public Trust Doctrine has its roots in early Roman law and subsequently English common law. It protects public use of navigable water bodies.

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



Puffing

The age-old practice of exaggeration historically referred to as puffing is illegal in Massachusetts. There are no provisions in M.G.L. c. 93A that allow puffing. Statements once considered sales rhetoric are now illegal.

Quitclaim Deed

Similar to the special warranty deed used in most other states, a Massachusetts quitclaim deed provides two quitclaim or limited covenants to the buyer at the time the deed is delivered. It warrants against any encumbrances made by the grantor except those specifically set forth in the deed. The grantor and grantor's heirs will warrant and defend the grantee against all claims and demands, only for the period of the grantor's ownership of the property.

Reciprocal License

A real estate broker's or salesperson's license obtained, often without classroom or examination requirements, in reliance upon the certified record of license history from the original state of licensure. The special criteria for licensure shared between Massachusetts and other states vary from state to state.

Recorded Land

The alternative to registered land. The vast majority of property in Massachusetts is known as recorded, unregistered, or the abstract system of land title. Documents pertaining to recorded or unregistered land reflect the traditional common law system of land records. Recorded in the order received, documents are assigned an instrument number, date and time of recording, and a book and page number. Also often referenced as unregistered land.

Redlining

Redlining is the illegal and discriminatory practice of refusing to lend to or insure people in a particular geographical area.

Registered Land

The alternative to recorded or unregistered land. A certificate of title for each registered property evidences ownership. Ownership has been previously declared by the land court to be a certain person or entity as the owner of the property. Ownership can never again be disputed or doubted by any person except upon a claim of fraud brought within one year after entry of judgment. The Commonwealth guarantees title to registered land. If a problem occurs, the state will reimburse the property owner for any losses. The land court acting through the registered land department of the registry of deeds supervises registered land records and retains all original documents including the original deed. Similar to the procedure for unregistered land, the registry will assign a book and page to the title certificate. The legal principle that governs registered land is that title only passes upon registration of the deed and issuance of a new certificate of title.

Rental Fee Disclosure

Required of licensees for all residential rental property. Each prospective tenant must be provided with a written disclosure at the first personal meeting, which states whether the prospective tenant will pay any fee, amount of the fee, when the fee is to be paid, and whether any fee will be payable if a tenancy is not created. It must be signed by and include the license number of the licensee. It must be offered to the prospective tenant for signature at the first personal meeting.

Riparian Rights

Massachusetts is referred to as a riparian state. Often the reference to riparian rights is meant to include all water frontage rights. Nevertheless, there is a usage distinction between riparian and littoral. Riparian rights are a property owner's rights and obligations in land that borders on a river, stream, or other watercourse.

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



These rights include both access to and use of the water.

Salesperson

Massachusetts recognizes broker and salesperson as the only two types of real estate license. Prerequisite to obtaining a broker's license is to obtain one year's experience as a salesperson. No salesperson may conduct or operate his or her own real estate business or act in any way except as the representative of a real estate broker. The broker is responsible for the salesperson and must approve the negotiation and completion of any transaction or agreement by the salesperson. A salesperson may not receive any fee, commission, or other valuable consideration from any person or entity except their licensed broker in connection with any transaction.

Satisfaction of Mortgage

An acknowledged statement acceptable for recording and issued by a mortgagee stating that a mortgage loan is paid in full. Also referenced as a mortgage discharge.

Secret Lien

Because mechanic's liens generally do not appear in a title search, they are often referred to as secret liens.

Security Deposit

An advance deposit of funds required by the lessor from the lessee to be held by lessor as security for unpaid rent, other unpaid tenant financial obligations or repairs, or damage to the leased premises.

Service Animal

Any guide dog or other animal specifically trained to provide assistance to a person with a disability. Service animals perform one or more of the functions and tasks that the disabled person cannot perform.

Servient Tenement

With an appurtenant easement, the land that serves to benefit an adjacent parcel is known as the servient tenement or the servient estate.

Single Agency

When a brokerage firm or a sole practitioner practicing traditional agency solely represents either buyers or sellers but never both. In this instance the licensee or firm will never participate in dual agency.

Solar Access

The Zoning Act specifically encourages the use of solar energy systems and the protection of solar access. As evidence of the state's priority regarding solar access, M. G.L. c. 184, § 23C expressly prohibits restrictions on solar devices, voiding "...any provision in an instrument relative to the ownership or use of real property, which purports to forbid or unreasonably restrict the installation or use of a solar energy system... or the building of structures that facilitate the collection of solar energy."

Solar Easement

An easement created to preserve or establish a property owner's access to natural light and direct sunlight.

Special Permit

Zoning boards of appeal may issue special permits for uses in harmony with the general purpose and intent of the zoning bylaw, but do not meet the specific zoning guidelines. The issuance of a special permit may impose conditions, safeguards, and limitations on time or use.

State Sanitary Code

Minimum standards of human habitation that must be maintained by the occupants and owners of housing. The standards apply to every owner-occupied or rented dwelling, dwelling unit, mobile dwelling unit, or rooming house unit in Massachusetts that is used for living, sleeping, cooking, and eating. Local boards of health

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



have the primary responsibility for their enforcement. These standards are promulgated by the Massachusetts Department of Public Health and recited in 105 CMR 410.000.

Statement of Condition

A written statement of the present condition of the leased premises containing a comprehensive schedule of any damage or material issues existing at the beginning of the lease term. This statement signed by both lessor and lessee is a prerequisite for a landlord to apply any portion of a security deposit in a residential rental for repairs or damages.

Statute of Frauds

The statute of frauds (M.G.L. c. 259) mandates certain contracts be in writing in order to be enforceable. The purpose is to prevent fraud by parties falsely claiming a contract is in force. It is not intended to prevent the effectiveness of legal oral contracts.

Statutory Eviction

Is the legal expulsion of a person from land or rental property initiated by the lessor as a consequence of failure to pay rent or some other breach of the lease. The legal procedure to effect an eviction is referred to as summary process. An actual eviction or expulsion from the premises can only be accomplished as a result of a court order. Also known as actual eviction.

Steering

Steering is directing prospective homebuyers or renters to or away from a particular neighborhood based upon a protected class. It generally has the effect of excluding certain members of a protected class from certain neighborhoods or directing them to neighborhoods predominated by a protected class without the specific request of the home seeker.

Subagent

An agent of an agent and may be either a seller's agent or a buyer's agent.

Subdivision

The division of a tract of land into two or more lots.

Survey

Generally referenced as a land survey or plat of survey. It is the process and application of measuring land areas and property boundaries, identifying distances and land area dimensions, and often the specific delineation of roads, improvements, easements, and encroachments. While the survey is a map or plat created by a licensed land surveyor, it is the fundamental basis for many legal descriptions of land.

Tacking

The adding together of periods of prescriptive use by continuous users whose interests in the property has succeeded the interest of previous users such as through a deed, will, or inheritance.

Target Housing

Federal lead paint laws use this term to generally mean housing constructed prior to 1978.

Tax Levy

The property tax levy is the total revenue that a community can raise through real and personal property taxes.

Tax Rate

The tax rate is determined by taking the tax levy and dividing that amount by the total assessed valuation of all taxable property in the community. Tax rates in Massachusetts are always expressed in terms of each \$1,000 of assessed valuation.

Tenancy at Will

In this type of leasehold estate, the distinguishing feature is that the lease period is defined (often one month) and continues automatically from period to period indefinitely until altered by proper notice by either lessee or lessor to the other. Also known as a

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



periodic tenancy, month-to-month tenancy, or estate at will.

Tenancy in Common

Undivided joint ownership or concurrent estate of property by two or more owners of where there is no right of survivorship. Tenants in common may have different percentages of ownership.

Tenants by the Entirety

A form of property co-ownership that applies only to a married couple while they are legally married. Such joint ownership is shared by spouses who, based upon very old common law, are considered to be one person for the purpose of owning property. As tenants by the entirety, the married couple has the same right of survivorship that is inherent in joint tenancy.

Testate

An individual who dies with a valid will. A testate decedent's property is distributed according to the dictates of his or her will.

Tidal Water

Generally refers to the rights of the riparian owner who owns to the mean low-water mark, but not farther seaward of the high-water mark than 100 rods (or 1,650 feet).

Time-Share

A form of joint ownership of property similar to a condominium except the element of time is introduced. Numerous owners or lessees share the costs of the property and the right to enjoy individual occupancy during a potentially infinite number of separated time periods according to a specific schedule. In Massachusetts, time-shares are considered real estate.

Title 5

That section of the State Environmental Code (310 CMR 15.000). It encompasses the standard requirements for the siting, construction, inspection, upgrade, and

expansion of on-site sewage treatment and disposal systems and the transport and disposal of septage. Although Title 5 is a state law, it is a minimum code providing latitude for local boards of health to adopt more stringent ordinances, policies, and guidelines than those required by Title 5. On-site wastewater disposal systems include conventional septic systems, cesspools, and innovative alternative systems.

Title Theory

Mortgage law that views title to the real property to be actually vested with the mortgagee. The mortgagor retains equitable title as well as the right to use and enjoy the property. Massachusetts is a title theory state.

Title XI

Title XI of FIRREA requires the establishment of state programs for the licensing and certification of appraisers performing appraisals for federally related transactions under the jurisdiction of FFIRAS.

Traditional Agency

When a licensee of a traditional agency firm enters into an agency relationship with either a buyer or a seller, all licensees in that brokerage firm automatically become agents of that buyer or seller. In the event of an in-house transaction where the brokerage firm represents both buyer and seller as agents, a dual agency occurs. Accordingly, licensees practicing traditional agency may represent either buyers or sellers or both. It should be noted if a licensee enters into a facilitator or non-agent relationship with a buyer and/or seller, all other licensees in the firm are also facilitators or non-agents with respect to that buyer or seller.

Transfer Tax Stamps

Massachusetts derives revenue from the conveyancing of real estate through the sale of documentary excise tax stamps. The cost of the stamps affixed to the deed before recording are based upon the actual sales price.

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



The cost to purchase (the tax rate) the excise tax stamps may differ from time to time and may vary from county to county.

Underground Storage Tank (UST)

Any tank, including related underground pipes, that has at least 10 percent of its volume underground. Such tanks may be used to store fuel products, industrial liquids, waste, or other hazardous liquids.

Underrides

A city or town can reduce the levy limit by voting an override. Overrides change the community's levy limit permanently and remain in the base number from which the following year's levy limit is determined. They must first be approved by local initiative petition before appearing on the ballot.

Unfair/ Deceptive Practices

There exists no specific definition of such practices. Rather, regulations abound with myriad examples of such practices. The fact that a regulation does not reference a specific unfair or deceptive practice does not diminish the illegality. Determining existence of such practices does not require whether there was intent to deceive. Generally, if the business practice is what most objective parties would deem unfair or deceptive, it probably is.

Unit Deed

The evidence of ownership of an individual condominium unit.

Vacation Rental

The law defines two separate categories of vacation rentals: 1) Any rental for 100 days or less of residential property for vacation or recreational purpose is subject to very little regulation and is not included within the requirements of M.G.L. c. 186, §15B; 2) Any rental for 31 days or less of residential property for vacation or recreational purpose is subject to different lead paint

procedures and exempt from most lead paint requirements.

Variance

After public hearing, the zoning board of appeals has the statutory power to grant a limited exception or variance from existing zoning ordinances based upon circumstances of hardship.

Vicarious Liability

The potential to be held liable for the misrepresentation, illegal act, or omission of another person as a consequence of an existing fiduciary relationship.

Warranty Deed

Similar to the general warranty deed used in most other states. A warranty deed provides four warranty covenants to the buyer at the time the deed is delivered. The warranties are that the grantor owns the land in fee simple, the property is free from encumbrances other than those specifically set forth in the deed, the grantor has the right to convey the property to the grantee, and the grantor and grantor's heirs will warrant and defend the title against all lawful claims and demands.

Writ of Attachment

Judicial notification that property is subject to possible lien dependent upon a future lawsuit. The attachment is not itself a lien, but rather a notice attached to the property impeding clear title until the court acts upon the claim.

Zoning Board of Appeals (ZBA)

A permit granting authority appointed by a board of selectmen or mayor as authorized by M.G.L. c. 40A, § 6. This board actually serves three functions. It may issue special permits and variances as well as overseeing rulings of the local zoning administrator or enforcement officer. It also has the key role in determining the

Glossary

Key Terms for Massachusetts Real Estate Principles, Practices, & Law



viability of affordable housing proposals under Massachusetts General Laws 40B.

Zoning Code

In Massachusetts all zoning is local. The Zoning Act (M.G.L. c. 40A) enables local communities, except Boston, to create zoning bylaws and ordinances under their police powers. Boston's zoning code is governed by the Enabling Act within M.G.L. c. 665 of the Acts of 1956 and as subsequently amended. Under 40A cities and towns are not required to create a separate zoning commission. Instead, it places the zoning authority in the respective city council, board of selectmen, or equivalent. Alternatively, the Enabling Act does not provide the Boston City Council any role in zoning.